

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

MOTION RECORD OF MAPPRO REALTY INC.

November 20, 2024

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B E T W E E N:

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Respondents

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Respondents

NOTICE OF MOTION

Mappro Realty Inc. (“**Mappro**”), will make a motion to the Honourable Justice Osborne,
or another Judge of the Commercial List, on the day of , 2024 at
10:00 a.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard

- ☐ In writing under subrule 37.12.1 (1);
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location: 330 University Avenue, Toronto, Ontario.

THE MOTION IS FOR:

1. An order:

- a) abridging the time for service and validating the service of this notice of motion and the motion record so that it is properly returnable before the court on the date of the motion;
- b) to the extent required, lifting the stay of proceedings (the “**Stay**”) ordered by The Honourable Justice Osborne pursuant to an order dated October 18, 2023 (the “**Receivership Order**”) to enable Mappro, a plaintiff in an Ontario Superior Court proceeding bearing Court File No. CV-22-00686696-0000 (the “**Mappro Action**”), to:
 - i) seek leave to amend its amended statement of claim (the “**Existing Claim**”), in the form attached as Schedule "A" (the “**Proposed Amended Claim**”) and continue the Mappro Action, as amended, in the normal course;
 - ii) in the alternative to paragraph 1(b)(i), continue the Mappro Action, as amended, in the normal course as against any one or more of the following non-debtor defendants: the City of Toronto (the “**City**”) and Mizrahi Inc. (“**Mizrahi Inc**”);
- c) to the extent required, lifting the Stay to enable Mappro to continue its injurious affection claim in a similar amended form (the “**Injurious Affection Claim**”) commenced under the *Expropriation Act*, R.S.O. 1990, c. E.26.;
- d) for its costs of this motion; and
- e) any further relief that the Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:*The Parties, the Properties, and the Project*

2. Mappro owns the property (the “**Mappro Property**”) municipally known as 19 Bloor Street West, Toronto, Ontario. The Mappro Property is located on the corner of Bloor Street and Balmuto Street.

3. Mizrahi Development Group (The One) Inc. (“**Mizrahi Group**”) is the registered owner of the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto, Ontario on which a mixed-use development project (the “**Project**”) is being constructed.
4. The Mappro Property and the Mizrahi Property are not adjoining properties.
5. Mappro recently learned that:
 - a) Mizrahi Group is the nominee for and on behalf of Mizrahi Commercial (The One) LP (“**Mizrahi LP**”), the beneficial owner of the Mizrahi Property;
 - b) Mizrahi Commercial (The One) GP Inc. (“**Mizrahi GP**”) is the sole general partner of Mizrahi LP; and
 - c) Mizrahi Inc acted as the developer and general contractor of the Project until March 13, 2024. Mizrahi Inc described itself as the “owner” of the Project and, according to the Receiver (defined below), “exercised significant (and sometimes total) control over the Project from its inception until [March 13, 2024].”
6. Mizrahi Group, Mizrahi LP, Mizrahi GP, and Mizrahi Inc, are collectively and individually referred to as “**Mizrahi.**”

The Nuisance and the Receivership Order

7. In or around the summer of 2020, Mizrahi, with the City’s consent, erected and began using a portion of Balmuto Street directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) in connection with the Project. Mizrahi installed and began operating a concrete pump pedestal and a generator on the Staging Area. Nobody made any efforts to consult with Mappro, seek its consent, or provide Mappro with notice of Mizrahi's intention to seek a permit and, ultimately, use the Staging Area.
8. Since the summer of 2020, Mizrahi has been using the Staging Area to pump concrete to the Project, among other construction-related activities. For the most part, Mizrahi has done so with the City’s consent, granted in the form of permits, that have been extended from time to time.
9. Mizrahi's installation and use of the Staging Area interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
 - b) it creates unreasonable noise, vibration, dust, dirt, and smell;
 - c) it is unsightly;
 - d) it obstructs the sidewalk in front of the Mappro Building;
 - e) it restricts access to the Mappro Building and the emergency exits;
 - f) it restricts visibility into and from the Mappro Building;
 - g) it restricts access to the fire hydrant;
 - h) it causes homeless people to loiter directly in front of the Mappro Property, leading to numerous instances of begging, drug use, and individuals urinating and defecating directly in front of the Mappro Property; and
 - i) it causes the Mappro Property to be vandalized and broken-into.
10. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.
 11. The non-trivial interference, which has been severe and lengthy, is unreasonable.
 12. There is no public utility in the Project; it is a private development being constructed by a private builder. Mappro is unreasonably being forced to bear the brunt of the Project for the private good of Mizrahi and its lenders.
 13. In September 2021, Mappro started the Injurious Affection Claim against Mizrahi Group and the City.
 14. In September 2022, Mappro commenced the Mappro Action against Mizrahi Group (i.e. the registered owner of the Mizrahi Property) and the City, in which it claimed that the defendants were liable for the on-going nuisance, among other things. Mappro sought damages and a mandatory permanent injunction preventing the ongoing use of the Staging Area, requiring the removal of the Staging Area, and requiring the repair of the portion of Balmuto Street that the Staging Area currently occupies.
 15. On October 18, 2023, Justice Osborne issued a receivership order (the “**Receivership Order**”) appointing Alvarez & Marsal Canada Inc. (the “**Receiver**”) as the “[r]eceiver without security of all of the assets, undertakings and properties of [Mizrahi LP, Mizrahi Group, and Mizrahi GP (collectively, 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 Receivership Order was made pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

16. The Receivership Order, including with the minor amendment to paragraph 15 in the Lien Regularization Order dated March 7, 2024, provides that:¹
 - a) “... 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.”
 - b) “... [N]o Proceeding against or **in respect of the Debtors or the [Mizrahi] Property, or [Mizrahi Inc]** for **matters arising after the date of this Order**, shall be commenced or continued except with ... leave of this Court ...”
 - c) “... [A]ll rights and remedies **against the Debtors, ... or affecting the [Mizrahi] Property, or against [Mizrahi Inc]** ... **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 ... leave of this Court, **provided however ... 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 ...**”
17. The nuisance has been ongoing since 2020 and continues to this day. The City last extended the permit on July 24, 2024, thereby allowing the continued use of the Staging Area from August 1, 2024 to February 1, 2026. There are no guarantees that the permit will not be further extended.
18. During the course of the receivership proceedings, Mappro learned that the different Mizrahi entities were involved in the nuisance.

The Within Motion

19. The Existing Claim did not reference events that had taken place after November 30, 2022.
20. In early October 2024, Mappro served a modified version of the within notice of motion, in which it, sought to lift the Stay to, among other things amend the Existing Claim to (a) add Mizrahi GP, Mizrahi LP, and Mizrahi Inc as defendants to the Mappro Action and (b) account for events that had occurred after the Existing Claim was issued (e.g. the continued use of the Staging Area and the extensions of the permits after November 30, 2022). This

¹ Emphasis added.

relief was in addition to the relief being sought on the within motion to continue with the Mappro Action and the Injurious Affection Claim, as amended, in the normal course.

21. To ensure that it was able to preserve all possible rights, Mappro proposed that the lifting of the Stay motion be heard on an expedited basis (i.e. before November 30, 2024). Mappro and the Receiver, however, were able to reach an agreement on the time sensitive aspects of the relief that Mappro sought. More specifically, the Receiver consented to lifting the Stay for the sole purpose of allowing Mappro to seek leave to amend the Existing Claim to:
 - a) add Mizrahi GP, Mizrahi LP, and Mizrahi Inc as defendants to the Mappro Action (but, as it concerns Mizrahi Inc, only in connection with events that took place before the Receiver was appointed); and
 - b) account for events that occurred after the Existing Claim was issued.
22. Mappro is currently in the process of seeking leave to amend the Existing Claim in the form agreed-upon by the Receiver. Mizrahi Inc and the City have yet to advise whether they will be opposing the amendment.
23. Mappro and the Receiver agreed that the remaining aspects of the motion to lift the Stay could proceed in the normal course. Mappro has revised the within notice of motion to outline the relief it is still seeking; namely:
 - a) Leave to amend the Existing Claim to the Proposed Amended Claim, which differs slightly from the form of claim to which the Receiver previously consented. The differences largely address changes that are necessary due to the limited nature of the Receiver's previous consent; and
 - b) Leave to proceed with the Mappro Action and the Injurious Affection Claim, both as amended, in the normal course.
24. On October 21, 2024, counsel for Mappro and counsel for the Receiver had a discussion as to the proper party against whom Mappro should seek an injunction. On October 23, 2024, the Receiver confirmed that:

the injunction [in the Mappro Action] should be sought against the Debtors; and, in the event that an injunction is granted against the Debtors during the Receivership, the Receiver will not cause the Debtors to breach the terms of that injunction. To put the

matter differently, there is no need to pursue a personal claim against the Receiver in order to secure an enforceable injunction.

25. The Receivership Order does not operate to stay or prevent Mappro from proceeding in the normal course with the Mappro Action in the form of the Proposed Amended Claim or the Injurious Affection Claim (in a similarly amended form) for any one or more of the following reasons:
 - a) The Mappro Action as against the City is not a matter “in respect of the Debtors or the [Mizrahi] Property.”
 - b) The Proposed Amended Claim as against Mizrahi Inc concerning events that took place before October 18, 2023 are not addressed by the Stay.
 - c) The Receivership Order specifically provides that it does not empower “the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on ...” As such, the Stay does not allow the Debtors (or Mizrahi Inc) to continue to engage in nuisance and, thus, does not prevent Mappro from seeking to stop the ongoing nuisance and advance claims concerning the ongoing nuisance.
26. In the alternative and to the extent required, Mappro seeks to lift the Stay as set out in paragraph 1 of this notice of motion. The Court has broad discretion to lift the Stay, including to prevent an abuse of process. There are sound reasons for doing so, including, but not limited to those set out below.
 - a) There is no sound reason why Mappro should be unable to proceed with its claims against the City and Mizrahi Inc.
 - b) In the Mappro Action, Mappro is seeking an injunction that would prevent Mizrahi from continuing to use the Staging Area (in addition to damages). If Mappro is not entitled to proceed with its action in the normal course, Mappro will lose its right to seek an injunction, which cannot be granted through a receivership claims process. Mappro should be able to present its case to the Court and have the Court decide whether Mizrahi’s use of the Staging Area should stop. The refusal to allow Mappro to proceed with its claim against Mizrahi would constitute a gross injustice and be materially prejudicial to Mappro.

- c) The Debtors are necessary parties for the complete adjudication of the matters at issue in the Mappro Action and the Injurious Affection Claim.
 - d) It would be costly, time-intensive, materially prejudicial to Mappro and, ultimately, nonsensical if:
 - i) Mappro were allowed to proceed at this time with the Proposed Amended Claim and the Injurious Affection Claim (as similarly amended) as against (I) the City, (II) Mizrahi Inc (as it concerns events that took place before October 18, 2023), and (III) the Debtors (for purposes of obtaining the injunction, but not damages), all of which should clearly be permitted; after which
 - ii) Mappro were forced to re-litigate the damages claims against the Debtors in a claims process in the receivership.
 - e) The Mappro Action is in respect of an unliquidated debt, the proof and valuation of which has a degree of complexity that makes the summary procedure of a receivership inappropriate.
 - f) Mappro will suffer material prejudice if the stay is not lifted. It would only be equitable to lift the Stay in the circumstances.
 - g) The totality of the circumstances and a consideration of the relative prejudice to both sides support the lifting the Stay.
27. Rules 1.04, 1.05, 3.02, 5.03, 5.04(2), 26.01, 26.02 and 37 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194.
28. The principles in sections 69.4 and 215 of the *BIA*.
29. Such further grounds as the lawyers may advise and to this Honourable Court may seem just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Claudia Lapa, to be sworn.

November , 2024

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Schedule "A"

No. CV-22-00686696-0000

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

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

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date “September 7, 2022” Issued by “Electronically Filed”
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto, Ontario
M5G 1R7

TO: GOODMAN'S LLP
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Lawyers for the defendants,
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and Mizrahi Commercial (The One) GP Inc.

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Lawyers for the defendant,
Mizrahi Inc.

CLAIM

1. The plaintiff, Mappro Realty Inc. ("**Mappro**"), claims against the defendants as follows:
 - a) damages in the amount of \$3,000,000;
 - b) an interlocutory and mandatory permanent injunction requiring Mizrahi (defined below) to immediately:
 - i) stop using the Staging Area (defined below);
 - ii) remove the Staging Area in its entirety or move it so that it is no longer in front of the property (the "**Mappro Property**") municipally known as 19 Bloor Street West, Toronto;
 - iii) repair the portion of Balmuto Street ("**Balmuto**") currently occupied by the Staging Area and return it to its previous condition;
 - c) pre-judgment interest in accordance with the Courts of Justice Act;
 - d) costs of this action; and
 - e) any further relief this Honourable Court deems just.
2. All dates and amounts set out herein are approximate.

A. The Parties and the Properties

3. Mappro, an Ontario corporation, owns the Mappro Property.
4. The defendant, Mizrahi Development Group (The One) Inc. ("**Mizrahi Group**"), an Ontario corporation, is the registered owner of the property (the "**Mizrahi Property**") municipally known as 1 Bloor Street West, Toronto as nominee for and on behalf of the defendant, Mizrahi Commercial (The One) LP ("**Mizrahi LP**").
5. The defendant, Mizrahi LP, an Ontario limited partnership, is the beneficial owner of the Mizrahi Property.
6. The defendant, Mizrahi Commercial (The One) GP Inc. ("**Mizrahi GP**"), an Ontario corporation, is the sole general partner of Mizrahi LP and the sole owner of Mizrahi Group.

7. The defendant, Mizrahi Inc. (“**Mizrahi Inc**”), an Ontario corporation, acted as the developer and general contractor of the project being built on the Property (the “**Project**”) until March 13, 2024. Mizrahi Inc described itself as the “owner” of the Project and, according to the Receiver (defined below), “exercised significant (and sometimes total) control over the Project from its inception until [March 13, 2024].”
8. Mizrahi Group, Mizrahi LP, Mizrahi GP, and Mizrahi Inc are collectively or individually referred to as “**Mizrahi**.”
9. The defendant, the City of Toronto (the “**City**”), is a municipal corporation governed by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A and its regulations. It owns the lands on which the Staging Area was installed.

B. The Properties and the Project

10. The Mappro Property is located on the southeast corner of Balmuto and Bloor Street (“**Bloor**”). The building on the Mappro Property is currently split into two units: one leased and operated by Scotiabank, and the other operated by Mappro (the “**Mappro Building**”).
11. Mappro has made significant efforts and continues to try to lease the Mappro Building to a high-end retail tenant.
12. Mizrahi is in the process of constructing a mixed-use development (the “**One**”) on the Mizrahi Property. For what is believed to have been a short time, Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the Project. At all relevant times, Clarke is believed to have acted as Mizrahi's agent.
13. The Mizrahi Property and the Mappro Property are not adjoining properties.

C. The Project, the Staging Area, and the Original Permit

14. In or around March 2015, Mizrahi submitted to the City its site plan and zoning application (among other things) for the Project. The City authorized the construction of the Project by issuing various types of authorizations and permits. There was no contemplation of using Balmuto as a construction staging area.

15. At some point, Mizrahi decided that it wanted to use a portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for the construction of the Project.
16. Mizrahi required a permit from the City to erect and use the Staging Area.
17. Neither Mizrahi, nor the City made any efforts to consult with Mappro, seek its consent, or provide it with notice of Mizrahi's intention to seek a permit and, ultimately, use the Staging Area.
18. On or around July 14, 2020, the City granted Clarke, as Mizrahi's agent, a temporary street occupation permit (the "**Original Permit**") allowing Mizrahi to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.
19. The City's grant of the Original Permit was contrary to the provisions of the City of Toronto Municipal Code (the "**Code**") because, among other things:
 - a) neither Mizrahi nor Clarke owns any lands abutting Balmuto;
 - b) Mappro did not consent to Mizrahi's occupation of Balmuto or waive its claims against the City for any losses or damages arising from the occupation; and,
 - c) Mizrahi and Clarke failed to provide Mappro with notice of the occupation of Balmuto.
20. At an unknown date, Mizrahi erected and began using the Staging Area by, among other things, installing and operating a concrete pump pedestal and a generator. Mizrahi used the Staging Area to pump concrete to the Project, among other things.
21. The Staging Area occupies more space than the Original Permit allowed. The City did not take any steps to ensure that Mizrahi complied with the terms of the Original Permit.
22. Mappro did not learn about Mizrahi's intention to obtain a permit or use the Staging Area until it saw the construction equipment installed on the Staging Area.
23. Mappro's initial calls to the City concerning the Staging Area went unanswered.
24. It is unknown whether the City extended the duration of the Original Permit. If the City extended the duration of the Original Permit, it was done without justification and without

authority. If the City did not do so, Mizrahi continued to use the Staging Area without permission.

D. The Multi-Year Permit

25. The Original Permit was only intended to be a stopgap solution. Mizrahi wanted to use the Staging Area for the duration of the Project, which was anticipated to take many years.
26. As a result, Mizrahi sought to obtain a longer-term permit (the "**Multi-Year Permit**").
27. Mizrahi first made its request for the Multi-Year Permit to the Toronto East York Community Council ("**TEYCC**").
28. On or around November 10, 2020, Mizrahi's request for the Multi-Year Permit came before TEYCC for a vote. Before the vote, the City submitted a report to TEYCC. In the report, the City admitted that City Council approval was required to issue the Multi-Year Permit (i.e. a permit that allows a temporary occupation of City lands that do NOT abut the lands of the applicant) because its issuance would "not comply with City policy or by-laws."
29. On or around November 10, 2020, TEYCC recommended that City Council grant the Multi-Year Permit, with certain additional recommendations including, among other things, that:
 - a) the City grant the Multi-Year Permit without Mizrahi having to comply with the Code; and,
 - b) Mizrahi execute an indemnity agreement in favour of the City with respect to Mizrahi's occupation of Balmuto.
30. On or around November 25, 2020, City Council adopted TEYCC's recommendations (with some small amendments) and authorized the City to grant the Multi-Year Permit for the period November 30, 2020 to November 30, 2022.
31. The City then issued the Multi-Year Permit allowing Mizrahi to "stage concrete truck and deliveries on both northbound lanes of Balmuto ... fronting [the Mappro Building] ... pertinent to the development of [the One]."

32. Mizrahi did not comply with the terms of the Multi-Year Permit. For instance, it occupied more space than it was permitted. The City did not take any steps to ensure that Mizrahi was complying with the terms of the Multi-Year Permit.

E. The Multi-Year Permit Was Repeatedly Extended

33. The Multi-Year Permit was in effect extended on numerous occasions after it expired on November 30, 2022.
34. On December 14, 2022, the Multi-Year Permit was extended from December 14, 2022 to March 31, 2023.
35. Mizrahi did not have permission from the City to use the Staging Area between November 30, 2022 and December 14, 2022. The City did nothing to stop Mizrahi from using the Staging Area during that time.
36. On March 29, 2023, the Multi-Year Permit was extended again from April 1, 2023 to April 1, 2024.
37. On October 18, 2023, Alvarez & Marsal Canada Inc. (the “**Receiver**”) was appointed the “[r]eceiver without security of all of the assets, undertakings and properties of [Mizrahi LP, Mizrahi Group, and Mizrahi GP] ... 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.”
38. On March 20, 2024, the Multi-Year Permit was extended from April 2, 2024 to July 31, 2024.
39. On July 24, 2024, the Multi-Year Permit was extended from August 1, 2024 to February 1, 2026.
40. Mizrahi has used the Staging Area continuously from the date on which it was installed. It has done so with the City’s permission, except during short periods of time when Mizrahi did not have a permit allowing it to use the Staging Area.
41. Mappro has not been provided with copies of all of the various permit extensions.

42. Mappro has been given no guarantees that the Multi-Year Permit will not be further extended past February 1, 2026. Mappro claims all damages arising from Mizrahi's use of the Staging Area and the granting of any further extension on a go-forward basis.

F. The Effects of the Installation and Use of the Staging Area

43. Mizrahi's installation and use of the Staging Area interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:
- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
 - b) it creates unreasonable noise, vibration, dust, dirt, and smell;
 - c) it is unsightly;
 - d) it obstructs the sidewalk in front of the Mappro Building;
 - e) it restricts access to the Mappro Building and the emergency exits;
 - f) it restricts visibility into and from the Mappro Building; ~~and~~
 - g) it restricts access to the fire hydrant-;
 - h) it caused homeless people to loiter directly in front of the Mappro Property, leading to numerous instances of begging, drug use, and individuals urinating and defecating directly in front of the Mappro Property; and
 - i) it caused the Mappro Property to be vandalized and broken-into.
44. Mappro spent a significant amount of time and money on a marketing program to secure the right long-term high-end retail tenant for the Mappro Building. It also sought to lease the Mappro Building to short-term tenants.
45. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.
46. The difficulty in attracting tenants limited Mappro's options in connection with the Mappro Property.
47. The installation and use of the Staging Area will likely interfere with, delay, and increase the cost of any renovation that Mappro may perform on the Mappro Building.

G. Nuisance

48. The granting and extension of the various permits and the installation and use of the Staging Area interferes to a significant degree with Mappro's use and enjoyment of the Mappro Property.
49. The non-trivial interference, which has been severe and lengthy, is unreasonable.
50. There is no public utility in the Project (i.e. the construction of the One); it is a private development being constructed by a private builder. Mappro is unreasonably being forced to bear the brunt of the Project for the private good of Mizrahi and its lenders. It is not reasonable that Mizrahi should be allowed to profit at Mappro's expense.
51. The defendants are liable to the plaintiff for creating an ongoing nuisance and for permitting any form of the nuisance to occur.
52. The defendants also failed to act reasonably throughout the process:
 - a) The defendants failed to discuss the Staging Area with Mappro before installing it (even though Mappro was going to be the entity most impacted by its installation).
 - b) The defendants changed the location of the Staging Area to Balmuto mid-Project, thereby precluding Mappro from being able to oppose the granting of the original building permit.
 - c) Mizrahi refused to meaningfully engage with Mappro until Mappro's legal counsel got involved.
 - d) Mappro's initial calls to the City regarding the Staging Area went unanswered.
 - e) Although the City held consultative talks with community members, it made it clear that it cared little that the installation and use of the Staging Area would negatively impact Mappro (i.e. a non-voting entity).
 - f) The City granted the Original Permit contrary to the provisions of the Code.
 - g) The City granted the various permits and extensions knowing full well that the granting of the permit (a) ran afoul of the City's own policies and (b) would cause Mappro significant financial harm. In doing something it knew to be wrong, the

City then ensured that it was protected from litigation risks by obtaining an indemnity from Mizrahi.

- h) The defendants failed to take any steps to mitigate the impacts of the ongoing nuisance.
 - i) The defendants failed to provide Mappro with reasonable notice when seeking and granting extensions of the various permits.
53. Mappro has suffered, and continues to suffer, damages arising from the nuisance.

H. Negligence

54. The defendants owe Mappro a duty of care.
55. The defendants acted negligently by, among other things:
- a) failing to provide notice to, consult with, or obtain consent from Mappro before installing and constructing the Staging Area;
 - b) granting the Original Permit contrary to the provisions of the Code;
 - c) installing and operating the Staging Area in a manner that does not comply with any of the permits;
 - d) failing to ensure that Mizrahi complied with the terms of the permits; and
 - e) failing to mitigate the effects that the installation and use of the Staging Area has on Mappro.
56. Mappro has suffered, and continues to suffer, damages arising from the defendants' negligence.
57. The plaintiff pleads the *Negligence Act*, the *City of Toronto Act*, and the Code.

September 7, 2022

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Lawyers for the plaintiff,
Mappro Realty Inc.

MAPPRO REALTY INC.
Plaintiff

-and- MIZRAHI DEVELOPMENT GROUP (THE ONE)
INC., et al.
Defendants

No. CV-22-00686696-0000

Ontario
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

FRESH AS AMENDED STATEMENT OF CLAIM

SPEIGEL NICHOLS FOX LLP
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Lawyers for the plaintiff,
Mappro Realty Inc.

RCP-F 4C (September 1, 2020)

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

AFFIDAVIT

I, Claudia Lapa, of the Town of Collingwood, in the County of Simcoe,

MAKE OATH AND SAY:

1. I am a law clerk with the law firm of Spiegel Nichols Fox LLP ("**SNF**"), lawyers for Mappro Realty Inc. ("**Mappro**"), the party seeking to lift the stay of proceedings ordered in the within receivership proceedings (the "**Receivership Proceeding**"), and, as such, have knowledge of the matters to which I depose.

A. The Parties and the Properties

2. Mappro is the plaintiff in an action (the "**Mappro Action**") commenced in the Superior Court of Justice bearing Court File Number CV-22-00686696-0000 against (a) the City of Toronto (the "**City**") and (b) Mizrahi Development Group (The One) Inc. ("**Mizrahi Group**"), one of the debtors in the Receivership Proceeding. As set out below, Mappro is in the process of amending the claim in the Mappro Action to add the following defendants: Mizrahi Commercial (The One) LP ("**Mizrahi LP**"), Mizrahi Commercial (The One) GP Inc. ("**Mizrahi GP**") and Mizrahi Inc. ("**Mizrahi Inc**").

3. Mizrahi Group, Mizrahi LP, Mizrahi GP, and Mizrahi Inc are collectively and individually referred to as “**Mizrahi**.”
4. I am advised by Isabelle Hayen (“**Hayen**”), a director of Mappro, and believe that:
 - a) Mappro, an Ontario corporation, purchased the property (the “**Mappro Property**”) municipally known as 19 Bloor Street West, Toronto on December 30, 2016 and remains the owner of the Mappro Property to this day.¹
 - b) The Mappro Property is located on the southeast corner of Balmuto and Bloor Street (“**Bloor**”).
 - c) Before Mappro purchased the Mappro Property, the entire Mappro Property was owned and used by Scotiabank as shown in the following picture.



- d) In June 2019 (i.e. after Mappro purchased the Mappro Property), Mappro split the Mappro Property into two units: (a) one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”), which remains the case today and (b) the other unit would be operated by Mappro (the “**Mappro Building**”). The

¹ Exhibit A, Tabs 1 and 2.

Mappro Building is approximately 5,500 square feet over two floors with an additional approximately 1680 square foot basement. It has a smaller frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See the picture below:



5. Mizrahi Group is the registered owner of the property (the "**Mizrahi Property**") municipally known as 1 Bloor Street West, Toronto.² The Mizrahi Property is located at the corner of Bloor Street and Yonge Street.³
6. The Mizrahi Property and the Mappro Property are not adjoining properties.⁴
7. According to the February 26, 2024 First Report (the "**First Report**") of Alvarez & Marsal Canada Inc. (the "**Receiver**"), the receiver appointed in the Receivership Proceeding:
 - a) Mizrahi Group is the nominee for and on behalf of Mizrahi LP, who is the beneficial owner of the Mizrahi Property.⁵

² Exhibit A, Tab 5.

³ Exhibit A, Tab 6.

⁴ Exhibit A, Tab 7 at ¶ 9; Tab 8 at ¶ 1; Tab 38.

⁵ Exhibit A, Tab 5 and Tab 9, p. 1 (1.1) and p. 5 (3.3).

- b) Mizrahi GP is the sole general partner of Mizrahi LP and the sole owner of Mizrahi Group.⁶
8. According to the various reports that the Receiver issued:
- a) Mizrahi Inc acted as the developer and general contractor of the project known as the One (the “**Project**”) that is being built on the Mizrahi Property from inception until March 13, 2024.⁷
 - b) Mizrahi Inc described itself as the “Owner of the Project” in a construction management contract that it entered into with Clark Construction Management Inc.⁸
 - c) Mizrahi Inc “exercised significant (and sometimes total) control over the Project from its inception until [March 13, 2024].”⁹
9. The City is a municipal corporation governed by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A and its regulations. The City owns and governs the lands on which the Staging Area was installed.¹⁰

B. The Permits and the Use of the Staging Area

10. I am advised by Allison Speigel (“**Speigel**”), a lawyer with SNF with carriage of this file, and believe that:
- a) On or around July 14, 2020, the City granted Clarke Construction Management Inc. (“**Clarke**”), seemingly on Mizrahi’s behalf, a temporary street occupation permit (the “**Original Permit**”) allowing Mizrahi to occupy an area in front of the Mappro Building as a construction staging area (i.e. the Staging Area) from July 14, 2020 to August 21, 2020.¹¹
 - b) At some point, Mizrahi sought a multi-year permit to use the Staging Area. On or around November 10, 2020, Mizrahi's request for a multi-year permit came before

⁶ Exhibit A, Tab 9, p. 5, 3.2.

⁷ Exhibit A, Tab 10, p. 1 (2.2).

⁸ Exhibit A, Tab 9, p. 23 (footnote 8).

⁹ Exhibit A, Tab 11, p. 49 (11.2).

¹⁰ Exhibit A, Tab 12 at ¶¶1 and 8.

¹¹ Exhibit A, Tab 39.

Toronto and East York Community Council ("**TEYCC**") for a vote. Before the vote, the Acting Director, Traffic Management, Transportation Services ("**Transportation Services**") of the City submitted a report to TEYCC, in which it was **admitted that City Council approval was required to issue the multi-year permit because its issuance would "not comply with City policy or by-laws."**¹²

- c) On or around November 10, 2020, TEYCC recommended that City Council grant a multi-year permit, with certain additional recommendations including, among other things, that: (a) the City grant the multi-year permit without Mizrahi having to comply with the Code; and, (b) Mizrahi execute an indemnity agreement in favour of the City with respect to Mizrahi's occupation of the Staging Area.¹³
- d) On or around November 25, 2020, City Council adopted TEYCC's recommendations (with some small amendments) and authorized the City to grant a multi-year permit (the "**Multi-Year Permit**") for the period **November 30, 2020 to November 30, 2022**. The City then issued the Multi-Year Permit allowing Mizrahi to use the Staging Area from November 30, 2020 to November 30, 2022.¹⁴
- e) The Multi-Year Permit was, in effect, extended on numerous occasions after it expired on November 30, 2022.
 - i) On December 14, 2022, the Multi-Year Permit was extended from **December 14, 2022 to March 31, 2023**.¹⁵
 - ii) On March 29, 2023, the Multi-Year Permit was extended again from **April 1, 2023 to April 1, 2024**.¹⁶
 - iii) On March 20, 2024, the Multi-Year Permit was extended from **April 2, 2024 to July 31, 2024**.¹⁷

¹² Exhibit A, Tab 14 (at p. 4) (emphasis added).

¹³ Exhibit A, Tab 14.

¹⁴ Exhibit A, Tab 15 and Tab 16.

¹⁵ Exhibit A, Tab 17 (emphasis added).

¹⁶ Exhibit A, Tab 18 (emphasis added).

¹⁷ Exhibit A, Tab 19 (emphasis added).

iv) On July 24, 2024, the Multi-Year Permit was extended from **August 1, 2024 to February 1, 2026.**¹⁸

f) Before the various extensions of the Multi-Year Permit were granted, the City received “reports for action” from Transportation Services. Each such report set out Transportation Services’ recommendations and identified the “financial impacts” to the City of granting the extension. Three “Reports for Action” are set out below, along with the report’s recommended extension and what was identified as the “financial impact” to the City of granting the extensions.

Report for Action dated November 14, 2022	Recommending extending Multi-Year Permit from December 14, 2022 to June 30, 2025	“There is no financial impact to the City. Mizrahi Developments is responsible for all costs , including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).”	Tab 21 of Exhibit “A”
Report for Action dated February 20, 2024	Recommending extending Multi-Year Permit from April 2, 2024 to August 31, 2025	“There is no financial impact to the City. Mizrahi Developments is responsible for all costs , including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, these fees will be approximately \$240,000.00 including lost revenue from the parking machines (if applicable).”	Tab 22 of Exhibit “A”
Report for Action dated June 21, 2024	Recommending extending Multi-Year Permit from August 1, 2024 to February 1, 2026	“There is no financial impact to the City. Mizrahi Developments is responsible for all costs , including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, these fees will be approximately \$ 255,000.00 including lost revenue from the parking machines (if applicable).”	Tab 23 of Exhibit “A”

¹⁸ Exhibit A, Tab 20 (emphasis added).

11. I am advised by Hayen and believe that:

- a) Mappro never consented to the erection, occupation, and use of the construction staging area (the “**Staging Area**”) that was erected in 2020 in front of the Mappro Building. To the contrary, Mappro has repeatedly opposed the issuance and extension of the permits allowing the use of the Staging Area.¹⁹
- b) Mizrahi has used the Staging Area continuously since it was erected in 2020.
- c) The Mappro Building is a rental property. The Mappro Building has remained vacant since the erection of the Staging Area.

C. The Action, the Receivership Proceeding, and the Within Motion

12. I am advised by Spiegel and believe that:

- a) Mappro made a claim for injurious affection on September 7, 2021.²⁰
- b) Mappro had a statement of claim issued on September 7, 2022 in the action (the “**Mappro Action**”) commenced in the Superior Court of Justice bearing Court File Number CV-22-00686696-0000. In the original statement of claim, Mappro inadvertently named Mizrahi Developments Inc. instead of Mizrahi Group.²¹
- c) Mappro served the original statement of claim in December 2022 and, shortly thereafter, learned of the misnomer. Mappro promptly sought to correct the misnomer, but Mizrahi Group opposed the correction. As a result, a misnomer motion was heard on April 25, 2023. Associate Justice Wiebe issued an order (the “**Misnomer Order**”) allowing Mappro to correct the misnomer and amend its claim. Mappro was wholly successful on the misnomer motion and Associate Justice Wiebe ordered that Mizrahi pay Mappro \$18,000 in costs.²²
- d) On May 12, 2023, Mappro amended its claim (the “**Existing Claim**”) to correct the misnomer.²³

¹⁹ Exhibit A, Tab 4.

²⁰ Exhibit A, Tabs 24(a) and 24(b).

²¹ Exhibit A, Tab 7.

²² Exhibit A, Tab 25 and Tab 26.

²³ Exhibit A, Tab 27.

- e) Mizrahi Group brought a motion with Mappro's consent to amend the Misnomer Order. The resulting order was not issued until September 29, 2023.²⁴
- f) The receivership order (the "**Receivership Order**") in the Receivership Proceeding was issued on October 18, 2023.²⁵
- g) Between June and October 2024, Mappro's counsel and the Receiver's counsel engaged in settlement discussions; none of which were successful.
- h) In early October 2024, Mappro served a notice of motion to lift the stay (the "**Stay**") imposed by the Receivership Order.²⁶
- i) On October 18, 2024, the Receiver consented to a subset of the relief sought on Mappro's motion to lift the Stay (the "**Lift Stay Motion**"); namely, the Receiver consented to lifting the Stay for the sole purpose of amending the Existing Claim to an agreed-upon form (i.e. adding Mizrahi LP, Mizrahi GP, and Mizrahi Inc as defendants and accounting for events that occurred after the Existing Claim was issued).²⁷
- j) The existing defendants and proposed new defendants in the Mappro Action have consented to allowing Mappro to amend the Existing Claim to the agreed-upon form (the "**Amended Amended Claim**"). Mappro is in the process of so amending the claim.
- k) Thereafter, Mappro revised its notice of motion in the Lift Stay Motion to account for the subset of relief to which the parties had already agreed. Mappro included the revised notice of motion (the "**Governing NOM**") in the aide memoire that it served on **November 5, 2024**. The Governing NOM now governs the within Lift Stay Motion.

13. I attach the following documents at the following tabs of Exhibit "A":

Tab 32	A blackline showing the differences between the Amended Amended Claim and the proposed Fresh as Amended Statement of Claim (attached as Schedule "A" to the Governing NOM).
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²⁴ Exhibit A, Tab 28.

²⁵ Exhibit A, Tab 29.

²⁶ Exhibit A, Tab 30 and Tab 31.

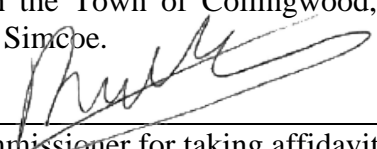
²⁷ Exhibit A, Tab 37.

Tab 12	Statement of defence that the City of Toronto (the “ City ”) filed in the Mappro Action.
Tab 8	Statement of defence that Mizrahi Group filed in the Mappro Action.
Tab 33	Mappro’s reply to the City’s statement of defence in the Mappro Action.
Tab 34	Mappro’s reply to Mizrahi Group’s statement of defence in the Mappro Action.

D. Pictures

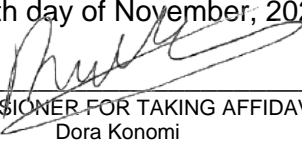
14. I attach at Tab 35 of Exhibit “A” pictures that were taken in 2020 and given to SNF by Hayen.
15. I attach at Tab 36 of Exhibit “A” pictures that were taken in June 2021 and given to SNF by Hayen.
16. I attach at Tab 3 of Exhibit “A” pictures that were taken on November 20, 2024 and given to SNF by Hayen. I am advised by Hayen and believe that (a) there were no cement trucks present when these pictures were taken and (b) when cement trucks are present, they occupy the space between the pump (located behind the hoarding) and the location of the black car (at the corner of Balmuto and Bloor) shown on the picture at Tab 3, page MR76 of Exhibit "A".
17. I attach at Tab 13 of Exhibit “A” a document seemingly prepared for Mizrahi showing alternative placements of the Staging Area.

SWORN BEFORE ME, after confirming the identity of the deponent, on the 20th day of November, 2024. This oath was administered in accordance with Ontario Regulation 431/20 and administered by videoconference while I was situated in the City of Toronto, in the Province of Ontario, and the deponent was situated in the Town of Collingwood, in the County of Simcoe.


 Commissioner for taking affidavits
 Dora Konomi


CLAUDIA LAPA

This is Exhibit "A" referred to in the Affidavit of Claudia Lapa, sworn before me this 20th day of November, 2024.



A COMMISSIONER FOR TAKING AFFIDAVITS
Dora Konomi

CORPORATION PROFILE REPORT

Ontario Corp Number		Corporation Name	Incorporation Date	
2549861		MAPPRO REALTY INC.	2016/12/06	
			Jurisdiction	
			ONTARIO	
Corporation Type		Corporation Status	Former Jurisdiction	
ONTARIO BUSINESS CORP.		ACTIVE	NOT APPLICABLE	
Registered Office Address			Date Amalgamated	Amalgamation Ind.
199 BAY STREET COMMERCE COURT WEST Suite # 5300 TORONTO ONTARIO CANADA M5L 1B9			NOT APPLICABLE	NOT APPLICABLE
			New Amal. Number	Notice Date
			NOT APPLICABLE	NOT APPLICABLE
			Letter Date	
Mailing Address			NOT APPLICABLE	
199 BAY STREET COMMERCE COURT WEST Suite # 5300 TORONTO ONTARIO CANADA M5L 1B9			Revival Date	Continuation Date
			NOT APPLICABLE	NOT APPLICABLE
			Transferred Out Date	Cancel/Inactive Date
			NOT APPLICABLE	NOT APPLICABLE
		EP Licence Eff.Date		EP Licence Term.Date
		NOT APPLICABLE		NOT APPLICABLE
		Date Commenced in Ontario		Date Ceased in Ontario
		NOT APPLICABLE		NOT APPLICABLE
Activity Classification		Number of Directors MinimumMaximum		
NOT AVAILABLE		00001	00010	

CORPORATION PROFILE REPORT

Ontario Corp Number

2549861

Corporation Name

MAPPRO REALTY INC.

Corporate Name History

MAPPRO REALTY INC.

Effective Date

2016/12/06

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator: Name (Individual / Corporation)

GILBERT
ECTOR

Address

199 BAY STREET
COMMERCE COURT WEST
Suite # 5300
TORONTO
ONTARIO
CANADA M5L 1B9

Date Began

2016/12/23

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

SECRETARY

Resident Canadian

CORPORATION PROFILE REPORT

Ontario Corp Number

2549861

Corporation Name

MAPPRO REALTY INC.

Administrator:

Name (Individual / Corporation)

ISABELLE

HAYEN

Address

199 BAY STREET
COMMERCE COURT WEST
Suite # 5300
TORONTO
ONTARIO
CANADA M5L 1B9

Date Began

2016/12/23

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

PRESIDENT

Resident Canadian

Administrator:

Name (Individual / Corporation)

JULES-ANDRE

HAYEN

Address

199 BAY STREET
COMMERCE COURT WEST
Suite # 5300
TORONTO
ONTARIO
CANADA M5L 1B9

Date Began

2016/12/23

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

VICE-PRESIDENT

Resident Canadian

CORPORATION PROFILE REPORT

Ontario Corp Number

2549861

Corporation Name

MAPPRO REALTY INC.

Administrator:

Name (Individual / Corporation)

ISABELLE

HAYEN

Address

199 BAY STREET
COMMERCE COURT WEST
Suite # 5300
TORONTO
ONTARIO
CANADA M5L 1B9

Date Began

2016/12/23

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

N

Administrator:

Name (Individual / Corporation)

ROELAND

KUYPS

Address

199 BAY STREET
COMMERCE COURT WEST
Suite # 5300
TORONTO
ONTARIO
CANADA M5L 1B9

Date Began

2016/12/23

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

N

CORPORATION PROFILE REPORT

Ontario Corp Number

2549861

Corporation Name

MAPPRO REALTY INC.

**Administrator:
Name (Individual / Corporation)**

ERIC
PUTCUYPS

Address

199 BAY STREET
COMMERCE COURT WEST
Suite # 5300
TORONTO
ONTARIO
CANADA M5L 1B9

Date Began

2016/12/23

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

N

**Administrator:
Name (Individual / Corporation)**

PAUL
SORBARA

Address

4 LOWTHER AVENUE
Suite # 505
TORONTO
ONTARIO
CANADA M5R 1C6

Date Began

2016/12/06

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

Y

CORPORATION PROFILE REPORT

Ontario Corp Number

2549861

Corporation Name

MAPPRO REALTY INC.

**Administrator:
Name (Individual / Corporation)**

RUDY

VAN DEN BROECK

Address

199 BAY STREET
COMMERCE COURT WEST
Suite # 5300
TORONTO
ONTARIO
CANADA M5L 1B9

Date Began

2016/12/23

First Director

NOT APPLICABLE

Designation

OFFICER

Officer Type

TREASURER

Resident Canadian

CORPORATION PROFILE REPORT

Ontario Corp Number

2549861

Corporation Name

MAPPRO REALTY INC.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2019	1C	2020/07/12 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

PROPERTY DESCRIPTION: PCL 9-15 SEC Y2; PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 66R11358; T/W PT PARKLT 9 CON 1 FTB PT 2 66R11358 AS IN 15724-O (SEE A804187); TORONTO , CITY OF TORONTO

PROPERTY REMARKS:

ESTATE/QUALIFIER:
FEE SIMPLE
ABSOLUTE

RECENTLY:
FIRST CONVERSION FROM BOOK

PIN CREATION DATE:
2001/05/28

OWNERS' NAMES
MAPPRO REALTY INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2001/05/25 **						
CT307027	1978/07/19	NOTICE OF LEASE		*** COMPLETELY DELETED ***	URBAN OUTDOORS INC.	C
REMARKS: SEE A804198						
CT321853	1978/10/13	NOTICE		*** COMPLETELY DELETED ***		
REMARKS: SEE A804200						
66R11358	1979/10/03	PLAN REFERENCE				
REMARKS: B27925						
A831395	1980/01/25	NO ASSG LESSEE INT		*** COMPLETELY DELETED ***	421246 ONTARIO LIMITED	
REMARKS: CT307027						
A831396	1980/01/25	NO ASSG LESSEE INT		*** COMPLETELY DELETED ***	421246 ONTARIO LIMITED	
REMARKS: CT321853						
A831397	1980/01/25	CHARGE		*** COMPLETELY DELETED ***	THE MANUFACTURERS LIFE INSURANCE COMPANY	
A831519	1980/01/25	NOTICE AGREEMENT		*** COMPLETELY DELETED ***		
A833791	1980/02/04	NOTICE AGREEMENT		*** COMPLETELY DELETED ***		
A837187	1980/02/26	NOTICE AGREEMENT		*** COMPLETELY DELETED ***		
C175164	1984/11/23	NOTICE OF LEASE		*** COMPLETELY DELETED ***	THEATREBOOKS LTD.	
REMARKS: FOR A TERM OF 10 YEARS FROM 1/7/84 AND ENDING 30/6/94 WITH AN OPTION TO RENEW FOR A FURTHER TERM OF 5 YEARS						
C192805	1985/03/13	TRANSFER		*** COMPLETELY DELETED ***		

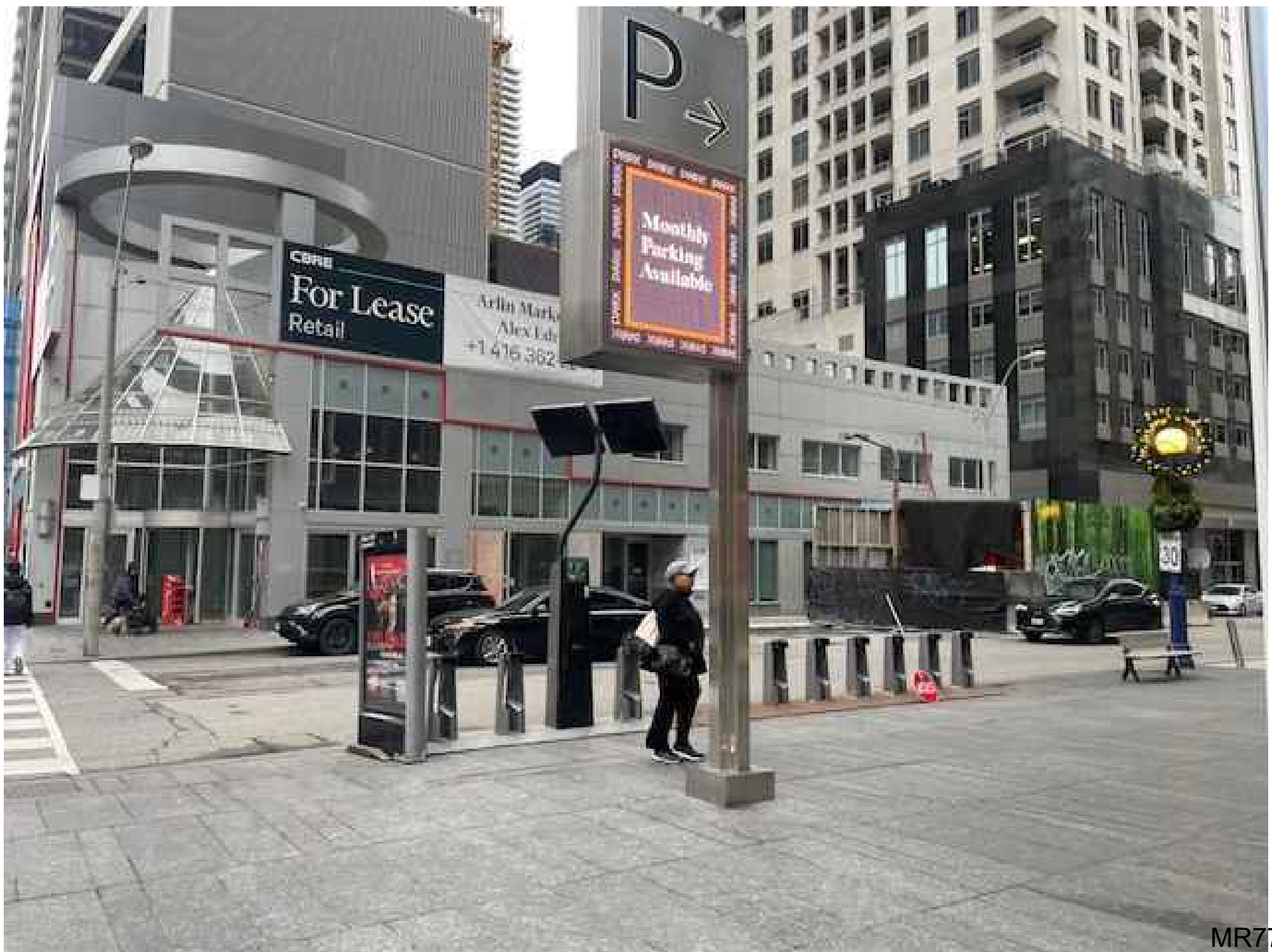
NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
C205053	1985/05/21	NO ASSG LESSOR INT		*** COMPLETELY DELETED ***	SCOTIA REALTY LIMITED	
		REMARKS: C175164, CT307027, CT321583				
C961448	1995/08/17	NOTICE			THE CORPORATION OF THE CITY OF TORONTO	C
C962287	1995/08/23	NOTICE AGREEMENT			THE MUNICIPALITY OF METROPOLITAN TORONTO	C
		REMARKS: ENCROACHMENT				
E195885	1998/09/09	NOTICE			CITY OF TORONTO	C
		REMARKS: THIS NOTICE WILL BE EFFECTIVE FOR AN INDETERMINATE TIME				
AT4426414	2016/12/06	DISCH OF CHARGE		*** COMPLETELY DELETED *** THE MANUFACTURERS LIFE INSURANCE COMPANY		
		REMARKS: A831397.				
AT4428510	2016/12/08	APL (GENERAL)		*** COMPLETELY DELETED *** SCOTIA REALTY LIMITED		
		REMARKS: DELETE CT307027, CT321853, A831395, A831396, C175164 AND C205053.				
AT4428686	2016/12/08	APL (GENERAL)		*** COMPLETELY DELETED *** SCOTIA REALTY LIMITED		
		REMARKS: DELETE A831519, A833791, A837187.				
AT4446482	2016/12/30	TRANSFER	\$74,000,000	SCOTIA REALTY LIMITED	MAPPRO REALTY INC.	C
		REMARKS: PLANNING ACT STATEMENTS.				
AT4446484	2016/12/30	NOTICE OF LEASE	\$2	MAPPRO REALTY INC.	THE BANK OF NOVA SCOTIA	C
AT4446485	2016/12/30	CHARGE	\$50,000,000	MAPPRO REALTY INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C
AT4446486	2016/12/30	NO ASSGN RENT GEN		MAPPRO REALTY INC.	CANADIAN IMPERIAL BANK OF COMMERCE	C
		REMARKS: AT4446485.				



Arin Markowitz
Alex Edmison
+1 416 362 2244

For Lease
etail





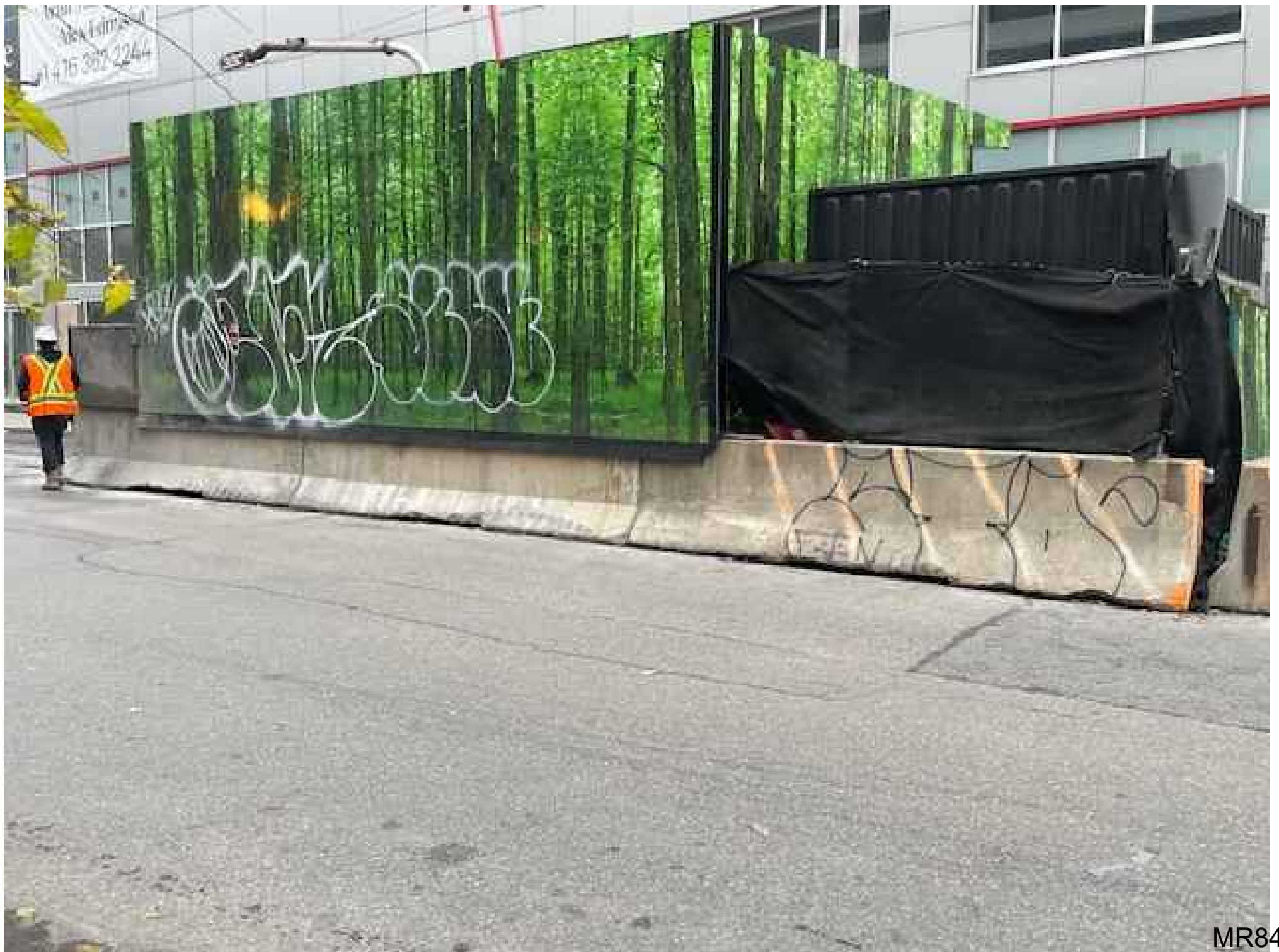














SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

July 19, 2024

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: The Speaker and Members of the Toronto City Council

Dear All:

Re: Item #TE15.29 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) municipally known as 19 Bloor Street West. We make the following submissions to Toronto City Council (“**City Council**”) regarding item TE15.29 (the “**Item**”), which City Council will consider on July 24, 2024.

As you are aware, Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) is the owner of the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, on which a mixed-use development is being constructed. Alvarez & Marsal Canada Inc. (the “**Receiver**”) is now acting as the receiver and manager of all of Mizrahi’s assets, undertakings, and properties, including the Mizrahi Property.

The Item concerns the request made by the Receiver or Mizrahi to extend the permit allowing it to continue occupying and using a portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from **August 1, 2024 to February 1, 2026**.

A. Mappro Adamantly Opposes the Extension of the Permit

Mappro adamantly opposes the extension of the Permit to February 1, 2026. Mappro has opposed the erection, existence, and use of the Staging Area since Mappro first discovered that it had been erected. The reasons for Mappro’s opposition are detailed in its past submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, February 22, 2023, March 23, 2023, February 20, 2024, and March 15, 2024, all of which are enclosed for your convenience as Tabs 1-8 of Schedule A.

In addition to the reasons previously given, Mappro opposes any further extension of the Permit because the existence and on-going use of the Staging Area (which prevents Mappro from being able to lease the Property) have also caused the following issues (the “**New Issues**”):

1. The Mappro Property has repeatedly been vandalized.
2. Homeless people are loitering directly in front of the Mappro Property and there have been a number of instances of begging, drug use (leaving abandoned needles and related paraphernalia), and individuals who are urinating and defecating directly in front of the Mappro Property.
3. There have been break-ins to the Mappro Property, resulting in doors and glass of the Mappro Property being broken and individuals urinating inside the Mappro Property.

Mappro has incurred costs to address the New Issues, including being forced to upgrade its security. It remains eminently unfair that Mappro is being forced to incur damages to enable others to profit from a development project being built a block away.

Mappro also fails to understand why the Receiver requires an extension of the Permit to February 1, 2026. Given that the building construction has apparently already reached the 59th floor in early June 2024,¹ it makes no sense that the Receiver would require the concrete pump to remain in the Staging Area until February 1, 2026. Mappro also notes that the requested permit end date continues to be a moving target, making it impossible for Mappro to effectively plan for the future.

If City Council is intent on granting some form of extension of the Permit against Mappro’s will, Mappro asks that, at a minimum:

1. The Permit be extended for no more than 1 year (i.e. to July 31, 2025);
2. The Permit set out that no further extensions will be permitted; and
3. The Receiver (or any future owner of the Mizrahi Property) be required to:
 - a. reimburse Mappro for all costs and damages that Mappro has and will incur and suffer due to the erection and use of the Staging Area;
 - b. put in place additional security measures surrounding the Mappro Property;
 - c. remove any graffiti and otherwise repair any damage to the outside of the Mappro Property while the Staging Area remains in place;
 - d. address any issues arising from homeless individuals congregating in front of the Mappro Property (i.e. clean any urine, defecation, etc., and otherwise address the issue) while the Staging Area remains in place; and
 - e. coordinate and collaborate with Mappro (or any future owner of the Mappro Property) regarding any construction work on the Mappro Property in a manner that ensures that the work can be performed (and done so efficiently).

¹https://indd.adobe.com/view/2f80c022-652c-49c5-9398-d6ceb2cb8f08?utm_campaign=DealX%20Email%2000608000013mibKAAQ-2024-06-06T17%3A53%3A52.212Z-Teaser&utm_medium=email&utm_source=Eloqua&utm_term=3453865&elqTrackId=ff7e54c7c03941a28659c9c11e91e2ae&elq=e18271ba430c4a7b821fbfd427ba6358&elqaid=35754&elqat=1&elqCampaignId=36607

Mappro makes these requests without prejudice to its rights in the ongoing litigation and, in particular, its rights to claim all damages arising from the erection and use of the Staging Area.

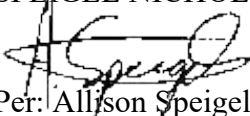
B. The City Continues to Act Unreasonably

In an email dated June 15, 2024, Toronto Transportation Services (“TTS”) sent an email to Mappro asking it to provide its views on the request to extend the permit. TTS asked for Mappro’s response by June 20, 2024 (i.e. four business days later). In light of the very short deadline, Mappro asked to extend the deadline until June 25, 2024. The City of Toronto’s lawyer advised Mappro that although it was free to provide its response at a later date, TTS “will likely be submitting a report for the upcoming Community Council meeting prior to that date.”² Mappro asked when TTS would be submitting its report and noted that “[p]roviding 4 business days to respond is neither reasonable, nor sufficient.”³ The City’s lawyer did not answer the question or otherwise respond to the email.

Despite not having a reasonable amount of time to adequately respond, Mappro provided its response to TTS’ request for comments on June 20, 2024 (i.e. the deadline that TTS imposed).⁴ It is noteworthy that TTS submitted its report to the Toronto and East York Community Council with respect to the permit extension request on June 21, 2024 (i.e. the next day). More strikingly, not only did TTS wholly ignore Mappro’s concerns when making its recommendations, it failed to acknowledge them altogether. According to TTS, it is not even worth mentioning that the continued occupation and use of the Staging Area is causing serious financial harm to Mappro. TTS does, however, continue to note that “[t]here [will be] no financial impact to the City.”

TTS’ request for Mappro’s submissions was nothing more than a display of empty theatrics. TTS and the City have made it all too clear that they are indifferent to the impact that the continued use of the Staging Area is having on Mappro.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)
Mark Dunn (mdunn@goodmans.ca)

² See Tab 1 of Schedule A.

³ See Tab 1 of Schedule A.

⁴ See Tab 9 of Schedule A (an excerpt of the letter with only one of its attachments).

Schedule "A"

Submission Regarding Item #TE16.37 Construction Staging Area (Phase 2) By: Mappro Realty Inc.

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”) to make submissions regarding Item #TE16.37 Construction Staging Area (Phase 2) -1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on July 16, 2020.

I. BACKGROUND INFORMATION

Mappro owns the property (the “**Property**”) at 19 Bloor Street West. Isabelle Hayen (“**Hayen**”) is an officer and owner of Mappro and is primarily responsible for Mappro’s operations.

The Property is located on the southeast corner of Bloor Street (“**Bloor**”) and Balmuto Street (“**Balmuto**”). Before Mappro purchased the Property, the entire Property was owned and used by Scotiabank. See Picture 1 below.



Picture 1

When Mappro purchased the Property, it split the Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). See Picture 2 below.



Picture 2

Mappro is in the process of renting the Mappro Building to a high-end retail store. Much of the appeal of the Mappro Building to a high-end retailer is the large frontage on Balmuto, which is high-end residential.

After Mappro split the Property, the Scotia Building was renovated (see Picture 2 above). Mappro is now in the process of beginning to renovate the Mappro Building (i.e. the last stage of the renovation of the Property). The renovation will include extending the envelope of the building to match the renovated envelope of the Scotia Building. Mappro has already begun the building permit application process to renovate the Mappro Building. See (a) the confirmation email below from the building application department of the City of Toronto to Mappro's architect, Craig Bonham, and (b) a request from the City of Toronto for fees associated with Mappro's building permit application associated with the renovation of the Mappro Building.

From: Toronto Building Applications <bldapplications@toronto.ca>

Sent: June-15-20 11:30 AM

To: Craig Bonham <cbonham@cmvarch.com>

Subject: Acknowledgement of Submission

*** This is an automatic reply. Please do not reply to this message.***

This email is to confirm that Toronto Building has received your permit application, which was submitted to bldapplications@toronto.ca.

Due to the impact of COVID-19 on the City, our service levels have been adjusted and may take longer than normal to process your permit application.

We are actively evaluating our needs and capability to allow for additional services. Up-to-date information regarding our service levels is provided at: <https://www.toronto.ca/home/covid-19/affected-city-services/>

Thank you for your patience and understanding.



Tracey Cook
Deputy City Manager
Scarborough Civic Centre
150 Borough Drive
Third Floor
Toronto, ON M1P 4N7

Gabby Luc
Application Examiner
Tel: (416) 396-7319
Fax: (416) 696-4163
Gabby.Luc@toronto.ca

Submission Status Letter

Payment of Fee Required

Wednesday, June 17, 2020

MAPPRO REALTY INC
C/O ISABELLE HAYEN
4 LOWTHER AVE UNIT 505
TORONTO ON M5R 1C6

20 157209 ZZC 00 ZR

19 BLOOR ST W

Non-Residential Building Other Proposal

This letter is to advise you that the above noted folder number has been assigned to your application submission. Your submission has been reviewed and has been deemed to be acceptable, pending payment of the application fees listed below.

Payment of Application Fees:

Zoning Certificate Fee (S)
\$597.76*

Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term tenant for the Mappro Building. Mappro is close to finalizing a transaction with a high-end retailer who has not been seriously affected by the COVID-19 crisis. Mappro also has a potential tenant who is prepared to rent the Mappro Building on a short-term basis before the renovation of the Mappro Building begins.

II. ONE BLOOR STREET WEST CONSTRUCTION PROJECT

Mizrahi Developments Inc. (“**Mizrahi**”) is in the process of constructing a mixed-use development (the “**One**”) at 1 Bloor Street West. The One will be comprised of an 8-storey podium and an 86-storey residential tower. This development, which is located on the southwest corner of Bloor and Yonge Street, is on the same block as the Property.

Mizrahi (more specifically Sam Mizrahi) and Mappro (more specifically, Hayen) know one another because (a) they were involved in a dispute concerning access to a private laneway between the One and the Property and (b) representatives of Mizrahi and Mappro communicated with each other with during the course of the renovation of the Scotia Building.

III. MIZRAHI’S PROPOSED OCCUPATION OF PART OF BALMUTO

Hayen was stranded in Europe due to the COVID-19 crisis. She returned to Canada in mid-June 2020. After completing her 14-day quarantine period, she visited the Property on July 7, 2020. She was shocked and distraught to see a large piece of construction equipment (i.e. a concrete pump) installed directly in front of the Mappro Building on Balmuto. This was the first time that Hayen (or anyone from Mappro) became aware of the proposed occupation of part of Balmuto as a construction staging area for the One. See Pictures 3-6 below.



Picture 3



Picture 4



Picture 5



Picture 6

Since July 7, 2020, Mappro has learned that Mizrahi appears to have obtained a temporary permit to install (and has now installed) (a) a concrete pump pedestal above ground in front of the Mappro Building on Balmuto (see Pictures 3-6 above) and (b) underground piping that will supply the concrete from the construction staging area on Balmuto to the construction site of the One via underground pipes that run the length of the public laneway running parallel to Bloor behind the Property.

Mizrahi is now seeking permission from Community Council to use this already installed construction staging area on Balmuto for the next **2 years**. This is the item on the agenda of the Community Council Meeting in respect of which we are providing these submissions.

Based on what we have been told and what we have observed, it appears that Mizrahi started pumping concrete on July 14, 2020.

If Community Council approves Mizrahi's request, the following will occur:

1. The concrete pumping pedestal will remain on Balmuto directly in front of the Mappro Building (see Pictures 3-6 above).
2. The sidewalk in front of the Mappro Building will be significantly reduced (and potentially closed) and will, regardless, become inhospitable to foot traffic.
3. There will be a steady flow of concrete trucks unloading concrete into the concrete pump directly in front of the entrance of the Mappro Building on Balmuto. The following panoramic Picture 7 shows where the concrete trucks will be unloading, which is directly in front of the Balmuto entrance.



Picture 7

4. The installation and operation of the concrete pump will (a) block the visibility of the west elevation of the Mappro Building and the windows of the Mappro Building and (b) create significant issues related to emergency exits and hydrant use.

Said otherwise, the Mappro Building will have a heavy, constant construction zone on its doorstep. It will be loud, dirty, and ensure that the Mappro Building is a difficult building in which to work and an unappealing destination for shoppers.

It is not hard to understand why a high-end retailer (or any commercial tenant for that matter) would not want to rent the Mappro Building in such circumstances. Allowing Mizrahi to use Balmuto and the public realm as a construction staging area (as Mizrahi proposes to do) will, thus, significantly hinder, if not prevent, Mappro's ability to lease the Mappro Building to any short-term or long-term tenants.

In addition, allowing Mizrahi to use Balmuto as it proposes will ensure that Mappro is unable to proceed with its planned renovation. If Mappro cannot proceed with its renovation, Mappro will lose the leasing transaction with the potential long-term tenant that Mappro has spent so much time and money procuring.

Immediately upon learning about what was transpiring at the Property, Mappro began reaching out to anyone who might be able to help. It sent numerous emails and placed numerous calls to staff of the City of Toronto, Councillor Layton and his staff, and Mizrahi itself. Until July 13, 2020, the calls to Mizrahi went unanswered. Although Councillor Layton was very responsive, he made it clear that the appropriate individuals with whom Mappro should be speaking are staff of the City of Toronto. Until July 14, however, Mappro's numerous requests to speak with the staff of the City of Toronto went unanswered.

IV. THE REPORT FOR ACTION

On July 16, 2020, Community Council will be considering a report for action (the "**Report**") dated June 12, 2020, seemingly signed by Roger Browne, the Acting Director of Traffic Management, Transportation Services. In addition to our comments above, we comment on the Report as follows:

Comment 1: It is unrealistic to believe that this construction staging area will only be required for two years. Undoubtedly, it will be required for longer than that.

Comment 2: Recommendation 13 provides that “Toronto and East York Community Council direct the applicant [(i.e. Mizrahi)] **to continue consulting** and communicating all construction, parking and road occupancy impacts with local business improvements areas and resident associations in advance of any physical road modification” (emphasis added).

Mizrahi has made no effort to consult or communicate with Mappro – despite that (a) Mappro is the owner that will be most affected by Mizrahi’s proposed use of Balmuto (because the construction pump is located directly in front of the Mappro Building) and (b) Mizrahi knows Mappro and its owner and had every opportunity to engage with Mappro to discuss its proposal. In effect, Mizrahi has failed to communicate and consult with the very party that will be most affected by its proposal. One can only wonder why.

Comment 3: The Report provides that “Transportation Services is satisfied that Mizrahi ... has looked at all options to alleviate congestion at this location.”

Mappro would like to know what other “options” Mizrahi reviewed and whether any other options would be less detrimental to Mappro’s economic existence. Community Council should also require that such “options” be presented to it so that it can make an informed decision as to the best “option” available.

Comment 4: Despite the Report's June 12, 2020 date, Mappro did not learn of its existence or the Community Council Meeting until July 8, 2020.

On July 14, 2020, Mappro’s counsel spoke with Craig Cripps (“**Cripps**”), the Manager, Traffic Engineering and the individual listed as the contact person on the Report. On that call, Cripps advised that:

1. The City of Toronto made no effort to consult Mappro regarding Mizrahi’s request to use Balmuto as a construction staging area. The City of Toronto drafted the Report without knowing specifically how Mizrahi's proposed use of Balmuto will cause Mappro serious financial harm.
2. Before making the recommendations in the Report, the City of Toronto was “not aware” that Mappro submitted an application to renovate the Mappro Building (see proof above) and, as such, the City did not assess how Mizrahi’s proposed use of Balmuto would interfere with Mappro’s ability to perform its renovation.
3. Cripps intended to raise Mappro’s concerns with senior management.

Mappro has not had sufficient time to investigate the proposal's serious ramifications on Mappro’s business prospects or any alternative options that would be less detrimental for Mappro. Mappro reserves its right to amend and augment its list of concerns.

V. CONCLUSION

If Community Council approves Mizrahi's request to use Balmuto as a construction staging area in the proposed manner, Mappro will undoubtedly suffer many millions of dollars in damages. It is clear from the history of the matter that the City of Toronto has not yet considered, much less addressed, Mappro's concerns. The failure to consider Mappro's concerns is improper. Moreover, it would be procedurally unfair for Community Council to vote on this issue before giving Mappro sufficient time to properly investigate and present its position on the issue.

In light of the foregoing, Mappro respectfully requests that:

- (a) this item be deferred until the next Community Council meeting; and
- (b) Mizrahi be prevented from using the concrete pump until Community Council renders its final decision on the matter.

Mappro (or counsel on its behalf) seeks permission to make oral submission on this issue during the Community Council Meeting.

Dated July 14, 2020

Mappro Realty Inc.
By its counsel:
Speigel Nichols Fox LLP

cc. Councillor Layton
Craig Cripps



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 15, 2020

By E-Mail to teycc@toronto.ca

Toronto and East York Community Council
City of Toronto
Toronto City Hall
2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: Justin Niddrie

Dear Mr. Niddrie:

Re: Item #TE18.49 Construction Staging Area (Phase 2)

Thank you to the members of the Toronto and East York Community Council (“**Community Council**”) for allowing Mappro Realty Inc (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West, to make submissions regarding Item #TE18.49 Construction Staging Area (Phase 2) - 1 Bloor Street West (Balmuto St.) (Ward 11) on the agenda for the meeting (the “**Community Council Meeting**”) on September 16, 2020.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020.

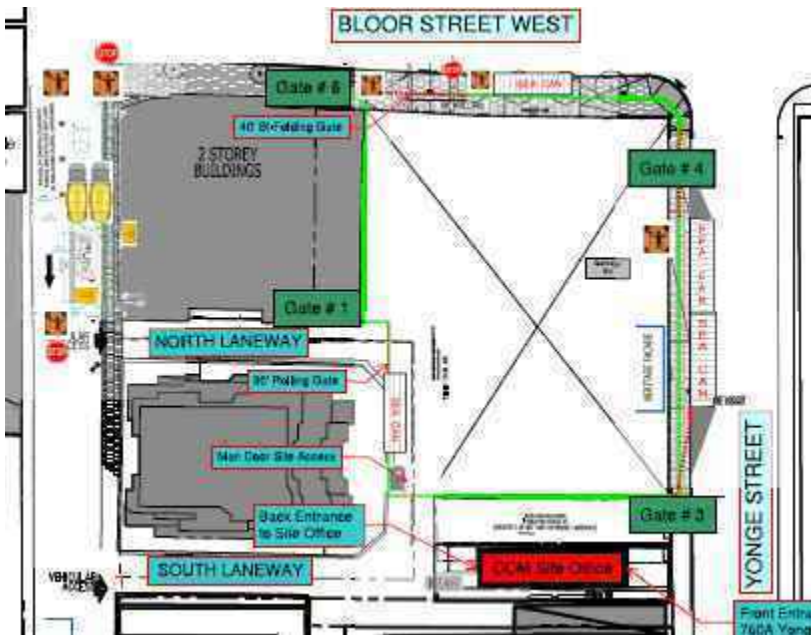
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property. Mappro understands that Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the project.

II. THE IMPROPERLY GRANTED TEMPORARY PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Clarke a temporary street occupation permit (the “**Temporary Permit**”) allowing it to occupy the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. A picture of the Temporary Permit has been attached as Schedule “A.”

In effect, Transportation Services has been allowing Mizrahi (not Clarke) to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area. Mizrahi has installed a concrete pump pedestal directly in front of the Mappro Building and there are now concrete trucks that idle for hours at a time directly in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Mappro understands that Transportation Services relied on its authority to grant the Temporary Permit pursuant to Section 743-18 of the Municipal Code.

Problem 1: The Permit was granted contrary to the Municipal Code as the applicant does not own the lands abutting the occupied portion of Balmuto.

Section 743-18(B) of the Municipal Code reads as follows (emphasis added):

A permit may be issued under this section **when it is required on behalf of an owner of lands abutting on the street, or portion thereof that will be occupied** temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicant's use of the lands.

In this case, neither Clarke (the applicant), nor Mizrahi own any land abutting Balmuto. The only lands that Mizrahi owns are located a block away from Balmuto. Transportation Services, thus, had no authority to issue the Temporary Permit.

Given that Mizrahi (and others on Mizrahi's behalf) have continued to occupy Balmuto after August 21, 2020, when the Temporary Permit expired, Mappro can only assume that Transportation Services has been improperly renewing the Temporary Permit.

The grant (and extension) of the Temporary Permit, contrary to the requirements of the Municipal Code, has caused, and continues to cause, Mappro to suffer significant financial harm. It appears that Mappro's potential short-term tenant is no longer interested in leasing the Mappro Building. Mappro is also likely to lose the leasing transaction with the potential long tenant that Mappro has spent so much time and

money procuring. It is not hard to understand why a prospective tenant would not want to rent a property with a construction zone on its doorstep.

Problem 2: Mappro's requisite consent was not obtained – or *even* sought.

Section 743-18(C) of the Municipal Code reads as follows (emphasis added):

A permit issued under this Section **shall not authorize the temporary occupation** of any portion of the street **beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents**, in writing, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner **waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.**

As noted above, the Mizrahi Property does not have any frontage on Balmuto. As a result, the entirety of the occupied portion of Balmuto lies “beyond the limits of the ... [Mizrahi Property's] frontage on the Street” (i.e. Balmuto).

Although it is questionable whether Transportation Services would have had the right to grant the Temporary Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Temporary Permit without Mappro's consent. Mappro could not have consented to the temporary street occupation because neither Mizrahi, nor Clarke made any efforts to apprise Mappro of their intention to obtain a temporary street permit. Mappro did not learn about the temporary street occupation until it saw the construction equipment installed in front of the Mappro Building.

Mappro has not waived “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” Quite to the contrary, Mappro will take the position that the City is liable to Mappro for the damages arising from the granting and extension of the Temporary Permit.

Problem 3: Neither Mizrahi, nor Clarke provided Mappro with notice of the occupation of Balmuto as required by the Municipal Code.

Section 743-29(C) of the Municipal Code provides that:

When the street work or temporary street occupation will exceed 24 hours in duration, and **where such activity will affect access to a property**, then the **permit holder shall deliver a notice to affected residents and businesses, in a form as determined by the General Manager, at least three working days before starting the street work** or temporary street occupation advising them of the nature, location, expected duration and phone number of the permit holder

As previously noted, Mizrahi is occupying the street directly in front of the Balmuto entrance to the Mappro Building and is, thus, affecting access to the Mappro Building. (See Picture 6 below.)



Picture 6

Neither Mizrahi, nor Clarke provided Mappro with any advance notice that it intended to occupy the portion of Balmuto directly in front of the Mappro Building. Given that no notice was provided, Mappro suspects that Transportation Services did not approve the form of notice to be provided to Mappro.

As is evident in Picture 6 above, Mizrahi (or those working for Mizrahi) are also blocking access to the fire hydrants located on the Mappro Building (see the two red fire hydrants located to the south of the entrance to the Mappro Building on Balmuto). It remains unclear how this is permissible.

Problem 4: Mizrahi is occupying lands outside of those included in the Temporary Permit

Mizrahi is occupying part of the sidewalk, seemingly in violation of the terms of the Temporary Permit, which provides *only* for occupation of the northbound lanes. (See Picture 7 below.)



Picture 7

III. MIZRAHI'S REQUESTED CLOSURE OF PART OF BALMUTO

Mizrahi now requests that Community Council close a portion of Balmuto and use the already installed construction staging area on Balmuto for the next **2 years**. Mappro believes that the 2 year timeframe is wishful thinking and, given the size and scope of Mizrahi's project, the occupation will likely be much longer. This is the item (the "**Item**") on the agenda of the Community Council Meeting in respect of which Mappro is providing these submissions.

A. The Status Quo

Mappro has been advised that:

- a) Transportation Services is considering an alternative proposal pursuant to which the construction staging area would be located on the west side of Balmuto as opposed to the east side (i.e. still in front of the Mappro Building, but on the other side of the street),
- b) there will be a motion to defer the Item for consideration to allow Transportation Services to provide an updated report on the issue;
- c) the revised report may not be ready in time for Community Council to consider the Issue at its October meeting; and
- d) in the meantime, the status quo will remain unchanged and the City of Toronto (the "**City**") will continue to allow Mizrahi to use Balmuto as its personal construction staging area.

The status quo, however, is harmful to Mappro's current and future use and enjoyment of the Mappro Building. Respectfully, the City should not continue to permit Mizrahi to occupy Balmuto pursuant to the improperly granted (and now extended) Temporary Permit.

It is also conceptually problematic that the City would allow the status quo to remain unchanged while it ostensibly evaluates whether the status quo is harmful to nearby owners and residents, including Mappro. It would only be reasonable to assume that the City would want to evaluate the potential harmful effects of a proposed closure (short, medium or long-term) *before* allowing the closure to occur.

If the City is going to defer making its decision on the Item to the indefinite future, the City should not continue to uphold the permit its General Manager issued contrary to law: Mizrahi should not be permitted to occupy Balmuto in a manner causing Mappro significant harm.

B. The City Should Not Allow Mizrahi to Occupy Balmuto

Ultimately, the City is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away.

While a land owner might reasonably assume the risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

In fact, at least in relation to temporary occupations, the Municipal Code already protects landowners from this issue through section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to obtain a temporary street permit to occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that you be required to ask your neighbour if you wish to occupy the street in front of his/her property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, the City should require Mizrahi to obtain Mappro's consent. There is no reasonable explanation why the City should permit its lands to be used in a way that allows Mizrahi to profit at Mappro's expense.

IV. CONCLUSION

If Community Council defers its vote on the Item, it should ensure that the improperly issued Temporary Permit is rescinded immediately. Mizrahi, Clarke, and those working on its behalf should be immediately directed to cease its occupation of Balmuto.

If Community Council is prepared to consider the Item, it should require Mizrahi to obtain Mappro's consent before allowing Mizrahi to use Balmuto as a construction staging area. If Community Council approves Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer several millions of dollars in damages as a direct result of the City's decision.

Mappro's counsel seeks permission to make oral submission on this Item during the Community Council meeting and hereby requests notice of any reports, meetings or decisions related to this or is ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.
AS:cl
Encl.
C: Councillor Layton (by email)
Craig Cripps (by email)

Rodney Gill (by email)
Belinda Brenner (by email)
Gadi Katz (by email)

Schedule "A" (the Temporary Permit)



Phone:	(416) 392-1803
Fax:	(416) 392-7465
24 Hours Dispatch:	(416) 392-5556
48 Hour Fax Notification:	
Construction, Toronto Metro Hal 17 Floor	
Permit No:	86576401
CA PM EqMaterials	\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc. 33 Bloor St. East, Suite 304 Toronto, Ontario M4W 3H		CONTACT: Jay Cha Phone: (416) 274-2629
LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS		City Ward: 11 District: Toronto and East York
PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour		

TIME PERIOD:			
From:	To:	Restriction During Period	
July 14, 2020	7:00 am	August 21, 2020	7:00 pm (Daily) Monday-Friday
Standard Conditions The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf			


SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services



Issued by: Sheel Radia
Date Issued: Jul 14, 2020

Applicant or Signing Officer: _____

Date Printed: Jul 14, 2020

November 29, 2022

**** Sent Via E-Mail to: teycc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Justin Niddrie and Mandy Tran

Dear Mr. Niddrie and Ms. Tran:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We set out below Mappro's submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting (the “**Community Council Meeting**”) on November 30, 2022. We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this Item or any ancillary matters.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

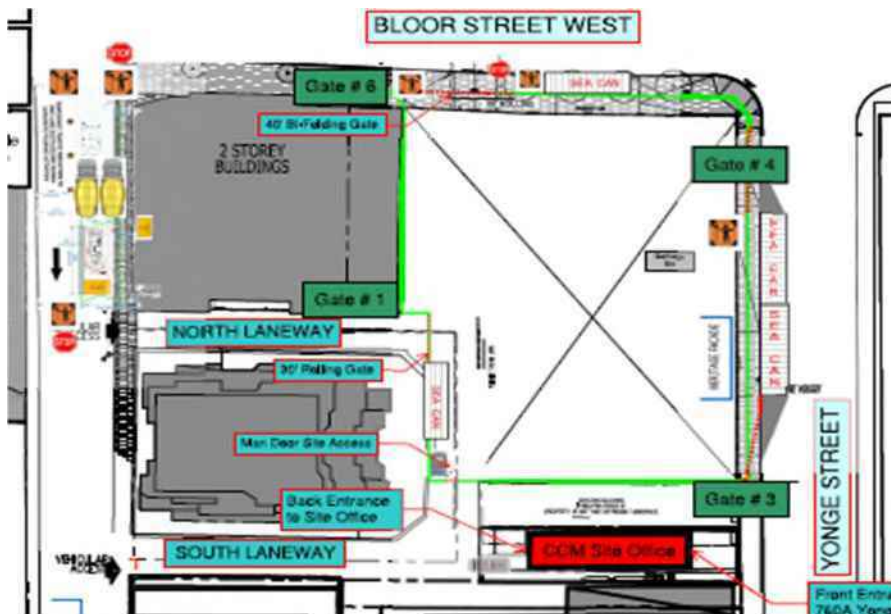
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Community Council dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive “all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.” To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the “City”) in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected). As such, the continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. COMMUNITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") that will be considered at the upcoming Community Council Meeting. In the Report, Transportation Services makes 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. The Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. This issue is particularly acute given the nature of the obstruction (nearly the entire frontage of the Mappro Building on Balmuto) and the location of the Mappro Building on this high-worth segment of Bloor.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Community Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto. If Community Council and ultimately, City Council,

approve Mizrahi's request to use Balmuto in the proposed manner without requiring it to obtain Mappro's consent, Mappro will suffer millions of dollars in damages as a direct result of the City's decision.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Craig Cripps (via email: craig.cripps@toronto.ca)
Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)

December 9, 2022

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: Sylwia Przewdziecki

Dear Ms. Przewdziecki:

Re: Item #TE1.11 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We set out below Mappro's submissions to City Council regarding Item #TE1.11- 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11) (the “**Item**”), currently on the agenda for the meeting on December 14, 2022.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020 and September 15, 2020, enclosed for your convenience.

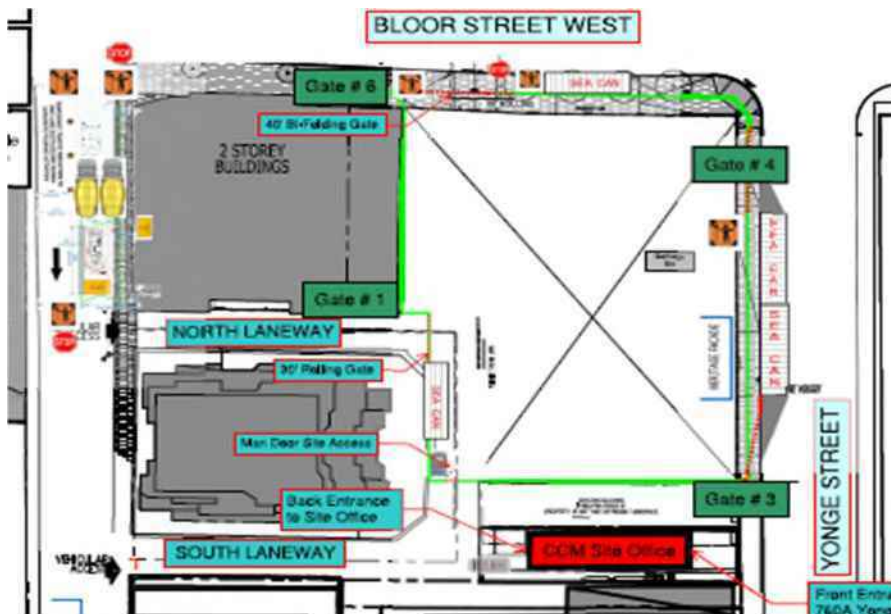
I. BACKGROUND

The Mappro Property is located on the southeast corner of Bloor Street West (“**Bloor**”) and Balmuto Street (“**Balmuto**”). When Mappro purchased the Mappro Property, it split the Mappro Property into two units: one unit would continue to be leased and operated by Scotiabank (the “**Scotia Building**”) and the other would be operated by Mappro (the “**Mappro Building**”). The Mappro Building is approximately 5,500 square feet over two floors. It has a small frontage on Bloor (approximately 30 feet) and a much larger frontage on Balmuto (approximately 111 feet). (See Picture 1 below.)



Picture 1

Mizrahi Developments Inc. (“**Mizrahi**”) owns the property (the “**Mizrahi Property**”) municipally known as 1 Bloor Street West, Toronto. The Mizrahi Property is located next to the H&M store at the corner of Bloor and Yonge Street. (see Picture 1 above and the square highlighted in green on Picture 2 below.)



Picture 2

Mizrahi is in the process of constructing a mixed-use development on the Mizrahi Property.

II. THE IMPROPERLY GRANTED FIRST PERMIT

On July 14, 2020, the General Manager of the Transportation Services (“**Transportation Services**”) granted Mizrahi a temporary street occupation permit (the “**Original Permit**”) allowing it to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.

The Original permit allowed Mizrahi to use the portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for its project. Mizrahi installed a concrete pump pedestal directly in front of the Mappro Building and had concrete trucks idling for hours at a time in front of the Mappro Building. (See Pictures 3, 4, and 5 below)



Picture 3



Picture 4



Picture 5

Transportation Services took the position that it had the authority to grant the Original Permit pursuant to Section 743-18 of the Municipal Code. In its submissions to Toronto and East York Community Council ("**Community Council**") dated September 15, 2020, Mappro asserted that Transportation Services granted the Original Permit contrary to the following sections of the Municipal Code:

- **Section 743-18(B):** Mizrahi did not (and does not) own the lands abutting the occupied portion of Balmuto. The only lands that Mizrahi owned (and owns) are located a block away.
- **Section 743-18(C):** Mizrahi did not obtain (or even seek) Mappro's consent.¹ In fact, Mappro did not learn about the Balmuto occupation until it saw the construction equipment installed in front of the Mappro Building. In addition, Mappro did not waive "all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation." To the contrary, as discussed below, Mappro made a claim to the City of Toronto (the "**City**") in 2021 for compensation for injurious affection under section 22 of the *Expropriations Act*.
- **Section 743-29(C):** Mizrahi failed to provide Mappro with notice of the occupation of Balmuto even though the occupation affects access to the Property.

Given that Mizrahi continued to occupy Balmuto after the Original Permit expired on August 21, 2020, Mappro can only assume that Transportation Services improperly renewed the Original Permit.

¹ Although it is questionable whether Transportation Services would have had the right to grant the Original Permit had Mizrahi sought and obtained Mappro's consent, it is clear that Transportation Services had no authority to grant the Original Permit without Mappro's consent.

III. MIZRAHI DID NOT ABIDE BY THE TERMS OF THE ORIGINAL PERMIT

The Original Permit provided *only* for occupation of the northbound lane of Balmuto. Mizrahi seemingly violated the terms of the Original Permit by occupying part of the sidewalk (see Picture 7 below), something it continues to do to this date. The City did nothing to stop Mizrahi.



Picture 7

IV. THE 2020 MULTI-YEAR PERMIT

In the fall of 2020, Mizrahi requested that Transportation Services grant Mizrahi a multi-year permit enabling it to use the Staging Area from **November 30, 2020 to November 30, 2022**.

At the time, Mappro noted that it believed that the two-year timeframe was wishful thinking. Given the size and scope of Mizrahi's project, Mappro believed that the occupation would likely need to be much longer. Mappro's concerns were ignored.

After Mappro made its submissions, Transportation Services seemingly conceded that it granted the Original Permit contrary to the Municipal Code. As a result, when faced with Mizrahi's request for a multi-year permit to occupy Balmuto (to use the Staging Area), Transportation Services sought approval from Community Council and, ultimately, City Council before granting it.

Community Council referred the issue to City Council with a recommendation to allow Mizrahi to continue occupying Balmuto (to use the Staging Area) from **November 30, 2020 to November 30, 2022**. City Council adopted Community Council's recommendations on November 25, 2020 with some minor amendments. Two such recommendations were as follows:

19. City Council authorize ... Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi ... to address the City's interests with respect to any and all

temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the ... Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi ... entering into the indemnity agreement in Recommendation 19 above.

Instead of safeguarding Mappro's rights in accordance with the Municipal Code, the City allowed Mizrahi to inflict significant economic harm to Mappro while simultaneously trying to insulate itself from the inevitable fallout.

On June 8, 2021 Transportation Services issued a multi year permit (the "**2020 Multi-Year Permit**") to Mizrahi to occupy Balmuto. Confusingly, the time period noted on the 2020 Multi-Year Permit was "November 30, 2020 to December 31, 2020."

V. THE IMPACT ON MAPPRO AND MAPPRO'S CLAIM FOR INJURIOUS AFFECTION

Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; and
- g) it restricts access to the fire hydrant.

Mappro has spent a significant amount of time and money on a marketing program to secure the appropriate, long-term, high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

In addition, Mappro has begun the process of renovating the Mappro Building. On July 13, 2022, Mappro obtained the necessary building permit (the "**Mappro Permit**") for its renovation project (the "**Mappro Project**"). The Mappro Project will include, among other things, an extensive renovation of the entire façade of the Mappro Building along Balmuto and Bloor. Mappro expects to begin construction on the Mappro Project in **March 2023**.

To undertake the Mappro Project, however, Mappro will need to temporarily occupy the area outside of the Mappro Building along Balmuto (i.e. where the Staging Area is currently erected).

On December 6, 2022, Mappro's construction manager, Donogh Hanley, met with Eric Jensen ("**Jensen**"), a senior project coordinator at Transportation Services. Jensen acknowledged that if Mizrahi's pump station in the Staging Area remains in its existing location, Mappro will not be able to perform the Mappro Project in accordance with the Mappro Permit.

The continued use of the Staging Area will interfere with, delay, and increase the cost of the Mappro Project. This too will negatively impact Mappro's ability to lease the Mappro Building going forward.

Mappro has and continues to suffer significant financial damages.

In light of the foregoing, on September 7, 2021, Mappro made a claim for compensation for injurious affection in accordance with section 22 of the *Expropriations Act*. In it, Mappro seeks compensation from the City and Mizrahi for all of the damages that Mappro has and will incur, including the reduction in the market value of the Mappro Property, arising from the construction of the Mizrahi project, the construction and use of the Staging Area, and the issuance of the Original Permit and the 2020 Multi-Year Permit.

VI. CITY COUNCIL SHOULD NOT AUTHORIZE THE NEWLY REQUESTED PERMIT – EVEN IN THE PROPOSED AMENDED FORM

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use the Staging Area and, thus, occupy Balmuto. Mizrahi now seeks a new multi-year permit (the "**New Multi-Year Permit**") to occupy Balmuto from December 14, 2022 to June 30, 2025 (i.e. an addition **2.5 years**).²

On November 14, 2022, Transportation Services released a Report for Action (the "**Report**") concerning Mizrahi's request. In the Report, Transportation Services made 22 recommendations, many of which concern Mizrahi's request for the New Multi-Year Permit. In addition to recommending the granting of the New Multi-Year Permit, the Report contains three noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. It recommended that:

16. City Council direct ... Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

This recommendation is new. It was not included as a term of the Original Permit or the 2020 Multi-Year Permit or as one of the recommendations made before those permits were issued. This recommendation is clearly being made in recognition of the fact that (a) Mappro is seeking to begin the Mappro Project in the near future and (b) the issuance of the New Multi-Year Permit will prevent Mappro from being able to do so.

3. The Report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

² It is unclear what authorization would govern Mizrahi's occupation of Balmuto from November 30, 2022 to December 14, 2022.

After considering the Item on November 30, 2022, Community Council adopted the recommendations set out in the Report with certain amendments, now being considered by City Council. The most noteworthy amendment is to the proposed end date of the new permit. Community Council recommends that the new permit expire on **March 31, 2023** as opposed to **June 30, 2025** (as Mizrahi had requested). This amendment was seemingly done to give Community Council and City Council time to consider what principles the City should consider when determining whether, to what extent, and on what terms to grant the New Multi-Year Permit contrary to the Municipal Code in circumstances where the owner whose lands abut the proposed occupied street has not consented to the occupation.

City Council is being asked to close a portion of a city street located directly in front of the Mappro Building to enable Mizrahi to construct a development project located a block away and add \$1.2M (for fees and lost revenue) to the City's coffers at Mappro's expense.

The Municipal Code makes it clear that while a land owner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours (discussed below), it does not reasonably assume the risk that the City might close the street in front of its property for two to five years to allow for construction a block away.

More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property.

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Building (i.e. a street located a full block away from the Mizrahi Property), thereby engulfing the Mappro Building into Mizrahi's construction zone, Mizrahi should be required to obtain Mappro's consent and, in doing so, compensate Mappro for the financial harm that it is causing to Mappro. **A determination of the financial harm that Mizrahi has caused and proposes to cause to Mappro is easy to calculate in this case; namely, it is the market value of the rent that Mappro has been prevented from earning on the Mappro Building because of the existence and use of the Staging Area.**

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at Mappro's expense. The irony here is that Transportation Services is proposing that Mappro be required to endure the adverse financial impacts arising from Mizrahi's occupation of Balmuto while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.2M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro be treated any differently?

Finally, Mappro notes that neither Transportation Services, nor Mizrahi (nor anyone else from the City for that matter) advised Mappro that Mizrahi was seeking the New Multi-Year Permit even though (a) Mappro has repeatedly requested to be kept apprised of all developments concerning the occupation of Balmuto and (b) Mappro will be the party most significantly affected if the New Multi-Year Permit is granted. The failure to notify Mappro was unreasonable (at best).

VII. CONCLUSION

Although the issuance of a new permit that expires on March 30, 2023 is less harmful to Mappro than one that expires in 2025, it will still delay the Mappro Project, thereby causing Mappro to suffer more even more financial harm than that which Mappro has already suffered. Mappro opposes the issuance of any permit that is contrary to the Municipal Code that does not provide that Mizrahi be required to compensate Mappro for the damages it is causing.

City Council should require Mizrahi to obtain Mappro's consent or to properly compensate Mappro before allowing Mizrahi to occupy Balmuto.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)

Craig Cripps (via email: craig.cripps@toronto.ca)

Rodney Gill (via email: rodney.gill@toronto.ca)

Belinda Brenner (via email: belinda.brenner@toronto.ca)

Gadi Katz (via email: gadi.katz@toronto.ca)

Mary Ellen Bench (via email: maryellen.bench@dentons.com)



SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

direct extension 280
allison@ontlaw.com

February 22, 2023

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: Item #TE3.23 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding Item #TE3.23 (the “**Item**”) concerning the request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension (the “**New Multi-Year Permit**”) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from **April 1, 2023 to June 30, 2025**.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022 and December 9, 2022, all of which are enclosed for your convenience as Schedule A.

I. THE CITY IS ALLOWING MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

Since mid 2020, the City has been allowing Mizrahi to use the Staging Area to construct a development project being built a block away (at the corner of Bloor Street and Yonge Street). Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with the enjoyment and use of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Property for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;

MR125

- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Property;
- e) it restricts access to the Mappro Property and the emergency exits;
- f) it restricts visibility into and from the Mappro Property;
- g) it restricts access to the fire hydrant; and
- h) it prevents Mappro from being able to lease the Mappro Property to short-term and longer-term tenants.

Mappro recently finalized an agreement of purchase and sale, pursuant to which Mappro agreed to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). This sale transaction, however, is not closing in the near future. In the interim, Mappro seeks to lease the Mappro Property to short-term or longer-term tenants. It will be prevented from doing so by Mizrahi's on-going occupation of the Staging Area.

Mappro has suffered and continues to suffer (as will Reserve) significant financial damages as a result of the actions of Mizrahi and the City. As the City is aware, Mappro has commenced an action in which it advances claims of nuisance and negligence against Mizrahi and the City.

II. THE CITY SHOULD NOT ALLOW MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

On February 6, 2023, Transportation Services released a Report for Action that contains two noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. The report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street and Yonge Street, these fees will be approximately \$1,776,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking Community Council and, ultimately, City Council to close a portion of a city street located directly in front of the Mappro Property to enable Mizrahi to construct a development project located a block away and add ~\$1.77M (for fees and lost revenue) to the City's coffers at the expense of Mappro (and Reserve).

The Municipal Code makes it clear that while a landowner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage on the street, unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the

temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this By-Law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property. When a developer seeks to occupy a street a block away from its own property, the requirement for getting the abutting land owner's consent should be even more stringent.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at the expense of Mappro (and Reserve) while the City tries to absolve itself of all liability. The City owes all landowners in the City a duty of care. The irony here is that Transportation Services is proposing that Mappro (and Reserve) be required to suffer the adverse financial impacts arising from Mizrahi's occupation of Balmuto, while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.77M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "*... no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro (and Reserve) be treated any differently?

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Property (i.e. a street located a full block away from Mizrahi's property), thereby engulfing the Mappro Property into Mizrahi's construction zone, Mizrahi should be required to obtain the consent of Mappro (and Reserve to the extent necessary). Mappro (and Reserve) are open to having reasonable discussions with Mizrahi as to the terms pursuant to which Mappro (and Reserve if necessary) would consent to Mizrahi's use of the Staging Area.

III. THE NEW MULTI YEAR PERMIT SHOULD NOT BE ISSUED

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use and, thus, occupy the Staging Area. Although Mizrahi previously sought and obtained a permit to occupy the Staging Area until November 30, 2022, Mizrahi now seeks the New Multi-Year Permit to continue occupying Balmuto until June 30, 2025. This is more than 2.5 years longer than Mizrahi initially indicated would be necessary. Mizrahi has not provided any indication that this latest request for an extension will be its last.

Community Council should oppose Mizrahi's occupation of the Staging Area outright on the basis that Mizrahi failed to obtain Mappro's consent. In the alternative, Community Council should recommend that the existing permit only be extended for an additional eight months (i.e. from **April 1, 2023 to December 1, 2023**), at which point it should be subject to further review. This would give the parties the opportunity to negotiate reasonable terms pursuant to which Mappro (and Reserve if necessary) would be amenable to Mizrahi's continued occupation of the Staging Area. The City should send a clear message that developers cannot use City land to harm other landowners.

Any recommendations that Community Council makes that would allow Mizrahi to continue occupying the Staging Area should also include the following terms, all of which will be necessary if Mappro (and/or Reserve) decide to proceed with the proposed renovation and/or other construction on the Mappro Property:

- The concrete pump enclosure (limited to 5m x 12m and shown in cross hatched on the plan attached as Schedule B) must be pulled to the edge of the existing sidewalk to leave 6m clear width for bi-directional traffic on Balmuto and the full sidewalk width of 2.4m for renovation work on the Mappro Property.
- Mizrahi's concrete trucks must service the pumping station (in the Staging Area) from the south end of the Staging Area. This will ensure that the section of Balmuto north of the Staging Area will be left available for the renovation/construction of the Mappro Property.
- Mizrahi shall only be entitled to use the pumping station every third day.
- On dates when Mizrahi is using the pumping station and street closures are in operation, Mappro (and/or Reserve) shall continue to be able to access the section of Balmuto north of the Staging Area for its deliveries.
- If a conflict arises between the need of Mappro (and/or Reserve) to use or occupy Balmuto for its renovation/construction work and Mizrahi's need to use the Staging Area, Mappro (and/or Reserve) shall have priority.

We also seek permission to make oral submissions during the Community Council meeting and request notice of any reports, meetings, or decisions related to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

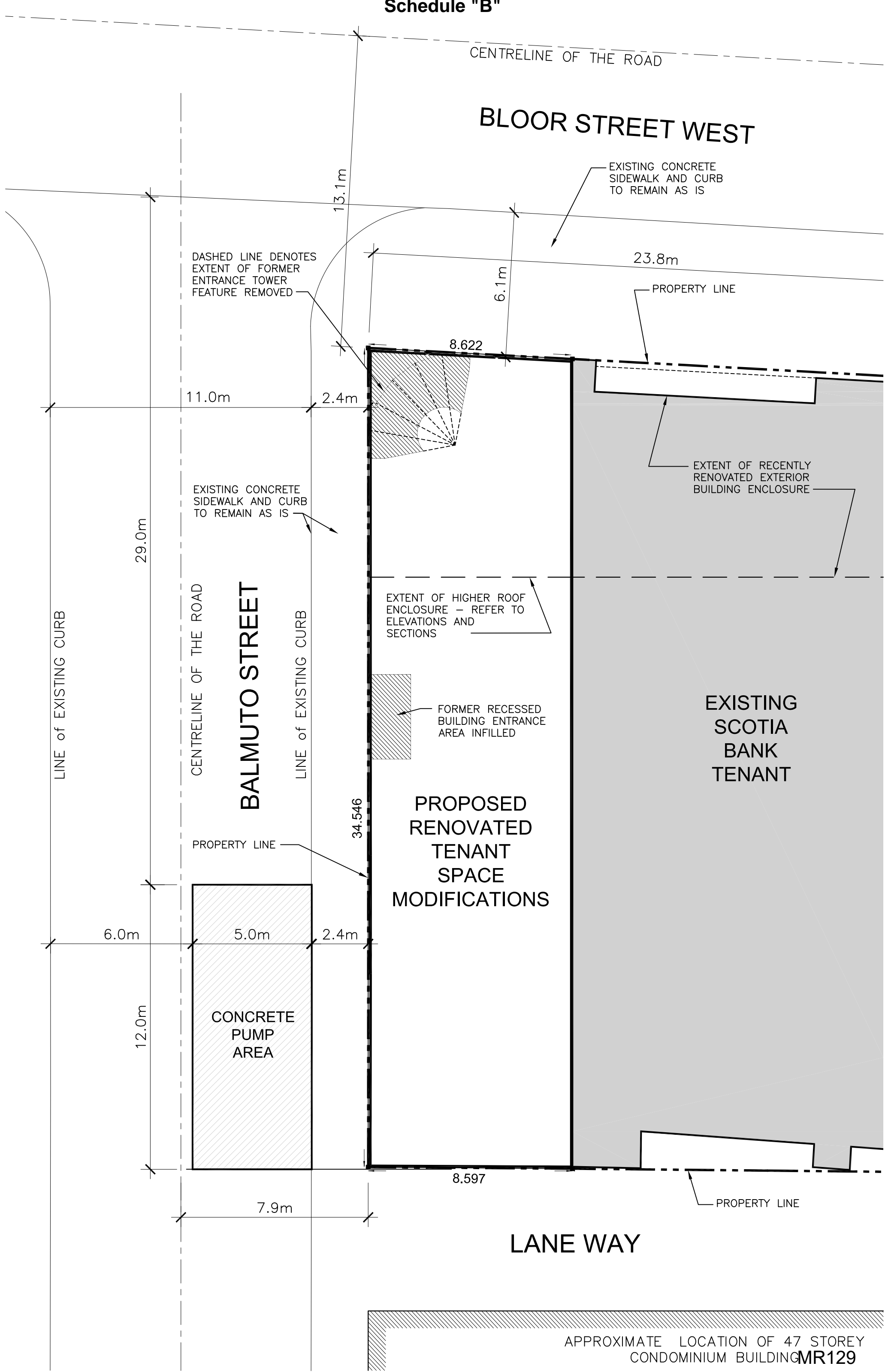


Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
Andrew Greene (via email: andrew.greene@toronto.ca)
Stuart McGhie (via email: stuart.mcghie@toronto.ca)
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Rodney Gill (via email: rodney.gill@toronto.ca)
Belinda Brenner (via email: belinda.brenner@toronto.ca)
Gadi Katz (via email: gadi.katz@toronto.ca)
Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)



March 23, 2023

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Speaker and Members of the Toronto City Council

Dear All:

Re: Item #2023.TE3.23 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto City Council (the “**City Council**”) regarding Item #2023.TE3.23 (the “**Item**”) concerning the request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension (the “**New Multi-Year Permit**”) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from **April 1, 2023 to June 30, 2025**.

These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, and February 22, 2023 all of which are enclosed for your convenience as Schedule A.

I. THE CITY IS ALLOWING MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

Since mid 2020, the City of Toronto (the “**City**”) has been allowing Mizrahi to use the Staging Area to construct a development project being built a block away (at the corner of Bloor Street and Yonge Street). Mizrahi's installation and use of the Staging Area (and the City's authorization of it) significantly interferes with the enjoyment and use of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Property for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Property;

- e) it restricts access to the Mappro Property and the emergency exits;
- f) it restricts visibility into and from the Mappro Property;
- g) it restricts access to the fire hydrant; and
- h) it prevents Mappro from being able to lease the Mappro Property to short-term and longer-term tenants.

Mappro recently finalized an agreement of purchase and sale, pursuant to which Mappro agreed to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). This sale transaction, however, is not closing in the near future. In the interim, Mappro seeks to lease the Mappro Property to short-term or longer-term tenants. It will be prevented from doing so by Mizrahi's on-going occupation of the Staging Area.

Mappro has suffered and continues to suffer (as will Reserve) significant financial damages as a result of the actions of Mizrahi and the City. As the City is aware, Mappro has commenced an action in which it advances claims of nuisance and negligence against Mizrahi and the City.

II. THE CITY SHOULD NOT ALLOW MIZRAHI TO PROFIT AT MAPPRO'S EXPENSE

On February 6, 2023, Transportation Services released a Report for Action that contains two noteworthy aspects:

1. Transportation Services concedes that the request for the New Multi-Year Permit runs afoul of the Municipal Code.
2. The report concludes that:

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street and Yonge Street, these fees will be approximately \$1,776,000.00 including lost revenue from the parking machines (if applicable).

Mizrahi (and now Transportation Services) are asking City Council to close a portion of a city street located directly in front of the Mappro Property to enable Mizrahi to construct a development project located a block away and add ~\$1.77M (for fees and lost revenue) to the City's coffers at the expense of Mappro (and Reserve).

The Municipal Code makes it clear that while a landowner might reasonably assume some risk of being inconvenienced by construction work being performed by one of its direct neighbours, it does not reasonably assume the risk that the City might close the street in front of its property to allow for construction a block away. More importantly, in the case of work being performed by a direct neighbour (which is not the case here), the Municipal Code protects the inconvenienced landowner under section 743-18(C) which provides that:

A permit issued under this Section **shall not authorize the temporary occupation of any portion of the street beyond the limits of the subject property's frontage** on the street, **unless the adjoining property owner consents, in writing**, to the General Manager issuing a permit for the temporary occupation of the street adjoining their property and the adjoining property owner waives all claims against the City for any losses and damages that may arise or result directly or indirectly from this temporary occupation.

In creating this by-law, the City recognized that if a land owner wishes to temporarily occupy a portion of the street that stretches beyond the limits of its property frontage, it must obtain its neighbour's consent. This makes eminent sense. It is only fair that a developer be required to ask its neighbour if the developer wishes to occupy the street in front of the neighbour's property. When a developer seeks to occupy a street a block away from its own property, the requirement for getting the abutting land owner's consent should be even more stringent.

It is unreasonable for the City to permit its lands to be used in a way that allows Mizrahi and the City to profit at the expense of Mappro (and Reserve) while the City tries to absolve itself of all liability. The City owes all landowners in the City a duty of care. The irony here is that Transportation Services is proposing that Mappro (and Reserve) be required to suffer the adverse financial impacts arising from Mizrahi's occupation of Balmuto, while simultaneously requiring Mizrahi to compensate the City for any financial impacts to it (e.g. \$1.77M in lost parking revenue and in fees). Clearly, the City recognizes that it is only fair that there be "... *no financial impact to the City*" arising from Mizrahi's occupation of Balmuto. Why should Mappro (and Reserve) be treated any differently?

If Mizrahi wishes to occupy the portion of Balmuto directly in front of the Mappro Property (i.e. a street located a full block away from Mizrahi's property), thereby engulfing the Mappro Property into Mizrahi's construction zone, Mizrahi should be required to obtain the consent of Mappro (and Reserve to the extent necessary). Mappro (and Reserve) are open to having reasonable discussions with Mizrahi as to the terms pursuant to which Mappro (and Reserve if necessary) would consent to Mizrahi's use of the Staging Area.

III. THE NEW MULTI YEAR PERMIT SHOULD NOT BE ISSUED

As Mappro suspected, Mizrahi underrepresented, whether knowingly or not, the length of time it would need to use and, thus, occupy the Staging Area. Although Mizrahi previously sought and obtained a permit to occupy the Staging Area until November 30, 2022, Mizrahi now seeks the New Multi-Year Permit to continue occupying Balmuto until June 30, 2025. This is more than 2.5 years longer than Mizrahi initially indicated would be necessary. Mizrahi has not provided any indication that this latest request for an extension will be its last.

City Council should oppose Mizrahi's occupation of the Staging Area outright on the basis that Mizrahi failed to obtain Mappro's consent. In the alternative, City Council should adopt the recommendation of the Toronto and East York Community Council that the existing permit only be extended until April 1, 2024, at which point it should be subject to further review. This would give the parties the opportunity to negotiate reasonable terms pursuant to which Mappro (and Reserve if necessary) would be amenable to Mizrahi's continued occupation of the Staging Area. City Council should send a clear message that developers cannot use City land to harm other landowners.

Any authorization that City Council grants that would allow Mizrahi to continue occupying the Staging Area should also include the following terms, all of which will be necessary if Mappro (and/or Reserve) decide to proceed with the proposed renovation and/or other construction on the Mappro Property:

- The concrete pump enclosure (limited to 5m x 12m and shown in cross hatched on the plan attached as Schedule B) must be pulled to the edge of the existing sidewalk to leave 6m clear width for bi-directional traffic on Balmuto and the full sidewalk width of 2.4m for renovation work on the Mappro Property.

- Mizrahi's concrete trucks must service the pumping station (in the Staging Area) from the south end of the Staging Area. This will ensure that the section of Balmuto north of the Staging Area will be left available for the renovation/construction of the Mappro Property.
- Mizrahi shall only be entitled to use the pumping station every third day.
- On dates when Mizrahi is using the pumping station and street closures are in operation, Mappro (and/or Reserve) shall continue to be able to access the section of Balmuto north of the Staging Area for its deliveries.
- If a conflict arises between the need of Mappro (and/or Reserve) to use or occupy Balmuto for its renovation/construction work and Mizrahi's need to use the Staging Area, Mappro (and/or Reserve) shall have priority.

We also request notice of any reports, meetings, or decisions related to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Speigel

On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Dianne Saxe (via email: councillor_saxe@toronto.ca)
 Andrew Greene (via email: andrew.greene@toronto.ca)
 Stuart McGhie (via email: stuart.mcghie@toronto.ca)
 Eric Jensen (via email: eric.jensen@toronto.ca)
 Belinda Brenner (via email: belinda.brenner@toronto.ca)
 Gadi Katz (via email: gadi.katz@toronto.ca)
 Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)
 Mary Ellen Bench (maryellen.bench@dentons.com)

February 20, 2024

**** Sent Via E-Mail to: tevcc@toronto.ca ****

Toronto and East York Community Council
City of Toronto
Toronto City Hall, 2nd Floor, West Tower
100 Queen Street West
Toronto, Ontario, M5H 2N2

Attention: The Chair and Members of the Toronto and East York Community Council

Dear All:

Re: 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto and East York Community Council (“**Community Council**”) regarding an item that may be added to the agenda concerning a possible request by Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) for a permit extension to continue occupying the portion of Balmuto Street directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”).

Despite Mappro’s repeated requests to be kept apprised as to any developments with respect to the existence or use of the Staging Area, neither Mizrahi, nor the City has done so.

On February 8, 2024, we emailed the City:

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

On February 15, the City responded as follows:

... While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

On February 16, we responded as follows:

I am not sure I understand what the following means: “They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.” Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

On February 17, the City responded as follows:

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk’s Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

We responded later that day by saying: “When are they adding it to the agenda? How can I make submissions opposing[it] if I don’t know what is being put forward?”

On February 18, the City said:

... I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi’s street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

On February 20 (i.e. the day before the meeting), the City advised that: “My client has confirmed to me that this is proceeding to this week’s TEYCC meeting. I will forward the updated agenda as soon as it is available.”

We responded later that day by saying:

*Given the lack of appropriate notice, I am not able to attend **tomorrow’s meeting**. Nor do I even know what position is being put forward. This is yet another example of the City’s unreasonable*

conduct. The City's repeated failure to take Mappro's interests into account is glaring. I have also received no update from Mizrahi as to what, if anything, is being requested.

The correspondence referred to above is attached as Schedule A.

In sum, Mappro was given one business days' notice that the City would be "reporting" to Community Council on February 21, 2024 with respect to the Staging Area. What this means and what is being reported (if anything) is anyone's guess. No relevant item has yet been added to the February 21 agenda.

Given the failure to provide appropriate notice, we will not be able to attend the February 21 Community Council meeting. Having no idea what is being reported or what extension (if any) is being sought, Mappro, has also been prevented from making meaningful submissions. To the extent that the City is recommending an extension of the permit (or Mizrahi is seeking one), Mappro opposes it. To that end, Mappro relies on its submissions dated February 22, 2023, December 9, 2022, November 29, 2022, September 15, 2020, and July 14, 2020, all of which are enclosed for your convenience as Schedule B.

The conduct of the City and Mizrahi has been and continues to be wholly unreasonable. Mappro's interests have been disregarded at every turn.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in blue ink, appearing to read 'A. Spiegel', is written over a horizontal line.

Per: Allison Spiegel
On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Schedule "A"

Claudia Lapa

From: Allison Spiegel
Sent: Tuesday, February 20, 2024 9:23 AM
To: Nicholas Rolfe
Cc: Dunn, Mark; Claudia Lapa
Subject: RE: Mizrahi Permit

INTERNAL SOURCE

Given the lack of appropriate notice, I am not able to attend **tomorrow's meeting**. Nor do I even know what position is being put forward. This is yet another example of the City's unreasonable conduct. The City's repeated failure to take Mappro's interests into account is glaring.

I have also received no update from Mizrahi as to what, if anything, is being requested.

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Sent: Tuesday, February 20, 2024 9:09 AM
To: Allison Spiegel <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: Re: Mizrahi Permit

EXTERNAL SOURCE - Exercise caution.

Hello Allison,

My client has confirmed to me that this is proceeding to this week's TEYCC meeting. I will forward the updated agenda as soon as it is available.

Thank you,
Nicholas Rolfe

Get [Outlook for iOS](#)

From: Nicholas Rolfe
Sent: Sunday, February 18, 2024 4:31:47 PM
To: 'Allison Speigel' <allison@ontlaw.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: RE: Mizrahi Permit

Hello Allison,

Further to my below emails – I will advise you once I receive confirmation as to dates. For the last Council meeting regarding whether to issue/renew the permit, Mappro made submissions about impacts or alleged impacts to it from an extension of Mizrahi's street occupancy permit, and proposed ways to minimize them. It also appended its previous submissions. I cannot suggest what further submissions Mappro may wish to make. I do note that its action is stayed and that it has sold or agreed to sell its Balmuto property, although it has not provided the documentation for that.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Speigel <allison@ontlaw.com>
Sent: February 17, 2024 1:37 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

When are they adding it to the agenda? How can I make submissions opposing if I don't know what is being put forward?

Sent from my iPhone

On Feb 17, 2024, at 12:53 PM, Nicholas Rolfe <Nicholas.Rolfe@toronto.ca> wrote:

EXTERNAL SOURCE - Exercise caution.

Hello Allison,

In answer to your below email – items considered at TEYCC (e.g. at its February 21, 2024 meeting) are typically then voted on at the following Council meeting. That would be beginning on March 20, 2024.

I see as well that you have separately emailed the Clerk's Office about the February 21, 2024 agenda. I understand that Transportation staff are aiming to have this item added to the agenda. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: February 16, 2024 3:02 PM
To: Allison Speigel <allison@ontlaw.com>
Cc: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>; Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Re: Mizrahi Permit

I will look into this. I was not aware of anything happening on Feb 21, it was being handled by Dentons. I will check in this then.

Sent from my iPhone

On Feb 16, 2024, at 2:49 PM, Allison Speigel <allison@ontlaw.com> wrote:

Given that I would need submissions in by noon on Tuesday if I am to speak to this on Feb 21, can you please get back to me asap.

Mark – can you please advise.

Regards,
Allison

Allison J. Speigel*
<image004.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3

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<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Speigel Professional Corporation

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From: Allison Speigel <allison@ontlaw.com>
Sent: Friday, February 16, 2024 1:43 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

INTERNAL SOURCE

I am not sure I understand what the following means: "They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter."

Will the Toronto and East York Community Council be considering this issue at their Feb 21 meeting or at the March 20 meeting?

Regards,
Allison

Allison J. Spiegel*

<image003.png>

Speigel Nichols Fox LLP

Tel: 905.366.9700 ext. 280

Fax: 905.366.9707

1 Robert Speck Parkway, Suite 200

Mississauga, ON L4Z 3M3

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<https://ca.linkedin.com/in/allionspeigel>

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>

Sent: Thursday, February 15, 2024 7:53 PM

To: Allison Speigel <allison@ontlaw.com>

Cc: Claudia Lapa <claudial@ontlaw.com>

Subject: RE: Mizrahi Permit

EXTERNAL SOURCE - Exercise caution.

Hello Allison,

Thank you for your email. While I am currently on leave, I have enquired with my client. They advise me that they are aiming to report to the February 21, 2024 Community Council meeting, and following that the Council meeting beginning March 20, 2024, with regard to this matter.

I understand that Mappro had, through you, made oral and written submissions at the previous Community Council meetings and written submissions to the previous Council meetings considering this matter. I suggest that you hold these dates should it wish to do

so again. Once I receive confirmation from my client as to Community Council and Council dates, I will advise you.

Thank you,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>
Sent: February 8, 2024 8:48 AM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Cc: Claudia Lapa <claudial@ontlaw.com>
Subject: [External Sender] Mizrahi Permit

I had understood that the existing permit is scheduled to expire on April 1, 2024. I seem to never receive any news about next steps in the permitting process (despite my repeated requests to be kept apprised). Is there anything scheduled for a hearing on it being further extended?

Regards,
Allison

Allison J. Spiegel*
<image003.png>
Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
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<https://ca.linkedin.com/in/allisonspeigel>

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***** Attention *****

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SPEIGEL NICHOLS FOX LLP

• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

March 15, 2024

**** Sent Via E-Mail to: councilmeeting@toronto.ca ****

City Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, Ontario
M5H 2N2

Attention: The Speaker and Members of the Toronto City Council

Dear All:

Re: Item #TE11.36 - 1 Bloor West (Yonge Street, Bloor Street and Balmuto Street) – Construction Staging Area Time Extension (Ward 11)

We act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West. We make the following submissions to the Toronto City Council (the “**City Council**”) regarding Item #TE11.36 (the “**Item**”) concerning the request to extend the permit allowing Mizrahi Development Group (The One) Inc. (“**Mizrahi**”) (or a replacement contractor) to continue occupying the portion of Balmuto Street (“**Balmuto**”) directly in front of the Mappro Property as a construction staging area (the “**Staging Area**”) from April 2, 2024 to August 31, 2025.

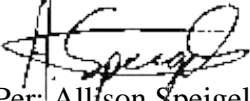
These submissions should be read in conjunction with Mappro’s submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, February 22, 2023, and February 20, 2024 all of which are enclosed for your convenience as Schedule A.

As set out in Mappro’s February 20, 2024 submissions, Mappro was not provided with appropriate notice before the issue was considered at the February 21, 2024 meeting of the Toronto and East York Community Council. This was yet another example of the manner in which Mizrahi and the City have shown a complete disregard for Mappro’s interest.

For the same reasons as set out in its previous submissions, Mappro adamantly opposes the extension of the permit.

Finally, Mappro again requests that the City and Mizrahi be required to provide appropriate notice of any reports, meetings, or decisions relating to this item or any ancillary matters.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in black ink, appearing to read 'A. Spiegel', is written over the printed name 'Allison Spiegel'.

Per: Allison Spiegel

On behalf of Mappro Realty Inc.

AS:cl

Encl.

C: Nicholas Rolfe (Nicholas.Rolfe@toronto.ca)

Mark Dunn (mdunn@goodmans.ca)

June 20, 2024

**** sent via email to: Nicholas.Rolfe@toronto.ca ****

Mr. Nicholas Rolfe
City of Toronto Legal Services
55 John St.
Stn. 1260, 26th Floor, Metro Hall
Toronto, Ontario
M5V 3C6

Dear Mr. Rolfe:

Re: 1 Bloor Street West (the “**Mizrahi Property**”) - Construction Staging Area (the “**Staging Area**”)

As you are aware, we act as counsel for Mappro Realty Inc. (“**Mappro**”), the owner of the property (the “**Mappro Property**”) at 19 Bloor Street West.

We respond to the email (the “**City Email**”) dated June 14, 2014 that John Kowalenko, a senior project manager at Toronto Transportation Services (“**TTS**”), sent to Isabelle Hayen, a director of Mappro.¹ In the City Email, TTS advised that “the 1 Bloor West developer is requesting permission to continue occupying the Balmuto Street [S]taging [A]rea until **February 1, 2026**.” We assume that the reference to the “1 Bloor West developer” is a reference to Alvarez & Marsal Canada Inc. (the “**Receiver**”) as receiver and manager of all of the assets, undertakings and properties of Mizrahi Development Group (The One) Inc., including the Mizrahi Property.

In the City Email, TTS invited Mappro to provide its views on the request to extend the permit (the “**Permit**”) to use the Staging Area. TTS requested Mappro’s response by June 20, 2024 (i.e. four business days after it sent the City Email). We asked to extend the deadline by which Mappro could provide its response until June 25, 2024. You advised us that although Mappro was free to provide its response at a later date, the “City [of Toronto (the “**City**”)] staff will likely be submitting a report for the upcoming Community Council meeting prior to that date.”² We asked you when City staff would be submitting its report and noted that “[p]roviding 4 business days to respond is neither reasonable, nor sufficient.”³ You did not answer our question or otherwise respond to our email.

¹ See Tab 1 of Schedule A.

² See Tab 1 of Schedule A.

³ See Tab 1 of Schedule A.

Despite not having a reasonable amount of time to adequately respond, Mappro provides this response to TTS' request for comments.

As a preliminary matter, we note that the City Email incorrectly identifies the Mappro Property as being "adjacent" to the Mizrahi Property. The Mappro Property is not adjacent to the Mizrahi Property; rather, it is located a block away, which makes the placement of the Staging Area even more troubling.

Mappro adamantly opposes the extension of the Permit to February 1, 2026. Mappro has opposed the existence and use of the Staging Area since Mappro discovered that the Staging Area had been erected directly in front of the Mappro Property. The reasons for Mappro's opposition are detailed in its past submissions dated July 14, 2020, September 15, 2020, November 29, 2022, December 9, 2022, February 22, 2023, March 23, 2023, February 20, 2024, and March 15, 2024, all of which are enclosed for your convenience as Tabs 2-9 of Schedule A.

In addition to the reasons previously given, Mappro opposes any further extension of the Permit because the existence and on-going use of the Staging Area (which prevents Mappro from being able to lease the Property) has also caused the following issues (the "New Issues"):

1. The Mappro Property has repeatedly been vandalized.
2. Homeless people are loitering directly in front of the Mappro Property and there have been a number of instances of begging, drug use (leaving abandoned needles and related paraphernalia), and individuals who are urinating and defecating directly in front of the Mappro Property.
3. There have been break-ins to the Mappro Property, resulting in doors and glass of the Mappro Property being broken and individuals urinating inside the Mappro Property.

Mappro has incurred costs to address the New Issues, including being forced to upgrade its security. It remains eminently unfair that Mappro is being forced to incur damages to enable others to profit from a construction project being built a block away.

Mappro also fails to understand why the Receiver requires an extension of the Permit to February 1, 2026. Given that the building construction has apparently already reached the 59th floor,⁴ it makes no sense that the Receiver would require the concrete pump to remain in the Staging Area until February 1, 2026.

If the City is intent on granting some form of extension of the Permit against Mappro's will, Mappro asks that, at a minimum:

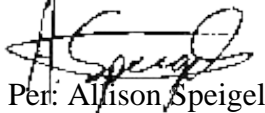
1. The Permit be extended for no more than 1 year (i.e. to July 31, 2025); and
2. The Receiver (or any future owner of the Mizrahi Property) be required to:
 - a. reimburse Mappro for all costs and damages that Mappro has and will incur and suffer due to the erection and use of the Staging Area;
 - b. put in place additional security measures surrounding the Mappro Property;

⁴https://indd.adobe.com/view/2f80c022-652c-49c5-9398-d6ceb2cb8f08?utm_campaign=DealX%20Email%2000608000013mibKAAQ-2024-06-06T17%3A53%3A52.212Z-Teaser&utm_medium=email&utm_source=Eloqua&utm_term=3453865&elqTrackId=ff7e54c7c03941a28659c9c11e91e2ae&elq=e18271ba430c4a7b821fbfd427ba6358&elqaid=35754&elqat=1&elqCampaignId=36607

- c. remove any graffiti and otherwise repair any damage to the outside of the Mappro Property while the Staging Area remains in place;
- d. address any issues arising from homeless individuals congregating in front of the Mappro Property (i.e. clean any urine, defecation, etc., and otherwise address the issue) while the Staging Area remains in place; and
- e. coordinate and collaborate with Mappro (or any future owner of the Mappro Property) regarding any construction work on the Mappro Property in a manner that ensures that the work can be performed (and done so efficiently).

Mappro makes these requests without prejudice to its rights in the ongoing litigation and, in particular, its rights to claim all damages arising from the erection and use of the Staging Area.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel

AS:cl

Encl.

Schedule "A"

Claudia Lapa

From: Allison Spiegel
Sent: Tuesday, June 18, 2024 1:12 PM
To: Nicholas Rolfe
Subject: RE: 1 Bloor Street West - Construction Staging Area

Follow Up Flag: Follow up
Flag Status: Flagged

INTERNAL SOURCE

When will they be submitting their report? I would have thought they would want to hear from Mappro before they submit the report?

Providing 4 business days to respond is neither reasonable, nor sufficient.

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

*practicing through Allison Spiegel Professional Corporation

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Sent: Tuesday, June 18, 2024 1:09 PM
To: Allison Spiegel <allison@ontlaw.com>
Subject: RE: 1 Bloor Street West - Construction Staging Area

EXTERNAL SOURCE - Exercise caution.

Allison,

You are welcome to do so. Please note that City staff will likely be submitting a report for the upcoming Community Council meeting prior to that date. As you know, Mappro has in the past and remains able to depute to Community Council and Council as well.

Ms. Hayen had written the following to City staff:

Dear Mr Kowalenko

Thank you very much for your e-mail.

May I kindly ask if it is possible for us to delay our submission to early next week, close of business Monday 24 June/Tuesday 25 June 2024.

I apologise, I am travelling and trying to coordinate diaries to provide a submission.

Kind regards

Isabelle Hayen

Given our correspondence and that Mappro wishes to provide its response through you, I will advise City staff that there is no need to respond to this email.

Yours truly,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>
Sent: Tuesday, June 18, 2024 12:58 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Subject: [External Sender] RE: 1 Bloor Street West - Construction Staging Area

I will send the response to you to forward to City staff. I will do so on June 25. If that is a problem, please advise.

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

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From: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Sent: Tuesday, June 18, 2024 12:23 PM
To: Allison Spiegel <allison@ontlaw.com>
Subject: RE: 1 Bloor Street West - Construction Staging Area

EXTERNAL SOURCE - Exercise caution.

Allison,

I am unable to provide legal advice on lobbyist registration. If you wish to respond, please do so directly to me. I will forward your response (if you are the one who responds) to City staff.

Please confirm at your earliest convenience if Mappro will be responding, and if so through whom.

Yours truly,

Nicholas Rolfe
Solicitor, City of Toronto Legal Services
Metro Hall, 23rd Floor, Stn 1260
55 John Street, Toronto ON M5V 3C6
Tel: 416-392-7246

From: Allison Spiegel <allison@ontlaw.com>
Sent: Tuesday, June 18, 2024 12:16 PM
To: Nicholas Rolfe <Nicholas.Rolfe@toronto.ca>
Subject: [External Sender] FW: 1 Bloor Street West - Construction Staging Area

My client received the email below. If my client responds directly, does she need to be a registered lobbyist? Conversely, are you ok if I respond on her behalf and copy you?

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 280
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, ON L4Z 3M3
<http://ontlaw.com/bio/allison-speigel/>
<https://ca.linkedin.com/in/allisonspeigel>

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From: John Kowalenko <John.Kowalenko@toronto.ca>
Sent: Friday, June 14, 2024 5:47 PM
To: Isabelle Hayen <isabelle.hayen@ahrgroup.be>
Subject: 1 Bloor Street West - Construction Staging Area

Dear Ms. Hayen,

City staff anticipate reporting to Community Council and Council regarding a further permit for the 1 Bloor West developer to continue to occupy its Balmuto Street staging area. We understand that you are a representative of Mappro, an adjacent property owner, and are familiar with this matter. The last Council treatment of this matter, including the associated staff report, is available at [this link](#).

We are writing to provide you with an opportunity to communicate Mappro's views to the City on whether the developer should receive permission to continue to occupy the Balmuto Street staging area, including conditions or ways in which to minimize any impacts of the staging area should such permission issue. Please feel free to contact the undersigned to that end.

City staff anticipate reporting to Community Council on this matter for its July 10, 2024 meeting. Mappro has in the past deputed on the staging area to Community Council and Council, and we understand that it is familiar with how to do so (although further information on deputations may be found [here](#)). Given the upcoming Council meeting, we would appreciate any response by Mappro to our email by June 20, 2024. For clarity, we are seeking to consult with Mappro at the City staff level, and deputation opportunities to Community Council and Council are also independently available to Mappro.

We understand that the 1 Bloor West developer is requesting permission to continue occupying the Balmuto Street staging area until February 1, 2026.

John Kowalenko
Senior Project Manager
Work Zone Coordination
416-392-5282
john.kowalenko@toronto.ca



LAND
REGISTRY
OFFICE #66

21109-0244 (LT)

PAGE 1 OF 7
PREPARED FOR Claudia01
ON 2022/12/22 AT 09:35:26

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

PROPERTY DESCRIPTION:

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; SEVENTLY: 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

PROPERTY REMARKS:

ESTATE/QUALIFIER:

FEE SIMPLE
LT CONVERSION QUALIFIED

RECENTLY:

DIVISION FROM 21109-0242

PIN CREATION DATE:

2022/05/19

OWNERS' NAMES

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

CAPACITY SHARE

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
** PRINTOUT	INCLUDES ALL	DOCUMENT TYPES AND	DELETED INSTRUMENTS	SINCE 2022/05/19 **		
**SUBJECT,	ON FIRST REGISTRATION UNDER THE	LAND TITLES ACT, TO:				
**	SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPH 11, PARAGRAPH 14, PROVINCIAL SUCCESSION DUTIES *					
**	AND ESCHEATS OR FORFEITURE TO THE CROWN.					
**	THE RIGHTS OF ANY PERSON WHO WOULD, BUT FOR THE LAND TITLES ACT, BE ENTITLED TO THE LAND OR ANY PART OF					
**	IT THROUGH LENGTH OF ADVERSE POSSESSION, PRESCRIPTION, MISDESCRIPTION OR BOUNDARIES SETTLED BY					
**	CONVENTION.					
**	ANY LEASE TO WHICH THE SUBSECTION 70(2) OF THE REGISTRY ACT APPLIES.					
**DATE OF	CONVERSION TO	LAND TITLES: 2003/09/22	**			
AT3666905	2014/08/20	TRANSFER	\$15,000,000	FRANK STOLLERY (2011) LIMITED	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
AT3717797	2014/10/20	TRANSFER	\$15,000,000	FRANK STOLLERY (2011) LIMITED	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
AT3717798	2014/10/20	TRANSFER	\$105,000,000	FRANK STOLLERY LIMITED	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
AT3770889	2014/12/18	TRANSFER	\$23,000,000	M. PERLMAN ENTERPRISES INC. R. PERLMAN ENTERPRISES INC.	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT3779597	2015/01/05	TRANSFER	\$16,000,000	PETER NICHOLSON HOLDINGS LIMITED	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	C
AT3780523	2015/01/06	TRANSFER	\$18,775,000	RED ROBIN LIMITED FADINE ENTERPRISES LIMITED ROLESCO LIMITED SHEILA RUTH INVESTMENTS (1985) LIMITED STORKLAND FURNITURE LIMITED	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	C
AT3860032	2015/04/17	TRANSFER	\$16,500,000	HR PROPERTY HOLDINGS LTD.	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	C
AT4081012	2015/11/30	TRANSFER	\$4,975,000	H2000 INVESTMENT GROUP INC.	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	C
AT4081016	2015/11/30	CHARGE	\$30,000,000	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	COCO INTERNATIONAL INC.	C
AT4108265	2016/01/04	BYLAW		CITY OF TORONTO		C
AT4192503	2016/04/13	NOTICE		MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	COCO INTERNATIONAL INC.	C
AT4474782	2017/01/31	NOTICE		MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	COCO INTERNATIONAL INC.	C
AT4523223	2017/03/29	APL ANNEX REST COV		MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.		C
AT4818862	2018/03/12	CHARGE	\$210,000,000	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	AVIVA INSURANCE COMPANY OF CANADA	C
AT4820639	2018/03/14	POSTPONEMENT		COCO INTERNATIONAL INC.	AVIVA INSURANCE COMPANY OF CANADA	C
AT5101384	2019/03/26	TRANSFER EASEMENT	\$2	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	ENBRIDGE GAS INC.	C
AT5183295	2019/07/11	CHARGE	\$213,000,000	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	CERIECO CANADA CORP.	C
AT5183330	2019/07/11	NO ASSGN RENT GEN		MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	CERIECO CANADA CORP.	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT5225851	2019/08/30	CHARGE	\$565,000,000	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	KEB HANA BANK CANADA	C
AT5225852	2019/08/30	NO ASSGN RENT GEN		MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	KEB HANA BANK CANADA	C
AT5225969	2019/08/30	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	KEB HANA BANK CANADA	C
AT5225973	2019/08/30	POSTPONEMENT		COCO INTERNATIONAL INC.	KEB HANA BANK CANADA	C
AT5225975	2019/08/30	POSTPONEMENT		CERIECO CANADA CORP.	KEB HANA BANK CANADA	C
AT5349990	2020/01/24	NOTICE	\$2	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	CITY OF TORONTO	C
AT5349991	2020/01/24	POSTPONEMENT		KEB HANA BANK CANADA	CITY OF TORONTO	C
AT5349992	2020/01/24	POSTPONEMENT		COCO INTERNATIONAL INC.	CITY OF TORONTO	C
AT5349993	2020/01/24	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	CITY OF TORONTO	C
AT5349994	2020/01/24	POSTPONEMENT		CERIECO CANADA CORP.	CITY OF TORONTO	C
AT5349995	2020/01/24	POSTPONEMENT		ENBRIDGE GAS INC.	CITY OF TORONTO	C
AT5373895	2020/02/26	NOTICE		CITY OF TORONTO		C
AT5373896	2020/02/26	POSTPONEMENT		COCO INTERNATIONAL INC.	CITY OF TORONTO	C
AT5373897	2020/02/26	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	CITY OF TORONTO	C
AT5373898	2020/02/26	POSTPONEMENT		ENBRIDGE GAS INC.	CITY OF TORONTO	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT5373899 REMARKS: AT5183295 TO AT5373895	2020/02/26	POSTPONEMENT		CERIECO CANADA CORP.	CITY OF TORONTO	C
AT5373900 REMARKS: AT5225851 TO AT5373895	2020/02/26	POSTPONEMENT		KEB HANA BANK CANADA	CITY OF TORONTO	C
AT5461644	2020/06/26	CHARGE	\$75,000,000	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	KEB HANA BANK CANADA	C
AT5461645 REMARKS: AT5461644.	2020/06/26	NO ASSGN RENT GEN		MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	KEB HANA BANK CANADA	C
AT5461707 REMARKS: AT4081016 TO AT5461644	2020/06/26	POSTPONEMENT		COCO INTERNATIONAL INC.	KEB HANA BANK CANADA	C
AT5461708 REMARKS: AT5183295, AT5183330, AT5461644 TO AT5461645	2020/06/26	POSTPONEMENT		CERIECO CANADA CORP.	KEB HANA BANK CANADA	C
AT5486576	2020/07/31	NOTICE		CITY OF TORONTO		C
AT5486577 REMARKS: AT4081016, AT4192503, AT4474782 TO AT5486576	2020/07/31	POSTPONEMENT		COCO INTERNATIONAL INC.	CITY OF TORONTO	C
AT5486578 REMARKS: AT4818862 TO AT5486576	2020/07/31	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	CITY OF TORONTO	C
AT5486579 REMARKS: AT5101384 TO AT5486576	2020/07/31	POSTPONEMENT		ENBRIDGE GAS INC.	CITY OF TORONTO	C
AT5486580 REMARKS: AT5183295 TO AT5486576	2020/07/31	POSTPONEMENT		CERIECO CANADA CORP.	CITY OF TORONTO	C
AT5486581 REMARKS: AT5225851 TO AT5486576	2020/07/31	POSTPONEMENT		KEB HANA BANK CANADA	CITY OF TORONTO	C
AT5486582 REMARKS: AT5461644 TO AT5486576	2020/07/31	POSTPONEMENT		KEB HANA BANK CANADA	CITY OF TORONTO	C
AT5540996	2020/10/08	APL CONSOLIDATE		MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.		C
AT5650701 REMARKS: AT5225851	2021/02/16	NOTICE	\$632,000,000	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	KEB HANA BANK CANADA	C

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PAGE 5 OF 7
PREPARED FOR Claudia01
ON 2022/12/22 AT 09:35:26

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT5650702 <i>REMARKS: AT4081016 TO AT5650701</i>	2021/02/16	POSTPONEMENT		COCO INTERNATIONAL INC.	KEB HANA BANK CANADA	C
AT5650703 <i>REMARKS: AT4818862 TO AT5650701</i>	2021/02/16	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	KEB HANA BANK CANADA	C
AT5650704 <i>REMARKS: AT5183295 TO AT5650701</i>	2021/02/16	POSTPONEMENT		CERIECO CANADA CORP.	KEB HANA BANK CANADA	C
AT5650705 <i>REMARKS: AT5461644 TO AT5650701</i>	2021/02/16	POSTPONEMENT		KEB HANA BANK CANADA	KEB HANA BANK CANADA	C
AT5773276	2021/06/21	NO APL ABSOLUTE		MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.		C
AT5877000 <i>REMARKS: AMENDS AT5225851, AT5650701</i>	2021/10/05	NOTICE	\$957,000,000	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	KEB HANA BANK CANADA	C
AT5877001 <i>REMARKS: AT4081016 TO AT5877000</i>	2021/10/05	POSTPONEMENT		COCO INTERNATIONAL INC.	KEB HANA BANK CANADA	C
AT5877002 <i>REMARKS: AT4818862 TO AT5877000</i>	2021/10/05	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	KEB HANA BANK CANADA	C
AT5877003 <i>REMARKS: AT5183295 TO AT5877000</i>	2021/10/05	POSTPONEMENT		CERIECO CANADA CORP.	KEB HANA BANK CANADA	C
AT5877004 <i>REMARKS: AT5461644 TO AT5877000</i>	2021/10/05	POSTPONEMENT		KEB HANA BANK CANADA	KEB HANA BANK CANADA	C
66R32221	2021/11/12	PLAN REFERENCE				C
AT6077633 <i>REMARKS: THIS NOTICE IS FOR AN INDETERMINATE PERIOD</i>	2022/05/13	NOTICE	\$2	CITY OF TORONTO		C
AT6077636 <i>REMARKS: AT4081016 TO AT6077634 AFFECT PART 3 ON PLAN 66R-32221</i>	2022/05/13	POSTPONEMENT		COCO INTERNATIONAL INC.	CITY OF TORONTO	C
AT6077638 <i>REMARKS: AT4818862 TO AT6077634 AFFECT PART 3 ON PLAN 66R-32221</i>	2022/05/13	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	CITY OF TORONTO	C
AT6077640 <i>REMARKS: AT5183295 TO AT6077634 AFFECT PART 3 ON PLAN 66R-32221</i>	2022/05/13	POSTPONEMENT		CERIECO CANADA CORP.	CITY OF TORONTO	C

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REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT6077642	2022/05/13	POSTPONEMENT		KEB HANA BANK CANADA	CITY OF TORONTO	C
		REMARKS: AT5225851 TO AT6077634 AFFECT PART 3 ON PLAN 66R-32221				
AT6077644	2022/05/13	POSTPONEMENT		KEB HANA BANK CANADA	CITY OF TORONTO	C
		REMARKS: AT5461644 TO AT6077634 AFFECT PART 3 ON PLAN 66R-32221				
AT6077646	2022/05/13	POSTPONEMENT		ENBRIDGE GAS INC.	CITY OF TORONTO	C
		REMARKS: AT5101384 TO AT6077634 AFFECT PART 3 ON PLAN 66R-32221				
AT6077647	2022/05/13	TRANSFER EASEMENT	\$2	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	CITY OF TORONTO	C
		REMARKS: AFFECT PARTS 7 AND 8 ON PLAN 66R-32221				
AT6077648	2022/05/13	POSTPONEMENT		COCO INTERNATIONAL INC.	CITY OF TORONTO	C
		REMARKS: AT4081016 TO AT6077647 PARTS 7 AND 8 ON PLAN 66R-32221				
AT6077649	2022/05/13	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	CITY OF TORONTO	C
		REMARKS: AT4818862 TO AT6077647 PARTS 7 AND 8 ON PLAN 66R-32221				
AT6077650	2022/05/13	POSTPONEMENT		CERIECO CANADA CORP.	CITY OF TORONTO	C
		REMARKS: AT5183295 TO AT6077647 PARTS 7 AND 8 ON PLAN 66R-32221				
AT6077651	2022/05/13	POSTPONEMENT		KEB HANA BANK CANADA	CITY OF TORONTO	C
		REMARKS: AT5225851 TO AT6077647 PARTS 7 AND 8 ON PLAN 66R-32221				
AT6077652	2022/05/13	POSTPONEMENT		KEB HANA BANK CANADA	CITY OF TORONTO	C
		REMARKS: AT5461644 TO AT6077647 PARTS 7 AND 8 ON PLAN 66R-32221				
AT6077653	2022/05/13	POSTPONEMENT		ENBRIDGE GAS INC.	CITY OF TORONTO	C
		REMARKS: AT5101384 TO AT6077647 PARTS 7 AND 8 ON PLAN 66R-32221				
AT6077654	2022/05/13	TRANSFER EASEMENT	\$2	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	CITY OF TORONTO	C
		REMARKS: PARTS 4, 5 AND 6 ON PLAN 66R-32221				
AT6077655	2022/05/13	POSTPONEMENT		COCO INTERNATIONAL INC.	CITY OF TORONTO	C
		REMARKS: AT4081016 TO AT6077654 PARTS 4, 5 AND 6 ON PLAN 66R-32221				
AT6077656	2022/05/13	POSTPONEMENT		AVIVA INSURANCE COMPANY OF CANADA	CITY OF TORONTO	C
		REMARKS: AT4818862 TO AT6077654 PARTS 4, 5 AND 6 ON PLAN 66R-32221				
AT6077657	2022/05/13	POSTPONEMENT		CERIECO CANADA CORP.	CITY OF TORONTO	C
		REMARKS: AT5183295 TO AT6077654 PARTS 4, 5 AND 6 ON PLAN 66R-32221				
AT6077658	2022/05/13	POSTPONEMENT		KEB HANA BANK CANADA	CITY OF TORONTO	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

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REGISTRY
OFFICE #66

21109-0244 (LT)

PAGE 7 OF 7
PREPARED FOR Claudia01
ON 2022/12/22 AT 09:35:26

* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT * SUBJECT TO RESERVATIONS IN CROWN GRANT *

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
AT6077659	2022/05/13	POSTPONEMENT		KEB HANA BANK CANADA	CITY OF TORONTO	C
AT6077660	2022/05/13	POSTPONEMENT		ENBRIDGE GAS INC.	CITY OF TORONTO	C
66R32722	2022/06/13	PLAN REFERENCE				C
AT6227322	2022/11/22	TRANSFER EASEMENT	\$2	MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.	ROGERS COMMUNICATIONS INC.	C



No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

MIZRAHI DEVELOPMENTS INC. and CITY OF TORONTO

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH

-2-

TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID
MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been
set down for trial or terminated by any means within five years after the action was commenced
unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto, Ontario
M5G 1R7

TO: DENTONS CANADA LLP
Barristers and Solicitors
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Lawyers for the defendant,
Mizrahi Developments Inc.

-3-

AND TO: Toronto City Clerk's Office
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100 Queen St. W.
Toronto, ON M5H 2N2

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Lawyers for the defendant,
City of Toronto

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CLAIM

1. The plaintiff, Mappro Realty Inc. ("**Mappro**"), claims against the Defendants as follows:
 - a) damages in the amount of \$3,000,000;
 - b) an interlocutory and mandatory permanent injunction requiring the defendants to immediately:
 - i) stop using the Staging Area (defined below);
 - ii) remove the Staging Area in its entirety or move it so that it is no longer in front of the property (the "**Mappro Property**") municipally known as 19 Bloor Street West, Toronto;
 - iii) repair the portion of Balmuto Street ("**Balmuto**") currently occupied by the Staging Area and return it to its previous condition;
 - c) pre-judgment interest in accordance with the Courts of Justice Act;
 - d) costs of this action; and
 - e) any further relief this Honourable Court deems just.
2. All dates and amounts set out herein are approximate.

A. The Parties and the Properties

3. Mappro, an Ontario corporation, owns the Mappro Property.
4. Mizrahi Developments Inc. ("**Mizrahi**"), an Ontario corporation, is a developer and owns the property (the "**Mizrahi Property**") municipally known as 1 Bloor Street West, Toronto.
5. The City of Toronto (the "**City**") is a municipal corporation governed by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A and its regulations. It owns the lands on which the Staging Area was installed.

B. The Properties and the Project

6. The Mappro Property is located on the southeast corner of Balmuto and Bloor Street ("**Bloor**"). The building on the Mappro Property is currently split into two units: one leased and operated by Scotiabank, and the other operated by Mappro (the "**Mappro Building**").
7. Mappro has made significant efforts and continues to try to lease the Mappro Building to a high-end retail tenant.
8. Mizrahi is in the process of constructing a mixed-use development (the "**One**") on the Mizrahi Property. Mizrahi retained Clarke Construction Management Inc. ("**Clarke**") to act as the construction manager on the project (the "**Project**"). At all relevant times, Clarke acted as Mizrahi's agent.
9. The Mizrahi Property and the Mappro Property are not adjoining properties.

C. The Project, the Staging Area, and the Original Permit

10. In or around March 2015, Mizrahi submitted to the City its site plan and zoning application (among other things) for the Project. The City authorized the construction of the Project by issuing various types of authorizations and permits. There was no contemplation of using Balmuto as a construction staging area.
11. At some point, Mizrahi decided that it wanted to use a portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for the construction of the Project.
12. Mizrahi required a permit from the City to erect and use the Staging Area.
13. Neither Mizrahi, nor the City made any efforts to consult with Mappro, seek its consent, or provide it with notice of Mizrahi's intention to seek a permit and, ultimately, use the Staging Area.
14. On or around July 14, 2020, the City granted Clarke, as Mizrahi's agent, a temporary street occupation permit (the "**Original Permit**") allowing Mizrahi to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.
15. The City's grant of the Original Permit was contrary to the provisions of the City of Toronto Municipal Code (the "**Code**") because, among other things:

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- a) neither Mizrahi nor Clarke owns any lands abutting Balmuto;
 - b) Mappro did not consent to Mizrahi's occupation of Balmuto or waive its claims against the City for any losses or damages arising from the occupation; and,
 - c) Mizrahi and Clarke failed to provide Mappro with notice of the occupation of Balmuto.
16. At an unknown date, Mizrahi erected and began using the Staging Area by, among other things, installing and operating a concrete pump pedestal and a generator. Mizrahi used the Staging Area to pump concrete to the Project, among other things.
17. The Staging Area occupies more space than the Original Permit allowed. The City did not take any steps to ensure that Mizrahi complied with the terms of the Original Permit.
18. Mappro did not learn about Mizrahi's intention to obtain a permit or use the Staging Area until it saw the construction equipment installed on the Staging Area.
19. Mappro's initial calls to the City concerning the Staging Area went unanswered.
20. It is unknown whether the City extended the duration of the Original Permit. If the City extended the duration of the Original Permit, it was done without justification and without authority. If the City did not do so, Mizrahi continued to use the Staging Area without permission.

D. The Multi-Year Permit

21. The Original Permit was only intended to be a stopgap solution. Mizrahi wanted to use the Staging Area for the duration of the Project, which was anticipated to take many years.
22. As a result, Mizrahi sought to obtain a longer-term permit (the "**Multi-Year Permit**").
23. Mizrahi first made its request for the Multi-Year Permit to the Toronto East York Community Council ("**TEYCC**").
24. On or around November 10, 2020, Mizrahi's request for the Multi-Year Permit came before TEYCC for a vote. Before the vote, the City submitted a report to TEYCC. In the report, the City admitted that City Council approval was required to issue the Multi-Year Permit (i.e. a permit that allows a temporary occupation of City lands that do NOT abut the lands of the applicant) because its issuance would "not comply with City policy or by-laws."

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25. On or around November 10, 2020, TEYCC recommended that City Council grant the Multi-Year Permit, with certain additional recommendations including, among other things, that:
 - a) the City grant the Multi-Year Permit without Mizrahi having to comply with the Code; and,
 - b) Mizrahi execute an indemnity agreement in favour of the City with respect to Mizrahi's occupation of Balmuto.
26. On or around November 25, 2020, City Council adopted TEYCC's recommendations (with some small amendments) and authorized the City to grant the Multi-Year Permit for the period November 30, 2020 to November 30, 2022.
27. The City then issued the Multi-Year Permit allowing Mizrahi to "stage concrete truck and deliveries on both northbound lanes of Balmuto ... fronting [the Mappro Building] ... pertinent to the development of [the One]."
28. Mizrahi did not comply with the terms of the Multi-Year Permit. For instance, it occupied more space than it was permitted. The City did not take any steps to ensure that Mizrahi was complying with the terms of the Multi-Year Permit.

E. The Effects of the Installation and Use of the Staging Area

29. Mizrahi's installation and use of the Staging Area interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:
 - a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
 - b) it creates unreasonable noise, vibration, dust, dirt, and smell;
 - c) it is unsightly;
 - d) it obstructs the sidewalk in front of the Mappro Building;
 - e) it restricts access to the Mappro Building and the emergency exits;
 - f) it restricts visibility into and from the Mappro Building; and
 - g) it restricts access to the fire hydrant.

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30. Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants.
31. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.
32. Mappro is now in the process of renovating the Mappro Building. The installation and use of the Staging Area will likely interfere with, delay, and increase the cost of Mappro's renovation. This too will negatively impact Mappro's ability to lease the Mappro Building.

F. Nuisance

33. The granting of the Original Permit and Multi-Year Permit and the installation and use of the Staging Area interferes to a significant degree with Mappro's use and enjoyment of the Mappro Property.
34. The non-trivial interference, which has been severe and lengthy, is unreasonable.
35. There is no public utility in the Project (i.e. the construction of the One); it is a private development being constructed by a private builder. Mappro is unreasonably being forced to bear the brunt of the Project for the private good of Mizrahi. It is not reasonable that Mizrahi should be allowed to profit at Mappro's expense.
36. The defendants are liable to the plaintiff for creating an ongoing nuisance and for permitting any form of the nuisance to occur.
37. The defendants also failed to act reasonably throughout the process:
 - a) The defendants failed to discuss the Staging Area with Mappro before installing it (even though Mappro was going to be the entity most impacted by its installation).
 - b) The defendants changed the location of the Staging Area to Balmuto mid-Project, thereby precluding Mappro from being able to oppose the granting of the original building permit.
 - c) Mizrahi refused to meaningfully engage with Mappro until Mappro's legal counsel got involved.
 - d) Mappro's initial calls to the City regarding the Staging Area went unanswered.

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- e) Although the City held consultative talks with community members, it made it clear that it cared little that the installation and use of the Staging Area would negatively impact Mappro (i.e. a non-voting entity).
 - f) The City granted the Original Permit contrary to the provisions of the Code.
 - g) The City granted the Multi-Year Permit knowing full well that the granting of the permit (a) ran afoul of the City's own policies and (b) would cause Mappro significant financial harm. In doing something it knew to be wrong, the City then ensured that it was protected from litigation risks by obtaining an indemnity from Mizrahi.
 - h) The defendants failed to take any steps to mitigate the impacts of the ongoing nuisance.
38. Mappro has suffered, and continues to suffer, damages arising from the nuisance.
39. It is very unlikely that Mizrahi will have completed the Project by November 30, 2022 (i.e. the date on which the Multi-Year Permit expires). In such a case, Mizrahi will be forced to request an extension of the Multi-Year Permit. Based on the City's conduct to date, it is likely that, without the Court's intervention, the City will grant such an extension, without paying any regard to the damages that such extension will cause to Mappro. It is, thus, likely that the nuisance to Mappro will continue long past November 30, 2022.

G. Negligence

40. The defendants owe Mappro a duty of care.
41. The defendants acted negligently by, among other things:
- a) failing to provide notice to, consult with, or obtain consent from Mappro before installing and constructing the Staging Area;
 - b) granting the Original Permit contrary to the provisions of the Code;
 - c) installing and operating the Staging Area in a manner that does not comply with either the Original Permit, the Multi-Year Permit, or both;
 - d) failing to ensure that Mizrahi complied with the terms of the Original Permit, the Multi-Year Permit, or both; and

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- e) failing to mitigate the effects that the installation and use of the Staging Area has on Mappro.
42. Mappro has suffered, and continues to suffer, damages arising from the defendants' negligence.
43. The plaintiff pleads the *Negligence Act*, the *City of Toronto Act*, and the Code.

September 7, 2022

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MAPPRO REALTY INC.
Plaintiff

-and- **MIZRAHI DEVELOPMENTS INC. et al.**
Defendants

No.

Ontario
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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RCP-F 4C (September 1, 2020)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

and

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. and
CITY OF TORONTO

Defendants

**STATEMENT OF DEFENCE OF MIZRAHI DEVELOPMENT
GROUP (THE ONE) INC.**

1. The Defendant, Mizrahi Development Group (The One) Inc., (hereinafter referred to as “**Mizrahi**”) admits the allegations contained in paragraphs 4, 5 and 9 of the Amended Statement of Claim. Mizrahi also admits the allegation contained in the first sentence in paragraph 6 of the Amended Statement of Claim.
2. Mizrahi has no or insufficient knowledge in respect of the allegations contained in the second sentence of paragraph 6 of the Amended Statement of Claim, and paragraphs 19, and 37(d) and (e) of the Amended Statement of Claim.
3. Unless otherwise expressly stated herein, Mizrahi denies the remaining allegations made in the Amended Statement of Claim. Accordingly, Mizrahi denies that the Plaintiff, Mappro Realty Inc. (hereinafter referred to as “**Mappro**”) is entitled to the relief sought in paragraphs 1 and 2 of the Amended Statement of Claim, or to any relief at all.

The Parties

4. Mizrahi is an Ontario corporation and is the registered owner of the property municipally known as 1 Bloor Street West, Toronto (the “**Mizrahi Property**”). The development project at the Mizrahi Property is the construction of a mixed-use high-rise tower known as “The One” (the “**Project**”). Once complete, the Project will include an 86-storey high residential condominium building atop an 8-storey high retail podium.

5. Mizrahi originally retained Clark Construction Management Inc. (“**CCM**”) to act as its construction manager for the Project.

6. Mappro is an Ontario corporation.

The Mappro Property

7. Although it is currently the registered owner of the property municipally known as 19 Bloor Street West, Toronto (the “**Mappro Property**”), Mappro has recently entered into an agreement to sell the Mappro Property to The R.W. Bloor Street Development Corporation (“**R.W. Bloor**”).

8. The Mappro Property is a corner property located nearby and to the west of the Mizrahi Property along Bloor Street West (“**Bloor**”), and fronts along Bloor to the North and Balmuto Street (“**Balmuto**”) to the West. Mappro acquired the Mappro Property from The Bank of Nova Scotia (“**Scotiabank**”) on approximately December 30, 2016, at a purchase price of \$74 million in a sale and leaseback transaction.

9. A low-rise building (the “**Mappro Building**”) is currently located on the Mappro Property. As depicted below, prior to being purchased by Mappro, the Mappro Building was fully occupied by a branch of Scotiabank:



10. After its acquisition of the Mappro Property, Mappro split the Mappro Building into two units. The eastern unit, which is the larger of the two units, continues to be leased to Scotiabank. The western unit, which is considerably smaller than the eastern unit, is operated by Mappro.

11. As a result of Mappro’s changes to the Mappro Building, the portion of the Mappro Building that is not occupied by Scotiabank now has a very small (approximately 30 foot) frontage on Bloor.

12. The portion of the Mappro Building that is occupied by Scotiabank was extensively renovated after Mappro acquired the Mappro Property. The improvements included increasing the height of the building, and significant façade updates to the exterior cladding and the tenant signage to be consistent with the prevailing contemporary designs in the surrounding area. In contrast, no visible improvements were made to the façade of the western unit of the Mappro Building. The differences between the two units is illustrated in the photo below:



History of Staging Area in Relation to the Project

13. Mizrahi originally used a construction staging area located on portions of Yonge Street (“Yonge”) and Bloor (the “Yonge & Bloor Staging Area”) in connection with the Project. Mizrahi’s use of the Yonge & Bloor Staging Area began pursuant to an initial permit issued by the

City of Toronto (the “**City**”) for the period from October 9, 2017 to October 31, 2019 (the “**Yonge & Bloor Permit**”).

14. The Yonge & Bloor Permit was extended by City Council until August 31, 2020 on November 26, 2019. On the same date, City Council adopted a motion by Councillor Kristyn Wong-Tam to form a monthly working group “to facilitate the timely coordination of planned and future infrastructure and development in the area bounded by Bay Street, Bloor Street, Jarvis Street and College Street/Carlton Street.” Councillor Wong-Tam’s motion recognized that: (a) twenty-four known projects were already underway in this area; (b) the area will continue to experience an “unprecedented amount of growth over the next five years”; and, (c) “the projects require the coordination of multiple City divisions, private developers, local stakeholders and residents to ensure the safety of pedestrians and minimize the traffic impacts on local and arterial roads.”

15. Consistent with Councillor Wong-Tam’s motion, in or around June 2020, there was a request to relocate the Yonge & Bloor Staging Area to the east side of Balmuto in order to minimize the impact of Project construction along Yonge and Bloor streets, which are major arterial roads for vehicular traffic, public transit routes and feature heavy pedestrian traffic to the many retail businesses fronting on these streets.

16. Following this request, the Acting Director, Traffic Management, Transportation Services of the City of Toronto (the “**Acting Director**”), in a report dated June 12, 2020 addressed to the Toronto and East York Community Council (“**TEYCC**”), recommended that the Yonge & Bloor Staging Area be relocated to a portion of the east side of Balmuto in order to minimize disruptions on Yonge and Bloor. More specifically, the Acting Director requested “authorization to close a

portion of the northbound curb lane/sidewalk on Balmuto Street from a point 29 metres south of Bloor Street West to a point 12 metres further south for 24 months”, being the period between July 17, 2020 and June 30, 2022 (hereinafter, the “**Balmuto Staging Area**”).

17. Consistent with the Acting Director’s report, the City granted an initial permit allowing Mizrahi to occupy the northbound lane on Balmuto for the purpose of pouring concrete from July 14, 2020 to August 21, 2020, which was extended until September 22, 2020 (the “**Original Balmuto Permit**”). Meanwhile, the TEYCC and City Council extended the Yonge & Bloor Permit until December 31, 2021.

18. The recommendation of the Acting Director to allow Mizrahi to occupy the Balmuto Staging Area until June 30, 2022 was considered by the TEYCC during public meetings that were held on or about July 16, 2020, September 16, 2020 and October 15, 2020. Legal counsel for Mappro filed written submissions on behalf of Mappro in opposition to this recommendation in advance of all three meetings, and made oral submissions on behalf of Mappro at the September 16 and October 15, 2020 meetings. Following these meetings, the decision of the TEYCC regarding Mizrahi’s application for a permit to occupy the Balmuto Staging Area until June 30, 2022 was deferred until November 2020.

19. On October 19, 2020, the Acting Director issued a second report that recommended that the Yonge & Bloor Staging Area be relocated to a portion of the east side of Balmuto for Phase 2 of the Project. This report identified the following reasons in support of this recommendation:

- (a) The current Yonge & Bloor Staging Area is “unable to safely accommodate the requirements for the delivery of concrete to the site;”

- (b) The laneway that will provide permanent access to the Project from Balmuto was “unfeasible to accommodate the delivery of concrete to the site as it would have resulted in nearby buildings that take access from the laneway to either totally lose or have significantly reduced access to their parking facilities during times in which the concrete was being delivered;”
- (c) A location on Yonge, just south of Bloor, was feasible. However, it would require the closure of both southbound lanes “resulting in Yonge Street being reduced to one lane for each direction between Bloor Street and Hayden Street”, and further, given “that the historical 24-hour traffic volumes on Yonge Street near Bloor Street are in excess of 26,000 vehicles per day, the impacts and delay to traffic would be significant.” The installation of cycling infrastructure that was planned on Yonge between Bloor and Wellesley Street during the year 2022 could also be impacted;
- (d) The impacts on Yonge and the intersection of Bloor and Yonge would be significant enough to justify the staging area on Balmuto, given significantly lower daily traffic (approximately 4,800 vehicles daily) and pedestrian volumes; and,
- (e) The concrete for the Project could be pumped to the Project via an existing underground pipe that was buried within the first laneway south of Bloor.

20. On November 25, 2020 and following a further meeting of the TEYCC on November 10, 2020, City Council adopted the recommendations of City staff and authorized a permit for the Balmuto Staging Area for the period between November 30, 2020 and November 30, 2022 (the “**Multi-Year Permit**”), subject to certain conditions, which included:

- (a) the establishment of a Construction Liaison Committee engaging the local residents and Councillor, and the continuation of a 24-hour monitored construction hotline;
- (b) a requirement that Mizrahi continue to sweep the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe;
- (c) a requirement that Mizrahi continue to pressure wash the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe;
- (d) a direction to Mizrahi to continue to ensure that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night;
- (e) a requirement that Mizrahi ensure adequate winter maintenance within the affected area designated on the construction management plan;
- (f) a requirement that Mizrahi visually improve the pumping station fence by providing and installing public art;
- (g) a direction to Mizrahi to ensure that traffic bollards and signage are placed on the street fifteen minutes prior to operating the pump and are removed within fifteen minutes of discontinuing the use of the pump; and,
- (h) the execution of an indemnity agreement in favour of the City.

21. A temporary extension to the Multi-Year Permit for the period from December 14, 2022 to March 31, 2023 was granted by City Council on or about December 14, 2022 (the “**First Extended Multi-Year Permit**”). Notice of the application for the First Extended Multi-Year Permit was given to Mappro on or about November 11, 2022. Legal counsel for Mappro delivered written submissions on behalf of Mappro in opposition to the First Extended Multi-Year Permit on November 29 and December 9, 2022. Legal counsel for Mappro also delivered oral submissions before the TEYCC on November 29, 2022.

22. A further extension to the Multi-Year Permit from April 1, 2023 to April 1, 2024 was granted by City Council on or about March 29, 2023, on the condition that Mizrahi continue to follow the terms and conditions of the Multi-Year Permit (the “**Second Extended Multi-Year Permit**”). Legal counsel for Mappro delivered written submissions on behalf of Mappro in opposition to the Second Extended Multi-Year Permit dated February 22 and March 23, 2023. Legal counsel for Mappro also made oral submissions before the TEYCC on February 23, 2023.

Mizrahi’s Construction of the Project and use of the Balmuto Staging Area

23. As a responsible developer, Mizrahi’s construction of the Project complies with all applicable standards of safety and follows industry practice in terms of the sequencing and scheduling of the work, the construction techniques and the noise generated by construction and construction-related activities.

24. Mizrahi has operated under, and complied with the terms of, all applicable permits at all material times during its use of the Balmuto Staging Area. Mizrahi expressly denies the allegations in paragraph 28 of the Amended Statement of Clam that it did not comply with the terms of the

Multi-Year Permit. The terms that were imposed by the City as a condition to issuing the Multi-Year and Extended Multi-Year Permits require Mizrahi to diligently ensure the cleanliness, safety, winter maintenance and outward appearance of the Balmuto Staging Area. Mizrahi has complied with these terms in every material respect.

25. Mappro's consent was not a precondition to the issuance of any of the permits for the Balmuto Staging Area. Even though section 743-18(C) of the Toronto Municipal Code (the "Code") provides that the consent of the adjoining property owner is required to occupy any portion of a street beyond the limits of the property owner's frontage on the street, and Mappro is the adjoining property owner with respect to the portion of Balmuto on which the Balmuto Staging Area is located, City Council retains the legislative authority to make exceptions to override the Code (which is itself an exercise of the City's legislative authority) and issue a permit. Indeed, this is precisely what City Council did in respect of the permits concerning the Balmuto Staging Area: it exercised its discretion to award the permits despite Mappro's objections, subject to certain conditions.

Mappro was Both Notified and Aware of Mizrahi's Potential Use of the Balmuto Staging Area

26. Mizrahi denies Mappro's allegation in paragraph 10 of the Amended Statement of Claim that there was never any contemplation of using Balmuto for the purpose of a staging area. From the outset of the Project, all relevant parties, including Mappro, were aware that construction would be completed in phases. Further, all parties were aware that permanent vehicle access to the Project, once completed, would be from a laneway located to the southwest of the site and accessible from Balmuto. It was within the reasonable contemplation of all relevant parties that

subsequent phases of the Project would involve the issuance of additional staging permits which would potentially include nearby streets such as Balmuto.

27. Mizrahi denies the allegation in paragraph 13 of the Amended Statement of Claim that Mappro was not notified nor aware of the potential relocation of the Yonge & Bloor Staging Area to the Balmuto Staging Area. Mappro's extensive participation in the City's consultation process with respect to Mizrahi's use of the Balmuto Staging Area, including through the making of written and oral submissions to the TEYCC (which were ultimately rejected), and the public nature of the recommendations of the Acting Director to relocate the Yonge & Bloor Staging Area to the Balmuto Staging Area, demonstrate that Mappro was fully aware that Mizrahi may be granted permission to use the Balmuto Staging Area. Furthermore, Mizrahi expressly notified Mappro on November 11, 2022 regarding its intention to renew its permit for the Balmuto Staging Area, and Mappro participated extensively in the permit renewal process.

28. Because the Mizrahi development application process for the Project started in March 2015, Mappro was or ought to have been aware of the Project and the likely impacts of the Project's construction activities when it acquired the Mappro Property in December 2016. Even a basic level of due diligence would have revealed that significant Project-related construction would occur in the vicinity of the Mappro Property. When Mappro decided to acquire the Mappro Property, reasonable due diligence would have revealed substantial information about the status of the Project.

29. Furthermore, and shortly before Mappro acquired the Mappro Property, the City of Toronto granted a series of building permits in connection with a major renovation project to the Manulife

Centre, which is located on Bloor directly across Balmuto from the Mappro Property. The south-bound lanes of Balmuto were used as a staging area for this Manulife Centre renovation project for at least two years.

30. Accordingly, Mappro, by its purchase decision, voluntarily accepted the reality that construction of the Project as well as construction at other nearby properties and of Bloor Street infrastructure, would be taking place in close proximity over the next several years.

No Interference With Mappro's Use and Enjoyment of the Mappro Property

31. Mizrahi denies the allegation made in paragraph 29 of the Amended Statement of Claim that the installation and use of the Balmuto Staging Area interferes with Mappro's enjoyment of the Mappro Property to a substantial degree, or at all. Mizrahi further denies that any of the itemized ways in which Mizrahi's installation and use of the Balmuto Staging Area is alleged to interfere with Mappro's enjoyment of the Mappro Property would be compensable, even if proven.

32. While Mizrahi acknowledges that noise and other by-products of construction are associated with the Project, Mizrahi submits that these effects are typical for the Toronto urban environment, where construction and noise are widespread and reasonably expected, and were or ought to have been well known to Mappro when it acquired the Property. As of 2022, there were at least 252 major construction projects in the City of Toronto, far outnumbering the second-place city in North America, being Los Angeles, which had 51. The City, in imposing multiple conditions on use of the Balmuto Staging Area, has taken such effects into account and put in place appropriate mitigation measures that benefit Mappro, all while allowing the inevitable growth of the City to take place.

33. Mappro could not have any reasonable expectation that it would be insulated from these inevitable aspects of an urban setting. In fact, since commencing this litigation, R.W. Bloor has sought approval on Mappro's behalf to develop and construct a 94-storey mixed use building on the Mappro Property, which is further evidence that Mappro is aware of the development potential in this part of the City. If approved, this development at the Mappro Property will produce substantially the same noise and construction by-products for the surrounding area that are associated with the Project. Mappro cannot have it both ways, complaining that Mizrahi's construction activities associated with the Project interfere with the enjoyment of its property on one hand, while actively pursuing a substantial redevelopment of its own property on the other.

34. Contrary to Mappro's allegation at paragraph 32 of the Amended Statement of Claim, Mizrahi's occupation of the Balmuto Staging Area will not prevent Mappro from renovating the unrenovated (and unoccupied) portion of the Mappro Building. In any event, Mappro's planned redevelopment of the Mappro Property will necessitate the demolition in due course of the Mappro Building, and that circumstance will substantially diminish the value and appeal, if any, of the Mappro Building to prospective tenants.

35. Accordingly, Mappro's allegations of interference are disingenuous, exaggerated and entirely detached from the reality of the dense urban environment in which they arise. In any event, Mizrahi's construction activities at the Project and the use of the Balmuto Staging Area:

- (a) do not impose a disproportionate burden on Mappro;
- (b) do not obstruct or restrict access to the Mappro Property, and certainly not to a substantial or unreasonable degree. The Balmuto Staging Area does not face the

main façade and entrance of the unoccupied portion of the Mappro Building. At all material times, Mappro, its tenants, prospective tenant(s) and/or their guests have been able to access the Mappro Building through the premises' main entrances on Bloor; and,

- (c) the new development of the Mappro Property will benefit from the work that Mizrahi has done in establishing community expectations and conditions, which will allow the Mappro Property to obtain permits faster, once its project has development approvals in place.

36. Contrary to Mappro's allegations of interference and negative impacts from the Project, the construction by Mizrahi of a landmark luxury building in near proximity to the Mappro Property will have or already has had a value enhancing impact on the Mappro Property, and in particular has enhanced the location appeal of the unleased portion of the Mappro Building. Indeed, Mappro appears to recognize this in its own marketing material for the Mappro Building which, in or around July 2020, boasted that the Mappro Property:

sits on the prominent corner of Balmuto and Bloor in between Yonge and Bay, steps from the future home of Apple in "THE ONE" – an 80 storey condominium project currently under construction

(emphasis added)

37. An image of the "future home of Apple", which is planned to be located at the Mizrahi Property, is also depicted in Mappro's advertising material for the Mappro Building. Likewise, marketing materials advertising the availability of other commercial leasehold space in the vicinity of the Project, including premises that were available in the Manulife Centre (located on the other

side of Balmuto Street from the Mappro Property) similarly promoted proximity to the Project as a positive highlight of their property, and included artists' renderings of the completed Project.

38. Mizrahi also denies Mappro's allegation in paragraph 35 of the Amended Statement of Claim that there is no public utility in Mizrahi's use of the Balmuto Staging Area. To the contrary, the use by Mizrahi of the Balmuto Staging Area has minimized the impact of Mizrahi's construction on Yonge and Bloor streets, which, unlike the side street Balmuto, are major arterial roads and routes for public transit and active transportation impacting many businesses and residents.

39. Despite the use of the Balmuto Staging Area, pedestrian access to Balmuto has been maintained on both sides of the street through the installation of temporary construction fencing. Furthermore, two-way traffic operations are maintained on Balmuto at all times, except when construction activities are taking place, at which time traffic is limited to one lane and controlled by traffic control persons. Signage, mirrors and lighting requirements imposed upon Mizrahi also ensure public safety, while public art, noise mitigation measures and cleaning requirements ensure the disruption to the surrounding area is minimized. The Acting Director's report also confirms that Mizrahi's use of the Balmuto Staging Area will allow the Project to continue without interfering with any planned capital projects in the area.

No Nuisance

40. If there was any interference with the use and enjoyment of the Mappro Property that was caused by the construction of the Project and the use of the Balmuto Staging Area (which is denied), it was minor, transitory and part of the normal give and take of life in a dense urban

environment. Mappro is not entitled to compensation for every minor annoyance or interference with its use and enjoyment of the Mappro Property. Mizrahi denies Mappro's allegation that such interference is actionable as a nuisance.

No Duty of Care Owed to Mappro and No Negligence

41. Mizrahi denies Mappro's allegation in paragraph 40 of the Amended Statement of Claim that Mizrahi owes Mappro a duty of care, and denies the allegation in paragraph 41 that it acted negligently. As stated above, at all material times Mappro was or ought to have been aware of the pending construction of the Project as well as the construction at other nearby properties and of Bloor Street infrastructure that would be taking place in close proximity over the next several years. Mappro should have taken this into account in making its decision to purchase the Mappro Property.

42. Mizrahi also denies the allegation in paragraph 37(h) of the Amended Statement of Claim that it has failed to mitigate the effects of the installation and use of the Balmuto Staging Area. To the contrary, Mizrahi's means, methods and techniques with respect to the construction of the Project are reasonable and comply with or exceed all industry standards. As is stated above, Mizrahi operated under, and complied with the terms of, all applicable permits at all material times during its use of the Balmuto Staging Area, and such terms were designed to, and have in fact, mitigated the effects of the installation and use of the Balmuto Staging Area on nearby property owners, businesses and residents.

No Damages

43. Mizrahi denies that Mappro has suffered any damages or losses as a result of the acts or omissions of Mizrahi, including the construction of the Project and the use of the Balmuto Staging Area, and puts Mappro to the strict proof thereof.

44. Mizrahi specifically denies that its acts or omissions have had a negative impact on the ability of Mappro to attract short-term or long-term tenants as alleged in paragraphs 31 and 32 of the Amended Statement of Claim, or otherwise caused Mappro to suffer damages.

45. If Mappro has been unable to attract tenants to the unleased portion of the Mappro Building, which is denied, this has been caused by any or all of the following market circumstances and conduct on the part of Mappro:

- (a) Mappro altered, renovated or reconfigured the Mappro Building in such a way as to make it less valuable, less commercially attractive or less desirable to tenants or prospective tenants;
- (b) Mappro has sought to lease the unoccupied portion of the Mappro Building at a rental rate of \$350 per s/f, which is far more than what could reasonably be obtained for premises of a comparable quality in this location. Although this rate may be achievable for a certain category of tenants in the “luxury” section of Bloor Street (between Bay Street and Avenue Road), it is not attainable for either the unoccupied portion of the Mappro Building given its size, outdated condition, and other quality and location characteristics, or for the portion of the Mappro Building that is

occupied by Scotiabank under its lease from Mappro that was part of Mappro's purchase and leaseback transaction;

- (c) The amount of rent sought by Mappro for the unoccupied portion of the Mappro Building also exceeds the rental rate that was agreed to by Mappro for the portion of the Mappro Building that is occupied by Scotiabank, which are superior premises;
- (d) Relative to other properties located in the same area, the unleased portion of the Mappro Building is undesirable to prospective tenants as it features minimal frontage on Bloor Street and the street-facing facades are out of date compared to those in the surrounding area;
- (e) The vacancy rate along the Bloor Street corridor between Yonge and Avenue Road was very high between the onset of the COVID-19 pandemic that began in early 2020 until the fall of 2021. Flagship tenants in this area secured arrangements with their landlords to pay no rent during the course of the pandemic as a result of lacklustre sales revenues; and
- (f) As the impact of the pandemic subsides and despite the ongoing construction activities taking place at the Project, new leases have been entered for other commercial premises located along Bloor between Yonge and Bay streets, including at 2 Bloor Street West, which is immediately across the street from the Project, and 13-15 Bloor Street West, which is located in between the Mappro Building and the Project. The out of date condition of the unleased portion of the

Mappro Building and the excessive rent that Mappro seeks for the unoccupied portion of the Mappro Building puts it at a disadvantage compared to the other available retail spaces in the vicinity.

46. Accordingly, if Mappro has suffered any losses arising from its inability to lease the vacant portion of the Mappro Building to short and/or long-term tenants (which is denied), such losses were caused or contributed to by Mappro's own property management decisions and the competitive market forces described above, which are unrelated to Mizrahi's construction activities at the Mizrahi Property or its use of the Balmuto Staging Area.

47. Mizrahi also denies Mappro's allegation in paragraph 7 of the Amended Statement of Claim that Mappro has spent a significant (or any) amount of time and money to secure a long-term high-end tenant for the Mappro Building, and puts Mappro to the strict proof thereof.

48. Further, or in the alternative, any damages or losses sustained by Mappro (which are denied) are excessive, unforeseeable and/or too remote, were not caused by any acts or omissions for which Mizrahi is liable in fact or in law, and therefore are not recoverable from Mizrahi. Mappro's own negligent property management conduct and decisions have contributed to the alleged losses it claims in this action. Mizrahi pleads and relies upon sections 3, 4 and 7 of the *Negligence Act*, R.S.O. 1990 c. N.1.

49. Additionally, Mappro has unreasonably failed to mitigate the damages and losses it claims in this action, by, among other things:

- (a) failing to avail itself of opportunities to consult and collaborate with Mizrahi and/or the City to reduce or eliminate the alleged impacts of the Balmuto Staging Area on the Mappro Property, and
- (b) unreasonably declining rental opportunities for the vacant portion of the Mappro Building, including an offer by Mizrahi to rent the Mappro Building as support space for the Project.

50. Since commencing this action, Mappro has agreed to sell the Mappro Property to a third party, R.W. Bloor. Mappro has refused to provide Mizrahi with the closing date for that transaction, the sale price, and a copy of the agreement of purchase and sale, despite the relevance of this information to Mappro's allegations in the within action, including its allegation that it has suffered damage caused by Mizrahi's conduct. Mappro's investment profit in its sale to R.W. Bloor for development purposes fully offsets and disproves the damages Mappro is claiming in this action.

Relief Sought

51. Mizrahi asks that this action be dismissed with costs on such scale as this Honourable Court deems just.

Date: June 9, 2023

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MAPPRO REALTY INC.
Plaintiff

- and -

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. et al.
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

**STATEMENT OF DEFENCE OF THE DEFENDANT
MIZRAHI DEVELOPMENT GROUP
(THE ONE) INC.**

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Lawyers for the Defendant Mizrahi Development Group
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**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

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**”).

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

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

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

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

**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**

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

JUNE 21, 2024

1.0 INTRODUCTION

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

2.0 OVERVIEW AND PURPOSE OF THE REPORT

- 2.1 The Receiver has brought a motion to require the production of certain Records (as defined in the Receivership Order) by Mizrahi Inc. (“**MI**”). This report provides the background to this motion, the facts relied on to support the motion and a recommendation that the motion be granted.
- 2.2 MI was the developer and general contractor for the Project from its inception in 2014 until the Receiver disclaimed certain contracts between the Debtors and MI (the “**Disclaimer**”) effective March 13, 2024 (the “**Effective Date**”). On February 26, 2024, the same day that

it received notice of the Disclaimer, MI served a motion seeking payment of construction management fees totally approximately \$5.4 million (the “**MI Payment Motion**”).

- 2.3 MI has failed to produce Records required to understand the Project’s finances. These Records are also required to investigate (among other things) potential claims against MI that may also be relevant to the MI Payment Motion.
- 2.4 For example, one of the Project’s lenders, CERIECO Canada Corp. (“**CERIECO**”) advanced \$200 million to the Project. CERIECO paid these funds into MI’s bank accounts (collectively, the “**MI Account**”) instead of segregated accounts established by the Debtors to pay Project expenses (the “**Project Accounts**”).
- 2.5 MI transferred approximately \$92 million loaned by CERIECO to the Project Accounts, leaving approximately \$90 million paid into the MI Account that was never transferred into any Project Account.¹ MI claims all \$90 million was used to pay Project expenses, but it has refused to produce the complete and unredacted bank statements required to confirm this.
- 2.6 MI initially provided heavily redacted statements for the MI Account (the “**Redacted Statements**”) that provide no information about what Project expenses were actually paid from the MI Account. MI has now conceded that its redactions are improper, but insists on providing *more* redacted statements instead of unaltered documents. Specifically, MI says that it will produce new statements that allegedly show all Project payments. MI will only

¹ MI transferred approximately \$18 million advanced by CERIECO from the MI Account to the Project Accounts, which was immediately paid to a numbered company ostensibly related to CERIECO. The Receiver continues to investigate these transactions.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

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

Applicant

- and -

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

Respondents

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

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

October 11, 2024

11.0 MI'S WORK ON THE PROJECT

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

■ *MI did not successfully execute the Project*

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

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

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

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

And

~~MIZRAHI DEVELOPMENTS INC.~~ MIZRAHI DEVELOPMENT GROUP
(THE ONE) INC. and CITY OF TORONTO

Defendants

**STATEMENT OF DEFENCE OF
THE CITY OF TORONTO**

1. The defendant, City of Toronto (the "City"), is a municipality incorporated pursuant to section 2(2) of the *City of Toronto Act, 1997*, S.O. 1997, c. 2., and continued pursuant to section 125(1) of the *City of Toronto Act, 2006*, S.O. 2006, c.11 (the "*City of Toronto Act, 2006*").
2. The City denies all of the allegations contained in the Statement of Claim, except as otherwise expressly admitted in this defence.

1. Overview

3. The co-defendant Mizrahi Development Group (The One) Inc. ("Mizrahi") is constructing an 86-storey residential tower ("One Bloor"). The One Bloor site is located at Toronto's busy Yonge Street ("Yonge") and Bloor Street ("Bloor") intersection. Mizrahi sought City authorization to establish a construction staging area within a nearby side street, namely Balmuto Street ("Balmuto"). City staff recommended that Council authorize the staging area in

order to direct construction activities away from Yonge and Bloor, and minimize disruption to area road users, businesses, and residents.

4. Council considered the matter, including receiving fulsome oral and written submissions from Mappro. Council ultimately authorized Mizrahi's use of the staging area. Mappro's action collaterally attacks the City's valid and lawful decision-making and broad authority to regulate its roads and property.

2. Background and Facts

a. Mizrahi One Bloor West project

5. On or about May 3, 2017, the Local Planning Appeal Tribunal (as it was then) granted Mizrahi's request for site specific rezoning to permit a high rise tower at the southwest corner of Bloor and Yonge. Mappro did not participate in the Tribunal proceedings.

6. As of the date of this Statement of Defence, Mizrahi is constructing One Bloor at the southwest corner of the Yonge and Bloor intersection. This area of Toronto has and continues to experience significant growth and construction.

7. The Yonge and Bloor intersection is a major artery for motor vehicles, cyclists, and pedestrians, and hosts Toronto's busiest subway station.

b. City regulation of its highways

8. Bloor, Yonge, and Balmuto are highways over which the City had jurisdiction, pursuant to sections 33 and 36 of the *City of Toronto Act, 2006* at all relevant times for the purpose of this action.

9. At all material times, the City has sought in good faith to minimize construction impacts in the vicinity of Yonge, Bloor, and Balmuto on road, bike lane, and sidewalk users, and area businesses and residents.

10. Mizrahi sought approval from the City to establish a staging area for concrete deliveries within the City's Balmuto road allowance (the "Staging Area"). Balmuto is a small side street extending approximately 170 meters. It is approximately 50 meters west of the One Bloor site. Balmuto goes in a north-south direction between Bloor and Charles Street West.

11. Concrete may be delivered to the Staging Area, and then pumped via underground pipeline to One Bloor.

12. In order to minimize disruptions to Bloor and Yonge roadway users, businesses, and residents, City staff recommended to Council that it authorize the Staging Area.

13. On or about November 25, 2020, Council authorized Mizrahi's establishment and use of the Staging Area. Council subsequently extended this authorization on or about December 14, 2022, and March 29, 2023.

14. Mappro made, through its counsel, extensive written and oral submissions to Council and Community Council in advance of their consideration of the Staging Area.

15. In authorizing the Staging Area, the City imposed numerous requirements for Mizrahi to ensure public safety and minimize impacts to road users and adjacent premises.

c. Mappro's purchase and sale of 19 Bloor

16. Mappro purchased the premises known municipally as 19 Bloor Street, Toronto ("19 Bloor") on December 16, 2016.

17. Mappro has advised that, sometime prior to March 26, 2023, it entered into an agreement of purchase and sale to sell 19 Bloor. Mappro has not to date provided this agreement to the City.

18. On or about March 1, 2023, the R.W. Bloor Street Development Corporation applied, as the agent of Mappro, for zoning amendments to permit the construction of a 94-story mixed-use tower on the Mappro premises and other adjacent lands.

19. Mappro and/or its agents propose to build this tower directly to the property line, which ordinarily requires construction hoarding and/or staging areas on neighbouring roads or properties.

d. Mappro's use of 19 Bloor

20. Starting on or about December 30, 2016, Mappro leased 19 Bloor or a portion thereof to Scotiabank. On a date and for reasons unknown to the City, Mappro separated 19 Bloor into two units.

21. As of the date of this Statement of Defence, the larger, easterly unit continues to be leased to and/or occupied by Scotiabank. This unit does not adjoin Balmuto or the Staging Area.

22. The smaller, more dated, and less marketable westerly unit (the "West Unit") is adjacent to the southeast corner of Bloor and Balmuto. Its main façade and entrance faces Bloor.

23. The Staging Area does not face the West Unit's main façade and entrance.

24. At all material times, Mappro, its tenants, its prospective tenant(s), and/or their guests have been able to access 19 Bloor through the premises' main entrances.

25. The City states that, at all material times, the Staging Area has not prevented or hindered Mappro from completing its allegedly-planned renovations to 19 Bloor.

e. The COVID-19 Pandemic

26. Any interference with Mappro's use of 19 Bloor, or failure of Mappro to obtain a tenant it judges satisfactory, predates the existence of the Staging Area and/or is due to unrelated causes for which the City is not responsible in law.

27. Mappro's Statement of Claim does not account for impacts to 19 Bloor due to the COVID-19 pandemic, legislated public health restrictions, reduced profitability of or demand for commercial retail spaces, and reduced foot traffic in downtown Toronto owing to and following the COVID-19 pandemic.

3. Mappro's Collateral Attack

28. The City pleads that Mappro's action is a collateral attack on the City's decision to authorize the use of the Staging Area. As such, the City pleads that Mappro's action should be dismissed as an abuse of process.

29. Mappro could have brought an application for judicial review pursuant to the *Judicial Review Procedure Act* to seek a declaration, injunction, *mandamus*, *certiorari*, or prohibition with regard to Council's authorization of the staging area. Mappro has, to the knowledge of the City, brought no such application.

4. No Liability on Behalf of the City

30. The City denies that it, or anyone for whom the City is in law responsible, acted with any negligence, nuisance, or breach of duty which may have caused or contributed to the damages alleged by the plaintiff, which damages are not admitted but are denied.

a. No Negligence

31. The City owes no common law or statutory duty of care to the plaintiff that could form the basis of a claim for damages against the City.

32. The City pleads that its authorization of the Staging Area was a legislative and/or quasi-judicial decision, and as such cannot found a claim for negligence.

33. The City's decision to authorize the staging area, or the enforcement of its legislation pertaining to the Staging Area, involves the exercise or non-exercise of a discretionary power and/or the performance or non-performance of a discretionary function resulting from the City's policy decisions, for which no liability can be found against the City. The City pleads and relies on section 390 of the *City of Toronto Act, 2006*, and pleads that the plaintiffs' claims in this regard are statute-barred.

34. In the alternative, the City fulfilled any duties it may be found to have owed to Mappro. The City's employees, or anyone for whom the City may be in law responsible, took all reasonable steps and ensured that the appropriate standard of care was met.

35. Mappro has the onus of proving that the City breached any standard of care expected of it, and the City puts Mappro to the strict proof thereof.

b. Enforcement

36. The City denies that it owes any duty to Mappro to enforce Chapter 743 of the Toronto Municipal Code ("the Streets Chapter"), any permits authorizing the use of the Staging Area, or any other applicable law or legal instruments.

37. The City specifically denies Mappro's bare allegation that the City acted negligently by failing to ensure that Mizrahi complied with unspecified terms of permit(s) authorizing the Staging Area.

38. In the alternative, any such non-compliance was *de minimus*, was rapidly cured, and/or did not cause any damages to Mappro.

39. In the further alternative, any non-compliance with permit(s) authorizing the Staging Area is the responsibility of third parties for whom the City is not in law responsible.

c. No Nuisance

40. The City specifically denies Mappro's allegations of nuisance as against the City. At all material times, Mappro did not experience any interference, or any unreasonable interference, with the use of 19 Bloor.

41. In the alternative, if Mappro experienced any unreasonable interference with the use of 19 Bloor, which is not admitted but specifically denied, such interference was the responsibility of third parties for whom the City is not responsible in law.

42. The use of the Staging Area for construction activities was at all material times consistent with pervasive construction within downtown Toronto generally and the immediate vicinity of 19 Bloor specifically.

43. Mappro's allegation of interference with its enjoyment of its property due to noise, vibration, or other construction impacts is inconsistent with 19 Bloor's location in a busy, growing, heavily-trafficked, commercial area of downtown Toronto.

44. The City's authorizing of the Staging Area was a reasonable use of its highway and property in light of the policy goal of minimizing disruptions to Bloor and Yonge, the City's efforts as a regulator of its highways to balance the needs of road users, neighbouring businesses and residents, and municipal infrastructure works, and the City securing conditions on the use of the Staging Area to minimize impacts to neighbours.

5. Alleged Damages

45. The City denies that Mappro has suffered the alleged damages.

46. If Mappro has suffered any damages, which is not admitted but is denied, then such damages were caused or contributed to by Mappro or persons for whom it is responsible in law, and/or third parties for whom the City is not responsible in law, *inter alia*:

- (a) purchasing property, namely 19 Bloor, near development sites or potential development sites despite being unduly sensitive to construction impacts;
- (b) failing to make reasonable inquiries when purchasing 19 Bloor;
- (c) failing to make reasonable efforts to attract prospective tenants to 19 Bloor;
- (d) failing to take reasonable measures to retain existing tenant(s) of 19 Bloor;

- (e) altering, renovating, or reconfiguring 19 Bloor in such a way as to make it less valuable, less commercially attractive, or less desirable to tenants or prospective tenants;
- (f) failing to adequately maintain or improve 19 Bloor;
- (g) failing to take reasonable steps to reduce or eliminate the alleged impacts of the Staging Area on 19 Bloor;
- (h) failing to avail themselves of opportunities to consult and collaborate with Mizrahi and/or the City to reduce or eliminate the alleged impacts of the Staging Area on 19 Bloor, and;
- (i) such other acts and omissions as will be particularized prior to the trial of this proceeding.

47. If Mappro have suffered any of the alleged damages, which is not admitted but is denied, such damages:

- (a) pre-existed the establishment of the Staging Area, and/or are due to other causes;
- (b) are excessive, unforeseeable, and/or too remote, and are therefore not recoverable as against the City, and;
- (c) were not mitigated, or alternatively were fully mitigated, by Mappro.

48. The City pleads and relies upon the *City of Toronto Act, 2006*, the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the *Negligence Act*, R.S.O. 1990, c. N.1, the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1, the Toronto Municipal Code, and the regulations thereto, all as amended.

49. The City submits that the within action should be dismissed, with costs payable to the City on a substantial, or alternatively partial, indemnity basis.

Dated: June 8, 2023

CITY SOLICITOR'S OFFICE

City of Toronto
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B E T W E E N:

MAPPRO REALTY INC.
Plaintiff

and

CITY OF TORONTO et al
Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at
TORONTO

**STATEMENT OF DEFENCE OF
THE DEFENDANT CITY OF
TORONTO**

CITY SOLICITOR'S OFFICE

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*Lawyers for the Defendant,
City of Toronto*



Item - 2020.TE20.29

Tracking Status

- City Council adopted this item on November 25, 2020 with amendments.
- This item was considered by the Toronto and East York Community Council on November 10, 2020 and adopted without amendment. It will be considered by City Council on November 25, 2020.
- See also By-laws 1051-2020, 1052-2020, 1060-2020

City Council consideration on November 25, 2020

TE20.29 - Construction Staging Area - 1 Bloor Street West (Balmuto Street)

Decision Type: ACTION

Status: Amended

Ward: 11 - University - Rosedale

City Council Decision

City Council on November 25 and 26, 2020, adopted the following:

1. City Council authorize the closure of a 5 metre wide portion of the northbound curb lane and east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from November 30, 2020 to November 30, 2022.
2. City Council rescind the existing designated commercial loading zone on the west side of Balmuto Street, between a point 25.5 metres south of Bloor Street West and a point 11.5 metres further south.
3. City Council rescind the existing designated on-street accessible parking space on the west side of Balmuto Street, between a point 37 metres south of Bloor Street West and a point 20 metres further south.
4. City Council rescind the existing parking prohibition in effect from 6:30 p.m. of one day to 8:00 a.m. of the next following day, Monday to Friday, from 6:00 p.m. to 12:00 a.m. Saturday and at all times Sunday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south.
5. City Council rescind the existing stopping prohibition in effect from 3:30 p.m. to 6:30 p.m., Monday to Friday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south.
6. City Council rescind the existing standing prohibition in effect from, 8:00 a.m. to 3:30 p.m., Monday to Friday and from 8:00 a.m. to 6:00 p.m., Saturday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south of Bloor Street.
7. City Council prohibit stopping, at all times, on both sides of Balmuto Street, between Bloor Street West and a point 57 metres south.
8. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
9. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
10. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
11. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
12. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
13. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local business improvement areas and resident associations in advance of any physical road modifications.
14. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.
15. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.

16. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.

17. City Council direct that Balmuto Street be returned to its pre-construction traffic and parking regulations and lane configurations when the project is completed.

18. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of November 30, 2020 to November 30, 2022 for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, as more generally described in the report (October 19, 2020) from the Acting Director, Traffic Management, Transportation Services and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.

19. City Council rescind the existing northbound right turn prohibition in effect from 7:00 a.m. to 7:00 p.m., Monday to Friday, except public holidays, at the intersection of Bloor Street West and Bay Street.

20. City Council direct the applicant to establish and host a Construction Liaison Committee made up of local residents and businesses (including local the Residents' Associations and Business Improvement Areas), to the satisfaction of the local Councillor; the Committee is to meet bi-weekly for the first three months after the permit is issued, and subsequently as regularly as is deemed necessary by the local Councillor in consultation with local residents; the Committee is to be held online through a video conferencing platform while physical distancing protocols are in place; and notes from the meetings are to be shared with the members and the Councillor's office.

21. City Council direct the applicant to ensure adequate winter maintenance of the all areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.

22. City Council direct the applicant to visually improve the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.

23. City Council direct the applicant to only place additional bollards and traffic signage on the street fifteen minutes prior to operating the pump; to remove them within fifteen minutes of discontinuing use of the pump; and to not place them in legal parking areas.

24. City Council direct the applicant to ensure that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street.

25. City Council authorize the General Manager, Transportation Services to negotiate, enter into and execute an indemnity agreement with Mizrahi Development Group (The One) Inc. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services and in a form satisfactory to the City Solicitor.

26. City Council direct that Parts 1 to 24, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. entering into the indemnity agreement in Part 25 above.

Background Information (Community Council)

(October 19, 2020) Report and Attachment from the Acting Director, Traffic Management, Transportation Services - Construction Staging Area - 1 Bloor Street West (Balmuto Street)

<https://www.toronto.ca/legdocs/mmis/2020/te/bgrd/backgroundfile-157687.pdf>

Motions (City Council)

1 - Motion to Amend Item moved by Councillor Mike Layton (Carried)

That:

1. City Council rescind the existing northbound right turn prohibition in effect from 7:00 a.m. to 7:00 p.m., Monday to Friday, except public holidays, at the intersection of Bloor Street West and Bay Street.

2. City Council direct the applicant to establish and host a Construction Liaison Committee made up of local residents and businesses (including local the Residents' Associations and Business Improvement Areas), to the satisfaction of the local Councillor; the Committee is to meet bi-weekly for the first three months after the permit is issued, and subsequently as regularly as is deemed necessary by the local Councillor in consultation with local residents; the Committee is to be held online through a video conferencing platform while physical distancing protocols are in place; and notes from the meetings are to be shared with the members and the Councillor's office.

3. City Council direct the applicant to ensure adequate winter maintenance of the all areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.

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5. City Council direct the applicant to only place additional bollards and traffic signage on the street fifteen minutes prior to operating the pump; to remove them within fifteen minutes of discontinuing use of the pump; and to not place them in legal parking areas.

6. City Council direct the applicant to ensure that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street.

Motion to Adopt Item as Amended (Carried)

Toronto and East York Community Council consideration on November 10, 2020

TE20.29 - Construction Staging Area - 1 Bloor Street West (Balmuto Street)

Decision Type: ACTION

Status: Adopted

Ward: 11 - University - Rosedale

Community Council Recommendations

The Toronto and East York Community Council recommends that:

1. City Council authorize the closure of a 5 metre wide portion of the northbound curb lane and east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from November 30, 2020 to November 30, 2022.
2. City Council rescind the existing designated commercial loading zone on the west side of Balmuto Street, between a point 25.5 metres south of Bloor Street West and a point 11.5 metres further south.
3. City Council rescind the existing designated on-street accessible parking space on the west side of Balmuto Street, between a point 37 metres south of Bloor Street West and a point 20 metres further south.
4. City Council rescind the existing parking prohibition in effect from 6:30 p.m. of one day to 8:00 a.m. of the next following day, Monday to Friday, from 6:00 p.m. to 12:00 a.m. Saturday and at all times Sunday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south.
5. City Council rescind the existing stopping prohibition in effect from 3:30 p.m. to 6:30 p.m., Monday to Friday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south.
6. City Council rescind the existing standing prohibition in effect from, 8:00 a.m. to 3:30 p.m., Monday to Friday and from 8:00 a.m. to 6:00 p.m., Saturday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south of Bloor Street.
7. City Council prohibit stopping, at all times, on both sides of Balmuto Street, between Bloor Street West and a point 57 metres south.
8. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
9. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
10. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
11. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
12. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
13. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local business improvement areas and resident associations in advance of any physical road modifications.
14. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.
15. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.
16. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.
17. City Council direct that Balmuto Street be returned to its pre-construction traffic and parking regulations and lane configurations when the project is completed.
18. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of November 30, 2020 to November 30, 2022 for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, as more generally described in the report from the Acting Director, Traffic Management, Transportation Services (dated October 19, 2020) and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.
19. City Council authorize the General Manager, Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi Development Group (The One) Inc. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. entering into the indemnity agreement in Recommendation 19 above.

Origin

(October 19, 2020) Report from the Acting Director, Traffic Management, Transportation Services

Summary

Since this report contains recommendations that do not comply with City policy or by-laws, City Council approval of this report is required.

Mizrahi Development Group (The One) Inc. (the "developer") is constructing a mixed-use development at 1 Bloor Street West (Mizrahi Project). The site is located on the southwest corner of Yonge Street and Bloor Street West. The development will consist of an eight-storey high retail podium and an 86-storey high residential tower.

Construction staging operations for the development are currently taking place within the road right-of-way on the south side of Bloor Street West and on the west side of Yonge Street. Phase 1 of construction involved excavation, piling and shoring operations and building to the ground level, which is now complete. The current construction staging areas on Bloor Street West and Yonge Street are unable to accommodate the requirements for the delivery of concrete to the site. Therefore, Transportation Services, in consultation with the area Councillor and the developer have reviewed numerous options for the supply of concrete to the site. After reviewing the benefits and impacts of each of the options, Transportation Services is proposing a construction staging area on the east side of Balmuto Street south of Bloor Street West.

Transportation Services is requesting authorization to temporarily close a portion of the northbound curb lane and east sidewalk on Balmuto Street from a point 29 metres south of Bloor Street West to a point 12 metres further south for 24 months (i.e. from November 30, 2020 to November 30, 2022), in order to facilitate the construction of the eight-storey high podium (Phase 2A) and 86 storey high residential tower (Phase 2B).

Transportation Services is also requesting the authority for the General Manager of Transportation Services to issue a Temporary Street Occupation permit for Balmuto Street to the developer, notwithstanding that not all the criteria within the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, for so doing would be met.

Background Information

(October 19, 2020) Report and Attachment from the Acting Director, Traffic Management, Transportation Services - Construction Staging Area - 1 Bloor Street West (Balmuto Street)

<https://www.toronto.ca/legdocs/mmis/2020/te/bgrd/backgroundfile-157687.pdf>

Motions

Motion to Adopt Item moved by Councillor Mike Layton (Carried)

Source: Toronto City Clerk at www.toronto.ca/council

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Tracking Status

- [City Council](#) adopted this item on November 25, 2020 with amendments.
- This item was considered by the [Toronto and East York Community Council](#) on November 10, 2020 and adopted without amendment. It will be considered by City Council on November 25, 2020.
- See also By-laws 1051-2020, 1052-2020, 1060-2020

City Council consideration on November 25, 2020

TE20.29	ACTION	Amended		Ward: 11
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Construction Staging Area - 1 Bloor Street West (Balmuto Street)

Community Council Recommendations

The Toronto and East York Community Council recommends that:

1. City Council authorize the closure of a 5 metre wide portion of the northbound curb lane and east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from November 30, 2020 to November 30, 2022.
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17. City Council direct that Balmuto Street be returned to its pre-construction traffic and parking regulations and lane configurations when the project is completed.
18. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of November 30, 2020 to November 30, 2022 for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, as more generally described in the report from the Acting Director, Traffic Management, Transportation Services (dated October 19, 2020) and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.

19. City Council authorize the General Manager, Transportation Services, to negotiate, enter into and execute and indemnity agreement with Mizrahi Development Group (The One) Inc. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

20. City Council direct that Recommendation 1 to 18, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. entering into the indemnity agreement in Recommendation 19 above.

Background Information (Community Council)

(October 19, 2020) Report and Attachment from the Acting Director, Traffic Management, Transportation Services - Construction Staging Area - 1 Bloor Street West (Balmuto Street)

(<http://www.toronto.ca/legdocs/mmis/2020/te/bgrd/backgroundfile-157687.pdf>)

Motions (City Council)

1 - Motion to Amend Item (Additional) moved by Councillor Mike Layton (Carried)

That:

1. City Council rescind the existing northbound right turn prohibition in effect from 7:00 a.m. to 7:00 p.m., Monday to Friday, except public holidays, at the intersection of Bloor Street West and Bay Street.

2. City Council direct the applicant to establish and host a Construction Liaison Committee made up of local residents and businesses (including local the Residents' Associations and Business Improvement Areas), to the satisfaction of the local Councillor; the Committee is to meet bi-weekly for the first three months after the permit is issued, and subsequently as regularly as is deemed necessary by the local Councillor in consultation with local residents; the Committee is to be held online through a video conferencing platform while physical distancing protocols are in place; and notes from the meetings are to be shared with the members and the Councillor's office.

3. City Council direct the applicant to ensure adequate winter maintenance of the all areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.

4. City Council direct the applicant to visually improve the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.

5. City Council direct the applicant to only place additional bollards and traffic signage on the street fifteen minutes prior to operating the pump; to remove them within fifteen minutes of discontinuing use of the pump; and to not place them in legal parking areas.

6. City Council direct the applicant to ensure that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street.

Motion to Adopt Item as Amended (Carried)

Toronto and East York Community Council consideration on November 10, 2020

Source: Toronto City Clerk at www.toronto.ca/council

PERMIT NO: 85909201

CA APPL Site Protection	\$657.11
CA PM Site Protection	\$266.59
CA PM Site Prot Bld Encl	\$76.37
Lost Parking Meter Fees	\$3,114.48
CA PM Site Protection Roadway-Area A	\$7038.50

CONSTRUCTION PERMIT

APPLICANT: Mizrahi Development Group (The One) Inc.
125 Hazelton Ave
Toronto, Ontario M5R 2E4

CONTACT: Sam Mizrahi
Phone: (416) 922-4200
Cellular: (416) 818-5288

LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS
on northbound lanes and east sidewalk on Balmuto St in front of 19 Bloor St W.

City Ward: 11
District: Toronto and East York

PURPOSE: To stage concrete truck and deliveries on both northbound lanes of Balmuto Street fronting 19 Bloor St W pertinent to the development of 1 Bloor St W.

TIME PERIOD:

From: November 30, 2020 12:01 am
To: December 31, 2020 11:59 pm

Standard Conditions

The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf

Special Conditions

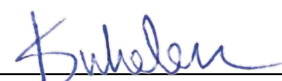
1.0 City Council Decision

City Council on November 25 and 26, 2020, adopted the following:

- i. City Council authorize the closure of a 5 metre wide portion of the northbound curb lane and east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from November 30, 2020 to November 30, 2022.
- ii. City Council rescind the existing designated commercial loading zone on the west side of Balmuto Street, between a point 25.5 metres south of Bloor Street West and a point 11.5 metres further south.
- iii. City Council rescind the existing designated on-street accessible parking space on the west side of Balmuto Street, between a point 37 metres south of Bloor Street West and a point 20 metres further south.
Continued on condition# 2
- 2.0 iv. City Council rescind the existing parking prohibition in effect from 6:30 p.m. of one day to 8:00 a.m. of the next following day, Monday to Friday, from 6:00 p.m. to 12:00 a.m. Saturday and at all times Sunday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south.
- v. City Council rescind the existing stopping prohibition in effect from 3:30 p.m. to 6:30 p.m., Monday to Friday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south.
- vi. City Council rescind the existing standing prohibition in effect from, 8:00 a.m. to 3:30 p.m., Monday to Friday and from 8:00 a.m. to 6:00 p.m., Saturday on the east side of Balmuto Street, between Bloor Street West and a point 57 metres south of Bloor Street.
- vii. City Council prohibit stopping, at all times, on both sides of Balmuto Street, between Bloor Street West and a point 57 metres south.

I/We hereby agree and bind myself/ourselves my/our heirs, executors, administrators, successors, or assigns to indemnify fully and save harmless the City of Toronto, or its officers, agents, officials, employees or workers from any and all actions, claims, demands, damage, loss or expense whatsoever, arising from or incidental to the issuing of this permit, the occupation of any part of the street hereunder, or the erection, continuance, want of repair or inadequacy in any respect whatsoever of any structure or thing erected, and agree to abide by all of the conditions listed on this permit.

For: General Manager of
Transportation Services


Issued by: Kazi Helen
Date Issued: Jun 08, 2021

Applicant or Signing Officer: _____

Date Printed: Jun 08, 2021

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Special Conditions

3.0 STREET NAME: Balmuto Street

TOTAL LINEAL: 12 Lineal Metres
SIDEWALK/BOULEVARD ENCLOSURE: 10m2
STREET/ROAD ENCLOSURE: 52m2

LOSS OF PARKING METRE REVENUE TOTAL SPACES: 3
SPACES WITHIN THE ENCLOSURE: 0
SPACES OUTSIDE OF ENCLOSURE: 3

- 4.0** Applicant must comply with the requirements of the Ministry of Labour Regulations.
- 5.0** Work must be contained within the projected lot lines. Any work/occupation beyond property owners lot lines required written approval.
- 6.0** Traffic Control Plan to be submitted and reviewed/approved by the workzone coordinator.
- 7.0** Paid Duty Officers / Traffic Control Persons (TCP's) must be on-duty at all times during construction activities in accordance with the approved Traffic Control Plan.
- 8.0** Must maintain 2 way traffic at all times.
- 9.0** Municipal Road Damage Deposit to be provided.
- 10.0** Applicant must ensure street signs are not obstructed, or must be relocated at cost of applicant (contact Traffic Signs Unit via 311/311@toronto.ca)
- 11.0** Access to the maintenance access holes must be maintained and kept clear at all times.
- 12.0** Applicant is responsible for any damage caused to City streets, curbs, sidewalks, and/or any installations on the City ROW.
- 13.0** Applicant must ensure the streets and sidewalks are kept clean, clear, and safe at all times; fouling of the ROW is not permitted.
- 14.0** Must obtain all required building permits and comply with Ontario Building Code regulations.
- 15.0** No overhead work permitted within 4.5m of a pedestrian walkway.
- 16.0** A 2.0m clearance is required around a fire hydrant.
- 17.0** Must maintain a minimum interior width of 1.5m for pedestrian passage.
- 18.0** Scaffolding must not cover traffic or pedestrian lights.
- 19.0** Access to all entrances/exits to be maintained.
- 20.0** "Hydro- 1) No work, object or structure to be placed or installed within 3m of overhead electricity lines. (Requirement under the Occupational Health and Safety Act and Regulation 213 S188.)
2) Applicant to contact Toronto Hydro (416-542-2618) to have the overhead electricity lines de-energized or relocated at the Applicant's cost prior to starting work."
- 21.0** Scaffold to be planked on top and screened or hoarded on the inside.
- 22.0** All other areas surrounding the scaffolding are to be blocked off to pedestrians.
- 23.0** Scaffolding to be a minimum of 4.5m high at driveway entrances.
- 24.0** Scaffolding to be stationary and not movable.
- 25.0** Scaffolding at the corners must provide clear pedestrian access in all directions and must not create any vision hazards.
- 26.0** Scaffolding not to be attached to transit shelter, hydro pole or trees. Access to shelter and TTC stop to be maintained.
- 27.0** Proper access and clearance (0.3m) to be maintained to street furnishings e.g. litter container, vending boxes and bike rings. If not possible, prior arrangements to remove/relocate must be made by the applicant with the appropriate department.
- 28.0** Applicant to ensure that all liquid run off from the scaffolding is either trapped or flows in a safe manner, not onto the sidewalk or street. No liquid chemicals to be sent to the catch basin.
- 29.0** All plywood hoarding attached must be painted and kept free of graffiti & posters. No Red, Green and Yellow within 30m of a signalized intersection.
- 30.0** All access doors to swing inwards.
- 31.0** Proper vision splays at each end must be installed.
- 32.0** All graphics/advertising on hoarding/scaffolding must be approved. Request letter and photos/graphics to be submitted prior to obtaining permit.
- 33.0** Hydro poles and traffic signs not to be enclosed and a minimum 0.5m clearance is required around hydro poles and traffic sign/signal installations.

Special Conditions

- 34.0 All chutes discharging into disposal bins, must be secured and bin must be tarped to prevent any discharge.
- 35.0 All chutes over the public sidewalk must have a walk-through scaffold to protect pedestrians.
- 36.0 Loss of parking revenue to be paid by applicant.
- 37.0 Appropriate Traffic Control requirements required, as per Table 1, OTM Book 7.
- 38.0 Materials and/or equipment cannot be left unattended or stored on scaffolding.
- 39.0 Site Protection is not to be secured to the Right-of-Way (i.e. sidewalk) in any fashion.
- 40.0 IT IS THE APPLICANT'S RESPONSIBILITY TO RENEW THIS PERMIT PRIOR TO THE EXPIRY DATE. PLEASE CONTACT OUR OFFICE 10 BUSINESS DAYS PRIOR TO THE EXPIRY DATE. FAILURE TO COMPLY IN RENEWING THE PERMIT ON TIME WILL RESULT IN BY-LAW ENFORCEMENT MEASURES.
- 41.0 Applicant to notify when site protection has been removed for inspection and billing purposes.
- 42.0 Applicant is not permitted to use the top of the canopy for material storage, erecting scaffolding, as a staging area or as a work platform.
- 43.0 Access must be maintained to all above ground public utility structures. Hydro vaults not to be obstructed.
- 44.0 All installations must provide appropriate vision splays when in close proximity to an intersection or adjacent to a driveway or lane. If the proposed occupation will, in any way interfere with traffic lights, traffic signs or parking metres, Transportation Services must be informed before proceeding.
- 45.0 Scaffold to be secured to building when higher than the ground floor.
- 46.0 Applicant is responsible for the cost any damage caused to the City Right-of-Way.
- 47.0 Site protection must not cause any safety hazards, i.e. trip hazards, accessible to the public.
- 48.0 Additional occupation or closure of the public right of way requires an additional Street Occupation Permit (SOP). This includes the portion of the roadway beyond the enclosed staging area that will be used to stage concrete trucks during construction activities. You can apply for the Street Occupation Permit at SOPTEY@toronto.ca or 416-392-6593.
- 49.0 Application fee of \$657.11 is due.
- 50.0 Payment information will be obtained and payment will be processed at a later date, contingent to the Province's State of Emergency. Payment receipt will be provided upon processing of the payment. Failure to provide this payment may result in the City recovering the cost by adding the costs to the tax roll of this property.
- 51.0 The insuranec on file expires on November 25, 2022.



Tracking Status

- [City Council](#) adopted this item on December 14, 2022 without amendments and without debate.
- This item was considered by [Toronto and East York Community Council](#) on November 30, 2022 and was adopted with amendments. It will be considered by City Council on December 14, 2022.

City Council consideration on December 14, 2022

TE1.11	ACTION	Adopted on Consent		Ward: 11
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1 Bloor Street West (Yonge Street, Bloor Street and Balmuto Street) - Construction Staging Area Time Extension

City Council Decision

Caution: This is a preliminary decision. This decision should not be considered final until the meeting is complete and the City Clerk has confirmed the decisions for this meeting.

City Council on December 14, 2022, adopted the following:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to vehicular traffic of a five-metre-wide portion of the northbound curb lane and to pedestrian traffic a

portion of the east sidewalk, both on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from December 14, 2022 to March 31, 2023, inclusive.

2. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to pedestrian traffic of the west sidewalk and to vehicular traffic of a three-metre-wide portion of the southbound curb lane, both on Yonge Street, between Bloor Street West and a point 66 metres south, from December 14, 2022 to March 31, 2023, inclusive.

3. City Council direct the applicant to continue ensuring the existing curb lanes and bicycle lanes, both east and westbound, on Bloor Street West in the area of the development site at 1 Bloor Street West, remain open and accessible at all times and that the sidewalk on the south side of Bloor Street West, between Yonge Street and a point 49 metres west, are temporarily closed to allow for a 1.7 metre-wide covered walkway within the temporary closed portion of the sidewalk area.

4. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.

5. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.

6. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.

7. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.

8. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
9. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local Business Improvement Areas and resident associations in advance of any physical road modifications.
10. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.
11. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.
12. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.
13. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.
14. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of December 14, 2022 to March 31, 2023, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, as more generally described in the report (November 14, 2022) from the Director, Traffic Management, Transportation Services and, where the approval conflicts with

Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.

15. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of December 14, 2022 to March 31, 2023, inclusive, for a portion of Yonge Street, between Bloor Street West and a point 66 metres south, and a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of December 14, 2022 to March 31, 2023, inclusive, for a portion of Bloor Street West, between Yonge Street and a point 49 metres west.

16. City Council direct the General Manager, Transportation Services to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to March 31, 2023, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

17. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the Construction Management Plan.

18. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.

19. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump, to removing them within fifteen minutes of discontinuing use of the pump, and to not placing them in legal parking areas.

20. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street.

21. City Council authorize the General Manager, Transportation Services to negotiate, enter into and execute an updated indemnity agreement with Mizrahi Development Group (The One) Inc. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

22. City Council direct that Parts 1 to 20, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. entering into the indemnity agreement in Part 21 above.

Background Information (Community Council)

(November 14, 2022) Report and Attachments 1-2 from the Director, Traffic Management, Transportation Services - Construction Staging Area Time Extension - 1 Bloor Street West (Yonge Street, Bloor Street and Balmuto Street)

(<https://www.toronto.ca/legdocs/mmis/2023/te/bgrd/backgroundfile-230009.pdf>)

Communications (Community Council)

(November 29, 2022) Letter from Allison Speigel, Speigel Nichols Fox LLP, on behalf of Mappro Realty Inc. (TE.New)

(<https://www.toronto.ca/legdocs/mmis/2023/te/comm/communicationfile-156619.pdf>)

Communications (City Council)

(December 9, 2022) Letter from Allison Speigel, Speigel Nichols Fox LLP On behalf of Mappro Realty Inc. (CC.Supp)

(<https://www.toronto.ca/legdocs/mmis/2023/cc/comm/communicationfile-156735.pdf>)

Toronto and East York Community Council consideration on November 30, 2022

Source: Toronto City Clerk at www.toronto.ca/council



Item - 2023.TE3.23

Tracking Status

- City Council adopted this item on March 29, 2023 without amendments and without debate.
- This item was considered by Toronto and East York Community Council on February 23, 2023 and was adopted with amendments. It will be considered by City Council on March 29, 2023.

City Council consideration on March 29, 2023

TE3.23 - 1 Bloor Street West (Yonge Street and Balmuto Street) - Construction Staging Area Time Extension

Decision Type: ACTION

Status: Adopted

Ward: 11 - University - Rosedale

City Council Decision

City Council on March 29, 30 and 31, 2023, adopted the following:

1. City Council authorize, for purposes of construction at 1 Bloor Street West, the temporary closure to vehicular traffic of a 5 metre-wide portion of the northbound curb lane and to pedestrian traffic on the east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from April 1, 2023 to April 1, 2024, inclusive.
2. City Council authorize, for purposes of concrete pouring on at 1 Bloor Street West, the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from April 1, 2023 to April 1, 2024, inclusive.
3. City Council authorize, for purposes of construction at 1 Bloor Street West the temporary closure to pedestrian traffic of the west sidewalk and to vehicular traffic of a three-metre-wide portion of the southbound curb lane, both on Yonge Street, between Bloor Street West and a point 66 metres south, from April 1, 2023 to June 30, 2025, inclusive.
4. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
5. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
6. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
7. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
8. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
9. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local Business Improvement Areas and resident associations in advance of any physical road modifications.
10. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.
11. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer, during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.

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12. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.
13. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.
14. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of April 1, 2023 to April 1, 2024, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as more generally described in the report (February 6, 2023) from the Director, Traffic Management, Transportation Services and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.
15. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of April 1, 2023 to June 30, 2025, inclusive, for a portion of Yonge Street, between Bloor Street West and a point 66 metres south.
16. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.
17. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.
18. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump, to removing them within fifteen minutes of discontinuing use of the pump and to not placing them in legal parking areas.
19. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street, except during concrete pouring operations.
20. City Council authorize the General Manager, Transportation Services, to negotiate, enter into and execute an updated indemnity agreement with Mizrahi Development Group (The One) Inc. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.
21. City Council direct that Parts 1 to 19, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. entering into the indemnity agreement in Part 20 above.

Background Information (Community Council)

(February 6, 2023) Report and Attachments 1-2 from the Director, Traffic Management, Transportation Services - Construction Staging Area Time Extension - 1 Bloor Street West (Yonge Street and Balmuto Street)

<https://www.toronto.ca/legdocs/mmis/2023/te/bgrd/backgroundfile-234381.pdf>

Communications (Community Council)

(February 22, 2023) Letter from Allison Speigel, Speigel Nichols Fox LLP, on behalf of Mappro Realty Inc. (TE.Supp)

<https://www.toronto.ca/legdocs/mmis/2023/te/comm/communicationfile-165960.pdf>

Communications (City Council)

Communications (City Council)

(March 23, 2023) Letter from Allison Speigel, Speigel Nichols Fox LLP, on behalf of Mappro Realty Inc. (CC.Supp)

<https://www.toronto.ca/legdocs/mmis/2023/cc/comm/communicationfile-166546.pdf>

Toronto and East York Community Council consideration on February 23, 2023

TE3.23 - 1 Bloor Street West (Yonge Street and Balmuto Street) - Construction Staging Area Time Extension

Decision Type: ACTION

Status: Amended

Ward: 11 - University - Rosedale

Community Council Recommendations

The Toronto and East York Community Council recommends that:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to vehicular traffic of a 5 metre-wide portion of the northbound curb lane and to pedestrian traffic on the east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from April 1, 2023 to April 1, 2024, inclusive.
2. City Council authorize for purposes of concrete pouring on at 1 Bloor Street West, the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from April 1, 2023 to April 1, 2024, inclusive.
3. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to pedestrian traffic of the west sidewalk and to vehicular traffic of a three-metre-wide portion of the southbound curb lane, both on Yonge Street, between Bloor Street West and a point 66 metres south, from April 1, 2023 to June 30, 2025, inclusive.
4. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
5. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
6. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
7. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
8. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
9. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local Business Improvement Areas and resident associations in advance of any physical road modifications.
10. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.

11. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.

12. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.

13. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.

14. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of April 1, 2023 to April 1, 2024, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as more generally described in the report (February 6, 2023) from the Director, Traffic Management, Transportation Services and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.

15. City Council authorize the General Manager, Transportation Services to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of April 1, 2023 to June 30, 2025, inclusive, for a portion of Yonge Street, between Bloor Street West and a point 66 metres south.

16. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.

17. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.

18. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump, to removing them within fifteen minutes of discontinuing use of the pump and to not placing them in legal parking areas.

19. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street, except during concrete pouring operations.

20. City Council authorize the General Manager, Transportation Services, to negotiate, enter into and execute an updated indemnity agreement with Mizrahi Development Group (The One) Inc. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

21. City Council direct that Parts 1 to 19, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. entering into the indemnity agreement in Part 20 above.

Origin

(February 6, 2023) Report from the Director, Traffic Management, Transportation Services

Summary

As the Toronto Transit Commission (TTC) operates a transit service on Yonge Street, City Council approval of this report is required. Further, since this report contains recommendations that do not comply with City policy or by-laws, City Council approval of this report is required.

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comply with City policy on any lane, any closure approval or any report is required.

Mizrahi Development Group (The One) Inc. (the "developer") is constructing a mixed-use development at 1 Bloor Street West (Mizrahi Project). The site is located on the southwest corner of Yonge Street and Bloor Street West. The development will consist of an eight-storey high retail podium and an 86-storey high residential tower.

A five-metre-wide portion of the northbound curb lane and east sidewalk on Balmuto Street from a point 29 metres south of Bloor Street West to a point 12 metres further south is currently closed to accommodate construction staging operations for the development. The west sidewalk and a three-metre-wide portion of the southbound curb lane on Yonge Street, between Bloor Street West and a point 66 metres south are also closed. The previous closure of the south sidewalk and a 1.2-metre-wide portion of the eastbound curb lane on Bloor Street West, between Yonge Street and a point 49 metres west, is no longer required. Pedestrians have access to the existing sidewalk on the south side of Bloor Street West, abutting the construction site, which is covered and protected. Existing vehicle and bicycle lanes are maintained for both directions on Bloor Street West.

Toronto and East York Community Council, at its meeting on November 25 and 26, 2020, approved the construction staging area on Balmuto Street from November 30, 2020 to November 30, 2022. In a separate meeting on March 10, 2021, Toronto and East York Community Council approved an extension of the construction staging areas on Yonge Street and Bloor Street West from September 1, 2020 to December 31, 2021. In a meeting on December 14 and 15, 2022, City Council approved an extension of the construction staging areas on Yonge Street, Bloor Street West and Balmuto Street, from December 14, 2022 to March 31, 2023. At the time, the developer indicated they would require the staging areas until June 30, 2025.

Transportation Services is requesting authorization to extend the duration of the construction staging areas on Balmuto Street and Yonge Street for an additional 27 months, from April 1, 2023 to June 30, 2025, to allow for the construction of the development to be completed. Transportation Services is also requesting authority for the intermittent closure of Balmuto Street during concrete pouring operations, from the first public lane south of Bloor Street West to Bloor Street West, from April 1, 2023 to June 30, 2025.

For the maintenance of the concrete pump on Balmuto Street, Transportation Services is also requesting the authority for the General Manager of Transportation Services to issue a Temporary Street Occupation permit for Balmuto Street to the developer, notwithstanding that not all the criteria within the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, for so doing would be met.

Background Information

(February 6, 2023) Report and Attachments 1-2 from the Director, Traffic Management, Transportation Services - Construction Staging Area Time Extension - 1 Bloor Street West (Yonge Street and Balmuto Street)

<https://www.toronto.ca/legdocs/mmis/2023/te/bgrd/backgroundfile-234381.pdf>

Communications

(February 22, 2023) Letter from Allison Speigel, Speigel Nichols Fox LLP, on behalf of Mappro Realty Inc. (TE.Supp)

<https://www.toronto.ca/legdocs/mmis/2023/te/comm/communicationfile-165960.pdf>

Speakers

Allison Speigel, Speigel Nichols Fox LLP
Mary Ellen Bench, Dentons

Motions

1 - Motion to Amend Item moved by Councillor Dianne Saxe (Carried)

That Recommendations 1 and 2 be amended by deleting the date "June 30, 2025" and inserting the date "April 1, 2024" so that they now read as follows:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to

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vehicular traffic of a five-metre-wide portion of the northbound curb lane and to pedestrian traffic on the east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from April 1, 2023 to April 1, 2024, inclusive.

2. City Council authorize for purposes of concrete pouring on at 1 Bloor Street West, the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from April 1, 2023 to April 1, 2024, inclusive.

2 - Motion to Adopt Item as Amended moved by Councillor Gord Perks (Carried)

Motion to Reconsider Item moved by Councillor Gord Perks (Carried)

That in accordance with the provisions of Chapter 27, Council Procedures, Toronto and East York Community Council reconsider Item TE3.23.

3 - Motion to Amend Item moved by Councillor Dianne Saxe (Carried)

That Recommendation 14 be amended by deleting the date "June 30, 2025" and inserting the date "April 1, 2024" so that it now read as follows:

14. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of April 1, 2023 to April 1, 2024, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as more generally described in the report from the Director, Traffic Management, Transportation Services (dated February 6, 2023) and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.

Source: Toronto City Clerk at www.toronto.ca/council

4 - Motion to Adopt Item as Amended moved by Councillor Gord Perks (Carried)

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Item - 2024.TE11.36

Tracking Status

- City Council adopted this item on March 20, 2024 with amendments.
- This item was considered by Toronto and East York Community Council on February 21, 2024. It is being forwarded to City Council without recommendations. It will be considered by City Council on March 20, 2024.

City Council consideration on March 20, 2024

TE11.36 - Construction Staging Area Time Extension - 1 Bloor Street West (Balmuto Street)

Decision Type: ACTION

Status: Amended

Ward: 11 - University - Rosedale

Caution: Motions are shown below. Any motions should not be considered final until the meeting is complete, and the City Clerk has confirmed the decisions for this meeting.

Community Council Recommendations

The Toronto and East York Community Council forwards the Item to City Council without recommendation.

Background Information (Community Council)

(February 20, 2024) Report from the Director, Traffic Management, Transportation Services on Construction Staging Area Time Extension - 1 Bloor Street West (Balmuto Street)
<https://www.toronto.ca/legdocs/mmis/2024/te/bgrd/backgroundfile-243252.pdf>
(February 21, 2024) Letter from Councillor Diane Saxe on Construction Staging Area Time Extension - 1 Bloor Street West (Balmuto Street)
<https://www.toronto.ca/legdocs/mmis/2024/te/bgrd/backgroundfile-243217.pdf>

Communications (Community Council)

(February 20, 2024) Letter from Allison Speigel, Speigel Nichols Fox, LLP on behalf of Mappro Realty Inc. (TE.New)
<https://www.toronto.ca/legdocs/mmis/2024/te/comm/communicationfile-177630.pdf>

Communications (City Council)

(March 15, 2024) Submission from Allison Speigel, on behalf of Mappro Realty Inc. (CC.Supp)
<https://www.toronto.ca/legdocs/mmis/2024/cc/comm/communicationfile-178017.pdf>

Motions (City Council)

1 - Motion to Amend Item moved by Councillor Dianne Saxe (Carried)
That City Council adopt the following recommendations in the report (February 20, 2024) from the Director, Traffic Management, Transportation Services, amended as follows:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to vehicular traffic of a five-metre-wide portion of the northbound curb lane and to pedestrian traffic on the east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from April 2, 2024 to July 31, 2024 ~~August 31, 2025~~, inclusive.

2. City Council authorize for purposes of concrete pouring on at 1 Bloor Street West, the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from April 2, 2024 to July 31, 2024 ~~August 31, 2025~~, inclusive.
3. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
4. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
5. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
6. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
7. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
8. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local business improvement areas and resident associations in advance of any physical road modifications.
9. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.
10. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.
11. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.
12. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.
13. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. for the period of April 2, 2024 to July 31, 2024 ~~August 31, 2025~~, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as more generally described in the report from the Director, Traffic Management, Transportation Services (dated February 20, 2024) and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.
14. City Council authorize the General Manager, Transportation Services, to transfer and/or assign a Temporary Street Occupation Permit to from Mizrahi Development Group (The One) Inc. to Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., and/or to the Court-appointed Receiver which is overseeing its operations, for the period of April 1, 2023 to July 31, 2024 ~~June 30, 2025~~, inclusive, for a portion of Yonge Street, between Bloor Street West and a point 66 metres south.

15. City Council authorize the General Manager, Transportation Services, to transfer and/or assign the Temporary Street Occupancy Permit for Balmuto Street in the event that a new owner becomes a holder of the development at 1 Bloor Street during the requested construction staging area times extension request from April 2, 2024 to July 31, 2024 ~~August 31, 2025~~.

16. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.

17. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway, but does shield the pumping station from public view from Bloor Street.

18. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump; to removing them within fifteen minutes of discontinuing use of the pump; and to not placing them in legal parking areas.

19. City Council direct the applicant to cooperate with and provide all necessary assistance to the City Engineers, staff and representatives carrying out operation, maintenance, and construction activities to municipal infrastructure within the vicinity of the construction staging area, and at no cost to the City to remove any staging to accommodate the necessary municipal infrastructure work.

20. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street, except during concrete pouring operations.

21. City Council authorize the General Manager, Transportation Services, to transfer and/or assign an existing indemnity agreement with Mizrahi Development Group (The One) Inc. and/or negotiate, enter into and execute an updated indemnity agreement with Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

22. City Council authorize the General Manager, Transportation Services, to require the applicant to provide financial security in a form and amount satisfactory to the General Manager, Transportation Services, as a condition of granting the above permits.

23. City Council direct that parts 1 to 20, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. and/or the Court-appointed Receiver which is overseeing its operations, and/or a transferee or assignee of the permits entering into the indemnity agreement in Part 21 above.

Motion to Adopt Item as Amended (Carried)

Toronto and East York Community Council consideration on February 21, 2024

Source: Toronto City Clerk at www.toronto.ca/council

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Item - 2024.TE15.29

Tracking Status

- City Council adopted this item on July 24, 2024 with amendments.
- This item was considered by the Toronto and East York Community Council on July 10, 2024 and adopted without amendment. It will be considered by City Council on July 24, 2024.
- See also 2024.TE11.36

City Council consideration on July 24, 2024

TE15.29 - 1 Bloor Street West (Balmuto Street) - Construction Staging Area Time Extension

Decision Type: ACTION

Status: Amended

Ward: 11 - University - Rosedale

City Council Decision

City Council on July 24 and 25, 2024, adopted the following:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to vehicular traffic of a five-metre-wide portion of the northbound curb lane on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from August 1, 2024 to February 1, 2026, inclusive.
2. City Council authorize for purposes of concrete pouring at 1 Bloor Street West, the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from August 1, 2024 to February 1, 2026, inclusive.
3. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
4. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
5. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
6. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
7. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
8. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local Business Improvement Areas and resident associations in advance of any physical road modifications.

9. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site, and to maintain a safe environment for the public.
10. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and the Toronto Police Construction Liaison Officer during large-scale concrete pours and large-scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.
11. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians', cyclists' and motorists' safety is considered at all times.
12. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.
13. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Alvarez and Marsal Canada Inc., Court – Appointed Receiver for Mizrahi Development Group (The One) Inc. for the period of August 1, 2024 to February 1, 2026, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Alvarez and Marsal Canada Inc., Court – Appointed Receiver for Mizrahi Development Group (The One) having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as more generally described in the report from the Director, Traffic Management, Transportation Services (dated February 20, 2024) and, where the approval conflicts with City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.
14. City Council authorize the General Manager, Transportation Services, to transfer and/or assign the Temporary Street Occupancy Permit for Balmuto Street in the event that a new party acquires or becomes responsible for the Mizrahi Project during the requested construction staging area time extension request from August 1, 2024 to February 1, 2026.
15. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.
16. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.
17. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump; to removing them within fifteen minutes of discontinuing use of the pump; and to not placing them in legal parking areas.
18. City Council direct the applicant to cooperate with and provide all necessary assistance to City Engineers, staff and representatives carrying out operation, maintenance and construction activities to municipal infrastructure within the vicinity of the construction staging area, and at no cost to the City to remove any staging to accommodate the necessary municipal infrastructure work.
19. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street, except during concrete pouring operations.
20. City Council authorize the General Manager, Transportation Services to transfer and/or assign existing indemnity agreements with Mizrahi Development Group (The One) Inc. or its Court-appointed Receiver and/or negotiate, enter into and execute further indemnity agreement(s) to address the City's

interests with respect to any and all temporary street occupations and closures on Balmuto Street, on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

21. City Council authorize the General Manager, Transportation Services to require the applicant to provide financial security in a form and amount satisfactory to the General Manager, Transportation Services, as a condition of granting the above permits.

22. City Council direct that Parts 1 to 19 above, be subject to Mizrahi Development Group (The One) Inc. its Court-appointed Receiver, and/or a transferee or assignee of the permits entering into such indemnity agreements and/or providing security as may be required by the General Manager, Transportation Services pursuant to Parts 20 to 21 above.

Background Information (Community Council)

(June 21, 2024) Report and Attachments 1 and 2 from the Director, Traffic Management, Transportation Services on 1 Bloor Street West (Balmuto Street) - Construction Staging Area Time Extension
<https://www.toronto.ca/legdocs/mmis/2024/te/bgrd/backgroundfile-247018.pdf>

Communications (Community Council)

(July 5, 2024) Letter from Allison Speigel, Speigel Nichols Fox LLP on behalf of Mappro Realty Inc. (TE.Supp)
<https://www.toronto.ca/legdocs/mmis/2024/te/comm/communicationfile-181432.pdf>

Communications (City Council)

(July 19, 2024) Letter from Allison Speigel, on behalf of Mappro Realty Inc. (CC.Supp)
<https://www.toronto.ca/legdocs/mmis/2024/cc/comm/communicationfile-182341.pdf>

Motions (City Council)


1 - Motion to Amend Item moved by Councillor Dianne Saxe (Carried)
That City Council amend Toronto and East York Community Council recommendation 22, by deleting the number "22" and replacing with the number "21" so that it reads as follows:

22. City Council direct that Parts 1 to 19, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. its Court-appointed Receiver, and/or a transferee or assignee of the permits entering into such indemnity agreements and/or providing security as may be required by the General Manager, Transportation Services pursuant to Parts 20 to ~~22~~ 21 above.

Motion to Adopt Item as Amended (Carried)

Toronto and East York Community Council consideration on July 10, 2024

Source: Toronto City Clerk at www.toronto.ca/council

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Construction Staging Area Time Extension - 1 Bloor Street West (Yonge Street, Bloor Street and Balmuto Street)

Date: November 14, 2022
To: Toronto and East York Community Council
From: Director, Traffic Management, Transportation Services
Wards: Ward 11, University-Rosedale

SUMMARY

As the Toronto Transit Commission (TTC) operates a transit service on Yonge Street and Bloor Street West, City Council approval of this report is required. Further, since this report contains recommendations that do not comply with City policy or by-laws, City Council approval of this report is required.

Mizrahi Development Group (The One) Inc. (the "developer") is constructing a mixed-use development at 1 Bloor Street West (Mizrahi Project). The site is located on the southwest corner of Yonge Street and Bloor Street West. The development will consist of an eight-storey high retail podium and an 86-storey high residential tower.

A five-metre-wide portion of the northbound curb lane and east sidewalk on Balmuto Street from a point 29 metres south of Bloor Street West to a point 12 metres further south is currently closed to accommodate construction staging operations for the development. The west sidewalk and a three-metre-wide portion of the southbound curb lane on Yonge Street, between Bloor Street West and a point 66 metres south are also closed. In addition, the south sidewalk and a 1.2-metre-wide portion of the eastbound curb lane on Bloor Street West, between Yonge Street and a point 49 metres west are closed.

Toronto and East York Community Council, at its meeting on November 25 and 26, 2020, approved the construction staging area on Balmuto Street from November 30, 2020 to November 30, 2022. In a separate meeting on March 10, 2021, Toronto and East York Community Council approved an extension of the construction staging areas on Yonge Street and Bloor Street West from September 1, 2020 to December 31, 2021. The developer has requested an additional extension of the duration of the construction staging areas on Balmuto Street, Yonge Street both Bloor Street West, as the site has experienced a number of construction delays related to COVID-19.

Transportation Services is requesting authorization to extend the duration of the construction staging areas on Balmuto Street, Yonge Street and Bloor Street West for an additional 31 months, from December 14, 2022 to June 30, 2025, inclusive, to allow for the construction of the development to be completed.

Transportation Services is also requesting the authority for the General Manager of Transportation Services to issue a Temporary Street Occupation permit for Balmuto Street to the developer, notwithstanding that not all the criteria within the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, for so doing would be met.

RECOMMENDATIONS

The Director, Traffic Management, Transportation Services recommends that:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to vehicular traffic of a five-metre-wide portion of the northbound curb lane and to pedestrian traffic a portion of the east sidewalk, both on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from December 14, 2022 to June 30, 2025, inclusive.
2. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to pedestrian traffic of the west sidewalk and to vehicular traffic of a three-metre-wide portion of the southbound curb lane, both on Yonge Street, between Bloor Street West and a point 66 metres south, from December 14, 2022 to June 30, 2025, inclusive.
3. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to pedestrian traffic of the south sidewalk and to vehicular traffic of a 1.2-metre-wide portion of the eastbound curb lane, both on Bloor Street West, between Yonge Street and a point 49 metres west, from December 14, 2022 to June 30, 2025, inclusive.
4. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
5. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
6. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.

7. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
8. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
9. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local business improvement areas and resident associations in advance of any physical road modifications.
10. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.
11. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.
12. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.
13. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.
14. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Mizrahi Development Group (The One) Inc. having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, as more generally described in the report from the Director, Traffic Management, Transportation Services (dated November 14, 2022) and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.
15. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Yonge Street, between Bloor Street West and a point 66 metres south, and a Temporary Street Occupation permit to Mizrahi Development Group (The One) Inc. for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Bloor Street West, between Yonge Street and a point 49 metres west.

16. City Council direct the General Manager, Transportation Services, to not issue any other Temporary Street Occupation permit for the period of December 14, 2022 to June 30, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south.

17. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.

18. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.

19. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump; to removing them within fifteen minutes of discontinuing use of the pump; and to not placing them in legal parking areas.

20. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street.

21. City Council authorize the General Manager, Transportation Services, to negotiate, enter into and execute an updated indemnity agreement with Mizrahi Development Group (The One) Inc. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

22. City Council direct that parts 1 to 20, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. entering into the indemnity agreement in part 21 above.

FINANCIAL IMPACT

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, Yonge Street and Bloor Street West, these fees will be approximately \$1,200,000.00 including lost revenue from the parking machines (if applicable).

DECISION HISTORY

City Council, at its meeting on March 10, 2021, adopted Item TE23.57 entitled "Construction Staging Area Time Extension - 1 Bloor Street West, Phase 2 - (Yonge Construction Staging Area Time Extension - 1 Bloor St W (Yonge St, Bloor St W and Balmuto St)

Street and Bloor Street West)" and, in so doing, authorized the closure of the sidewalk and a portion of the southbound lane on Yonge Street and the closure of the sidewalk and a portion of the eastbound lane on Bloor Street West, from September 1, 2020 to December 31, 2021.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.TE23.57>

City Council, at its meeting on November 25 and 26, 2020, adopted Item TE20.29 entitled "Construction Staging Area - 1 Bloor Street West (Balmuto Street)" and, in so doing, authorized the closure of the sidewalk and a portion of the northbound lane on Balmuto Street, from November 30, 2020 to November 30, 2022.

[Agenda Item History - 2020.TE20.29 \(toronto.ca\)](#)

City Council, at its meeting on November 26 and 27, 2019, adopted Item TE10.27, entitled "Construction Staging Area Time Extension Phase 2 - Yonge Street and Bloor Street West -1 Bloor Street West" to extend the closure of the sidewalk and a portion of the southbound lane on Yonge Street and the closure of the sidewalk and a portion of the eastbound lane on Bloor Street West, until August 31, 2020.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.TE10.27>

City Council, at its meeting on October 2, 3 and 4 2017, adopted Item TE26.69 entitled "Construction Staging Area (Phase 1) Yonge Street and Bloor Street West (1 Bloor Street West)" and, in so doing, authorized the closure of the sidewalk and a portion of the southbound lane on Yonge Street and the closure of the sidewalk and a portion of the eastbound lane on Bloor Street West, from October 9, 2017 to October 31, 2019.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE26.69>

COMMENTS

Status of the Development

A mixed-use development (The One) is currently being constructed by Mizrahi Developments at 1 Bloor Street West. The site is bounded by Bloor Street West to the north, Yonge Street to the east and existing commercial uses to the south and west.

The development, in its completed form, will include an 86-storey high residential condominium building atop an eight-storey high retail podium. Retail uses will also be provided in a below grade concourse level. A four-level underground parking garage will be provided.

Major construction activities and associated timelines for the development are described below:

- Above grade formwork: Ongoing to June 2025;
- Building envelope phase: Ongoing to June 2025; and
- Interior finishes stage: Ongoing to January 2026.

Based on the information provided by the developer at the time of this report, construction of the below-grade activities, and construction of the multi-storey podium and lower levels of the tower, are complete. The developer has requested an extension of the duration of the construction staging areas on Balmuto Street, Yonge Street and Bloor Street West due to COVID-19 construction delays, and to allow completion of the construction project, from December 14, 2022 to June 30, 2025, inclusive.

Construction Staging Areas

Traditionally, Transportation Services prefers to have the construction staging areas abutting the development. In fact, the delegated authority given to the General Manager, Transportation Services to issue Temporary Street Occupation permits pursuant to City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, provides that "a permit may be issued under this section when it is required on behalf of an owner of the lands abutting the street, or portion thereof that will be occupied temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicants use of the lands". Irrespective of the above provision in Chapter 743, the General Manager may still issue a permit under Chapter 743 despite the temporary occupation of any portion of the street beyond the limit of the applicants property frontage on the street, where the adjoining property owner consents in writing and waives all claims against the City for losses and damages that may arise or result directly or indirectly from this occupation. The proposed temporary street occupation on Balmuto Street does not abut the Mizrahi Development Group (The One) Inc. Rather the proposed temporary street occupation on Balmuto Street would abut the property at 19 Bloor Street West. Given the above, City Council approval is required for the temporary street occupation to occur on Balmuto Street and to authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit.

Construction staging operations for the development will continue to take place on Balmuto Street, where a five-metres-wide portion of the northbound curb lane and sidewalk will remain temporarily closed between a point 29 metres south of Bloor Street West and a point 12 metres further south. Pedestrians will continue to be accommodated on the east side of Balmuto Street within a 1.7-metre-wide portion of the existing sidewalk separated from the staging area by temporary construction fencing. Two-way traffic operations will be maintained on Balmuto Street within the remaining six-metre-wide roadway; however, during times when construction activities are taking place, traffic will be restricted to one lane controlled by traffic control persons.

Construction staging operations will also continue to take place within the road right-of-way on the west side of Yonge Street abutting the site. The sidewalk and southbound curb lane on the west side of Yonge Street, between Bloor Street West and a point 66

Construction Staging Area Time Extension - 1 Bloor St W (Yonge St, Bloor St W and Balmuto St)

metres south, will continue to be temporarily closed to accommodate construction staging operations. Pedestrians are directed to a 2.1-metre-wide covered and protected walkway within the closed portion of the southbound curb lane. Yonge Street, in the immediate vicinity of the site, operates as one southbound traffic lane and two northbound traffic lanes.

The southbound curb lane on Yonge Street north of Bloor Street West is temporarily closed, between the stop bar and a point 30 metres north (including taper). Vehicles travelling in the southbound curb lane are channelized into the southbound-through traffic lane to achieve smooth traffic flow around the existing construction staging area on Yonge Street. Southbound right-turn movements at the intersection of Yonge Street and Bloor Street West are prohibited at all times. In addition, the TTC near-side bus stop on Yonge Street at Bloor Street West was relocated approximately 60 metres north of Bloor Street West.

Construction staging operations on Bloor Street West are setup within the existing boulevard abutting the site. The sidewalk and a portion of the curb lane on the south side of Bloor Street West, between Yonge Street and a point 49 metres west, are temporarily closed to accommodate construction staging operations. Pedestrians are directed to a 1.7 metre-wide covered and protected walkway within the temporarily closed portion of the eastbound curb lane. Existing vehicle and bicycle lanes will be maintained for both directions on Bloor Street West.

Overall, the existing construction staging areas are operating acceptably, and Transportations Services does not recommend any modifications to the area for the duration of the extension.

A review of the City's Five-Year Major Capital Works Program was undertaken to identify any conflicts between the proposed construction staging areas and planned capital works projects in the area. The review of the program at the time of this report indicates that in years 2025 to 2027, a cycling infrastructure installation project is planned on Bloor Street West, between Avenue Road to Yonge Street. In addition, a Business Improvement Area streetscape/intersection improvement project is planned on Yonge Street, between College Street and Davenport Road. In the event of any conflict with the planned capital works projects, the developer has been advised that the proposed construction staging areas will need to be modified or removed to accommodate the capital works project activities.

Transportation Services is satisfied that Mizrahi Developments has looked at all options to alleviate congestion at these locations.

The Ward Councillor has been advised of the recommendations of this staff report.

CONTACT

Craig Cripps, Manager, Work Zone Coordination and Mitigation, Transportation Services, 416-397-5020, Craig.Cripps@toronto.ca

SIGNATURE

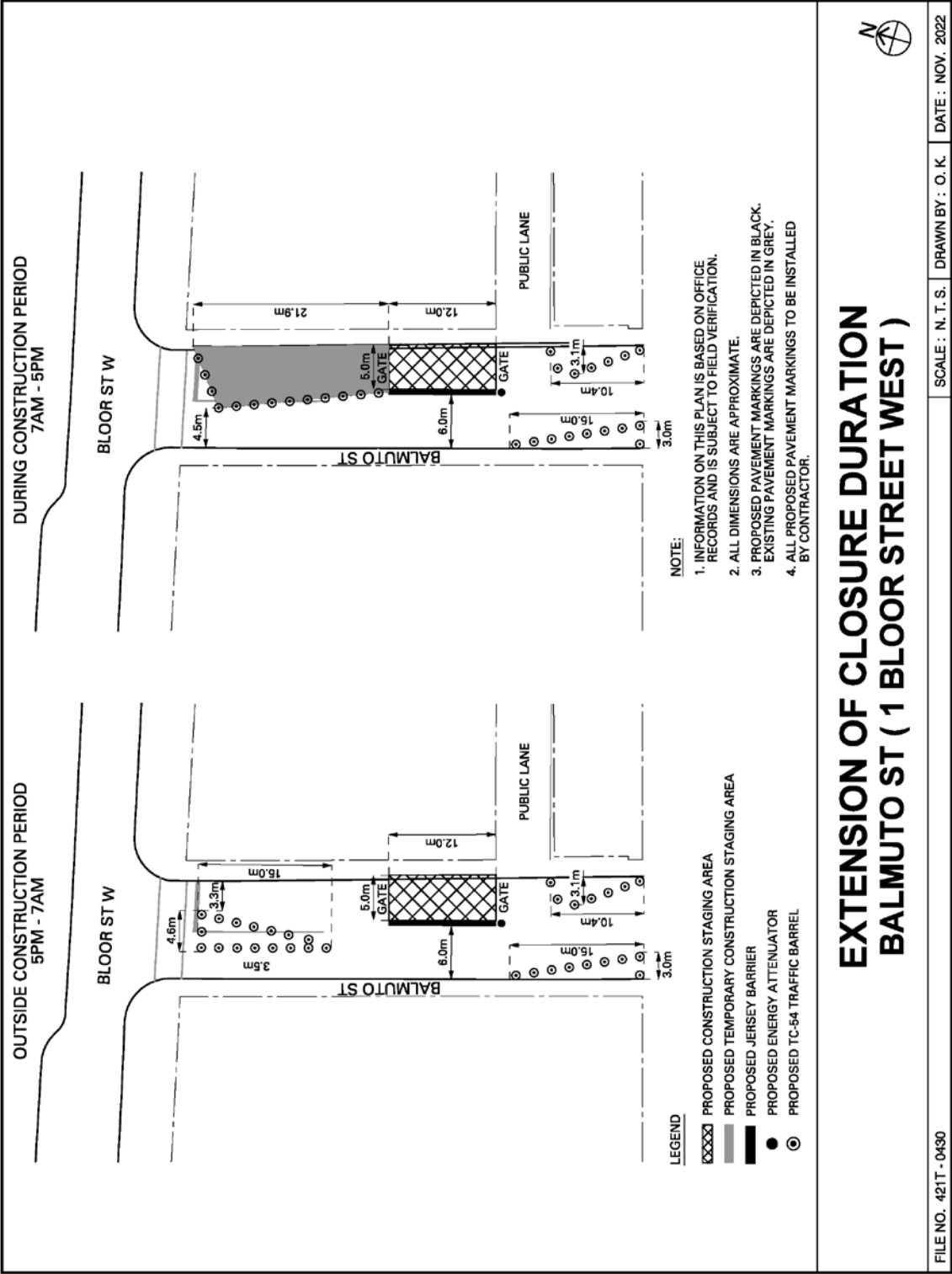
Roger Browne, M.A.Sc., P. Eng.
Director, Traffic Management, Transportation Services

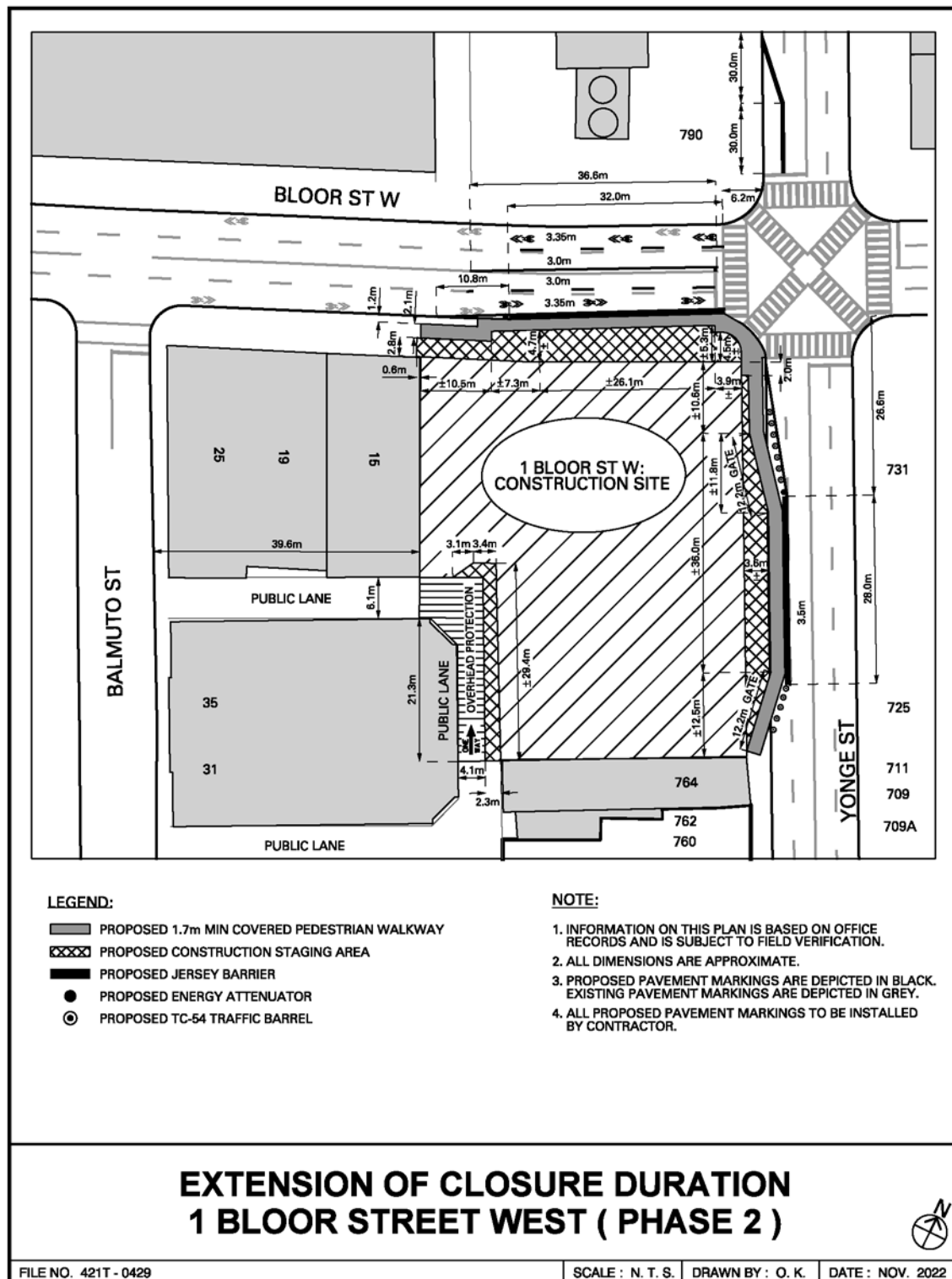
ATTACHMENTS

Attachment 1: Existing Construction Staging - 1 Bloor Street West (Balmuto Street)

Attachment 2: Existing Construction Staging Area - 1 Bloor Street West (Yonge Street and Bloor Street West)

Attachment 1: Existing Construction Staging Area - 1 Bloor Street West (Balmuto Street)





Construction Staging Area Time Extension - 1 Bloor Street West (Balmuto Street)

Date: February 20, 2024
To: Toronto and East York Community Council
From: Director, Traffic Management, Transportation Services
Wards: Ward 11, University-Rosedale

SUMMARY

As the Toronto Transit Commission (TTC) operates a transit service on Yonge Street and Bloor Street West, City Council approval of this report is required. Further, since this report contains recommendations that do not comply with City policy or by-laws, City Council approval of this report is required.

Mizrahi Development Group (The One) Inc. (the "developer") is currently the owner of a mixed-use development at 1 Bloor Street West (Mizrahi Project). The site is located on the southwest corner of Yonge Street and Bloor Street West. The development will consist of an eight-storey high retail podium and an 86-storey high residential tower.

A five-metre-wide portion of the northbound curb lane and east sidewalk on Balmuto Street from a point 29 metres south of Bloor Street West to a point 12 metres further south is currently closed to accommodate construction staging operations for the development. The west sidewalk and a three-metre-wide portion of the southbound curb lane on Yonge Street, between Bloor Street West and a point 66 metres south are also closed. The previous closure of the south sidewalk and a 1.2-metre-wide portion of the eastbound curb lane on Bloor Street West, between Yonge Street and a point 49 metres west, is no longer required. Pedestrians have access to the existing sidewalk on the south side of Bloor Street West, abutting the construction site, which is covered and protected. Existing vehicle and bicycle lanes are maintained for both directions on Bloor Street West.

Toronto and East York Community Council, at its meeting on November 25 and 26, 2020, approved the construction staging area on Balmuto Street from November 30, 2020 to November 30, 2022. In a separate meeting on March 10, 2021, Toronto and East York Community Council approved an extension of the construction staging areas on Yonge Street and Bloor Street West from September 1, 2020 to December 31, 2021. In a meeting on December 14 and 15, 2022, City Council approved an extension of the construction staging areas on Yonge Street, Bloor Street West and Balmuto Street, from December 14, 2022 to March 31, 2023. At the time, the developer indicated they would

require the staging areas until June 30, 2025.

At its meeting on March 29, 2023, City Council approved an extension of the construction staging areas on Yonge Street, and Bloor Street West, from April 1, 2023 to June 30, 2025, and for Balmuto Street an extension was approved for only one year from April 1, 2023 to April 1, 2024. At the time of the meeting on March 29, 2023, the developer indicated they would require the staging area on Balmuto Street until June 30, 2025. The developer is now requesting an extension for the duration of the construction staging on Balmuto Street, to allow for the construction of the development to be completed.

Transportation Services is requesting authorization to extend the duration of the construction staging area on Balmuto Street, between the first public lane south of Bloor Street West to Bloor Street West to allow for intermittent closures of the street during concrete pouring operations, for additional 17 months from April 2, 2024 to August 31, 2025.

For the maintenance of the concrete pump on Balmuto Street, Transportation Services is also requesting the authority for the General Manager of Transportation Services to issue a Temporary Street Occupation permit for Balmuto Street to the developer, notwithstanding that not all the criteria within the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, for so doing would be met.

In addition, Transportation Services is requesting authority to transfer the ownership of the Temporary Street Occupancy Permit for Balmuto Street in the event that the development and property is acquired by a new owner during the requested construction staging area times extension period from April 2, 2024 to August 31, 2025. The developer is currently the subject of Court-supervised Receivership proceedings, and the property may be the subject of a Court-supervised sale during this period.

The issuance or transfer of the permit is contingent on the applicant providing an indemnity agreement to the City and/or a letter of credit in a form and amount and from a bank satisfactory to the General Manager, Transportation Services and the City Solicitor. Transportation Services is also requesting authority to transfer the indemnity agreement to a new owner, subject to the ongoing court proceedings.

RECOMMENDATIONS

The Director, Traffic Management, Transportation Services recommends that:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to vehicular traffic of a five-metre-wide portion of the northbound curb lane and to pedestrian traffic on the east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from April 2, 2024 to August 31, 2025, inclusive.
2. City Council authorize for purposes of concrete pouring on at 1 Bloor Street West, the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public

lane south of Bloor Street West to Bloor Street West, from April 2, 2024 to August 31, 2025, inclusive.

3. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.

4. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.

5. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.

6. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.

7. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.

8. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local business improvement areas and resident associations in advance of any physical road modifications.

9. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.

10. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.

11. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.

12. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.

13. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. for the period of April 2, 2024 to August 31, 2025, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as more generally described in the report from the Director, Traffic Management, Transportation Services (dated February 20, 2024) and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.

14. City Council authorize the General Manager, Transportation Services, to transfer and/or assign a Temporary Street Occupation Permit to from Mizrahi Development Group (The One) Inc. to Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., and/or to the Court-appointed Receiver which is overseeing its operations, for the period of April 1, 2023 to June 30, 2025, inclusive, for a portion of Yonge Street, between Bloor Street West and a point 66 metres south.

15. City Council authorize the General Manager, Transportation Services, to transfer and/or assign the Temporary Street Occupancy Permit for Balmuto Street in the event that a new owner becomes a holder of the development at 1 Bloor Street during the requested construction staging area times extension request from April 2, 2024 to August 31, 2025.

16. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.

17. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.

18. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump; to removing them within fifteen minutes of discontinuing use of the pump; and to not placing them in legal parking areas.

19. City Council direct the applicant to cooperate with and provide all necessary assistance to the City Engineers, staff and representatives carrying out operation, maintenance, and construction activities to municipal infrastructure within the vicinity of the construction staging area, and at no cost to the City to remove any staging to accommodate the necessary municipal infrastructure work.

20. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that

they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street, except during concrete pouring operations.

21. City Council authorize the General Manager, Transportation Services, to transfer and/or assign an existing indemnity agreement with Mizrahi Development Group (The One) Inc. and/or negotiate, enter into and execute an updated indemnity agreement with Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

22. City Council authorize the General Manager, Transportation Services, to require the applicant to provide financial security in a form and amount satisfactory to the General Manager, Transportation Services, as a condition of granting the above permits.

23. City Council direct that parts 1 to 20, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. and/or the Court-appointed Receiver which is overseeing its operations, and/or a transferee or assignee of the permits entering into the indemnity agreement in Part 21 above.

FINANCIAL IMPACT

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, these fees will be approximately \$240,000.00 including lost revenue from the parking machines (if applicable).

DECISION HISTORY

City Council, at its meeting on March 29, 2023, adopted Item TE3.23 entitled " 1 Bloor Street West (Yonge Street and Balmuto Street) - Construction Staging Area Time Extension" and, in so doing, authorized a temporary closure for purposes of construction at 1 Bloor Street West, the temporary closure to vehicular traffic of a 5 metre-wide portion of the northbound curb lane and to pedestrian traffic on the east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from April 1, 2023 to April 1, 2024, inclusive. As well as authorized the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from April 1, 2023 to April 1, 2024, inclusive. Furthermore, City Council authorized for purposes of construction at 1 Bloor Street West the temporary closure to pedestrian traffic of the west sidewalk and to vehicular traffic of a three-metre-wide portion of the southbound curb lane, both on Yonge Street, between Bloor Street West and a point 66 metres south, from April 1, 2023 to June 30, 2025, inclusive.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.TE3.23>

City Council, at its meeting on December 14 and 15, 2022, adopted Item TE1.11 entitled "1 Bloor Street West (Yonge Street, Bloor Street and Balmuto Street)" and, in so doing, authorized the closure of a portion of the northbound curb lane and east sidewalk on Balmuto Street, the sidewalk and a portion of the southbound lane on Yonge Street, and the closure of the sidewalk and a portion of the eastbound lane on Bloor Street West, from December 14, 2022 to March 31, 2023.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.TE1.11>

City Council, at its meeting on March 10, 2021, adopted Item TE23.57 entitled "Construction Staging Area Time Extension - 1 Bloor Street West, Phase 2 - (Yonge Street and Bloor Street West)" and, in so doing, authorized the closure of the sidewalk and a portion of the southbound lane on Yonge Street and the closure of the sidewalk and a portion of the eastbound lane on Bloor Street West, from September 1, 2020 to December 31, 2021.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.TE23.57>

City Council, at its meeting on November 25 and 26, 2020, adopted Item TE20.29 entitled "Construction Staging Area - 1 Bloor Street West (Balmuto Street)" and, in so doing, authorized the closure of the sidewalk and a portion of the northbound lane on Balmuto Street, from November 30, 2020 to November 30, 2022.

[Agenda Item History - 2020.TE20.29 \(toronto.ca\)](#)

City Council, at its meeting on November 26 and 27, 2019, adopted Item TE10.27, entitled "Construction Staging Area Time Extension Phase 2 - Yonge Street and Bloor Street West -1 Bloor Street West" to extend the closure of the sidewalk and a portion of the southbound lane on Yonge Street and the closure of the sidewalk and a portion of the eastbound lane on Bloor Street West, until August 31, 2020.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.TE10.27>

City Council, at its meeting on October 2, 3 and 4 2017, adopted Item TE26.69 entitled "Construction Staging Area (Phase 1) Yonge Street and Bloor Street West (1 Bloor Street West)" and, in so doing, authorized the closure of the sidewalk and a portion of the southbound lane on Yonge Street and the closure of the sidewalk and a portion of the eastbound lane on Bloor Street West, from October 9, 2017 to October 31, 2019.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE26.69>

COMMENTS

Status of the Development

A mixed-use development is currently owned by Mizrahi Development Group (The One) Inc. at 1 Bloor Street West. The site is bounded by Bloor Street West to the north, Yonge Street to the east and existing commercial uses to the south and west.

The development, in its completed form, will include an 86-storey high residential condominium building atop an eight-storey high retail podium. Retail uses will also be

provided in a below grade concourse level. A four-level underground parking garage will be provided.

Major construction activities and associated timelines for the development are described below:

- Above grade formwork: Ongoing to August 2025;
- Building envelope phase: Ongoing to September 2027, and;
- Interior finishes stage: April 2024 to April 2028.

Based on the information provided by the developer, an extension for the duration of the construction staging area on Balmuto Street is being requested to allow for the completion of the construction project. At the previous City Council meeting on March 29, 2023 the developer requested for the construction staging on Balmuto Street to be in effect until June 30, 2025 however an extension was granted for only one year till April 1, 2024 which is now near end.

Construction Staging Areas

Traditionally, Transportation Services prefers to have the construction staging areas abutting the development. The delegated authority given to the General Manager, Transportation Services to issue Temporary Street Occupation permits pursuant to City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, provides that "a permit may be issued under this section when it is required on behalf of an owner of the lands abutting the street, or portion thereof that will be occupied temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicants use of the lands". Irrespective of the above provision in Chapter 743, the General Manager may still issue a permit under Chapter 743 despite the temporary occupation of any portion of the street beyond the limit of the applicants property frontage on the street, where the adjoining property owner consents in writing and waives all claims against the City for losses and damages that may arise or result directly or indirectly from this occupation. The proposed temporary street occupation on Balmuto Street does not abut the applicants property. Rather the proposed temporary street occupation on Balmuto Street would abut the property at 19 Bloor Street West. Given the above, City Council approval is required for the temporary street occupation to occur on Balmuto Street and to authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit. Several mechanisms of mitigating the City's risks have been included in the recommendations.

Construction staging operations for the development will continue to take place on Balmuto Street, within a five-metres-wide portion of the northbound curb lane between a point 29 metres south of Bloor Street West and a point 12 metres further south. Further to on-site meetings with Mizrahi Development Group, their constructor has agreed to pull-back the hoarding around the concrete pump, from the sidewalk, allowing for the future installation of walk-through scaffolding over the existing sidewalk to accommodate building renovations at 17-19 Bloor Street West. Pedestrians will be accommodated on the existing east side sidewalk of Balmuto Street until renovations at 17-19 Bloor Street West commence. Two-way traffic operations will be maintained on

Balmuto Street within the remaining six-metre-wide roadway during days when there is no concrete pouring scheduled; however, a modification to the construction staging setup will be required during days when concrete pouring is scheduled to take place (approximately every third day), during which Balmuto Street will be closed to vehicle traffic between Bloor Street West and the first public lane south of Bloor Street West. The closure will be required to accommodate space for concrete trucks to stop next to the pump. The space north of the pump, next to the properties at 17-19 Bloor Street West, was previously used by concrete trucks (which allowed for Balmuto Street to remain open); however, that space will be made available for Mappro Realty Inc related construction work at 17-19 Bloor Street West. Relocation of the concrete pump set-up on Balmuto Street is no longer feasible due to the mechanics of pumping concrete into the site, as the feeder pipe and structural base supporting the pump are now in-place at their current location.

Construction staging operations will also continue to take place within the road right-of-way on the west side of Yonge Street abutting the site. The sidewalk and southbound curb lane on the west side of Yonge Street, between Bloor Street West and a point 66 metres south, will continue to be temporarily closed to accommodate construction staging operations. Pedestrians are directed to a 2.1-metre-wide covered and protected walkway within the closed portion of the southbound curb lane. Yonge Street, in the immediate vicinity of the site, operates as one southbound traffic lane and two northbound traffic lanes.

The southbound curb lane on Yonge Street north of Bloor Street West is temporarily closed, between the stop bar and a point 30 metres north (including taper). Vehicles and cyclists travelling in the southbound curb lane are channelized into the southbound through traffic lane to achieve smooth traffic flow around the existing construction staging area on Yonge Street. Southbound right-turn movements at the intersection of Yonge Street and Bloor Street West are prohibited at all times. In addition, the TTC near-side bus stop on Yonge Street at Bloor Street West was relocated approximately 60 metres north of Bloor Street West.

A previous construction staging area was set-up on the sidewalk and a portion of the curb lane on the south side of Bloor Street West, between Yonge Street and a point 49 metres west, which is no longer required. Pedestrians have access to the existing sidewalk on the south side of Bloor Street West, abutting the construction site, which is covered and protected. Existing vehicle and bicycle lanes are maintained for both directions on Bloor Street West.

A review of the City's Five-Year Major Capital Works Program was undertaken to identify any conflicts between the proposed construction staging areas and planned capital works projects in the area. The review of the program on Bloor Street West indicates that Transportation Services have infrastructure enhancement work planned from 2026 to 2027, and Toronto Hydro Electric System Ltd have overhead and underground Civil and Electrical work planned in 2025. On Balmuto Street, Toronto Hydro Electric System Ltd have overhead and underground Civil and Electrical work planned in 2025.

The developer was informed that the staging areas may need to be temporarily removed or modified to accommodate the above mentioned Capital Works, and failure to do so may result in the developer being responsible to cover any cost penalties incurred by the City as a result. The applicant shall cooperate with and provide all necessary assistance to the City Engineers, staff and representatives carrying out operation, maintenance, and construction activities to municipal infrastructure within the vicinity of the construction staging area at no cost to the City.

Transportation Services is satisfied that the applicant has looked at all options to alleviate congestion at these locations.

The Ward Councillor has been advised of the recommendations of this staff report.

CONTACT

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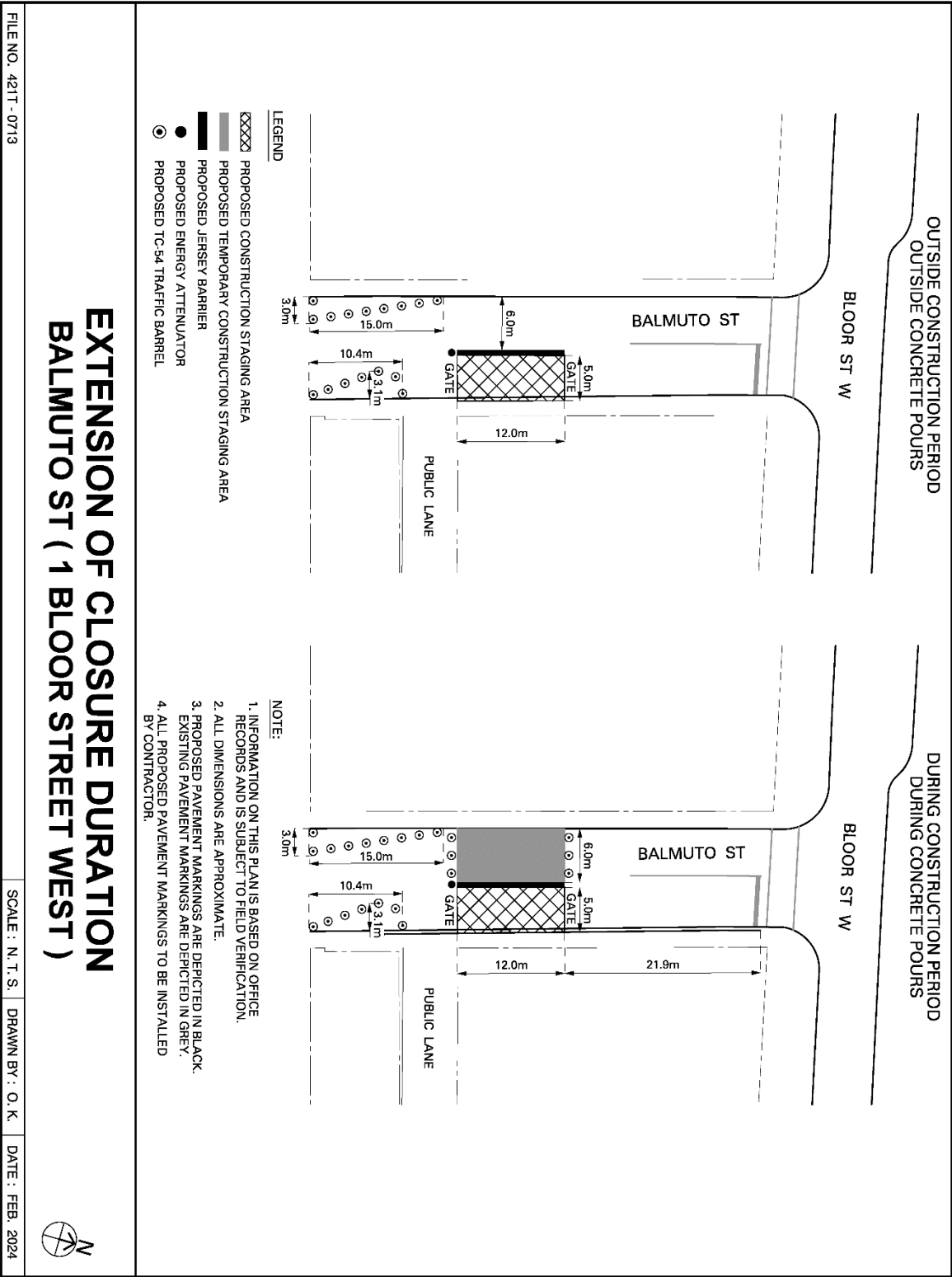
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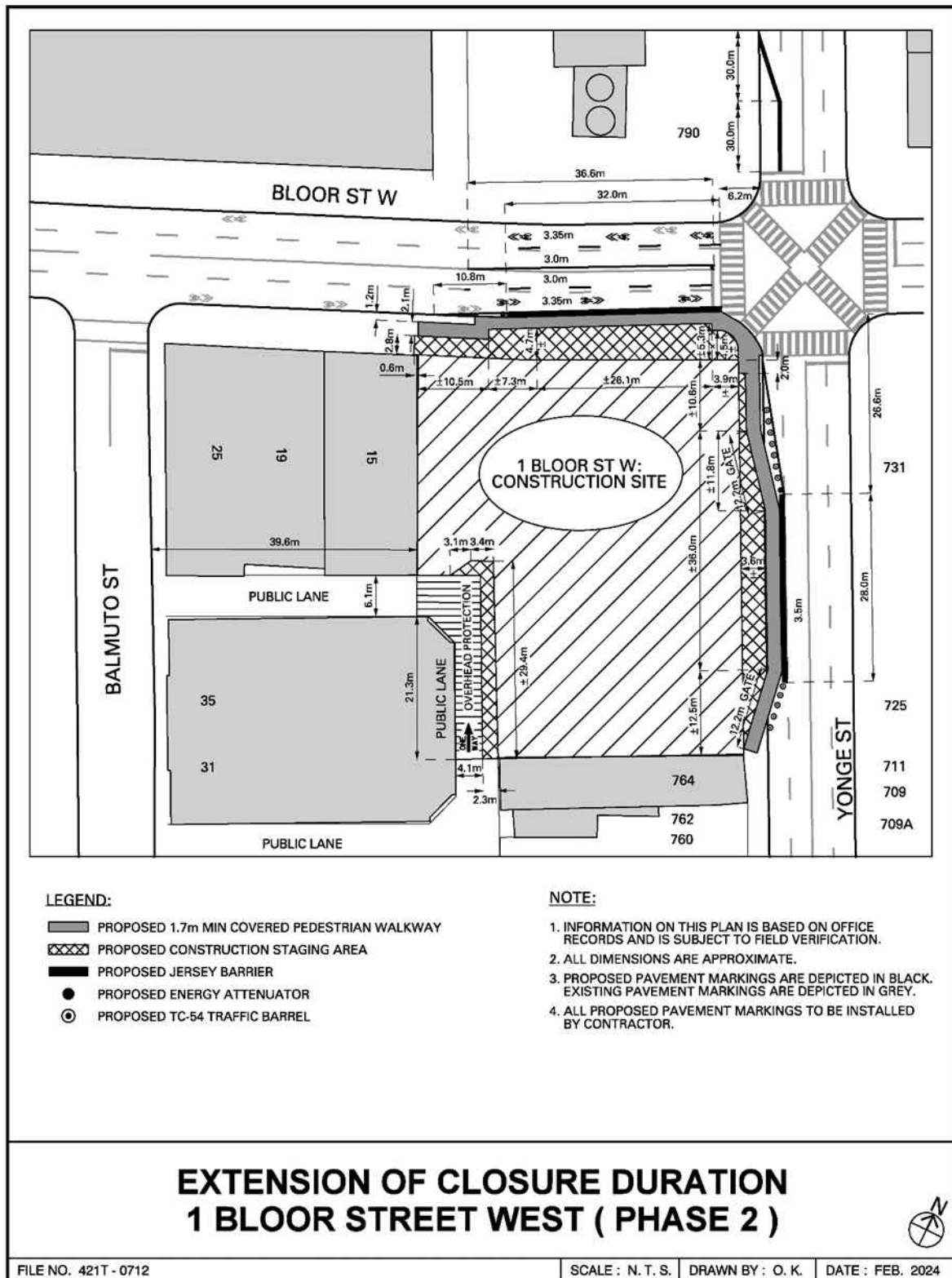
Roger Browne, M.A.Sc., P. Eng.
Director, Traffic Management, Transportation Services

ATTACHMENTS

Attachment 1: Existing Construction Staging - 1 Bloor Street West (Balmuto Street)

Attachment 2: Existing Construction Staging Area - 1 Bloor Street West (Yonge Street)





Construction Staging Area Time Extension - 1 Bloor Street West (Balmuto Street)

Date: June 21, 2024
To: Toronto and East York Community Council
From: Director, Traffic Management, Transportation Services
Wards: Ward 11, University-Rosedale

SUMMARY

As the Toronto Transit Commission (TTC) operates a transit service on Yonge Street and Bloor Street West, City Council approval of this report is required. Further, since this report contains recommendations that do not comply with City policy or by-laws, City Council approval of this report is required. Mizrahi Development Group (The One) Inc. (the "developer") is currently the owner of a mixed-use development at 1 Bloor Street West (Mizrahi Project). The site is located on the southwest corner of Yonge Street and Bloor Street West. The development will consist of an eight-storey high retail podium and an 86-storey high residential tower.

A five-metre-wide portion of the northbound curb lane on Balmuto Street from a point 29 metres south of Bloor Street West to a point 12 metres further south is currently closed to accommodate construction staging operations for the development. The west sidewalk and a three-metre-wide portion of the southbound curb lane on Yonge Street, between Bloor Street West and a point 66 metres south are also closed. The previous closure of the south sidewalk and a 1.2-metre-wide portion of the eastbound curb lane on Bloor Street West, between Yonge Street and a point 49 metres west, is no longer required. Pedestrians have access to the existing sidewalk on the south side of Bloor Street West, abutting the construction site, which is covered and protected. Existing vehicle and bicycle lanes are maintained for both directions on Bloor Street West.

Toronto and East York Community Council, at its meeting on November 25 and 26, 2020, approved the construction staging area on Balmuto Street from November 30, 2020 to November 30, 2022. In a separate meeting on March 10, 2021, Toronto and East York Community Council approved an extension of the construction staging areas on Yonge Street and Bloor Street West from September 1, 2020 to December 31, 2021. In a meeting on December 14 and 15, 2022, City Council approved an extension of the construction staging areas on Yonge Street, Bloor Street West and Balmuto Street, from December 14, 2022 to March 31, 2023. At the time, the developer indicated they would require the staging areas until June 30, 2025.

At its meeting on March 29, 2023, City Council approved an extension of the construction staging areas on Yonge Street, and Bloor Street West, from April 1, 2023 to June 30, 2025, and for Balmuto Street an extension was approved for only one year from April 1, 2023 to April 1, 2024. At the time of the meeting on March 29, 2023, the developer indicated they would require the staging area on Balmuto Street until June 30, 2025.

The applicant applied for another time extension of the construction staging area permit on Balmuto Street and at its meeting on March 20 and 21, 2024, the Toronto and East York Community Council approved an extension for a four month period, from April 2, 2024 to July 31, 2024. At the time of the meeting the developer indicated they would require the staging area on Balmuto Street until August 31, 2025. The developer now requires a further permit for the duration of the construction staging on Balmuto Street, to allow for the construction of the development to be completed.

Transportation Services is requesting authorization to extend the duration of the construction staging area on Balmuto Street, between the first public lane south of Bloor Street West to Bloor Street West to allow for intermittent closures of the street during concrete pouring operations, for an additional 18 months from August 1, 2024 to February 1, 2026.

For the maintenance of the concrete pump on Balmuto Street, Transportation Services is also requesting the authority for the General Manager of Transportation Services to issue a Temporary Street Occupation permit for Balmuto Street to the developer, notwithstanding that not all the criteria within the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, for so doing would be met.

In addition, Transportation Services is requesting authority to transfer the ownership of the Temporary Street Occupancy Permit for Balmuto Street in the event that the development and property is acquired by a new owner during the requested construction staging area times extension period from August 1, 2024 to February 1, 2026. The developer is currently the subject of Court-supervised Receivership proceedings, and the property may be the subject of a Court-supervised sale during this period.

The issuance or transfer of the permit is contingent on the applicant providing an indemnity and security satisfactory to the General Manager, Transportation Services and the City Solicitor. Transportation Services is also requesting authority to transfer indemnity agreement(s) to a new owner, subject to the ongoing court proceedings.

RECOMMENDATIONS

The Director, Traffic Management, Transportation Services recommends that:

1. City Council authorize for purposes of construction at 1 Bloor Street West the temporary closure to vehicular traffic of a five-metre-wide portion of the northbound curb lane on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from August 1, 2024 to February 1, 2026 inclusive.
2. City Council authorize for purposes of concrete pouring at 1 Bloor Street West, the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from August 1, 2024 to February 1, 2026 inclusive.
3. City Council direct the applicant to continue posting a 24-hour monitored construction hotline number on the hoarding board, which must be prominently placed and legible from 20 metres and on all elevations from the construction site.
4. City Council direct the applicant to continue providing and installing public art, including mural artwork, onto every elevation of the hoarding board with adequate spotlighting for night-time illumination, at their sole cost, to the satisfaction of the Ward Councillor.
5. City Council direct the applicant to continue sweeping the construction site daily and nightly, or more frequently as needed to be cleared of any construction debris and made safe.
6. City Council direct the applicant to continue pressure washing the construction site and adjacent sidewalks and roadways weekly, or more frequently as needed to be cleared of any construction debris and made safe.
7. City Council direct the applicant to continue ensuring that the existing sidewalks or the proposed pedestrian walkway have proper lighting to ensure safety and visibility at all times of the day and night.
8. City Council direct the applicant to continue consulting and communicating all construction, parking and road occupancy impacts with local business improvement areas and resident associations in advance of any physical road modifications.
9. City Council direct the applicant to provide a sufficient number of traffic control persons as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer, on a daily basis to control construction vehicle access and egress to and from the site and maintain a safe environment for the public.
10. City Council direct the applicant to provide a sufficient number of pay-duty Police Officers as determined by the Work Zone Traffic Coordinator and Toronto Police Construction Liaison Officer during large scale concrete pours and large scale material deliveries to control vehicle access and egress to and from the site and maintain a safe environment for the public.

11. City Council direct the applicant to continue installing appropriate signage and converging mirrors to ensure that pedestrians, cyclists and motorists safety is considered at all times.
12. City Council direct that Balmuto Street, Bloor Street West and Yonge Street be returned to their pre-construction traffic regulations and lane configurations when the project is completed.
13. City Council authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit to Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. for the period of August 1, 2024 to February 1, 2026, inclusive, for a portion of Balmuto Street, from a point 29 metres south of Bloor Street West and a point 12 metres further south, without Alvarez & Marsal Canada Inc., Court – Appointed Receiver for MIZRAHI DEVELOPMENT GROUP (THE ONE) having to comply with certain requirements of the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, as more generally described in the report from the Director, Traffic Management, Transportation Services (dated February 20, 2024) and, where the approval conflicts with Chapter 743, Streets and Sidewalks, Use of, the approval of the General Manager, Transportation Services shall prevail to the extent of the conflict.
14. City Council authorize the General Manager, Transportation Services, to transfer and/or assign the Temporary Street Occupancy Permit for Balmuto Street in the event that a new party acquires or becomes responsible for the Mizrahi Project during the requested construction staging area time extension request from August 1, 2024 to February 1, 2026.
15. City Council direct the applicant to continue ensuring adequate winter maintenance of all the areas that are not accessible by the City of Toronto Contracted Services, within the affected area designated on the construction management plan.
16. City Council direct the applicant to continue visually improving the pumping station fence by providing and installing public art, in a manner that does not block sightlines for vehicles exiting the laneway.
17. City Council direct the applicant to continue only placing additional bollards and traffic signage on the street fifteen minutes prior to operating the pump; to removing them within fifteen minutes of discontinuing use of the pump; and to not placing them in legal parking areas.
18. City Council direct the applicant to cooperate with and provide all necessary assistance to the City Engineers, staff and representatives carrying out operation, maintenance, and construction activities to municipal infrastructure within the vicinity of the construction staging area, and at no cost to the City to remove any staging to accommodate the necessary municipal infrastructure work.

19. City Council direct the applicant to continue ensuring that cement trucks and other construction vehicles and equipment do not queue or park on Balmuto Street, and that they do not block access for service vehicles accessing the properties at 21 and 35 Balmuto Street, except during concrete pouring operations.

20. City Council authorize the General Manager, Transportation Services, to transfer and/or assign existing indemnity agreements with Mizrahi Development Group (The One) Inc. or its Court-appointed Receiver and/or negotiate, enter into and execute further indemnity agreement(s) to address the City's interests with respect to any and all temporary street occupations and closures on Balmuto Street, on terms and conditions satisfactory to the General Manager, Transportation Services, and in a form satisfactory to the City Solicitor.

21. City Council authorize the General Manager, Transportation Services, to require the applicant to provide financial security in a form and amount satisfactory to the General Manager, Transportation Services, as a condition of granting the above permits.

22. City Council direct that parts 1 to 19, inclusive, above, be subject to Mizrahi Development Group (The One) Inc. its Court-appointed Receiver, and/or a transferee or assignee of the permits entering into such indemnity agreements and/or providing security as may be required by the General Manager, Transportation Services pursuant to Parts 20-22, above.

FINANCIAL IMPACT

There is no financial impact to the City. Mizrahi Developments is responsible for all costs, including payment of fees to the City for the occupancy of the right-of-way. Based on the area enclosed and projected duration of the proposed temporary closures on Balmuto Street, these fees will be approximately \$ 255,000.00 including lost revenue from the parking machines (if applicable).

DECISION HISTORY

City Council, at its meeting on March 20 and 21, 2024, adopted Item 2024.TE11.36 entitled " Construction Staging Area Time Extension - 1 Bloor Street West (Balmuto Street) and, in so doing, authorized a temporary closure for purposes of construction at 1 Bloor Street West, the temporary closure to vehicular traffic of a 5 metre-wide portion of the northbound curb lane and to pedestrian traffic on the east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from April 2, 2024 to July 31, 2024, inclusive.

As well as authorized the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from April 2, 2024 to July 31, 2024, inclusive.

<https://secure.toronto.ca/council/agenda-item.do?item=2024.TE11.36>

City Council, at its meeting on March 29, 2023, adopted Item TE3.23 entitled "1 Bloor Street West (Yonge Street and Balmuto Street) - Construction Staging Area Time Extension" and, in so doing, authorized a temporary closure for purposes of construction at 1 Bloor Street West, the temporary closure to vehicular traffic of a 5 metre-wide portion of the northbound curb lane and to pedestrian traffic on the east sidewalk on Balmuto Street, between a point 29 metres south of Bloor Street West and a point 12 metres further south, from April 1, 2023 to April 1, 2024, inclusive. As well as authorized the intermittent temporary closure to vehicular traffic of Balmuto Street, from the first public lane south of Bloor Street West to Bloor Street West, from April 1, 2023 to April 1, 2024, inclusive. Furthermore, City Council authorized for purposes of construction at 1 Bloor Street West the temporary closure to pedestrian traffic of the west sidewalk and to vehicular traffic of a three-metre-wide portion of the southbound curb lane, both on Yonge Street, between Bloor Street West and a point 66 metres south, from April 1, 2023 to June 30, 2025, inclusive.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.TE3.23>

City Council, at its meeting on December 14 and 15, 2022, adopted Item TE1.11 entitled "1 Bloor Street West (Yonge Street, Bloor Street and Balmuto Street)" and, in so doing, authorized the closure of a portion of the northbound curb lane and east sidewalk on Balmuto Street, the sidewalk and a portion of the southbound lane on Yonge Street, and the closure of the sidewalk and a portion of the eastbound lane on Bloor Street West, from December 14, 2022 to March 31, 2023.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.TE1.11>

City Council, at its meeting on March 10, 2021, adopted Item TE23.57 entitled "Construction Staging Area Time Extension - 1 Bloor Street West, Phase 2 - (Yonge Street and Bloor Street West)" and, in so doing, authorized the closure of the sidewalk and a portion of the southbound lane on Yonge Street and the closure of the sidewalk and a portion of the eastbound lane on Bloor Street West, from September 1, 2020 to December 31, 2021.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.TE23.57>

City Council, at its meeting on November 25 and 26, 2020, adopted Item TE20.29 entitled "Construction Staging Area - 1 Bloor Street West (Balmuto Street)" and, in so doing, authorized the closure of the sidewalk and a portion of the northbound lane on Balmuto Street, from November 30, 2020 to November 30, 2022.

[Agenda Item History - 2020.TE20.29 \(toronto.ca\)](#)

City Council, at its meeting on November 26 and 27, 2019, adopted Item TE10.27, entitled "Construction Staging Area Time Extension Phase 2 - Yonge Street and Bloor Street West -1 Bloor Street West" to extend the closure of the sidewalk and a portion of the southbound lane on Yonge Street and the closure of the sidewalk and a portion of the eastbound lane on Bloor Street West, until August 31, 2020.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.TE10.27>

City Council, at its meeting on October 2, 3 and 4 2017, adopted Item TE26.69 entitled "Construction Staging Area (Phase 1) Yonge Street and Bloor Street West (1 Bloor Street West)" and, in so doing, authorized the closure of the sidewalk and a portion of the southbound lane on Yonge Street and the closure of the sidewalk and a portion of the eastbound lane on Bloor Street West, from October 9, 2017 to October 31, 2019. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE26.69>

COMMENTS

Status of the Development

A mixed-use development is currently owned by Mizrahi Development Group (The One) Inc. at 1 Bloor Street West. The site is bounded by Bloor Street West to the north, Yonge Street to the east and existing commercial uses to the south and west.

The development, in its completed form, will include an 86-storey high residential condominium building atop an eight-storey high retail podium. Retail uses will also be provided in a below grade concourse level. A four-level underground parking garage will be provided.

Major construction activities and associated timelines for the development are described below:

- Above grade formwork: Ongoing to February 2026;
- Building envelope phase: Ongoing to September 2027, and;
- Interior finishes stage: April 2024 to April 2028.

An extension for the duration of the construction staging area on Balmuto Street is being requested to allow for the completion of the construction project. At the previous City Council meeting on March 20 and 21, 2024 the developer requested for the construction staging on Balmuto Street to be in effect until August 31, 2025 however an extension was granted for only four months till July 31, 2024 which is now near end.

Construction Staging Areas

Traditionally, Transportation Services prefers to have the construction staging areas abutting the development. The delegated authority given to the General Manager, Transportation Services to issue Temporary Street Occupation permits pursuant to City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, provides that "a permit may be issued under this section when it is required on behalf of an owner of the lands abutting the street, or portion thereof that will be occupied temporarily by equipment or material that has been used, or that is intended to be used, for constructing, repairing, or demolishing a building or structure situated on the lands, or that will be otherwise temporarily occupied in connection with the applicants use of the lands". Irrespective of the above provision in Chapter 743, the General Manager may still issue a permit under Chapter 743 despite the temporary occupation of any portion of the street beyond the limit of the applicants' property frontage on the street, where the

adjoining property owner consents in writing and waives all claims against the City for losses and damages that may arise or result directly or indirectly from this occupation. The proposed temporary street occupation on Balmuto Street does not abut the applicant's property. Rather the proposed temporary street occupation on Balmuto Street would abut the property at 19 Bloor Street West, whose owner has not consented in writing or waived all such claims against the City. City staff contacted Mappro to seek its views on the proposed temporary street occupation. Mappro responded to advise that it opposes any further authorization of the temporary street occupation, but alternatively requested that the temporary street occupation be authorized for no more than one year, and that Mizrahi's Receiver be required to reimburse Mappro for damages it claims from the temporary street occupation, put in place further security measures around Mappro's property, address and repair issues and damage from loitering and vandalism that it alleges, and coordinate regarding any future construction work at Mappro's property to ensure that the work can be performed efficiently. Mappro has previously deputed to Toronto and East York Community Council and Council to oppose the temporary street occupation.

Given the above, City Council approval is required for the temporary street occupation to occur on Balmuto Street and to authorize the General Manager, Transportation Services, to issue a Temporary Street Occupation permit. Several mechanisms of mitigating the City's risks and seeking to accommodate neighbours have been included in the recommendations.

Construction staging operations for the development will continue to take place on Balmuto Street, within a five-metres-wide portion of the northbound curb lane between a point 29 metres south of Bloor Street West and a point 12 metres further south. Further to on-site meetings with Mizrahi Development Group, their constructor has agreed to pull-back the hoarding around the concrete pump, from the sidewalk, allowing for the future installation of walk-through scaffolding over the existing sidewalk to accommodate building renovations at 17-19 Bloor Street West. Pedestrians will be accommodated on the existing east side sidewalk of Balmuto Street until renovations at 17-19 Bloor Street West commence. Two-way traffic operations will be maintained on Balmuto Street within the remaining six-metre-wide roadway during days when there is no concrete pouring scheduled; however, a modification to the construction staging setup will be required during days when concrete pouring is scheduled to take place (approximately every third day), during which Balmuto Street will be closed to vehicle traffic between Bloor Street West and the first public lane south of Bloor Street West. The closure will be required to accommodate space for concrete trucks to stop next to the pump. The space north of the pump, next to the properties at 17-19 Bloor Street West, was previously used by concrete trucks (which allowed for Balmuto Street to remain open); however, that space will be made available for Mappro Realty Inc related construction work at 17-19 Bloor Street West. Relocation of the concrete pump set-up on Balmuto Street is no longer feasible due to the mechanics of pumping concrete into the site, as the feeder pipe and structural base supporting the pump are now in-place at their current location.

Construction staging operations will also continue to take place within the road right-of-way on the west side of Yonge Street abutting the site. The sidewalk and southbound curb lane on the west side of Yonge Street, between Bloor Street West and a point 66 metres south, will continue to be temporarily closed to accommodate construction staging operations. Pedestrians are directed to a 2.1-metre-wide covered and protected walkway within the closed portion of the southbound curb lane. Yonge Street, in the immediate vicinity of the site, operates as one southbound traffic lane and two northbound traffic lanes.

The southbound curb lane on Yonge Street north of Bloor Street West is temporarily closed, between the stop bar and a point 30 metres north (including taper). Vehicles and cyclists travelling in the southbound curb lane are channelized into the southbound through traffic lane to achieve smooth traffic flow around the existing construction staging area on Yonge Street. Southbound right-turn movements at the intersection of Yonge Street and Bloor Street West are prohibited at all times. In addition, the TTC near-side bus stop on Yonge Street at Bloor Street West was relocated approximately 60 metres north of Bloor Street West.

A previous construction staging area was set-up on the sidewalk and a portion of the curb lane on the south side of Bloor Street West, between Yonge Street and a point 49 metres west, which is no longer required. Pedestrians have access to the existing sidewalk on the south side of Bloor Street West, abutting the construction site, which is covered and protected. Existing vehicle and bicycle lanes are maintained for both directions on Bloor Street West.

A review of the City's Five-Year Major Capital Works Program was undertaken to identify any conflicts between the proposed construction staging areas and planned capital works projects in the area. The review of the program on Bloor Street West indicates that Transportation Services have infrastructure enhancement work planned from 2026 to 2027, and Toronto Hydro Electric System Ltd have overhead and underground Civil and Electrical work planned in 2025. On Balmuto Street, Toronto Hydro Electric System Ltd have overhead and underground Civil and Electrical work planned in 2025. On Yonge Street, Toronto Hydro Electric System Ltd. have overhead, and underground civil and electrical work planned in 2026, and Transportation Services has infrastructure enhancement work planned from 2028 to 2030.

The developer was informed that the staging areas may need to be temporarily removed or modified to accommodate the above mentioned Capital Works, and failure to do so may result in the developer being responsible to cover any cost penalties incurred by the City as a result. The proposed permit conditions require the applicant to cooperate with and provide all necessary assistance to the City Engineers, staff and representatives carrying out operation, maintenance, and construction activities to municipal infrastructure within the vicinity of the construction staging area at no cost to the City.

Transportation Services is satisfied that the applicant has looked at all options to alleviate congestion at these locations.

The Ward Councillor has been advised of the recommendations of this staff report.

CONTACT

Nathan Sham, Acting Manager, Work Zone Coordination and Traffic Mitigation,
Transportation Services, (416) 338-5397, Nathan.Sham@toronto.ca

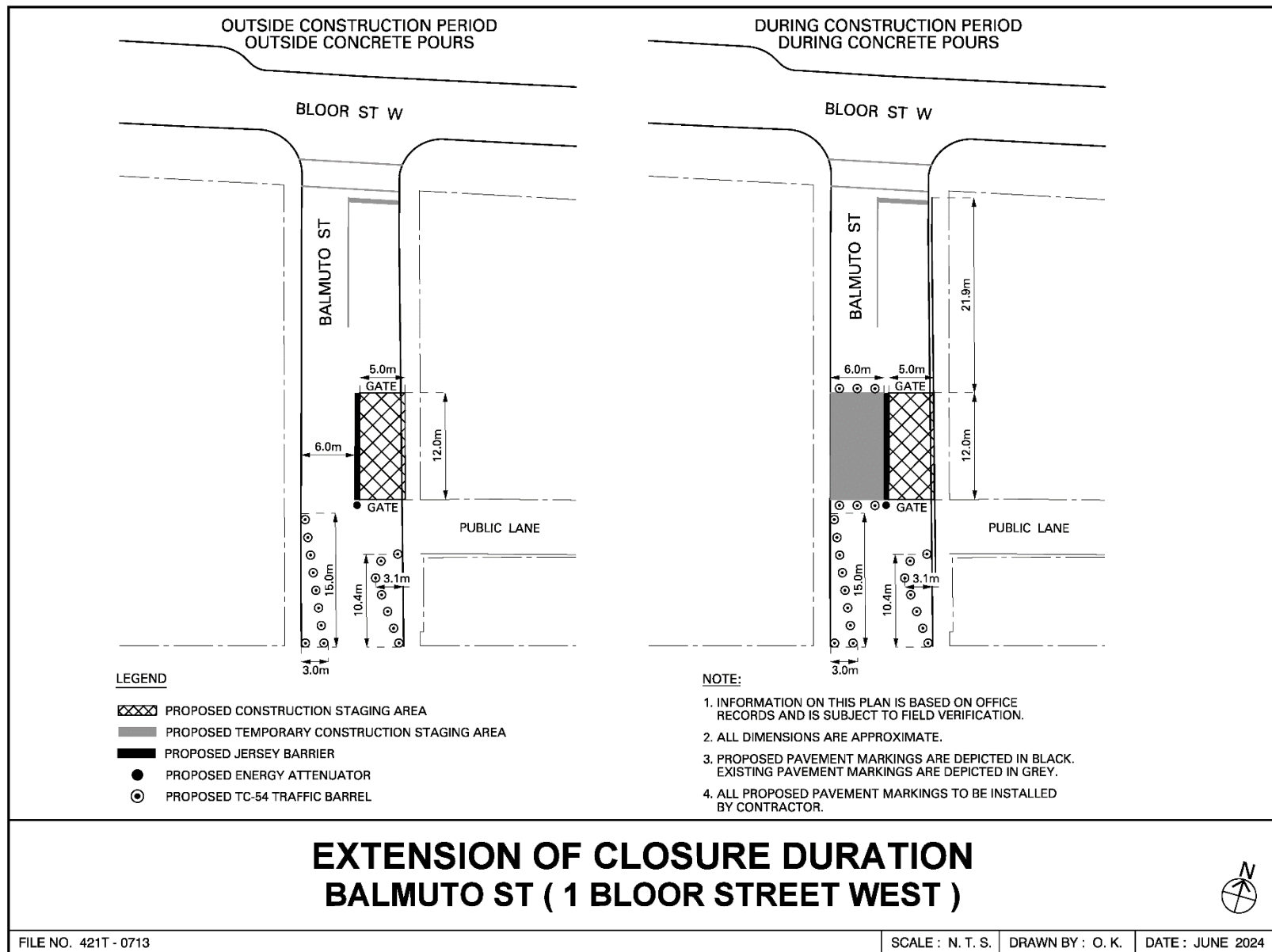
SIGNATURE

Roger Browne, M.A.Sc., P. Eng.
Director, Traffic Management, Transportation Services

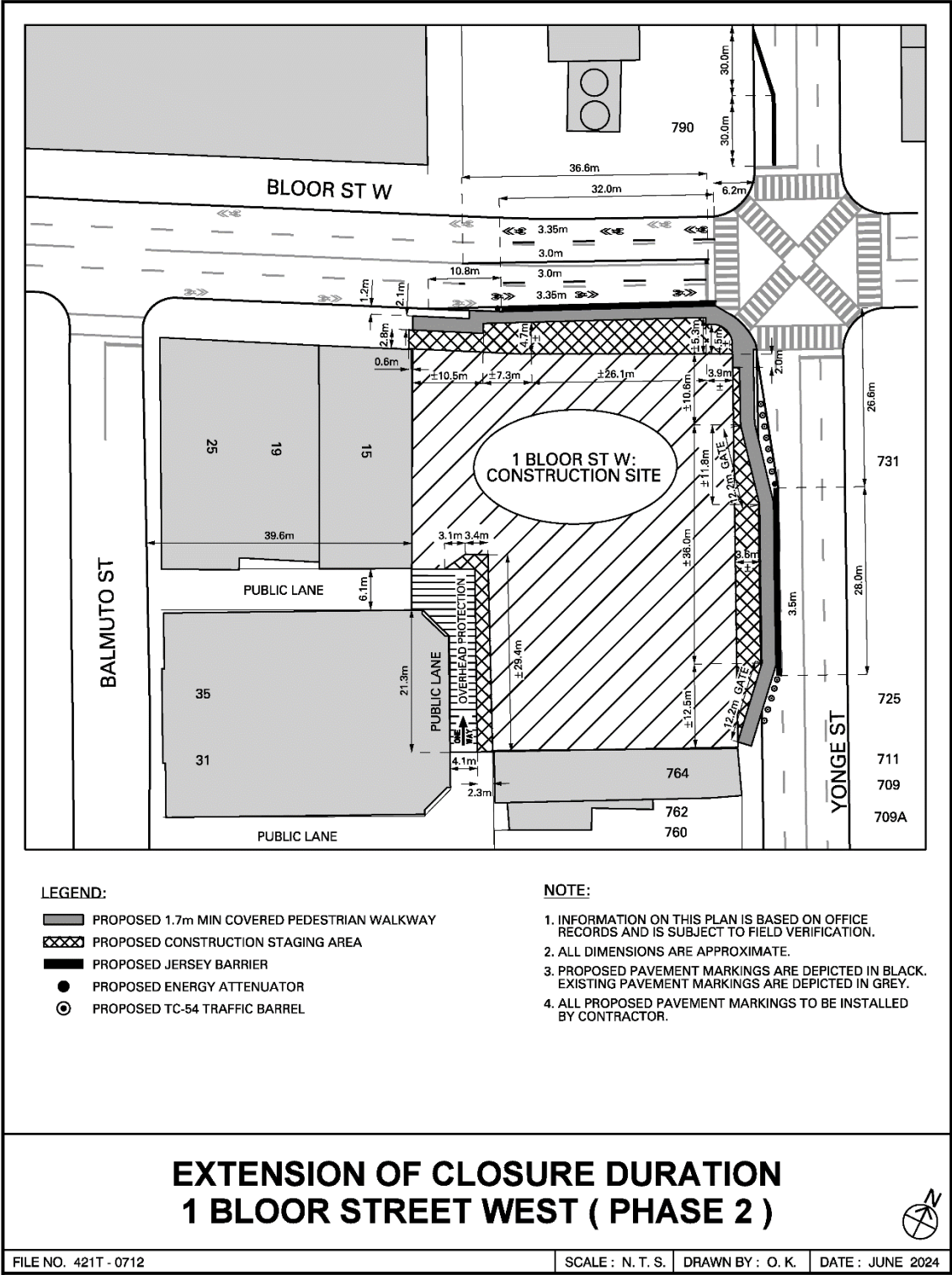
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Attachment 2: Existing Construction Staging Area - 1 Bloor Street West (Yonge Street)



Attachment 2: Existing Construction Staging Area - 1 Bloor Street West (Yonge Street)





SPEIGEL NICHOLS FOX LLP
• BARRISTERS & SOLICITORS •

Direct Extension 280
allison@ontlaw.com

September 7, 2021

**** sent via email to: clerk@toronto.ca and Gadi.Katz@toronto.ca
and via courier ****

Toronto City Clerk's Office
Toronto City Hall
13th floor W.,
100 Queen St. W.
Toronto, ON M5H 2N2

Mr. Gadi Katz
City of Toronto, Legal Services
55 John St.
Toronto, ON M5V 3C6

Dear Ms. Watkiss and Mr. Katz:

Re: Claim for Injurious Affection under the *Expropriations Act*, R.S.O. 1990, c. E.26

We act as counsel for Mappro Realty Inc. ("**Mappro**"), the owner of the property (the "**Property**") municipally known as 19 Bloor Street West.

By virtue of this letter, Mappro hereby makes a claim (the "**Claim**") for compensation for injurious affection in accordance with s. 22 of the *Expropriations Act* (the "**Act**"). Mappro seeks compensation from the City of Toronto (the "**City**") for all of the damages that Mappro has and will incur, including the reduction in the market value of the Property, arising from one or more of the following: (a) the construction of the One (defined below); (b) the construction and use of the Staging Area (defined below); and (c) the issuance of the Original Permit (defined below) and the Second Permit (defined below).

All dates set out herein are approximate.

A. The Property and the One

The Property is located on the southeast corner of Bloor Street ("**Bloor**") and Balmuto Street ("**Balmuto**"). The building on the Property is currently split into two units: one leased and operated by Scotiabank (the "**Scotia Building**"), and the other operated by Mappro (the "**Mappro Building**").

Mizrahi Developments Inc. ("**Mizrahi**") owns the property (the "**Mizrahi Property**") at 1 Bloor Street West, at the corner of Bloor and Yonge Street. Mizrahi is in the process of constructing a mixed-use development (the "**One**") on the Mizrahi Property and appears to have retained Clarke Construction

Management Inc. (“**Clarke**”) to act as the construction manager on the project (the “**Project**”). As part of that Project, Mizrahi (in, at least one instance, through Clarke) appears to have sought and obtained permits from the City to use a portion of Balmuto directly in front of the Mappro Building as a construction staging area (the “**Staging Area**”). These permits included a permit granted in July 2020 (the “**Original Permit**”) and a second temporary permit (the “**Second Permit**”) that appears to have been granted in June 2021.

B. The City's Approval and Permits

The City appears to have authorized the construction of the One by issuing various types of authorizations and permits.

On July 14, 2020, the General Manager, Transportation Services (“**Transportation Services**”), on behalf of the City, granted the Original Permit allowing the occupation of the northbound lanes on Balmuto “for concrete pour” from July 14, 2020 to August 21, 2020. Mizrahi began using the portion of Balmuto directly in front of the Mappro Building as a construction staging area (i.e. the Staging Area) for the construction of the One (including, by installing a concrete pump pedestal).

The Original Permit appears to have been extended numerous times – though Mappro is not aware of the specifics of how or under what circumstances.

The Original Permit, however, was only a stopgap solution. Mizrahi required a longer-term permit that would authorize it to use the Staging Area for a longer period of time. The request for a longer-term permit (the “**Request**”) first came up for consideration at the meeting of the Toronto and East York Community Council (“**TEYCC**”) on July 15, 2020. The Request was deferred on a number of occasions. It came up for consideration for a final time on November 10, 2020. At that time, TEYCC recommended that City Council adopt a set of recommendations (the “**Recommendations**”) that would, in effect, grant the Request. On November 25, 2020, City Council adopted the Recommendations with some minor amendments. On June 8, Mappro received a copy of the alleged Second Permit.

The City claims to have issued the various types of authorizations and permits in connection with the construction of the One and the construction and use of the Staging Area (including the Original Permit and the Second Permit) pursuant to its statutory authority under, amongst other things, the *Municipal Code*, the *City of Toronto Act, 2006*, and the *Planning Act*.

Mizrahi claims that its construction activities comply with the permits, authorizations, and requirements set by the City.

C. Injurious Affection

Construction and use of the One and the Staging Area (collectively, the “**Construction**”), allegedly made possible by the City's issuance of authorizations and permits, substantially interfere with Mappro's enjoyment of the Mappro Building and, thus, the Property.

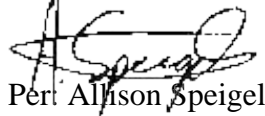
The Mappro Building is primarily a rental property. Mappro has suffered, and continues to suffer, significant personal and business damages, as well as a reduction in the market value of the Property as a result of the Construction.

As a result of the Construction, Mappro has, amongst other things, been unable to secure a tenant to rent the Mappro Building either on a short-term or long-term basis, notwithstanding all reasonable efforts. The quantum of Mappro's damages is not yet known. Further information will be provided as it becomes known.

If the parties are unable to resolve the Claim, Mappro will commence proceedings.

Please acknowledge receipt of this letter as satisfying the requirement to make a claim against the City under section 22 of the Act.

Yours very truly,
SPEIGEL NICHOLS FOX LLP

A handwritten signature in black ink, appearing to read "Peri Allison Speigel", is written over a horizontal line.

Peri Allison Speigel
AS:cl

September 7, 2021

**** sent via email to: maryellen.bench@dentons.com ****

Mary Ellen Bench
Dentons Canada LLP
77 King Street West, Suite 400,
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Dear Ms. Bench:

Re: Claim for injurious affection under the *Expropriations Act*, R.S.O. 1990, c. E.26

We act as counsel for Mappro Realty Inc. ("**Mappro**"), the owner of the property (the "**Property**") municipally known as 19 Bloor Street West.

By virtue of this letter, Mappro hereby makes a claim (the "**Claim**") for compensation for injurious affection in accordance with s. 22 of the *Expropriations Act* (the "**Act**"). Mappro seeks compensation from Mizrahi Developments Inc. ("**Mizrahi**") for all of the damages that Mappro has and will incur, including the reduction in the market value of the Property, arising from one or more of the following: (a) the construction of the One (defined below); (b) the construction and use of the Staging Area (defined below); and (c) the issuance of the Original Permit (defined below) and the Second Permit (defined below).

All dates set out herein are approximate.

A. The Property and the One

The Property is located on the southeast corner of Bloor Street ("**Bloor**") and Balmuto Street ("**Balmuto**"). The building on the Property is currently split into two units: one leased and operated by Scotiabank (the "**Scotia Building**"), and the other operated by Mappro (the "**Mappro Building**").

Mizrahi owns the property (the "**Mizrahi Property**") at 1 Bloor Street West, at the corner of Bloor and Yonge Street. Mizrahi is in the process of constructing a mixed-use development (the "**One**") on the Mizrahi Property and appears to have retained Clarke Construction Management Inc. ("**Clarke**") to act as the construction manager on the project (the "**Project**"). As part of that Project, Mizrahi (in, at least one instance, through Clarke) appears to have sought and obtained permits from the City of Toronto (the "**City**") to use a portion of Balmuto directly in front of the Mappro Building as a construction staging area

(the "**Staging Area**"). These permits included a permit granted in July 2020 (the "**Original Permit**" and a second temporary permit (the "**Second Permit**") that appears to have been granted in June 2021.

B. The City's Approval and Permits

The City appears to have authorized the construction of the One by issuing various types of authorizations and permits.

On July 14, 2020, the General Manager, Transportation Services ("**Transportation Services**"), on behalf of the City, granted the Original Permit allowing the occupation of the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020. Mizrahi began using the portion of Balmuto directly in front of the Mappro Building as a construction staging area (i.e. the Staging Area) for the construction of the One (including, by installing a concrete pump pedestal).

The Original Permit appears to have been extended numerous times – though Mappro is not aware of the specifics of how or under what circumstances.

The Original Permit, however, was only a stopgap solution. Mizrahi required a longer-term permit that would authorize it to use the Staging Area for a longer period of time. The request for a longer-term permit (the "**Request**") first came up for consideration at the meeting of the Toronto and East York Community Council ("**TEYCC**") on July 15, 2020. The Request was deferred on a number of occasions. It came up for consideration for a final time on November 10, 2020. At that time, TEYCC recommended that City Council adopt a set of recommendations (the "**Recommendations**") that would, in effect, grant the Request. On November 25, 2020, City Council adopted the Recommendations with some minor amendments. On June 8, Mappro received a copy of the alleged Second Permit.

The City claims to have issued the various types of authorizations and permits in connection with the construction of the One and the construction and use of the Staging Area (including the Original Permit and the Second Permit) pursuant to its statutory authority under, amongst other things, the *Municipal Code*, the *City of Toronto Act, 2006*, and the *Planning Act*.

Mizrahi claims that its construction activities comply with the permits, authorizations, and requirements set by the City.

C. Injurious Affection

Construction and use of the One and the Staging Area (collectively, the "**Construction**"), allegedly made possible by the City's issuance of authorizations and permits, substantially interfere with Mappro's enjoyment of the Mappro Building and, thus, the Property.

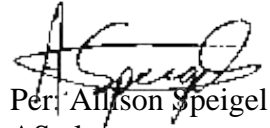
The Mappro Building is primarily a rental property. Mappro has suffered, and continues to suffer, significant personal and business damages, as well as a reduction in the market value of the Property as a result of the Construction.

As a result of the Construction, Mappro has, amongst other things, been unable to secure a tenant to rent the Mappro Building either on a short-term or long-term basis, notwithstanding all reasonable efforts. The quantum of Mappro's damages is not yet known. Further information will be provided as it becomes known.

If the parties are unable to resolve the Claim, Mappro will commence proceedings.

Please acknowledge receipt of this letter as satisfying the requirement to make a claim against Mizrahi under section 22 of the Act.

Yours very truly,
SPEIGEL NICHOLS FOX LLP



Per: Allison Spiegel
AS:cl

CITATION: Mappro Realty Inc. v. Mizrahi Developments Inc., 2023 ONSC2538
COURT FILE NO.: CV-22-686696
DATE: April 25, 2023

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Mappro Realty Inc. v. Mizrahi Developments Inc. and City of Toronto;

BEFORE: **ASSOCIATE JUSTICE C. WIEBE**

COUNSEL: Susanne Balpataky for Mappro Realty Inc.;
Fraser Mackinnon Blair for Mizrahi Developments Inc.;
Nicholas Rolfe for the City of Toronto.

HEARD: April 25, 2023.

ENDORSEMENT

[1] This was a motion brought by the plaintiff, Mappro Realty Inc. (“Mappro”), seeking an order pursuant to Rule 5.04(2) correcting the name, “Mizrahi Developments Inc.” (“MDI”), to the proper name of the registered owner of 1 Bloor Street West, Toronto, Mizrahi Development Group (The One) Inc. (“MDG”).

[2] Mappro has property next to 1 Bloor Street West. The underlying action concerns allegations of interference with Mappro’s property rights by the high-rise development underway on 1 Bloor Street West named “The One.”

[3] By the time of the argument of the motion, the only issue was the costs of the motion. The parties had agreed that the requested substantive order should be granted. Concerning costs, there were two issues: whether Mappro or MDI should pay the other costs; and what the proper quantum of the award of costs should be. No one was seeking costs from the City of Toronto, who attended only to observe.

[4] On the first issue, I determined, after reading the motion material and hearing oral argument, that MDI should pay Mappro costs. I gave that ruling orally and added that I would issue written reasons to support that ruling. The following are my reasons:

- a) The test of misnomer is whether it is clear that the plaintiff intended to sue the rightful defendant, that a party properly informed would have known from a reading of the statement of claim that the rightful defendant was being sued, and that the order is otherwise just; see *Stekel v. Toyota Canada Inc.*, 2011 ONSC 6507 (CanLII) at paragraph 24 and *Clarhar-Hebert v. Dan*, 2022 ONSC5720 at paragraph 23.

- b) It is clear that this test was met in this case. The statement of claim issued on September 7, 2022 made it clear that Mappro was suing the owner of 1 Bloor Street West. Furthermore, MDI knew MDG was the proper party to the action when it received and reviewed the statement of claim, and that there was a mistake. That was evident from the email the lawyer for MDI, Barbara Grossman, sent to the lawyer for Mappro on December 22, 2022 shortly after MDI was served with the statement of claim. In this email, Ms. Grossman identified that MDI was wrongly named as it had no interest in 1 Bloor Street West. She called this “an inadvertent misapprehension about the corporate entity on title and on the permit . . .” She demanded that MDI be removed.
- c) On December 23, 2022, the day after the Grossman email, Mappro served the Notice of Motion for this motion with the return date yet to be determined. MDI should have consented to this motion, or at least indicated that it was not opposing. There was some discussion about whether a party could consent to a motion under Rule 5.04(2). I saw no reason why that could not have been done. In any event, there was nothing stopping MDI from indicating that it was not opposing. After securing the inevitable City lack of opposition, Mappro could then have brought this as a motion in writing. The action could have proceeded accordingly while the parties awaited the in writing order.
- d) That was not done. Instead, MDG embarked on a course of conduct that purported to preserve rights to a limitation defence. On December 29, 2022 Ms. Grossman emailed the lawyer for Mappro, Allison Spiegel, proposing a consent order pursuant to Rule 26.02(b) that added MDG and deleted MDI and that expressly deferred the argument of the misnomer point. She justified this position on limitation grounds without explaining what those were. She later send a consent document embodying her position. Mr. Blair in argument explained that the pleaded cause of action was of a continuing tort and that the limitation period would, therefore, bear on the issue of damages. That was not explained by Ms. Grossman. In any event, where, as here, the misnomer is clear, due diligence is immaterial to the motion as the rightful party will be viewed as having been a party from the inception of the action; see *Lloyd v. Clark*, 2008 ONCA 343 (CanLII) at paragraph 4 and *Clabar-Hebert, op. cit.*, at paragraph 28. Mappro was entitled to the misnomer order it sought, not some other order.
- e) On February 23, 2023, with Ms. Spiegel having obtained a motion date and threatening to bring this motion and seek costs, Ms. Grossman emailed stating that she would “recommend” not opposing this motion but on condition that the above noted consent be included in the motion material and that Mappro not seek costs against MDI. I agree with Ms. Balpataky that this was an unacceptable position. By this time, a “recommendation” would not suffice. MDI needed to state its position. Also, Mappro had incurred needless costs on this issue and deserved to get them paid. Furthermore, requiring the inclusion of the above noted consent in the motion material left the issue of misnomer open to question. Understandably, Mappro proceeded with this motion.
- f) On March 10, 2023 MDI delivered its responding material. It stated that it was not opposing the motion, but it included its contentious consent in its materials. It was no sooner than the argument of this motion that MDI finally made it clear that it was unreservedly not opposing the substance of this motion.

- g) I agree with Justice Lederer when he stated in his decision in *Bertolli et al v. Toronto (City) et al*, 2017 ONSC 7534 (CanLII) at paragraph 40 on the issue of costs in such a motion, that where a misnomer has been found, the order is not an indulgence. "It is an application of the law." Therefore, costs should be determined in the usual way. As a result, I found that, as Mappro was the successful party and as the issue of misnomer was clear from the beginning, Mappro should get costs.

[5] As for the second issue, I note that the parties both filed costs outlines. The Mappro costs outline showed a partial indemnity amount of \$13,525.16 and a substantial indemnity amount of \$20,054.16. MDI's costs outline showed a partial indemnity amount of \$13,607.46 and \$22,679.10 in substantial indemnity costs.

[6] Ms. Balpataky argued that Mappro should be awarded substantial indemnity costs of \$20,054.16. Mr. Blair argued that the amount should be partial indemnity costs of only \$8,000. I reserved on this issue of quantum.

[7] I have decided to award Mappro substantial indemnity costs of \$18,000, and I do so for the following reasons:

- a) MDI should pay substantial indemnity costs. In her December 22, 2022 email Ms. Grossman essentially conceded the misnomer point. She identified the mistake in the name and required that MDI be removed. By then embarking on a pointless exercise of trying to defend a groundless limitation defence, MDI caused this motion to be brought and the costs associated with it to be incurred.
- b) Indeed, MDI's conduct was tantamount to bullying. MDI wanted to keep the limitation defence, groundless as it was, hanging over Mappro during the pendency of this entire action. The only conclusion I can reach from this is that MDI wanted to gain an advantage from doing so. This needs to be sanctioned.
- c) The costs outlines of MDI exceed those of Mappro, and Mappro's material dealt with the substance of the motion, not just costs. MDI's motion material was filed when it knew it was not contesting the substance of the motion. Therefore, I draw the conclusion that MDI should reasonably expect to pay substantial indemnity costs in the range claimed by Mappro.
- d) Mr. Blair argued that I should discount the time spent by Ms. Spiegel in this motion as she was acting in the motion as a witness not a lawyer. I do not accept this position. There was no cross-examination of Ms. Spiegel. Therefore, her involvement was the swearing of her affidavit, an affidavit no doubt some other lawyer in the firm would have had to prepare if it was not her.
- e) Mr. Blair made a complicated argument about costs. He parsed out certain periods of time and argued that Mappro should be disentitled to costs for the periods after February 23, 2023 and March 10, 2023. He argued that MDI made reasonable offers to settle the motion on February 23, 2023 and thereafter. I disagree. There was no offer made by MDI on February 23, 2023, much less a reasonable one, and the MDI position remained unclear after March 10, 2023.

- f) I have discounted the Mappro substantial indemnity award by a small amount to recognize the fact that, due to its own lack of care in identifying the proper defendant, this motion was necessary and would have required a least a motion in writing, the costs of which Mappro would have had to absorb.

[8] I, therefore, reiterate that I award Mappro \$18,000 in substantial indemnity costs as against MDI. MDI must pay this amount within 30 days from April 26, 2023.

DATE: April 25, 2023

Charles Wiebe
ASSOCIATE JUSTICE C. WIEBE



No. CV-22-00686696-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE ^{ASSOCIATE} JUSTICE ₁ WIEBE

) ^{Tues} DAY, THE ^{25th} DAY
) OF ^{April}, 2023

BETWEEN:

MAPPRO REALTY INC.

Plaintiff

- and -

MIZRAHI DEVELOPMENTS INC. and CITY OF TORONTO

Defendants

ORDER

^{✓ in part, ✓ CW} **THIS MOTION** made by the plaintiff, Mappro Realty Inc. ("**Mappro**") for an order, on consent, to correct the name of a defendant who was incorrectly named, was ^{✓ heard ✓ CW} ~~read~~ this day at Toronto.

ON READING Mappro's motion record and the consent of the parties, filed,

1. **THIS COURT ORDERS** that leave be granted to Mappro pursuant to Rule 5.04(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194, to correct the name of the defendant incorrectly named as "Mizrahi Developments Inc." to "Mizrahi Development Group (The One) Inc." on the basis of misnomer and amend the statement of claim in the form attached as Schedule "A" to this order.
2. **THIS COURT ORDERS** that the title of proceedings in the within action shall be changed to the following:

No. CV-22-00686696-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. and CITY OF
TORONTO

Defendants

3. **THIS COURT ORDERS** that Mizrahi Developments Inc. and Mizrahi Development Group (The One) Inc. shall pay to the plaintiff *\$18,000* in costs. *in 30 days from April 26, 2023.*

THIS ORDER BEARS INTEREST at the rate of 5 per cent per year from its date.

Charles Wiebe

Associate Justice C. Wiebe

SCHEDULE "A"

No. CV-22-00686696-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

~~MIZRAHI DEVELOPMENTS INC.~~ MIZRAHI DEVELOPMENT GROUP
(THE ONE) INC. and CITY OF TORONTO

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

CW

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH

SCHEDULE "A"

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TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID
MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been
set down for trial or terminated by any means within five years after the action was commenced
unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto, Ontario
M5G 1R7

TO: DENTONS CANADA LLP
Barristers and Solicitors
77 King Street West
Suite 400
Toronto-Dominion Centre
Toronto, Ontario
M5K 0A1

CW

Mary Ellen Bench
maryellen.bench@dentons.com
Tel – 416-863-4511
Fax – 416-863-4592

Lawyers for the defendant,
Mizrahi Development Group (The One) Inc.
~~Mizrahi Developments Inc.~~

SCHEDULE "A"

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AND TO: Toronto City Clerk's Office
Toronto City Hall
13th floor W.,
100 Queen St. W.
Toronto, ON M5H 2N2

Gadi Katz
gadi.katz@toronto.ca
Tel – 416-338-3169
Fax – 416-338-6986

Lawyers for the defendant,
City of Toronto

CW

SCHEDULE "A"

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CLAIM

1. The plaintiff, Mappro Realty Inc. ("**Mappro**"), claims against the Defendants as follows:
 - a) damages in the amount of \$3,000,000;
 - b) an interlocutory and mandatory permanent injunction requiring the defendants to immediately:
 - i) stop using the Staging Area (defined below);
 - ii) remove the Staging Area in its entirety or move it so that it is no longer in front of the property (the "**Mappro Property**") municipally known as 19 Bloor Street West, Toronto;
 - iii) repair the portion of Balmuto Street ("**Balmuto**") currently occupied by the Staging Area and return it to its previous condition;
 - c) pre-judgment interest in accordance with the Courts of Justice Act;
 - d) costs of this action; and
 - e) any further relief this Honourable Court deems just.
2. All dates and amounts set out herein are approximate.
 - A. **The Parties and the Properties**
3. Mappro, an Ontario corporation, owns the Mappro Property.
4. ~~Mizrahi Developments Inc.~~ Mizrahi Development Group (The One) Inc. ("**Mizrahi**"), an Ontario corporation, is a developer and owns the property (the "**Mizrahi Property**") municipally known as 1 Bloor Street West, Toronto.
5. The City of Toronto (the "**City**") is a municipal corporation governed by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A and its regulations. It owns the lands on which the Staging Area was installed.

CW

SCHEDULE "A"

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B. The Properties and the Project

6. The Mappro Property is located on the southeast corner of Balmuto and Bloor Street ("**Bloor**"). The building on the Mappro Property is currently split into two units: one leased and operated by Scotiabank, and the other operated by Mappro (the "**Mappro Building**").
7. Mappro has made significant efforts and continues to try to lease the Mappro Building to a high-end retail tenant.
8. Mizrahi is in the process of constructing a mixed-use development (the "**One**") on the Mizrahi Property. Mizrahi retained Clarke Construction Management Inc. ("**Clarke**") to act as the construction manager on the project (the "**Project**"). At all relevant times, Clarke acted as Mizrahi's agent.
9. The Mizrahi Property and the Mappro Property are not adjoining properties.

C. The Project, the Staging Area, and the Original Permit

10. In or around March 2015, Mizrahi submitted to the City its site plan and zoning application (among other things) for the Project. The City authorized the construction of the Project by issuing various types of authorizations and permits. There was no contemplation of using Balmuto as a construction staging area. CW
11. At some point, Mizrahi decided that it wanted to use a portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for the construction of the Project.
12. Mizrahi required a permit from the City to erect and use the Staging Area.
13. Neither Mizrahi, nor the City made any efforts to consult with Mappro, seek its consent, or provide it with notice of Mizrahi's intention to seek a permit and, ultimately, use the Staging Area.
14. On or around July 14, 2020, the City granted Clarke, as Mizrahi's agent, a temporary street occupation permit (the "**Original Permit**") allowing Mizrahi to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.
15. The City's grant of the Original Permit was contrary to the provisions of the City of Toronto Municipal Code (the "**Code**") because, among other things:

SCHEDULE "A"

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- a) neither Mizrahi nor Clarke owns any lands abutting Balmuto;
 - b) Mappro did not consent to Mizrahi's occupation of Balmuto or waive its claims against the City for any losses or damages arising from the occupation; and,
 - c) Mizrahi and Clarke failed to provide Mappro with notice of the occupation of Balmuto.
16. At an unknown date, Mizrahi erected and began using the Staging Area by, among other things, installing and operating a concrete pump pedestal and a generator. Mizrahi used the Staging Area to pump concrete to the Project, among other things.
17. The Staging Area occupies more space than the Original Permit allowed. The City did not take any steps to ensure that Mizrahi complied with the terms of the Original Permit.
18. Mappro did not learn about Mizrahi's intention to obtain a permit or use the Staging Area until it saw the construction equipment installed on the Staging Area.
19. Mappro's initial calls to the City concerning the Staging Area went unanswered.
20. It is unknown whether the City extended the duration of the Original Permit. If the City extended the duration of the Original Permit, it was done without justification and without authority. If the City did not do so, Mizrahi continued to use the Staging Area without permission. CW

D. The Multi-Year Permit

21. The Original Permit was only intended to be a stopgap solution. Mizrahi wanted to use the Staging Area for the duration of the Project, which was anticipated to take many years.
22. As a result, Mizrahi sought to obtain a longer-term permit (the "**Multi-Year Permit**").
23. Mizrahi first made its request for the Multi-Year Permit to the Toronto East York Community Council ("**TEYCC**").
24. On or around November 10, 2020, Mizrahi's request for the Multi-Year Permit came before TEYCC for a vote. Before the vote, the City submitted a report to TEYCC. In the report, the City admitted that City Council approval was required to issue the Multi-Year Permit (i.e. a permit that allows a temporary occupation of City lands that do NOT abut the lands of the applicant) because its issuance would "not comply with City policy or by-laws."

SCHEDULE "A"

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25. On or around November 10, 2020, TEYCC recommended that City Council grant the Multi-Year Permit, with certain additional recommendations including, among other things, that:
- a) the City grant the Multi-Year Permit without Mizrahi having to comply with the Code; and,
 - b) Mizrahi execute an indemnity agreement in favour of the City with respect to Mizrahi's occupation of Balmuto.
26. On or around November 25, 2020, City Council adopted TEYCC's recommendations (with some small amendments) and authorized the City to grant the Multi-Year Permit for the period November 30, 2020 to November 30, 2022.
27. The City then issued the Multi-Year Permit allowing Mizrahi to "stage concrete truck and deliveries on both northbound lanes of Balmuto ... fronting [the Mappro Building] ... pertinent to the development of [the One]."
28. Mizrahi did not comply with the terms of the Multi-Year Permit. For instance, it occupied more space than it was permitted. The City did not take any steps to ensure that Mizrahi was complying with the terms of the Multi-Year Permit. CW

E. The Effects of the Installation and Use of the Staging Area

29. Mizrahi's installation and use of the Staging Area interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:
- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
 - b) it creates unreasonable noise, vibration, dust, dirt, and smell;
 - c) it is unsightly;
 - d) it obstructs the sidewalk in front of the Mappro Building;
 - e) it restricts access to the Mappro Building and the emergency exits;
 - f) it restricts visibility into and from the Mappro Building; and
 - g) it restricts access to the fire hydrant.

SCHEDULE "A"

-8-

30. Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants.
31. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.
32. Mappro is now in the process of renovating the Mappro Building. The installation and use of the Staging Area will likely interfere with, delay, and increase the cost of Mappro's renovation. This too will negatively impact Mappro's ability to lease the Mappro Building.

F. Nuisance

33. The granting of the Original Permit and Multi-Year Permit and the installation and use of the Staging Area interferes to a significant degree with Mappro's use and enjoyment of the Mappro Property.
34. The non-trivial interference, which has been severe and lengthy, is unreasonable. *CW*
35. There is no public utility in the Project (i.e. the construction of the One); it is a private development being constructed by a private builder. Mappro is unreasonably being forced to bear the brunt of the Project for the private good of Mizrahi. It is not reasonable that Mizrahi should be allowed to profit at Mappro's expense.
36. The defendants are liable to the plaintiff for creating an ongoing nuisance and for permitting any form of the nuisance to occur.
37. The defendants also failed to act reasonably throughout the process:
 - a) The defendants failed to discuss the Staging Area with Mappro before installing it (even though Mappro was going to be the entity most impacted by its installation).
 - b) The defendants changed the location of the Staging Area to Balmuto mid-Project, thereby precluding Mappro from being able to oppose the granting of the original building permit.
 - c) Mizrahi refused to meaningfully engage with Mappro until Mappro's legal counsel got involved.
 - d) Mappro's initial calls to the City regarding the Staging Area went unanswered.

SCHEDULE "A"

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- e) Although the City held consultative talks with community members, it made it clear that it cared little that the installation and use of the Staging Area would negatively impact Mappro (i.e. a non-voting entity).
 - f) The City granted the Original Permit contrary to the provisions of the Code.
 - g) The City granted the Multi-Year Permit knowing full well that the granting of the permit (a) ran afoul of the City's own policies and (b) would cause Mappro significant financial harm. In doing something it knew to be wrong, the City then ensured that it was protected from litigation risks by obtaining an indemnity from Mizrahi.
 - h) The defendants failed to take any steps to mitigate the impacts of the ongoing nuisance.
38. Mappro has suffered, and continues to suffer, damages arising from the nuisance.
39. It is very unlikely that Mizrahi will have completed the Project by November 30, 2022 (i.e. the date on which the Multi-Year Permit expires). In such a case, Mizrahi will be forced to request an extension of the Multi-Year Permit. Based on the City's conduct to date, it is likely that, without the Court's intervention, the City will grant such an extension, without paying any regard to the damages that such extension will cause to Mappro. It is, thus, likely that the nuisance to Mappro will continue long past November 30, 2022. CW

G. Negligence

40. The defendants owe Mappro a duty of care.
41. The defendants acted negligently by, among other things:
- a) failing to provide notice to, consult with, or obtain consent from Mappro before installing and constructing the Staging Area;
 - b) granting the Original Permit contrary to the provisions of the Code;
 - c) installing and operating the Staging Area in a manner that does not comply with either the Original Permit, the Multi-Year Permit, or both;
 - d) failing to ensure that Mizrahi complied with the terms of the Original Permit, the Multi-Year Permit, or both; and

SCHEDULE "A"

-10-

- e) failing to mitigate the effects that the installation and use of the Staging Area has on Mappro.
42. Mappro has suffered, and continues to suffer, damages arising from the defendants' negligence.
43. The plaintiff pleads the *Negligence Act*, the *City of Toronto Act*, and the Code.

September 7, 2022

SPEIGEL NICHOLS FOX LLP
Barristers & Solicitors
1 Robert Speck Parkway, Suite 200
Mississauga ON L4Z 3M3

Allison Spiegel
LSO No. 64992D
allison@ontlaw.com
Tel – 905-366-9700 ext. 280
Fax – 905-366-9707

Lawyers for the plaintiff,
Mappro Realty Inc.

CW

MAPPRO REALTY INC.
Plaintiff

-and- ~~MIZRAHI DEVELOPMENTS INC; MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., et al.~~
Defendants

No. CV-22-00686696-0000

<i>Ontario</i> SUPERIOR COURT OF JUSTICE PROCEEDINGS COMMENCED AT TORONTO	
<u>AMENDED STATEMENT OF CLAIM</u>	
SPEIGEL NICHOLS FOX LLP Barristers & Solicitors 1 Robert Speck Parkway, Suite 200 Mississauga ON L4Z 3M3 Allison Speigel LSO No. 64992D allison@ontlaw.com Tel - 905-366-9700 ext. 280 Lawyers for the plaintiff, Mappro Realty Inc.	<div>CW</div> <div>RCP-F 4C (September 1, 2020)</div>

MAPPRO REALTY INC.
Plaintiff

-and-

MIZRAHI DEVELOPMENTS INC. et al.
Defendants

No. CV-22-00686696-0000

<i>Ontario</i> SUPERIOR COURT OF JUSTICE PROCEEDINGS COMMENCED AT TORONTO	
ORDER	
<div>SPEIGEL NICHOLS FOX LLP Barristers & Solicitors 1 Robert Speck Parkway, Suite 200 Mississauga ON L4Z 3M3 Allison Speigel LSO No. 64992D allison@ontlaw.com Tel – 905-366-9700 ext. 280 Fax – 905-366-9707 Lawyers for the plaintiff Mappro Realty Inc.</div>	

No. CV-22-00686696-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

AMENDED THIS May 12th 2023 PURSUANT TO

MAPPRO REALTY INC.

☐ RULE 26.02 (____)

☒ THE ORDER OF Associate Justice Wiebe

DATED April 25th 2023

Plaintiff

Camryn Booth

Digitally signed by Camryn Booth
Date: 2023.05.15 14:31:51 -04'00'

- and -

REGISTRAR

~~MIZRAHI DEVELOPMENTS INC.~~ MIZRAHI DEVELOPMENT GROUP

SUPERIOR COURT OF JUSTICE

(THE ONE) INC. and CITY OF TORONTO

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH

-2-

TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID
MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been
set down for trial or terminated by any means within five years after the action was commenced
unless otherwise ordered by the court.

Date	<u>May 12th 2023</u>	Issued by	<u>"electronically filed"</u>
			Local Registrar

Address of court office:	Superior Court of Justice 330 University Avenue Toronto, Ontario M5G 1R7
-----------------------------	---

TO: DENTONS CANADA LLP
Barristers and Solicitors
77 King Street West
Suite 400
Toronto-Dominion Centre
Toronto, Ontario
M5K 0A1

Mary Ellen Bench
maryellen.bench@dentons.com
Tel – 416-863-4511
Fax – 416-863-4592

Lawyers for the defendant,
~~Mizrahi Developments Inc.~~
Mizrahi Development Group (The One) Inc.

-3-

AND TO: Toronto City Clerk's Office
Toronto City Hall
13th floor W.,
100 Queen St. W.
Toronto, ON M5H 2N2

Gadi Katz
gadi.katz@toronto.ca
Tel – 416-338-3169
Fax – 416-338-6986

Lawyers for the defendant,
City of Toronto

-4-

CLAIM

1. The plaintiff, Mappro Realty Inc. ("**Mappro**"), claims against the Defendants as follows:
 - a) damages in the amount of \$3,000,000;
 - b) an interlocutory and mandatory permanent injunction requiring the defendants to immediately:
 - i) stop using the Staging Area (defined below);
 - ii) remove the Staging Area in its entirety or move it so that it is no longer in front of the property (the "**Mappro Property**") municipally known as 19 Bloor Street West, Toronto;
 - iii) repair the portion of Balmuto Street ("**Balmuto**") currently occupied by the Staging Area and return it to its previous condition;
 - c) pre-judgment interest in accordance with the Courts of Justice Act;
 - d) costs of this action; and
 - e) any further relief this Honourable Court deems just.
2. All dates and amounts set out herein are approximate.

A. The Parties and the Properties

3. Mappro, an Ontario corporation, owns the Mappro Property.
4. ~~Mizrahi Developments Inc.~~ Mizrahi Development Group (The One) Inc. ("**Mizrahi**"), an Ontario corporation, is a developer and owns the property (the "**Mizrahi Property**") municipally known as 1 Bloor Street West, Toronto.
5. The City of Toronto (the "**City**") is a municipal corporation governed by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A and its regulations. It owns the lands on which the Staging Area was installed.

B. The Properties and the Project

6. The Mappro Property is located on the southeast corner of Balmuto and Bloor Street ("**Bloor**"). The building on the Mappro Property is currently split into two units: one leased and operated by Scotiabank, and the other operated by Mappro (the "**Mappro Building**").
7. Mappro has made significant efforts and continues to try to lease the Mappro Building to a high-end retail tenant.
8. Mizrahi is in the process of constructing a mixed-use development (the "**One**") on the Mizrahi Property. Mizrahi retained Clarke Construction Management Inc. ("**Clarke**") to act as the construction manager on the project (the "**Project**"). At all relevant times, Clarke acted as Mizrahi's agent.
9. The Mizrahi Property and the Mappro Property are not adjoining properties.

C. The Project, the Staging Area, and the Original Permit

10. In or around March 2015, Mizrahi submitted to the City its site plan and zoning application (among other things) for the Project. The City authorized the construction of the Project by issuing various types of authorizations and permits. There was no contemplation of using Balmuto as a construction staging area.
11. At some point, Mizrahi decided that it wanted to use a portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for the construction of the Project.
12. Mizrahi required a permit from the City to erect and use the Staging Area.
13. Neither Mizrahi, nor the City made any efforts to consult with Mappro, seek its consent, or provide it with notice of Mizrahi's intention to seek a permit and, ultimately, use the Staging Area.
14. On or around July 14, 2020, the City granted Clarke, as Mizrahi's agent, a temporary street occupation permit (the "**Original Permit**") allowing Mizrahi to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.
15. The City's grant of the Original Permit was contrary to the provisions of the City of Toronto Municipal Code (the "**Code**") because, among other things:

-6-

- a) neither Mizrahi nor Clarke owns any lands abutting Balmuto;
 - b) Mappro did not consent to Mizrahi's occupation of Balmuto or waive its claims against the City for any losses or damages arising from the occupation; and,
 - c) Mizrahi and Clarke failed to provide Mappro with notice of the occupation of Balmuto.
16. At an unknown date, Mizrahi erected and began using the Staging Area by, among other things, installing and operating a concrete pump pedestal and a generator. Mizrahi used the Staging Area to pump concrete to the Project, among other things.
17. The Staging Area occupies more space than the Original Permit allowed. The City did not take any steps to ensure that Mizrahi complied with the terms of the Original Permit.
18. Mappro did not learn about Mizrahi's intention to obtain a permit or use the Staging Area until it saw the construction equipment installed on the Staging Area.
19. Mappro's initial calls to the City concerning the Staging Area went unanswered.
20. It is unknown whether the City extended the duration of the Original Permit. If the City extended the duration of the Original Permit, it was done without justification and without authority. If the City did not do so, Mizrahi continued to use the Staging Area without permission.

D. The Multi-Year Permit

21. The Original Permit was only intended to be a stopgap solution. Mizrahi wanted to use the Staging Area for the duration of the Project, which was anticipated to take many years.
22. As a result, Mizrahi sought to obtain a longer-term permit (the "**Multi-Year Permit**").
23. Mizrahi first made its request for the Multi-Year Permit to the Toronto East York Community Council ("**TEYCC**").
24. On or around November 10, 2020, Mizrahi's request for the Multi-Year Permit came before TEYCC for a vote. Before the vote, the City submitted a report to TEYCC. In the report, the City admitted that City Council approval was required to issue the Multi-Year Permit (i.e. a permit that allows a temporary occupation of City lands that do NOT abut the lands of the applicant) because its issuance would "not comply with City policy or by-laws."

-7-

25. On or around November 10, 2020, TEYCC recommended that City Council grant the Multi-Year Permit, with certain additional recommendations including, among other things, that:
 - a) the City grant the Multi-Year Permit without Mizrahi having to comply with the Code; and,
 - b) Mizrahi execute an indemnity agreement in favour of the City with respect to Mizrahi's occupation of Balmuto.
26. On or around November 25, 2020, City Council adopted TEYCC's recommendations (with some small amendments) and authorized the City to grant the Multi-Year Permit for the period November 30, 2020 to November 30, 2022.
27. The City then issued the Multi-Year Permit allowing Mizrahi to "stage concrete truck and deliveries on both northbound lanes of Balmuto ... fronting [the Mappro Building] ... pertinent to the development of [the One]."
28. Mizrahi did not comply with the terms of the Multi-Year Permit. For instance, it occupied more space than it was permitted. The City did not take any steps to ensure that Mizrahi was complying with the terms of the Multi-Year Permit.

E. The Effects of the Installation and Use of the Staging Area

29. Mizrahi's installation and use of the Staging Area interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:
 - a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
 - b) it creates unreasonable noise, vibration, dust, dirt, and smell;
 - c) it is unsightly;
 - d) it obstructs the sidewalk in front of the Mappro Building;
 - e) it restricts access to the Mappro Building and the emergency exits;
 - f) it restricts visibility into and from the Mappro Building; and
 - g) it restricts access to the fire hydrant.

-8-

30. Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants.
31. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.
32. Mappro is now in the process of renovating the Mappro Building. The installation and use of the Staging Area will likely interfere with, delay, and increase the cost of Mappro's renovation. This too will negatively impact Mappro's ability to lease the Mappro Building.

F. Nuisance

33. The granting of the Original Permit and Multi-Year Permit and the installation and use of the Staging Area interferes to a significant degree with Mappro's use and enjoyment of the Mappro Property.
34. The non-trivial interference, which has been severe and lengthy, is unreasonable.
35. There is no public utility in the Project (i.e. the construction of the One); it is a private development being constructed by a private builder. Mappro is unreasonably being forced to bear the brunt of the Project for the private good of Mizrahi. It is not reasonable that Mizrahi should be allowed to profit at Mappro's expense.
36. The defendants are liable to the plaintiff for creating an ongoing nuisance and for permitting any form of the nuisance to occur.
37. The defendants also failed to act reasonably throughout the process:
 - a) The defendants failed to discuss the Staging Area with Mappro before installing it (even though Mappro was going to be the entity most impacted by its installation).
 - b) The defendants changed the location of the Staging Area to Balmuto mid-Project, thereby precluding Mappro from being able to oppose the granting of the original building permit.
 - c) Mizrahi refused to meaningfully engage with Mappro until Mappro's legal counsel got involved.
 - d) Mappro's initial calls to the City regarding the Staging Area went unanswered.

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- e) Although the City held consultative talks with community members, it made it clear that it cared little that the installation and use of the Staging Area would negatively impact Mappro (i.e. a non-voting entity).
 - f) The City granted the Original Permit contrary to the provisions of the Code.
 - g) The City granted the Multi-Year Permit knowing full well that the granting of the permit (a) ran afoul of the City's own policies and (b) would cause Mappro significant financial harm. In doing something it knew to be wrong, the City then ensured that it was protected from litigation risks by obtaining an indemnity from Mizrahi.
 - h) The defendants failed to take any steps to mitigate the impacts of the ongoing nuisance.
38. Mappro has suffered, and continues to suffer, damages arising from the nuisance.
39. It is very unlikely that Mizrahi will have completed the Project by November 30, 2022 (i.e. the date on which the Multi-Year Permit expires). In such a case, Mizrahi will be forced to request an extension of the Multi-Year Permit. Based on the City's conduct to date, it is likely that, without the Court's intervention, the City will grant such an extension, without paying any regard to the damages that such extension will cause to Mappro. It is, thus, likely that the nuisance to Mappro will continue long past November 30, 2022.

G. Negligence

40. The defendants owe Mappro a duty of care.
41. The defendants acted negligently by, among other things:
- a) failing to provide notice to, consult with, or obtain consent from Mappro before installing and constructing the Staging Area;
 - b) granting the Original Permit contrary to the provisions of the Code;
 - c) installing and operating the Staging Area in a manner that does not comply with either the Original Permit, the Multi-Year Permit, or both;
 - d) failing to ensure that Mizrahi complied with the terms of the Original Permit, the Multi-Year Permit, or both; and

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- e) failing to mitigate the effects that the installation and use of the Staging Area has on Mappro.
42. Mappro has suffered, and continues to suffer, damages arising from the defendants' negligence.
43. The plaintiff pleads the *Negligence Act*, the *City of Toronto Act*, and the Code.

September 7, 2022

SPEIGEL NICHOLS FOX LLP
Barristers & Solicitors
1 Robert Speck Parkway, Suite 200
Mississauga ON L4Z 3M3

Allison Speigel
LSO No. 64992D
allison@ontlaw.com
Tel – 905-366-9700 ext. 280
Fax – 905-366-9707

Lawyers for the plaintiff,
Mappro Realty Inc.

MAPPRO REALTY INC.

Plaintiff

-and- ~~MIZRAHI DEVELOPMENTS INC. MIZRAHI~~
~~DEVELOPMENT GROUP (THE ONE) INC.~~ et al.
Defendants

No. CV-22-00686696-0000

Ontario
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

AMENDED STATEMENT OF CLAIM

SPEIGEL NICHOLS FOX LLP
Barristers & Solicitors
1 Robert Speck Parkway, Suite 200
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Lawyers for the plaintiff,
Mappro Realty Inc.

RCP-F 4C (September 1, 2020)

Court File No. CV-22-00686696-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE

Associate Justice C. Wiebe

)
)
)

Friday, THE *29th*

DAY OF *September*, 2023

BETWEEN:

MAPPRO REALTY INC.

Plaintiff

and

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. and
CITY OF TORONTO

Defendants

ORDER

THIS MOTION, on consent, made by the Defendant, Mizrahi Development Group (The One) Inc., to amend the Order of Associate Justice Wiebe dated April 25, 2023 (the "**Original Order**") and the Endorsement of Associate Justice Wiebe dated April 25, 2023 (the "**Endorsement**"), attached collectively as Schedule "A", was read this day at the Court House, ~~330 University Avenue, Toronto ON M5G 1R7.~~

ON READING the Consent of the Parties, filed,

1. **THIS COURT ORDERS** that the preamble paragraphs of the Original Order are hereby amended as follows:

2.

THIS MOTION made by the plaintiff, Mappro Realty Inc. ("**Mappro**"), for an order, unopposed as to the substantive relief sought, to correct the name of a defendant who was incorrectly named, was heard this day at Toronto.

ON READING Mappro's motion record, supplementary motion record and factum, and the responding motion record and factum of the respondent Mizrahi Developments Inc., filed, on hearing the submissions of counsel for the parties, and for reasons set out in the Endorsement dated April 25th, 2023.

2. **THIS COURT ORDERS** that paragraph 3 of the Original Order is hereby amended as follows:

3. **THIS COURT ORDERS** that Mizrahi Development Group (The One) Inc. shall pay to the plaintiff \$18,000.00 in costs in 30 days from April 26, 2023.

3. **THIS COURT ORDERS** that paragraph 8 of the Endorsement is hereby amended as follows:

8. I, therefore, reiterate that I award Mappro \$18,000 in substantial indemnity costs as against MDG. MDG must pay this amount within 30 days from April 26, 2023.

4. **THIS COURT ORDERS THAT** there be no costs of this motion.


(Signature of judge, officer or registrar)

Associate Justice C. Wiebe

SCHEDULE "A"

No. CV-22-00686696-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE ^{ASSOCIATE} JUSTICE ₁ WIEBE

) Tues DAY, THE 25th DAY
) OF April, 2023

BETWEEN:

MAPPRO REALTY INC.

Plaintiff

- and -

MIZRAHI DEVELOPMENTS INC. and CITY OF TORONTO

Defendants

ORDER

^{✓ in part, ✓ CW} THIS MOTION made by the plaintiff, Mappro Realty Inc. ("Mappro") for an order, on consent, to correct the name of a defendant who was incorrectly named, was ^{✓ heard ✓ CW} read this day at Toronto.

ON READING Mappro's motion record and the consent of the parties, filed,

1. **THIS COURT ORDERS** that leave be granted to Mappro pursuant to Rule 5.04(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Regulation 194, to correct the name of the defendant incorrectly named as "Mizrahi Developments Inc." to "Mizrahi Development Group (The One) Inc." on the basis of misnomer and amend the statement of claim in the form attached as Schedule "A" to this order.
2. **THIS COURT ORDERS** that the title of proceedings in the within action shall be changed to the following:

No. CV-22-00686696-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MAPPRO REALTY INC.

Plaintiff

- and -

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. and CITY OF
TORONTO

Defendants

CW

3. **THIS COURT ORDERS** that Mizrahi Developments Inc. and Mizrahi Development Group (The One) Inc. shall pay to the plaintiff *\$18,000* in costs. *in 30 days from April 26, 2023.* CW

THIS ORDER BEARS INTEREST at the rate of 5 per cent per year from its date.

Charles Wiebe

Associate Justice C. Wiebe

SCHEDULE "A"

No. CV-22-00686696-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MAPPRO REALTY INC.

Plaintiff

- and -

~~MIZRAHI DEVELOPMENTS INC.~~ MIZRAHI DEVELOPMENT GROUP
(THE ONE) INC. and CITY OF TORONTO

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

CW

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

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SCHEDULE "A"

-2-

TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID
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Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto, Ontario
M5G 1R7

TO: DENTONS CANADA LLP
Barristers and Solicitors
77 King Street West
Suite 400
Toronto-Dominion Centre
Toronto, Ontario
M5K 0A1

CW

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Tel – 416-863-4511
Fax – 416-863-4592

Lawyers for the defendant,
Mizrahi Development Group (The One) Inc.
~~Mizrahi Developments Inc.~~

SCHEDULE "A"

-3-

AND TO: Toronto City Clerk's Office
Toronto City Hall
13th floor W.,
100 Queen St. W.
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Gadi Katz
gadi.katz@toronto.ca
Tel – 416-338-3169
Fax – 416-338-6986

Lawyers for the defendant,
City of Toronto

CW

SCHEDULE "A"

-4-

CLAIM

1. The plaintiff, Mappro Realty Inc. ("**Mappro**"), claims against the Defendants as follows:
 - a) damages in the amount of \$3,000,000;
 - b) an interlocutory and mandatory permanent injunction requiring the defendants to immediately:
 - i) stop using the Staging Area (defined below);
 - ii) remove the Staging Area in its entirety or move it so that it is no longer in front of the property (the "**Mappro Property**") municipally known as 19 Bloor Street West, Toronto;
 - iii) repair the portion of Balmuto Street ("**Balmuto**") currently occupied by the Staging Area and return it to its previous condition;
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2. All dates and amounts set out herein are approximate.
- A. **The Parties and the Properties**
3. Mappro, an Ontario corporation, owns the Mappro Property.
4. ~~Mizrahi Developments Inc.~~ Mizrahi Development Group (The One) Inc. ("**Mizrahi**"), an Ontario corporation, is a developer and owns the property (the "**Mizrahi Property**") municipally known as 1 Bloor Street West, Toronto.
5. The City of Toronto (the "**City**") is a municipal corporation governed by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A and its regulations. It owns the lands on which the Staging Area was installed.

CW

SCHEDULE "A"

-5-

B. The Properties and the Project

6. The Mappro Property is located on the southeast corner of Balmuto and Bloor Street ("**Bloor**"). The building on the Mappro Property is currently split into two units: one leased and operated by Scotiabank, and the other operated by Mappro (the "**Mappro Building**").
7. Mappro has made significant efforts and continues to try to lease the Mappro Building to a high-end retail tenant.
8. Mizrahi is in the process of constructing a mixed-use development (the "**One**") on the Mizrahi Property. Mizrahi retained Clarke Construction Management Inc. ("**Clarke**") to act as the construction manager on the project (the "**Project**"). At all relevant times, Clarke acted as Mizrahi's agent.
9. The Mizrahi Property and the Mappro Property are not adjoining properties.

C. The Project, the Staging Area, and the Original Permit

10. In or around March 2015, Mizrahi submitted to the City its site plan and zoning application (among other things) for the Project. The City authorized the construction of the Project by issuing various types of authorizations and permits. There was no contemplation of using Balmuto as a construction staging area. CW
11. At some point, Mizrahi decided that it wanted to use a portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for the construction of the Project.
12. Mizrahi required a permit from the City to erect and use the Staging Area.
13. Neither Mizrahi, nor the City made any efforts to consult with Mappro, seek its consent, or provide it with notice of Mizrahi's intention to seek a permit and, ultimately, use the Staging Area.
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15. The City's grant of the Original Permit was contrary to the provisions of the City of Toronto Municipal Code (the "**Code**") because, among other things:

SCHEDULE "A"

-6-

- a) neither Mizrahi nor Clarke owns any lands abutting Balmuto;
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 - c) Mizrahi and Clarke failed to provide Mappro with notice of the occupation of Balmuto.
16. At an unknown date, Mizrahi erected and began using the Staging Area by, among other things, installing and operating a concrete pump pedestal and a generator. Mizrahi used the Staging Area to pump concrete to the Project, among other things.
17. The Staging Area occupies more space than the Original Permit allowed. The City did not take any steps to ensure that Mizrahi complied with the terms of the Original Permit.
18. Mappro did not learn about Mizrahi's intention to obtain a permit or use the Staging Area until it saw the construction equipment installed on the Staging Area.
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20. It is unknown whether the City extended the duration of the Original Permit. If the City extended the duration of the Original Permit, it was done without justification and without authority. If the City did not do so, Mizrahi continued to use the Staging Area without permission. CW
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21. The Original Permit was only intended to be a stopgap solution. Mizrahi wanted to use the Staging Area for the duration of the Project, which was anticipated to take many years.
22. As a result, Mizrahi sought to obtain a longer-term permit (the "**Multi-Year Permit**").
23. Mizrahi first made its request for the Multi-Year Permit to the Toronto East York Community Council ("**TEYCC**").
24. On or around November 10, 2020, Mizrahi's request for the Multi-Year Permit came before TEYCC for a vote. Before the vote, the City submitted a report to TEYCC. In the report, the City admitted that City Council approval was required to issue the Multi-Year Permit (i.e. a permit that allows a temporary occupation of City lands that do NOT abut the lands of the applicant) because its issuance would "not comply with City policy or by-laws."

SCHEDULE "A"

-7-

25. On or around November 10, 2020, TEYCC recommended that City Council grant the Multi-Year Permit, with certain additional recommendations including, among other things, that:
- a) the City grant the Multi-Year Permit without Mizrahi having to comply with the Code; and,
 - b) Mizrahi execute an indemnity agreement in favour of the City with respect to Mizrahi's occupation of Balmuto.
26. On or around November 25, 2020, City Council adopted TEYCC's recommendations (with some small amendments) and authorized the City to grant the Multi-Year Permit for the period November 30, 2020 to November 30, 2022.
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SCHEDULE "A"

-8-

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 37. The defendants also failed to act reasonably throughout the process:
 - a) The defendants failed to discuss the Staging Area with Mappro before installing it (even though Mappro was going to be the entity most impacted by its installation).
 - b) The defendants changed the location of the Staging Area to Balmuto mid-Project, thereby precluding Mappro from being able to oppose the granting of the original building permit.
 - c) Mizrahi refused to meaningfully engage with Mappro until Mappro's legal counsel got involved.
 - d) Mappro's initial calls to the City regarding the Staging Area went unanswered.

SCHEDULE "A"

-9-

- e) Although the City held consultative talks with community members, it made it clear that it cared little that the installation and use of the Staging Area would negatively impact Mappro (i.e. a non-voting entity).
 - f) The City granted the Original Permit contrary to the provisions of the Code.
 - g) The City granted the Multi-Year Permit knowing full well that the granting of the permit (a) ran afoul of the City's own policies and (b) would cause Mappro significant financial harm. In doing something it knew to be wrong, the City then ensured that it was protected from litigation risks by obtaining an indemnity from Mizrahi.
 - h) The defendants failed to take any steps to mitigate the impacts of the ongoing nuisance.
38. Mappro has suffered, and continues to suffer, damages arising from the nuisance.
39. It is very unlikely that Mizrahi will have completed the Project by November 30, 2022 (i.e. the date on which the Multi-Year Permit expires). In such a case, Mizrahi will be forced to request an extension of the Multi-Year Permit. Based on the City's conduct to date, it is likely that, without the Court's intervention, the City will grant such an extension, without paying any regard to the damages that such extension will cause to Mappro. It is, thus, likely that the nuisance to Mappro will continue long past November 30, 2022. CW

G. Negligence

40. The defendants owe Mappro a duty of care.
41. The defendants acted negligently by, among other things:
- a) failing to provide notice to, consult with, or obtain consent from Mappro before installing and constructing the Staging Area;
 - b) granting the Original Permit contrary to the provisions of the Code;
 - c) installing and operating the Staging Area in a manner that does not comply with either the Original Permit, the Multi-Year Permit, or both;
 - d) failing to ensure that Mizrahi complied with the terms of the Original Permit, the Multi-Year Permit, or both; and

SCHEDULE "A"

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- e) failing to mitigate the effects that the installation and use of the Staging Area has on Mappro.
42. Mappro has suffered, and continues to suffer, damages arising from the defendants' negligence.
43. The plaintiff pleads the *Negligence Act*, the *City of Toronto Act*, and the Code.

September 7, 2022

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Lawyers for the plaintiff,
Mappro Realty Inc.

CW

MAPPRO REALTY INC.

Plaintiff

-and-

MIZRAHI DEVELOPMENTS INC. MIZRAHI

DEVELOPMENT GROUP (THE ONE) INC., et al.
Defendants

No. CV-22-00686696-0000

Ontario

SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT
TORONTO

AMENDED STATEMENT OF CLAIM

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Lawyers for the plaintiff,
Mappro Realty Inc.

RCP-F 4C (September 1, 2020)

CW

CITATION: Mappro Realty Inc. v. Mizrahi Developments Inc., 2023 ONSC2538
COURT FILE NO.: CV-22-686696
DATE: April 25, 2023

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Mappro Realty Inc. v. Mizrahi Developments Inc. and City of Toronto;

BEFORE: ASSOCIATE JUSTICE C. WIEBE

COUNSEL: Susanne Balpataky for Mappro Realty Inc.;
Fraser Mackinnon Blair for Mizrahi Developments Inc.;
Nicholas Rolfe for the City of Toronto.

HEARD: April 25, 2023.

ENDORSEMENT

[1] This was a motion brought by the plaintiff, Mappro Realty Inc. ("Mappro"), seeking an order pursuant to Rule 5.04(2) correcting the name, "Mizrahi Developments Inc." ("MDI"), to the proper name of the registered owner of 1 Bloor Street West, Toronto, Mizrahi Development Group (The One) Inc. ("MDG").

[2] Mappro has property next to 1 Bloor Street West. The underlying action concerns allegations of interference with Mappro's property rights by the high-rise development underway on 1 Bloor Street West named "The One."

[3] By the time of the argument of the motion, the only issue was the costs of the motion. The parties had agreed that the requested substantive order should be granted. Concerning costs, there were two issues: whether Mappro or MDI should pay the other costs; and what the proper quantum of the award of costs should be. No one was seeking costs from the City of Toronto, who attended only to observe.

[4] On the first issue, I determined, after reading the motion material and hearing oral argument, that MDI should pay Mappro costs. I gave that ruling orally and added that I would issue written reasons to support that ruling. The following are my reasons:

- a) The test of misnomer is whether it is clear that the plaintiff intended to sue the rightful defendant, that a party properly informed would have known from a reading of the statement of claim that the rightful defendant was being sued, and that the order is otherwise just; see *Stekel v. Toyota Canada Inc.*, 2011 ONSC 6507 (CanLII) at paragraph 24 and *Clarbar-Hebert v. Dan*, 2022 ONSC5720 at paragraph 23.

CW

- b) It is clear that this test was met in this case. The statement of claim issued on September 7, 2022 made it clear that Mappro was suing the owner of 1 Bloor Street West. Furthermore, MDI knew MDG was the proper party to the action when it received and reviewed the statement of claim, and that there was a mistake. That was evident from the email the lawyer for MDI, Barbara Grossman, sent to the lawyer for Mappro on December 22, 2022 shortly after MDI was served with the statement of claim. In this email, Ms. Grossman identified that MDI was wrongly named as it had no interest in 1 Bloor Street West. She called this "an inadvertent misapprehension about the corporate entity on title and on the permit . . ." She demanded that MDI be removed.
- c) On December 23, 2022, the day after the Grossman email, Mappro served the Notice of Motion for this motion with the return date yet to be determined. MDI should have consented to this motion, or at least indicated that it was not opposing. There was some discussion about whether a party could consent to a motion under Rule 5.04(2). I saw no reason why that could not have been done. In any event, there was nothing stopping MDI from indicating that it was not opposing. After securing the inevitable City lack of opposition, Mappro could then have brought this as a motion in writing. The action could have proceeded accordingly while the parties awaited the in writing order.
- d) That was not done. Instead, MDG embarked on a course of conduct that purported to preserve rights to a limitation defence. On December 29, 2022 Ms. Grossman emailed the lawyer for Mappro, Allison Spiegel, proposing a consent order pursuant to Rule 26.02(b) that added MDG and deleted MDI and that expressly deferred the argument of the misnomer point. She justified this position on limitation grounds without explaining what those were. She later send a consent document embodying her position. Mr. Blair in argument explained that the pleaded cause of action was of a continuing tort and that the limitation period would, therefore, bear on the issue of damages. That was not explained by Ms. Grossman. In any event, where, as here, the misnomer is clear, due diligence is immaterial to the motion as the rightful party will be viewed as having been a party from the inception of the action; see *Lloyd v. Clark*, 2008 ONCA 343 (CanLII) at paragraph 4 and *Clabar-Hebert, op. cit.*, at paragraph 28. Mappro was entitled to the misnomer order it sought, not some other order. CW
- e) On February 23, 2023, with Ms. Spiegel having obtained a motion date and threatening to bring this motion and seek costs, Ms. Grossman emailed stating that she would "recommend" not opposing this motion but on condition that the above noted consent be included in the motion material and that Mappro not seek costs against MDI. I agree with Ms. Balpataky that this was an unacceptable position. By this time, a "recommendation" would not suffice. MDI needed to state its position. Also, Mappro had incurred needless costs on this issue and deserved to get them paid. Furthermore, requiring the inclusion of the above noted consent in the motion material left the issue of misnomer open to question. Understandably, Mappro proceeded with this motion.
- f) On March 10, 2023 MDI delivered its responding material. It stated that it was not opposing the motion, but it included its contentious consent in its materials. It was no sooner than the argument of this motion that MDI finally made it clear that it was unreservedly not opposing the substance of this motion.

g) I agree with Justice Lederer when he stated in his decision in *Bertolli et al v. Toronto (City) et al*, 2017 ONSC 7534 (CanLII) at paragraph 40 on the issue of costs in such a motion, that where a misnomer has been found, the order is not an indulgence. "It is an application of the law." Therefore, costs should be determined in the usual way. As a result, I found that, as Mappro was the successful party and as the issue of misnomer was clear from the beginning, Mappro should get costs.

[5] As for the second issue, I note that the parties both filed costs outlines. The Mappro costs outline showed a partial indemnity amount of \$13,525.16 and a substantial indemnity amount of \$20,054.16. MDI's costs outline showed a partial indemnity amount of \$13,607.46 and \$22,679.10 in substantial indemnity costs.

[6] Ms. Balpataky argued that Mappro should be awarded substantial indemnity costs of \$20,054.16. Mr. Blair argued that the amount should be partial indemnity costs of only \$8,000. I reserved on this issue of quantum.

[7] I have decided to award Mappro substantial indemnity costs of \$18,000, and I do so for the following reasons:

- a) MDI should pay substantial indemnity costs. In her December 22, 2022 email Ms. Grossman essentially conceded the misnomer point. She identified the mistake in the name and required that MDI be removed. By then embarking on a pointless exercise of trying to defend a groundless limitation defence, MDI caused this motion to be brought and the costs associated with it to be incurred.
- b) Indeed, MDI's conduct was tantamount to bullying. MDI wanted to keep the limitation defence, groundless as it was, hanging over Mappro during the pendency of this entire action. The only conclusion I can reach from this is that MDI wanted to gain an advantage from doing so. This needs to be sanctioned.
- c) The costs outlines of MDI exceed those of Mappro, and Mappro's material dealt with the substance of the motion, not just costs. MDI's motion material was filed when it knew it was not contesting the substance of the motion. Therefore, I draw the conclusion that MDI should reasonably expect to pay substantial indemnity costs in the range claimed by Mappro.
- d) Mr. Blair argued that I should discount the time spent by Ms. Spiegel in this motion as she was acting in the motion as a witness not a lawyer. I do not accept this position. There was no cross-examination of Ms. Spiegel. Therefore, her involvement was the swearing of her affidavit, an affidavit no doubt some other lawyer in the firm would have had to prepare if it was not her.
- e) Mr. Blair made a complicated argument about costs. He parsed out certain periods of time and argued that Mappro should be disentitled to costs for the periods after February 23, 2023 and March 10, 2023. He argued that MDI made reasonable offers to settle the motion on February 23, 2023 and thereafter. I disagree. There was no offer made by MDI on February 23, 2023, much less a reasonable one, and the MDI position remained unclear after March 10, 2023.

CW

f) I have discounted the Mappro substantial indemnity award by a small amount to recognize the fact that, due to its own lack of care in identifying the proper defendant, this motion was necessary and would have required a least a motion in writing, the costs of which Mappro would have had to absorb.

[8] I, therefore, reiterate that I award Mappro \$18,000 in substantial indemnity costs as against MDI. MDI must pay this amount within 30 days from April 26, 2023.

DATE: April 25, 2023

Charles Wiebe
ASSOCIATE JUSTICE C. WIEBE

CW

MAPPRO REALTY INC.
Plaintiff

-and-

MIZRAHI DEVELOPMENTS INC. et al.
Defendants

No. CV-22-00686696-0000

Ontario
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

ORDER

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00617571-1

MR331

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

THE HONOURABLE MR.

)

WEDNESDAY, THE 18TH

JUSTICE OSBORNE

)

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.

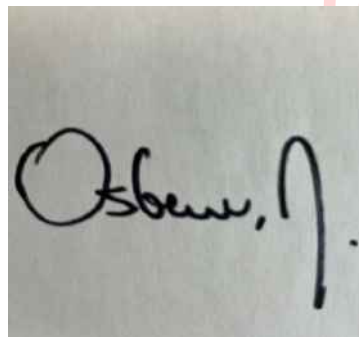
36. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order.

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.

A rectangular stamp containing a handwritten signature in black ink. The signature appears to be "Osburn, J." with a stylized flourish at the end.

2023.10.
18
13:21:12
-04'00'

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:

Claudia Lapa

From: Claudia Lapa
Sent: Wednesday, October 02, 2024 3:33 PM
To: fraser.mackinnon.blair@dentons.com; Grossman, Barbara
(barbara.grossman@dentons.com); nicholas.rolfe@toronto.ca; boneill@goodmans.ca;
carmstrong@goodmans.ca; mdunn@goodmans.ca; jlinde@goodmans.ca
Cc: Allison Spiegel; Jennifer Lake
Subject: Mappro v. Mizrahi, et al. (CV-22-00686696-0000)
Attachments: Notice of Motion NOM (further amend SOC).PDF

Good afternoon,

Attached and served upon you pursuant to the Rules is Mappro Realty Inc.'s Notice of Motion seeking leave to, among other things, amend the amended statement of claim and add new defendants. There is no return date for this motion as we will first move in the receivership proceeding for leave to lift the stay. If we obtain the order sought, we will coordinate a mutually convenient motion return date in due course.

For the proposed new defendants except for SKYGRiD Construction Inc., we are serving counsel based on the receivership service list. Please confirm whether you have instructions to accept service as set out. If anyone knows whether SKYGRiD has counsel, we would appreciate that information.

Finally, once you have had an opportunity to review the attached, please let us know if you will consent to the relief sought.

Thank you,
Claudia Lapa
Law Clerk



Speigel Nichols Fox LLP
Tel: 905.366.9700 ext. 232
Fax: 905.366.9707
1 Robert Speck Parkway, Suite 200
Mississauga, On L4Z 3M3

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.
and CITY OF TORONTO

Defendants

NOTICE OF MOTION

THE PLAINTIFF, Mappro Realty Inc. (“**Mappro**”), will make a motion to the court as soon as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard

- ☐ In writing under subrule 37.12.1 (1);
- ☐ In writing as an opposed motion under subrule 37.12.1 (4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location: 330 University Avenue, Toronto, Ontario

THE MOTION IS FOR:

1. An order:
 - a) abridging the time for service and validating the service of this notice of motion and the motion record so that it is properly returnable before the court on the date of the motion;

- i) granting leave to amend the amended statement of claim (the “**Existing Claim**”), in the form attached as Schedule A (the “**Proposed Amended Claim**”), in order to:
 - 1. add the following parties as defendants (the “**Proposed New Defendants**”): Mizrahi Commercial (The One) LP (“**Mizrahi LP**”), Mizrahi Commercial (The One) GP Inc. (“**Mizrahi GP**”), Mizrahi Inc. (“**Mizrahi Inc.**”), SKYGRiD Construction Inc. (“**Skygrid**”), and Alvarez & Marsal Canada Inc., and Alvarez & Marsal Canada Inc. in its capacity as court-appointed receiver and manager of all of the assets, undertakings and properties of Mizrahi Development Group (The One) Inc., Mizrahi Commercial (The One) LP, and Mizrahi Commercial (The One) GP Inc. (collectively or individually, the “**Receiver**”) as defendants; and
 - 2. account for events that occurred after the Existing Claim was issued;
- b) for its costs of this motion; and
- c) for any further relief that counsel may advise, and the Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

- 2. The addition of the Proposed New Defendants is necessary to enable the court to adjudicate effectively and completely on the issues raised in this action.
- 3. The Proposed New Defendants connection to the action only became known to the plaintiffs after the Court appointed the Receiver on October 18, 2023.
- 4. The Existing Claim must also be amended to account for events that occurred after it was issued.
- 5. Pleadings are closed. The parties in the action, however, have yet to exchange affidavits of documents or conduct examinations for discovery.
- 6. The court should allow the proposed amendments to the Existing Claim because (a) neither the defendants, nor the Proposed New Defendants will suffer any resulting prejudice; or,

alternatively, (b) neither the defendants, nor the Proposed New Defendants will suffer any resulting prejudice that could not be compensated for by costs or an adjournment.

7. Rules 1.04, 1.05, 3.02, 5.03, 5.04(2), 26.01, 26.02 and 37 of the *Rules of Civil Procedure*.
8. Such further grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of Claudia Lapa, to be sworn.

October 2, 2024

SPEIGEL NICHOLS FOX LLP
Barristers & Solicitors
1 Robert Speck Parkway, Suite 200
Mississauga ON L4Z 3M3

Allison Speigel
LSO No. 64992D
allison@ontlaw.com
Tel – 905-366-9700 ext. 280
Fax – 905-366-9707

Lawyers for the plaintiff,
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AND TO: TORONTO CITY CLERK'S OFFICE
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Lawyers for the defendant
 City of Toronto

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Lawyers for Mizrahi Commercial (The One) LP, and Mizrahi
 Commercial (The One) GP Inc.

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Josh Nevsky
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Receiver

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Lawyers for Mizrahi Inc.

AND TO: MCCARTER GRESPAN LAWYERS
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Kitchener, Ontario N2K 3S3

Avril Lavallee
alavallee@mgbwlaw.com
Tel – 519-571-8800 Ext. 135

Lawyers for Mizrahi Inc.

Schedule "A"

No. CV-22-00686696-0000

ONTARIO SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

~~MIZRAHI DEVELOPMENTS INC.~~ MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., and CITY OF TORONTO, MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI COMMERCIAL (THE ONE) GP INC., MIZRAHI INC., SKYGRiD CONSTRUCTION INC., ALVAREZ & MARSAL CANADA INC., and ALVAREZ & MARSAL CANADA INC. 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.

Defendants

AMENDED AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto, Ontario
M5G 1R7

TO: DENTONS CANADA LLP
Barristers and Solicitors
77 King Street West
Suite 400
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Toronto, Ontario
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~~Mizrahi Developments Inc.~~

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City of Toronto

AND TO: MIZRAHI COMMERCIAL (THE ONE) LP

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Defendant

AND TO: MIZRAHI COMMERCIAL (THE ONE) GP INC.

125 Hazelton Avenue
Toronto, Ontario
M5R 3E4

Defendant

AND TO: MIZRAHI INC.

189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Defendant

AND TO: SKYGRiD CONSTRUCTION INC.

200 – 5750 Explorer Dr.
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L4W 0A9

Defendant

AND TO: GOODMANS LLP
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Lawyers for the defendants, Alvarez & Marsal Canada Inc. and Alvarez & Marsal
Canada Inc. (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.)

CLAIM

1. The plaintiff, Mappro Realty Inc. ("**Mappro**"), claims against the Defendants as follows:
 - a) damages in the amount of \$3,000,000;
 - b) an interlocutory and mandatory permanent injunction requiring Mizrahi (defined below) ~~the defendants~~ to immediately:
 - i) stop using the Staging Area (defined below);
 - ii) remove the Staging Area in its entirety or move it so that it is no longer in front of the property (the "**Mappro Property**") municipally known as 19 Bloor Street West, Toronto;
 - iii) repair the portion of Balmuto Street ("**Balmuto**") currently occupied by the Staging Area and return it to its previous condition;
 - c) pre-judgment interest in accordance with the Courts of Justice Act;
 - d) costs of this action; and
 - e) any further relief this Honourable Court deems just.
2. All dates and amounts set out herein are approximate.

A. The Parties and the Properties

3. Mappro, an Ontario corporation, owns the Mappro Property.
4. ~~Mizrahi Developments Inc.~~ The defendant, Mizrahi Development Group (The One) Inc. ("**Mizrahi Group**"), an Ontario corporation, is ~~a developer and the registered owner of~~ owns the property (the "**Mizrahi Property**") municipally known as 1 Bloor Street West, Toronto as nominee for and on behalf of the defendant, Mizrahi Commercial (The One) LP ("**Mizrahi LP**").
5. The defendant, Mizrahi LP, an Ontario limited partnership, is the beneficial owner of the Mizrahi Property.
6. The defendant, Mizrahi Commercial (The One) GP Inc. ("**Mizrahi GP**"), an Ontario corporation, is the sole general partner of Mizrahi LP and the sole owner of Mizrahi Group.

7. The defendant, Mizrahi Inc. (“**Mizrahi Inc**”), an Ontario corporation, is believed to have acted as the developer and general contractor of the project being built on the Property (the “**Project**”) until early 2024. Mizrahi Inc is also believed to have described itself as the “owner” of the Project.
8. The defendant, SKYGRiD Construction Inc. (“**Skygrid**”), an Ontario corporation, became the construction manager and/or general contractor on the Project in early 2024.
9. On October 18, 2023, Alvarez & Marsal Canada Inc. (the “**Receiver**”) was appointed the “[r]eceiver without security of all of the assets, undertakings and properties of [Mizrahi LP, Mizrahi Group, and Mizrahi GP (collectively, 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.”
10. Mizrahi Group, Mizrahi LP, Mizrahi GP, Mizrahi Inc, Skygrid, and the Receiver are collectively or individually referred to as “**Mizrahi**.”
11. The defendant, the ~~The~~ City of Toronto (the “**City**”), is a municipal corporation governed by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A and its regulations. It owns the lands on which the Staging Area was installed.

B. The Properties and the Project

12. The Mappro Property is located on the southeast corner of Balmuto and Bloor Street (“**Bloor**”). The building on the Mappro Property is currently split into two units: one leased and operated by Scotiabank, and the other operated by Mappro (the “**Mappro Building**”).
13. Mappro has made significant efforts and continues to try to lease the Mappro Building to a high-end retail tenant.
14. Mizrahi is in the process of constructing a mixed-use development (the “**One**”) on the Mizrahi Property. For what is believe to be a short period of time, Mizrahi retained Clarke Construction Management Inc. (“**Clarke**”) to act as the construction manager on the Project project (the “**Project**”). At all relevant times, Clarke is believed to have acted as Mizrahi's agent.
15. The Mizrahi Property and the Mappro Property are not adjoining properties.

C. The Project, the Staging Area, and the Original Permit

16. In or around March 2015, Mizrahi submitted to the City its site plan and zoning application (among other things) for the Project. The City authorized the construction of the Project by issuing various types of authorizations and permits. There was no contemplation of using Balmuto as a construction staging area.
17. At some point, Mizrahi decided that it wanted to use a portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for the construction of the Project.
18. Mizrahi required a permit from the City to erect and use the Staging Area.
19. Neither Mizrahi, nor the City made any efforts to consult with Mappro, seek its consent, or provide it with notice of Mizrahi's intention to seek a permit and, ultimately, use the Staging Area.
20. On or around July 14, 2020, the City granted Clarke, as Mizrahi's agent, a temporary street occupation permit (the "**Original Permit**") allowing Mizrahi to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.
21. The City's grant of the Original Permit was contrary to the provisions of the City of Toronto Municipal Code (the "**Code**") because, among other things:
 - a) neither Mizrahi nor Clarke owns any lands abutting Balmuto;
 - b) Mappro did not consent to Mizrahi's occupation of Balmuto or waive its claims against the City for any losses or damages arising from the occupation; and,
 - c) Mizrahi and Clarke failed to provide Mappro with notice of the occupation of Balmuto.
22. At an unknown date, Mizrahi erected and began using the Staging Area by, among other things, installing and operating a concrete pump pedestal and a generator. Mizrahi used the Staging Area to pump concrete to the Project, among other things.
23. The Staging Area occupies more space than the Original Permit allowed. The City did not take any steps to ensure that Mizrahi complied with the terms of the Original Permit.

24. Mappro did not learn about Mizrahi's intention to obtain a permit or use the Staging Area until it saw the construction equipment installed on the Staging Area.
25. Mappro's initial calls to the City concerning the Staging Area went unanswered.
26. It is unknown whether the City extended the duration of the Original Permit. If the City extended the duration of the Original Permit, it was done without justification and without authority. If the City did not do so, Mizrahi continued to use the Staging Area without permission.

D. The Multi-Year Permit

27. The Original Permit was only intended to be a stopgap solution. Mizrahi wanted to use the Staging Area for the duration of the Project, which was anticipated to take many years.
28. As a result, Mizrahi sought to obtain a longer-term permit (the "**Multi-Year Permit**").
29. Mizrahi first made its request for the Multi-Year Permit to the Toronto East York Community Council ("**TEYCC**").
30. On or around November 10, 2020, Mizrahi's request for the Multi-Year Permit came before TEYCC for a vote. Before the vote, the City submitted a report to TEYCC. In the report, the City admitted that City Council approval was required to issue the Multi-Year Permit (i.e. a permit that allows a temporary occupation of City lands that do NOT abut the lands of the applicant) because its issuance would "not comply with City policy or by-laws."
31. On or around November 10, 2020, TEYCC recommended that City Council grant the Multi-Year Permit, with certain additional recommendations including, among other things, that:
 - a) the City grant the Multi-Year Permit without Mizrahi having to comply with the Code; and,
 - b) Mizrahi execute an indemnity agreement in favour of the City with respect to Mizrahi's occupation of Balmuto.
32. On or around November 25, 2020, City Council adopted TEYCC's recommendations (with some small amendments) and authorized the City to grant the Multi-Year Permit for the period November 30, 2020 to November 30, 2022.

33. The City then issued the Multi-Year Permit allowing Mizrahi to "stage concrete truck and deliveries on both northbound lanes of Balmuto ... fronting [the Mappro Building] ... pertinent to the development of [the One]."
34. Mizrahi did not comply with the terms of the Multi-Year Permit. For instance, it occupied more space than it was permitted. The City did not take any steps to ensure that Mizrahi was complying with the terms of the Multi-Year Permit.

E. The Multi-Year Permit Was Repeatedly Extended

35. The Multi-Year Permit was in effect extended on numerous occasions after it expired on November 30, 2022.
36. On December 14, 2022, the Multi-Year Permit was extended from December 14, 2022 to March 31, 2023.
37. Mizrahi did not have permission from the City to use the Staging Area between November 30, 2022 and December 14, 2022.
38. On March 29, 2023, the Multi-Year Permit was extended from April 1, 2023 to April 1, 2024.
39. The Receiver was appointed on October 18, 2023. Since that date, the Receiver has had care and control of the Project and the Mizrahi Property and has been responsible for making all decisions concerning both, including the decisions to (a) continue using the Staging Area and (b) seek extensions of the permit allowing the use. Since the Receiver was appointed, the permit has been extended on two occasions:
 - a) on March 20, 2024, the Multi-Year Permit was extended from April 2, 2024 to July 31, 2024; and
 - b) on July 24, 2024, the Multi-Year Permit was extended from August 1, 2024 to February 1, 2026.
40. Mizrahi has used the Staging Area continuously since installing it. It has done so with the City's permission (except during short periods of time when Mizrahi did not have a permit allowing it to use the Staging Area).
41. Mappro has not been provided with copies of all of the various permit extensions.

42. Mappro has been given no guarantees that the Multi-Year Permit will not be further extended past February 1, 2026.

F. The Effects of the Installation and Use of the Staging Area

43. Mizrahi's installation and use of the Staging Area interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:
- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
 - b) it creates unreasonable noise, vibration, dust, dirt, and smell;
 - c) it is unsightly;
 - d) it obstructs the sidewalk in front of the Mappro Building;
 - e) it restricts access to the Mappro Building and the emergency exits;
 - f) it restricts visibility into and from the Mappro Building; ~~and~~
 - g) it restricts access to the fire hydrant_s;
 - h) it caused homeless people to loiter directly in front of the Mappro Property, leading to numerous instances of begging, drug use, and individual urinating and defecating directly in front of the Mappro Property; and
 - i) it caused the Mappro Property to be vandalized and broken-into.
44. Mappro has spent a significant amount of time and money on a marketing program to secure the right long-term high-end retail tenant for the Mappro Building. It has also sought to lease the Mappro Building to short-term tenants.
45. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.
46. Mappro has begun ~~is now in~~ the process of renovating the Mappro Building. The installation and use of the Staging Area will likely interfere with, delay, and increase the cost of Mappro's renovation. This too will negatively impact Mappro's ability to lease the Mappro Building.

G. Nuisance

47. The granting and extension of the various permits ~~Original Permit and Multi-Year Permit~~ and the installation and use of the Staging Area interferes to a significant degree with Mappro's use and enjoyment of the Mappro Property.
48. The non-trivial interference, which has been severe and lengthy, is unreasonable.
49. There is no public utility in the Project (i.e. the construction of the One); it is a private development being constructed by a private builder. Mappro is unreasonably being forced to bear the brunt of the Project for the private good of Mizrahi and its lenders. It is not reasonable that Mizrahi should be allowed to profit at Mappro's expense.
50. The defendants are liable to the plaintiff for creating an ongoing nuisance and for permitting any form of the nuisance to occur.
51. The defendants also failed to act reasonably throughout the process:
 - a) The defendants failed to discuss the Staging Area with Mappro before installing it (even though Mappro was going to be the entity most impacted by its installation).
 - b) The defendants changed the location of the Staging Area to Balmuto mid-Project, thereby precluding Mappro from being able to oppose the granting of the original building permit.
 - c) Mizrahi refused to meaningfully engage with Mappro until Mappro's legal counsel got involved.
 - d) Mappro's initial calls to the City regarding the Staging Area went unanswered.
 - e) Although the City held consultative talks with community members, it made it clear that it cared little that the installation and use of the Staging Area would negatively impact Mappro (i.e. a non-voting entity).
 - f) The City granted the Original Permit contrary to the provisions of the Code.
 - g) The City granted the various permits and extensions thereof ~~Multi-Year Permit~~ knowing full well that the granting of the permit (a) ran afoul of the City's own policies and (b) would cause Mappro significant financial harm. In doing something

it knew to be wrong, the City then ensured that it was protected from litigation risks by obtaining an indemnity from Mizrahi.

- h) The defendants failed to take any steps to mitigate the impacts of the ongoing nuisance.
- i) The defendants failed to provide Mappro with reasonable notice when seeking and granting extensions of the various permits.

52. Mappro has suffered, and continues to suffer, damages arising from the nuisance.

~~53. It is very unlikely that Mizrahi will have completed the Project by November 30, 2022 (i.e. the date on which the Multi Year Permit expires). In such a case, Mizrahi will be forced to request an extension of the Multi Year Permit. Based on the City's conduct to date, it is likely that, without the Court's intervention, the City will grant such an extension, without paying any regard to the damages that such extension will cause to Mappro. It is, thus, likely that the nuisance to Mappro will continue long past November 30, 2022.~~

54. It is possible that the nuisance to Mappro will continue past February 1, 2026.

55. As against the Receiver, Mappro is only claiming damages arising from the nuisance that has been ongoing since the Receiver was appointed on October 18, 2023.

56. As against Skygrid, Mappro is only claiming damages arising from the nuisance that has been ongoing since Skygrid began working on the Project.

H. Negligence (as against all defendants other than the Receiver)

57. The defendants owe Mappro a duty of care.

58. The defendants acted negligently by, among other things:

- a) failing to provide notice to, consult with, or obtain consent from Mappro before installing and constructing the Staging Area;
- b) granting the Original Permit contrary to the provisions of the Code;
- e) installing and operating the Staging Area in a manner that does not comply with any of the permits ~~either the Original Permit, the Multi Year Permit, or both;~~

- d) failing to ensure that Mizrahi complied with the terms of any of the permits ~~the Original Permit, the Multi-Year Permit, or both~~; and
 - e) failing to mitigate the effects that the installation and use of the Staging Area has on Mappro.
59. Mappro has suffered, and continues to suffer, damages arising from the defendants' negligence.
60. The plaintiff pleads the *Negligence Act*, the *City of Toronto Act*, and the Code.

September 7, 2022

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Lawyers for the plaintiff,
Mappro Realty Inc.

MAPPRO REALTY INC.

Plaintiff

-and- ~~MIZRAHI DEVELOPMENTS INC.~~ MIZRAHI
DEVELOPMENT GROUP (THE ONE) INC., et al.
Defendants

No. CV-22-00686696-0000

Ontario
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

AMENDED AMENDED STATEMENT OF CLAIM

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Lawyers for the plaintiff,
Mappro Realty Inc.

RCP-F 4C (September 1, 2020)

MAPPRO REALTY INC.
Plaintiff

-and- MIZRAHI DEVELOPMENT GROUP (THE ONE) No. CV-22-00686696-0000
INC., et al.
Defendants

Ontario
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

NOTICE OF MOTION

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Lawyers for the plaintiff,
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RCP-F 4C (September 1, 2020)

Claudia Lapa

From: Claudia Lapa
Sent: Wednesday, October 02, 2024 4:41 PM
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jmorse@morseshannon.com; dtrafford@morseshannon.com; alavallee@mgbwlaw.com
Cc: Jennifer Lake
Subject: Mappro v. Mizrahi, et al. (CV-22-00686696-0000)
Attachments: Notice of Motion NOM (further amend SOC).PDF

Good afternoon,

Attached and served upon you pursuant to the Rules is Mappro Realty Inc.'s Notice of Motion seeking leave to, among other things, amend the amended statement of claim and add new defendants. There is no return date for this motion as we will first move in the receivership proceeding for leave to lift the stay. If we obtain the order sought, we will coordinate a mutually convenient motion return date in due course.

For the proposed new defendants except for SKYGRiD Construction Inc., we are serving counsel based on the receivership service list. Please confirm whether you have instructions to accept service as set out. If anyone knows whether SKYGRiD has counsel, we would appreciate that information.

Finally, once you have had an opportunity to review the attached, please let us know if you will consent to the relief sought.

Thank you,
Claudia Lapa
Law Clerk



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Text Comparison

Initial Document:
00817623.pdf

Changed Document:
00822478.pdf

Summary

Differences exist between the documents.

248 word(s) added

439 word(s) deleted

2903 word(s) matched

14 page(s) replaced

<u>Insert</u>	Word(s) inserted
Delete	Word(s) deleted
Move	Word(s) moved
Different	Word(s) different only in style

No. CV-22-00686696-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

~~MIZRAHI DEVELOPMENTS INC. MIZRAHI DEVELOPMENT GROUP~~
(THE ONE) INC., and CITY OF TORONTO, MIZRAHI COMMERCIAL (THE ONE) LP,
MIZRAHI COMMERCIAL (THE ONE) GP INC., and MIZRAHI INC.

Defendants

~~AMENDED~~ ~~AMENDED~~ STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

No. CV-22-00686696-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

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

Defendants

FRESH AS AMENDED STATEMENT OF CLAIM

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A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

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-2-

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto, Ontario
M5G 1R7

-2-

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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Date “September 7, 2022”Issued by “Electronically Filed”
Local Registrar

Address of court office: Superior Court of Justice
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and Mizrahi Commercial (The One) GP Inc.
~~Mizrahi Developments Inc.~~

-3-

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and Mizrahi Commercial (The One) GP Inc.

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Lawyers for the defendant,
City of Toronto

~~-4-~~

AND TO: TORONTO CITY CLERK'S OFFICE
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Lawyers for the defendant,
City of Toronto

AND TO: ~~MIZRAHI INC.~~

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Toronto, Ontario
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~~Defendant~~

-4-

AND TO: MORSE SHANNON LLP
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Lawyers for the defendant,
Mizrahi Inc.

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 - a) damages in the amount of \$3,000,000;
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 - e) any further relief this Honourable Court deems just.
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A. The Parties and the Properties

3. Mappro, an Ontario corporation, owns the Mappro Property.
4. ~~Mizrahi Developments Inc.~~ The defendant, Mizrahi Development Group (The One) Inc. ("**Mizrahi Group**"), an Ontario corporation, is ~~a developer and~~ the registered owner of ~~owns~~ the property (the "**Mizrahi Property**") municipally known as 1 Bloor Street West, Toronto as nominee for and on behalf of the defendant, Mizrahi Commercial (The One) LP ("**Mizrahi LP**").
5. The defendant, Mizrahi LP, an Ontario limited partnership, is the beneficial owner of the Mizrahi Property.
6. The defendant, Mizrahi Commercial (The One) GP Inc. ("**Mizrahi GP**"), an Ontario corporation, is the sole general partner of Mizrahi LP and the sole owner of Mizrahi Group.

CLAIM

1. The plaintiff, Mappro Realty Inc. ("**Mappro**"), claims against the defendants as follows:
 - a) damages in the amount of \$3,000,000;
 - b) an interlocutory and mandatory permanent injunction requiring Mizrahi (defined below) to immediately:
 - i) stop using the Staging Area (defined below);
 - ii) remove the Staging Area in its entirety or move it so that it is no longer in front of the property (the "**Mappro Property**") municipally known as 19 Bloor Street West, Toronto;
 - iii) repair the portion of Balmuto Street ("**Balmuto**") currently occupied by the Staging Area and return it to its previous condition;
 - c) pre-judgment interest in accordance with the Courts of Justice Act;
 - d) costs of this action; and
 - e) any further relief this Honourable Court deems just.
2. All dates and amounts set out herein are approximate.

A. The Parties and the Properties

3. Mappro, an Ontario corporation, owns the Mappro Property.
4. The defendant, Mizrahi Development Group (The One) Inc. ("**Mizrahi Group**"), an Ontario corporation, is the registered owner of the property (the "**Mizrahi Property**") municipally known as 1 Bloor Street West, Toronto as nominee for and on behalf of the defendant, Mizrahi Commercial (The One) LP ("**Mizrahi LP**").
5. The defendant, Mizrahi LP, an Ontario limited partnership, is the beneficial owner of the Mizrahi Property.
6. The defendant, Mizrahi Commercial (The One) GP Inc. ("**Mizrahi GP**"), an Ontario corporation, is the sole general partner of Mizrahi LP and the sole owner of Mizrahi Group.

7. The defendant, Mizrahi Inc. ("~~Mizrahi Inc.~~"); an Ontario corporation, ~~is believed to have~~ acted as the developer and general contractor of the project being built on the Property (the "~~Project~~") until ~~early~~ 2024. Mizrahi Inc ~~is also believed to have~~ described itself as the "owner" of the ~~Project~~.
8. Mizrahi Group, Mizrahi LP, Mizrahi GP, and Mizrahi ~~Inc.~~ are collectively or individually referred to as "~~Mizrahi~~."
9. The defendant, the ~~The~~ City of Toronto (the "~~City~~"), is a municipal corporation governed by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A and its regulations. It owns the lands on which the Staging Area was installed.

B. The Properties and the Project

10. The Mappro Property is located on the southeast corner of Balmuto and Bloor Street ("**Bloor**"). The building on the Mappro Property is currently split into two units: one leased and operated by Scotiabank, and the other operated by Mappro (the "**Mappro Building**").
11. Mappro has made significant efforts and continues to try to lease the Mappro Building to a high-end retail tenant.
12. Mizrahi is in the process of constructing a mixed-use development (the "**One**") on the Mizrahi Property. For what is believed to have been a short time, Mizrahi retained Clarke Construction Management Inc. ("**Clarke**") to act as the construction manager on the ~~Project project (the "~~Project~~")~~. At all relevant times, Clarke is believed to have acted as Mizrahi's agent.
13. The Mizrahi Property and the Mappro Property are not adjoining properties.

C. The Project, the Staging Area, and the Original Permit

14. In or around March 2015, Mizrahi submitted to the City its site plan and zoning application (among other things) for the Project. The City authorized the construction of the Project by issuing various types of authorizations and permits. There was no contemplation of using Balmuto as a construction staging area.

7. The defendant, Mizrahi Inc. ("**Mizrahi Inc**"), an Ontario corporation, acted as the developer and general contractor of the project being built on the Property (the "**Project**") until March 13, 2024. Mizrahi Inc described itself as the "owner" of the Project and, according to the Receiver (defined below), "exercised significant (and sometimes total) control over the Project from its inception until [March 13, 2024]."
8. Mizrahi Group, Mizrahi LP, Mizrahi GP, and Mizrahi Inc are collectively or individually referred to as "**Mizrahi**."
9. The defendant, the City of Toronto (the "**City**"), is a municipal corporation governed by the *City of Toronto Act, 2006*, S.O. 2006, c. 11, Sched. A and its regulations. It owns the lands on which the Staging Area was installed.

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15. At some point, Mizrahi decided that it wanted to use a portion of Balmuto directly in front of the Mappro Building as a construction staging area (the "**Staging Area**") for the construction of the Project.
16. Mizrahi required a permit from the City to erect and use the Staging Area.
17. Neither Mizrahi, nor the City made any efforts to consult with Mappro, seek its consent, or provide it with notice of Mizrahi's intention to seek a permit and, ultimately, use the Staging Area.
18. On or around July 14, 2020, the City granted Clarke, as Mizrahi's agent, a temporary street occupation permit (the "**Original Permit**") allowing Mizrahi to occupy the northbound lanes on Balmuto "for concrete pour" from July 14, 2020 to August 21, 2020.
19. The City's grant of the Original Permit was contrary to the provisions of the City of Toronto Municipal Code (the "**Code**") because, among other things:
 - a) neither Mizrahi nor Clarke owns any lands abutting Balmuto;
 - b) Mappro did not consent to Mizrahi's occupation of Balmuto or waive its claims against the City for any losses or damages arising from the occupation; and,
 - c) Mizrahi and Clarke failed to provide Mappro with notice of the occupation of Balmuto.
20. At an unknown date, Mizrahi erected and began using the Staging Area by, among other things, installing and operating a concrete pump pedestal and a generator. Mizrahi used the Staging Area to pump concrete to the Project, among other things.
21. The Staging Area occupies more space than the Original Permit allowed. The City did not take any steps to ensure that Mizrahi complied with the terms of the Original Permit.
22. Mappro did not learn about Mizrahi's intention to obtain a permit or use the Staging Area until it saw the construction equipment installed on the Staging Area.
23. Mappro's initial calls to the City concerning the Staging Area went unanswered.
24. It is unknown whether the City extended the duration of the Original Permit. If the City extended the duration of the Original Permit, it was done without justification and without

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23. Mappro's initial calls to the City concerning the Staging Area went unanswered.
24. It is unknown whether the City extended the duration of the Original Permit. If the City extended the duration of the Original Permit, it was done without justification and without

authority. If the City did not do so, Mizrahi continued to use the Staging Area without permission.

D. The Multi-Year Permit

25. The Original Permit was only intended to be a stopgap solution. Mizrahi wanted to use the Staging Area for the duration of the Project, which was anticipated to take many years.
26. As a result, Mizrahi sought to obtain a longer-term permit (the "**Multi-Year Permit**").
27. Mizrahi first made its request for the Multi-Year Permit to the Toronto East York Community Council ("**TEYCC**").
28. On or around November 10, 2020, Mizrahi's request for the Multi-Year Permit came before TEYCC for a vote. Before the vote, the City submitted a report to TEYCC. In the report, the City admitted that City Council approval was required to issue the Multi-Year Permit (i.e. a permit that allows a temporary occupation of City lands that do NOT abut the lands of the applicant) because its issuance would "not comply with City policy or by-laws."
29. On or around November 10, 2020, TEYCC recommended that City Council grant the Multi-Year Permit, with certain additional recommendations including, among other things, that:
 - a) the City grant the Multi-Year Permit without Mizrahi having to comply with the Code; and,
 - b) Mizrahi execute an indemnity agreement in favour of the City with respect to Mizrahi's occupation of Balmuto.
30. On or around November 25, 2020, City Council adopted TEYCC's recommendations (with some small amendments) and authorized the City to grant the Multi-Year Permit for the period November 30, 2020 to November 30, 2022.
31. The City then issued the Multi-Year Permit allowing Mizrahi to "stage concrete truck and deliveries on both northbound lanes of Balmuto ... fronting [the Mappro Building] ... pertinent to the development of [the One]."

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31. The City then issued the Multi-Year Permit allowing Mizrahi to "stage concrete truck and deliveries on both northbound lanes of Balmuto ... fronting [the Mappro Building] ... pertinent to the development of [the One]."

32. Mizrahi did not comply with the terms of the Multi-Year Permit. For instance, it occupied more space than it was permitted. The City did not take any steps to ensure that Mizrahi was complying with the terms of the Multi-Year Permit.

E. The Multi-Year Permit Was Repeatedly Extended

33. The Multi-Year Permit was in effect extended on numerous occasions after it expired on November 30, 2022.
34. On December 14, 2022, the Multi-Year Permit was extended from December 14, 2022 to March 31, 2023.
35. Mizrahi did not have permission from the City to use the Staging Area between November 30, 2022 and December 14, 2022. The City did nothing to stop Mizrahi from using the Staging Area during that time.
36. On March 29, 2023, the Multi-Year Permit was extended from April 1, 2023 to April 1, 2024.
37. On October 18, 2023, Alvarez & Marsal Canada Inc. (the “**Receiver**”) was appointed the “[r]eceiver without security of all of the assets, undertakings and properties of [Mizrahi LP, Mizrahi Group, and Mizrahi GP] ... 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.”
38. Mizrahi has used the Staging Area continuously from the date on which it was installed. It has done so with the City’s permission, except during short periods of time when Mizrahi did not have a permit allowing it to use the Staging Area.
- ~~39.~~ Mappro has not been provided with copies of all of the various permit extensions.

F. The Effects of the Installation and Use of the Staging Area

- ~~40.~~ Mizrahi's installation and use of the Staging Area interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:
- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
 - b) it creates unreasonable noise, vibration, dust, dirt, and smell;

32. Mizrahi did not comply with the terms of the Multi-Year Permit. For instance, it occupied more space than it was permitted. The City did not take any steps to ensure that Mizrahi was complying with the terms of the Multi-Year Permit.

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35. Mizrahi did not have permission from the City to use the Staging Area between November 30, 2022 and December 14, 2022. The City did nothing to stop Mizrahi from using the Staging Area during that time.
36. On March 29, 2023, the Multi-Year Permit was extended again from April 1, 2023 to April 1, 2024.
37. On October 18, 2023, Alvarez & Marsal Canada Inc. (the “**Receiver**”) was appointed the “[r]eceiver without security of all of the assets, undertakings and properties of [Mizrahi LP, Mizrahi Group, and Mizrahi GP] ... 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.”
38. On March 20, 2024, the Multi-Year Permit was extended from April 2, 2024 to July 31, 2024.
39. On July 24, 2024, the Multi-Year Permit was extended from August 1, 2024 to February 1, 2026.
40. Mizrahi has used the Staging Area continuously from the date on which it was installed. It has done so with the City’s permission, except during short periods of time when Mizrahi did not have a permit allowing it to use the Staging Area.
41. Mappro has not been provided with copies of all of the various permit extensions.

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- c) it is unsightly;
 - d) it obstructs the sidewalk in front of the Mappro Building;
 - e) it restricts access to the Mappro Building and the emergency exits;
 - f) it restricts visibility into and from the Mappro Building; ~~and~~
 - g) it restricts access to the fire hydrant;
 - h) it caused homeless people to loiter directly in front of the Mappro Property, leading to numerous instances of begging, drug use, and individuals urinating and defecating directly in front of the Mappro Property; and
 - i) it caused the Mappro Property to be vandalized and broken-into.
- ~~41.~~ Mappro ~~has~~ spent a significant amount of time and money on a marketing program to secure the right long-term high-end retail tenant for the Mappro Building. It ~~has~~ also sought to lease the Mappro Building to short-term tenants.
- ~~42.~~ Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.
- ~~43.~~ ~~Mappro has begun is now in the process of renovating the Mappro Building.~~ The installation and use of the Staging Area will likely interfere with, delay, and increase the cost of Mappro's renovation. ~~This too will negatively impact Mappro's ability to lease the Mappro Building.~~

G. Nuisance

- ~~44.~~ The granting and extension of the various permits ~~Original Permit and Multi-Year Permit~~ ~~and~~ the installation and use of the Staging Area interferes to a significant degree with Mappro's use and enjoyment of the Mappro Property.
- ~~45.~~ The non-trivial interference, which has been severe and lengthy, is unreasonable.
- ~~46.~~ There is no public utility in the Project (i.e. the construction of the One); it is a private development being constructed by a private builder. Mappro is unreasonably being forced to bear the brunt of the Project for the private good of Mizrahi and its lenders. It is not reasonable that Mizrahi should be allowed to profit at Mappro's expense.

42. Mappro has been given no guarantees that the Multi-Year Permit will not be further extended past February 1, 2026. Mappro claims all damages arising from Mizrahi's use of the Staging Area and the granting of any further extension on a go-forward basis.

F. The Effects of the Installation and Use of the Staging Area

43. Mizrahi's installation and use of the Staging Area interferes with Mappro's enjoyment of the Mappro Property in many ways, including but not limited to the following:

- a) it results in concrete trucks idling directly in front of the Mappro Building for many hours a day;
- b) it creates unreasonable noise, vibration, dust, dirt, and smell;
- c) it is unsightly;
- d) it obstructs the sidewalk in front of the Mappro Building;
- e) it restricts access to the Mappro Building and the emergency exits;
- f) it restricts visibility into and from the Mappro Building; ~~and~~
- g) it restricts access to the fire hydrant-;
- h) it caused homeless people to loiter directly in front of the Mappro Property, leading to numerous instances of begging, drug use, and individuals urinating and defecating directly in front of the Mappro Property; and
- i) it caused the Mappro Property to be vandalized and broken-into.

44. Mappro spent a significant amount of time and money on a marketing program to secure the right long-term high-end retail tenant for the Mappro Building. It also sought to lease the Mappro Building to short-term tenants.

45. Mappro's ability to attract short-term or long-term tenants has been negatively affected by the installation and ongoing use of the Staging Area.

46. The difficulty in attracting tenants limited Mappro's options in connection with the Mappro Property.

47. The installation and use of the Staging Area will likely interfere with, delay, and increase the cost of any renovation that Mappro may perform on the Mappro Building.

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~~47.~~ The defendants are liable to the plaintiff for creating an ongoing nuisance and for permitting any form of the nuisance to occur.

~~48.~~ The defendants also failed to act reasonably throughout the process:

- a) The defendants failed to discuss the Staging Area with Mappro before installing it (even though Mappro was going to be the entity most impacted by its installation).
- b) The defendants changed the location of the Staging Area to Balmuto mid-Project, thereby precluding Mappro from being able to oppose the granting of the original building permit.
- c) Mizrahi refused to meaningfully engage with Mappro until Mappro's legal counsel got involved.
- d) Mappro's initial calls to the City regarding the Staging Area went unanswered.
- e) Although the City held consultative talks with community members, it made it clear that it cared little that the installation and use of the Staging Area would negatively impact Mappro (i.e. a non-voting entity).
- f) The City granted the Original Permit contrary to the provisions of the Code.
- g) The City granted the various permits and extensions of them ~~Multi-Year Permit~~ knowing full well that the granting of the permit (a) ran afoul of the City's own policies and (b) would cause Mappro significant financial harm. In doing something it knew to be wrong, the City then ensured that it was protected from litigation risks by obtaining an indemnity from Mizrahi.
- h) The defendants failed to take any steps to mitigate the impacts of the ongoing nuisance.
- i) The defendants failed to provide Mappro with reasonable notice when seeking and granting extensions of the various permits.

~~49.~~ Mappro has suffered, and continues to suffer, damages arising from the nuisance.

~~50.~~ ~~It is very unlikely that Mizrahi will have completed the Project by November 30, 2022 (i.e. the date on which the Multi-Year Permit expires). In such a case, Mizrahi will be forced to request an extension of the Multi-Year Permit. Based on the City's conduct to date, it is~~

G. Nuisance

48. The granting and extension of the various permits and the installation and use of the Staging Area interferes to a significant degree with Mappro's use and enjoyment of the Mappro Property.
49. The non-trivial interference, which has been severe and lengthy, is unreasonable.
50. There is no public utility in the Project (i.e. the construction of the One); it is a private development being constructed by a private builder. Mappro is unreasonably being forced to bear the brunt of the Project for the private good of Mizrahi and its lenders. It is not reasonable that Mizrahi should be allowed to profit at Mappro's expense.
51. The defendants are liable to the plaintiff for creating an ongoing nuisance and for permitting any form of the nuisance to occur.
52. The defendants also failed to act reasonably throughout the process:
- a) The defendants failed to discuss the Staging Area with Mappro before installing it (even though Mappro was going to be the entity most impacted by its installation).
 - b) The defendants changed the location of the Staging Area to Balmuto mid-Project, thereby precluding Mappro from being able to oppose the granting of the original building permit.
 - c) Mizrahi refused to meaningfully engage with Mappro until Mappro's legal counsel got involved.
 - d) Mappro's initial calls to the City regarding the Staging Area went unanswered.
 - e) Although the City held consultative talks with community members, it made it clear that it cared little that the installation and use of the Staging Area would negatively impact Mappro (i.e. a non-voting entity).
 - f) The City granted the Original Permit contrary to the provisions of the Code.
 - g) The City granted the various permits and extensions knowing full well that the granting of the permit (a) ran afoul of the City's own policies and (b) would cause Mappro significant financial harm. In doing something it knew to be wrong, the

~~-12-~~

~~likely that, without the Court's intervention, the City will grant such an extension, without paying any regard to the damages that such extension will cause to Mappro. It is, thus, likely that the nuisance to Mappro will continue long past November 30, 2022.~~

H. Negligence

~~51.~~ The defendants owe Mappro a duty of care.

~~52.~~ The defendants acted negligently by, among other things:

- a) failing to provide notice to, consult with, or obtain consent from Mappro before installing and constructing the Staging Area;
- b) granting the Original Permit contrary to the provisions of the Code;
- c) installing and operating the Staging Area in a manner that does not comply with any of the permits ~~either the Original Permit, the Multi-Year Permit, or both,~~
- d) failing to ensure that Mizrahi complied with the terms of the permits ~~the Original Permit, the Multi-Year Permit, or both,~~ and
- e) failing to mitigate the effects that the installation and use of the Staging Area has on Mappro.

~~53.~~ Mappro has suffered, and continues to suffer, damages arising from the defendants' negligence.

~~54.~~ The plaintiff pleads the *Negligence Act*, the *City of Toronto Act*, and the Code.

I. Motion in the Receivership to Lift the Stay

~~55.~~ Mappro brought a motion (the "Stay Motion") in the receivership proceedings to lift (to the extent necessary) the stay of proceedings (the "Stay") imposed by the receivership order dated October 18, 2023.

~~56.~~ The Receiver has consented to lift the Stay to the extent necessary to amend the claim to the within form.

~~57.~~ Mappro reserves its right to further amend this statement of claim once the Stay Motion is decided.

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City then ensured that it was protected from litigation risks by obtaining an indemnity from Mizrahi.

- h) The defendants failed to take any steps to mitigate the impacts of the ongoing nuisance.
- i) The defendants failed to provide Mappro with reasonable notice when seeking and granting extensions of the various permits.

53. Mappro has suffered, and continues to suffer, damages arising from the nuisance.

H. Negligence

54. The defendants owe Mappro a duty of care.

55. The defendants acted negligently by, among other things:

- a) failing to provide notice to, consult with, or obtain consent from Mappro before installing and constructing the Staging Area;
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- d) failing to ensure that Mizrahi complied with the terms of the permits; and
- e) failing to mitigate the effects that the installation and use of the Staging Area has on Mappro.

56. Mappro has suffered, and continues to suffer, damages arising from the defendants' negligence.

57. The plaintiff pleads the *Negligence Act*, the *City of Toronto Act*, and the Code.

58. ~~For the time being is decided, Mappro is only advancing claims against Mizrahi Inc. for the nuisance and negligence that took place until October 18, 2023 (i.e the date on which the Receiver was appointed).~~

September 7, 2022

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September 7, 2022

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Mappro Realty Inc.

MAPPRO REALTY INC.

Plaintiff

-and- ~~MIZRAHI DEVELOPMENTS INC. MIZRAHI~~
DEVELOPMENT GROUP (THE ONE) INC., et al.
Defendants

~~No. CV-22-00686696-0000~~

Ontario
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT
TORONTO

AMENDED ~~AMENDED~~ STATEMENT OF CLAIM

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Lawyers for the plaintiff,
Mappro Realty Inc.

RCP-F 4C (September 1, 2020)

MAPPRO REALTY INC.

Plaintiff

-and- MIZRAHI DEVELOPMENT GROUP (THE ONE)
INC., et al.
Defendants

No. CV-22-00686696-0000

Ontario
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT
TORONTO

FRESH AS AMENDED STATEMENT OF CLAIM

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Lawyers for the plaintiff,
Mappro Realty Inc.

RCP-F 4C (September 1, 2020)

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. and CITY OF
TORONTO

Defendants

REPLY TO THE STATEMENT OF DEFENCE OF CITY OF TORONTO

1. The plaintiff, Mappro Realty Inc. ("**Mappro**"), has no knowledge in respect of the allegations contained in the first sentence of paragraph 5 of the statement of defence (the "**Defence**") of the City of Toronto (the "**City**").
2. Mappro admits the second sentence in paragraph 5, the first sentence of paragraph 20 and paragraph 21 of the Defence.
3. Except as hereinafter admitted or as set out in amended statement of claim (the "**Claim**"), Mappro denies all other allegation set out in the Defence.
4. Except as otherwise defined herein, all defined terms are as set out in the Claim.

Mappro Purchased the Mappro Property

5. Mappro purchased the Mappro Property on December 30, 2016. In doing so, Mappro did not expect, nor would it have been reasonable for it to expect, that it would be forced to endure the noise, vibration, dirt, and other unreasonable interferences with its property emanating from the erection and use of the Staging Area (i.e. construction staging area being used for a private development project taking place a block away).

The Mappro Building

6. The Mappro Building (i.e. the West Unit as the term is defined in the Defence) has a façade of 9 meters on Bloor and a façade of 34 meters on Balmuto. Its entrance is on the corner of Bloor and Balmuto. The Mappro Building is significantly impacted by the nuisance caused by the existence and use of the Staging Area, which is blocking most of the Mappro Building's façade on Balmuto. But for the existence and use of the Staging Area, the Mappro Building would be a highly desirable and marketable commercial property.

Mappro Entered into an Agreement to Sell the Mappro Property

7. In or around November 2022, Mappro entered into an agreement of purchase and sale (the "APS") to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). The transaction (the "**Sale Transaction**") has not yet closed.
8. Reserve (or a corporation on its behalf) plans to build a development project (the "**Reserve Development Project**") on the Mappro Property (and a neighbouring property). To that end, The R.W. Bloor Street Development Corp. submitted various applications to the City of Toronto in February 2023. Given that Mappro is still the registered owner of the Mappro Property, Mappro authorized the making of the applications.
9. Other than in its capacity as the registered owner of the Mappro Property until the Sale Transaction closes, Mappro is not and will not be involved in the Reserve Development Project.
10. Mappro is not required to produce a copy of the APS to the defendants.

Other

11. Mappro has taken all reasonable steps to mitigate its damages.
12. Mappro was not required to bring an application for judicial review as a precondition to bringing the within action. The within action is not an abuse of process.

July 7, 2023

SPEIGEL NICHOLS FOX LLP
Barristers & Solicitors
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Mississauga ON L4Z 3M3

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Mappro Realty Inc.

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M5K 0A1

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Barbara Grossman
LSO No. 20947K
barbara.grossman@dentons.com
Tel – 416-863-4511
Fax – 416-863-4592

Lawyers for the defendant
Mizrahi Development Group (The One) Inc.

AND TO: TORONTO CITY CLERK'S OFFICE
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13th Floor W.
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Toronto, Ontario
M5H 2N2

Nicholas Rolfe
LSO No. 66063O
Nicholas.Rolfe@toronto.ca
Tel – 416-338-3169
Fax – 416-338-6986

Lawyers for the defendant
City of Toronto

RCP-E 25A (July 1, 2007)

MAPPRO REALTY INC.

Plaintiff

-and- MIZRAHI DEVELOPMENT GROUP (THE ONE) No. CV-22-00686696-0000
INC. et al.
Defendants

Ontario
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT
TORONTO

REPLY

SPEIGEL NICHOLS FOX LLP
Barristers & Solicitors
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Lawyers for the plaintiff
Mappro Realty Inc.

RCP-F 4C (September 1, 2020)

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MAPPRO REALTY INC.

Plaintiff

- and -

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC. and CITY OF
TORONTO

Defendants

**REPLY TO THE STATEMENT OF DEFENCE OF MIZRAHI DEVELOPMENT
GROUP (THE ONE) INC.**

1. The plaintiff, Mappro Realty Inc. ("**Mappro**"), admits the allegations contained in paragraph 6 of the statement of defence of Mizrahi Development Group (The One) Inc. ("**Mizrahi**").
2. Mappro has no knowledge in respect of the allegations contained in paragraphs 13-15 of Mizrahi's statement of defence.
3. Except as hereinafter admitted or as set out in amended statement of claim (the "**Claim**"), Mappro denies all other allegation set out in the Defence.
4. Except as otherwise defined herein, all defined terms are as set out in the Claim.

Mappro Purchased the Mappro Property

5. Mappro purchased the Mappro Property on December 30, 2016. At the time, Mappro was aware that Mizrahi had acquired the Mizrahi Property (located at the corner of Yonge Street and Bloor) and was in the process of trying to develop a project on those lands (i.e. the One). The Mizrahi Property is located on the other end of the block from the Mappro Property, with another property located in between.
6. When it purchased the Mappro Property, Mappro did not expect, nor would it have been reasonable for it to expect or contemplate, that Mizrahi would end up occupying the street

in front of the Mappro Building to use as a construction staging area for its development project located a block away. Mappro would have expected Mizrahi to use the street adjacent to its own property.

The Manulife Project

7. The Manulife Centre is located on Bloor in between Balmuto and Bay Street. It is across the street (i.e. Balmuto) from the Mappro Property. Just like the Mappro Property, the Manulife Center is adjacent to Balmuto.
8. When undertaking its renovation project, Manulife Center occupied the portion of Balmuto and the sidewalk directly adjacent to the Manulife Property. Manulife did not occupy the sidewalk and portion of Balmuto directly adjacent to the Mappro Property, nor did it seek to occupy a street in front of a property located a block away. Manulife did not create the nuisance that the defendants are creating.
9. Mappro had no reason to object to the Manulife occupation of Balmuto and did not do so. If anything, this demonstrates the extent to which Mappro behaves reasonably.

Mappro Entered into an Agreement to Sell the Mappro Property

10. In or around November 2022, Mappro entered into an agreement of purchase and sale (the "**APS**") to sell the Mappro Property to Reserve Suites Corporation ("**Reserve**"). The transaction (the "**Sale Transaction**") has not yet closed.
11. Reserve (or a related corporation) plans to build a development project (the "**Reserve Development Project**") on the Mappro Property (and the neighbouring property). To that end, The R.W. Bloor Street Development Corp. submitted various applications to the City of Toronto in February 2023. Given that Mappro is still the registered owner of the Mappro Property, Mappro authorized the making of the applications.
12. Other than in its capacity as the registered owner of the Mappro Property until the Sale Transaction closes, Mappro is not and will not be involved in the Reserve Development Project.
13. Mappro is not required to produce a copy of the APS to the defendants.

Other

14. The Mappro Building (i.e. the 'western unit' as the term is used in the Defence) has a façade of 9 meters on Bloor and a façade of 34 meters on Balmuto. Its entrance is on the corner of Bloor and Balmuto. The Mappro Building is significantly impacted by the nuisance caused by the erection and use of the Staging Area, which is blocking most of the Mappro Building's façade on Balmuto. But for the erection and use of the Staging Area, the Mappro Building would be a highly desirable and marketable commercial property.
15. Mappro has taken all reasonable steps to mitigate its damages.
16. Mappro's marketing materials for the Mappro Building reference the One because that is what is currently being built at the corner of Yonge Street and Bloor. If Mizrahi was not developing the One, the marketing materials would have referenced whatever store or development project was located or being built at that corner.
17. Mizrahi never offered to rent the Mappro Building.

July 7, 2023

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AND TO: TORONTO CITY CLERK'S OFFICE
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RCP-E 25A (July 1, 2007)

MAPPRO REALTY INC.

Plaintiff

-and- MIZRAHI DEVELOPMENT GROUP (THE ONE) No. CV-22-00686696-0000
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Defendants

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REPLY

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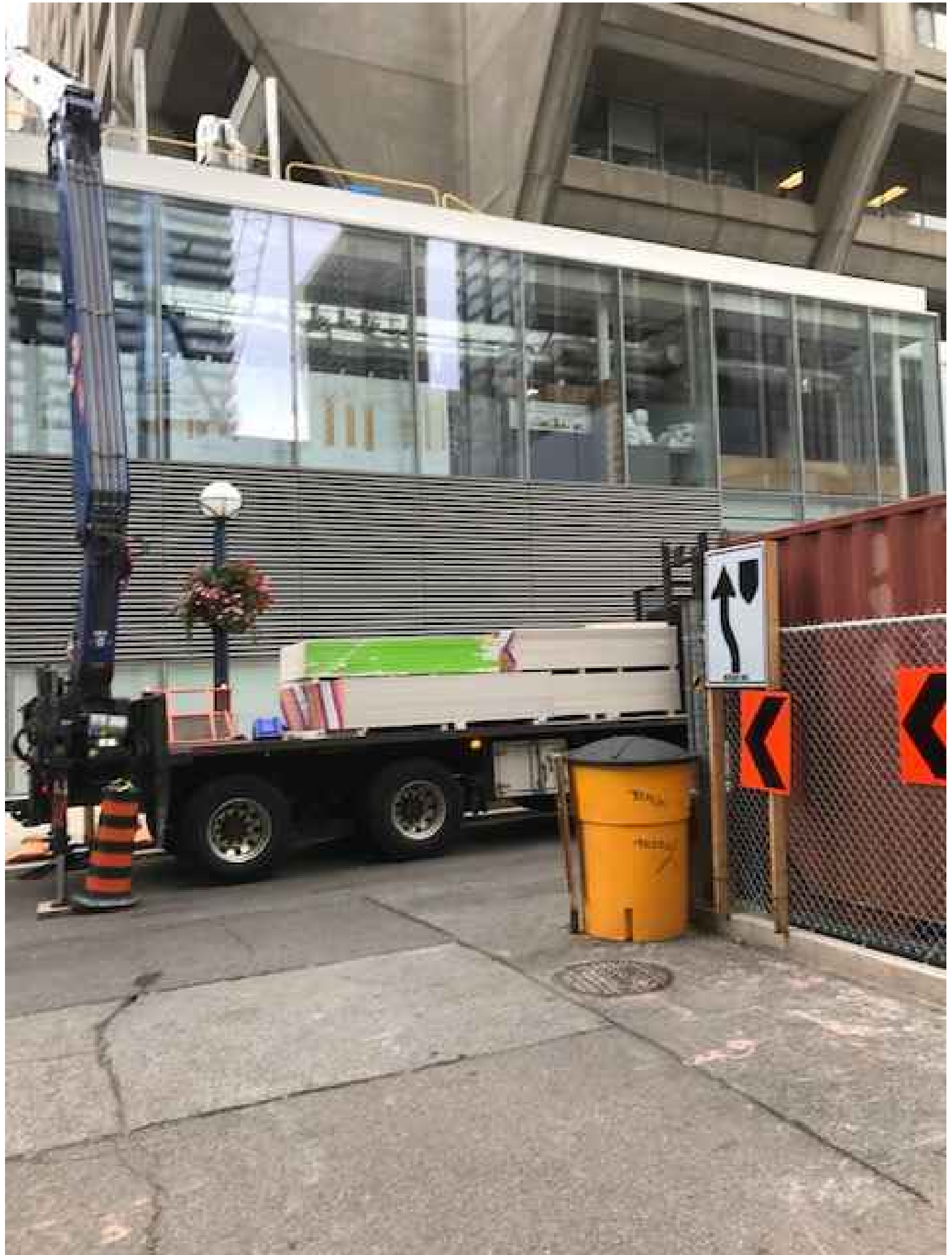
Lawyers for the plaintiff
Mappro Realty Inc.

RCP-F 4C (September 1, 2020)









MR418























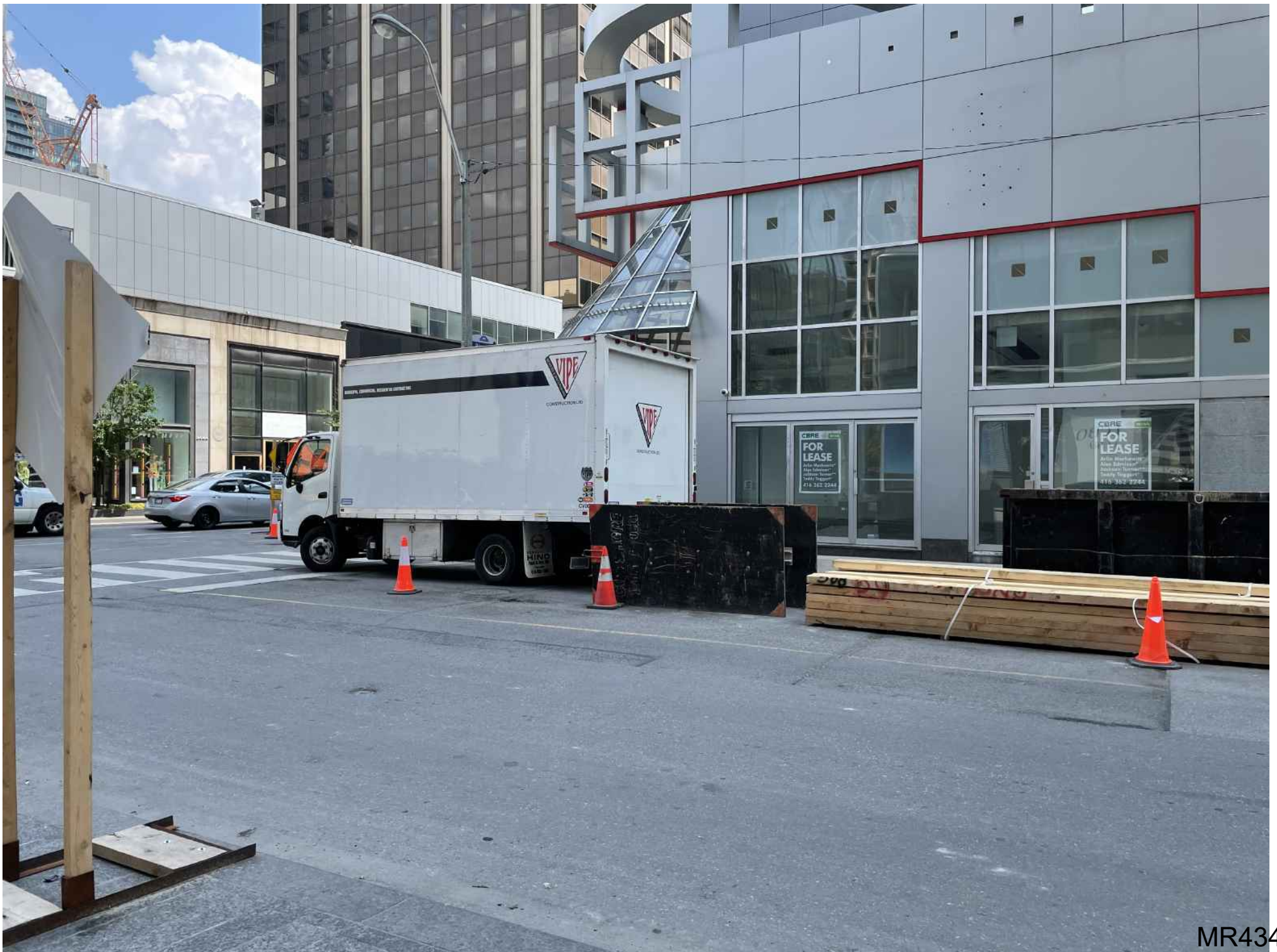






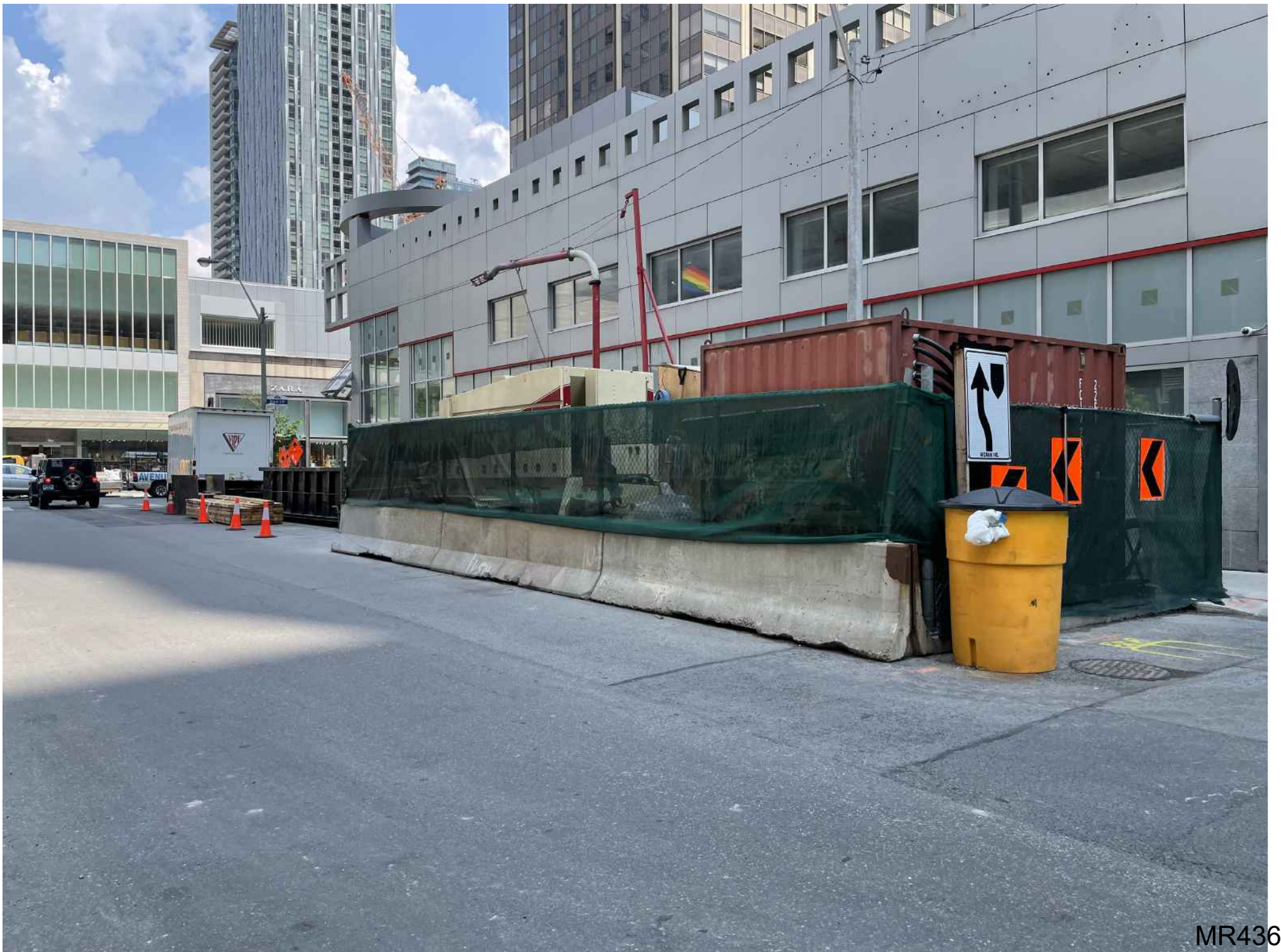


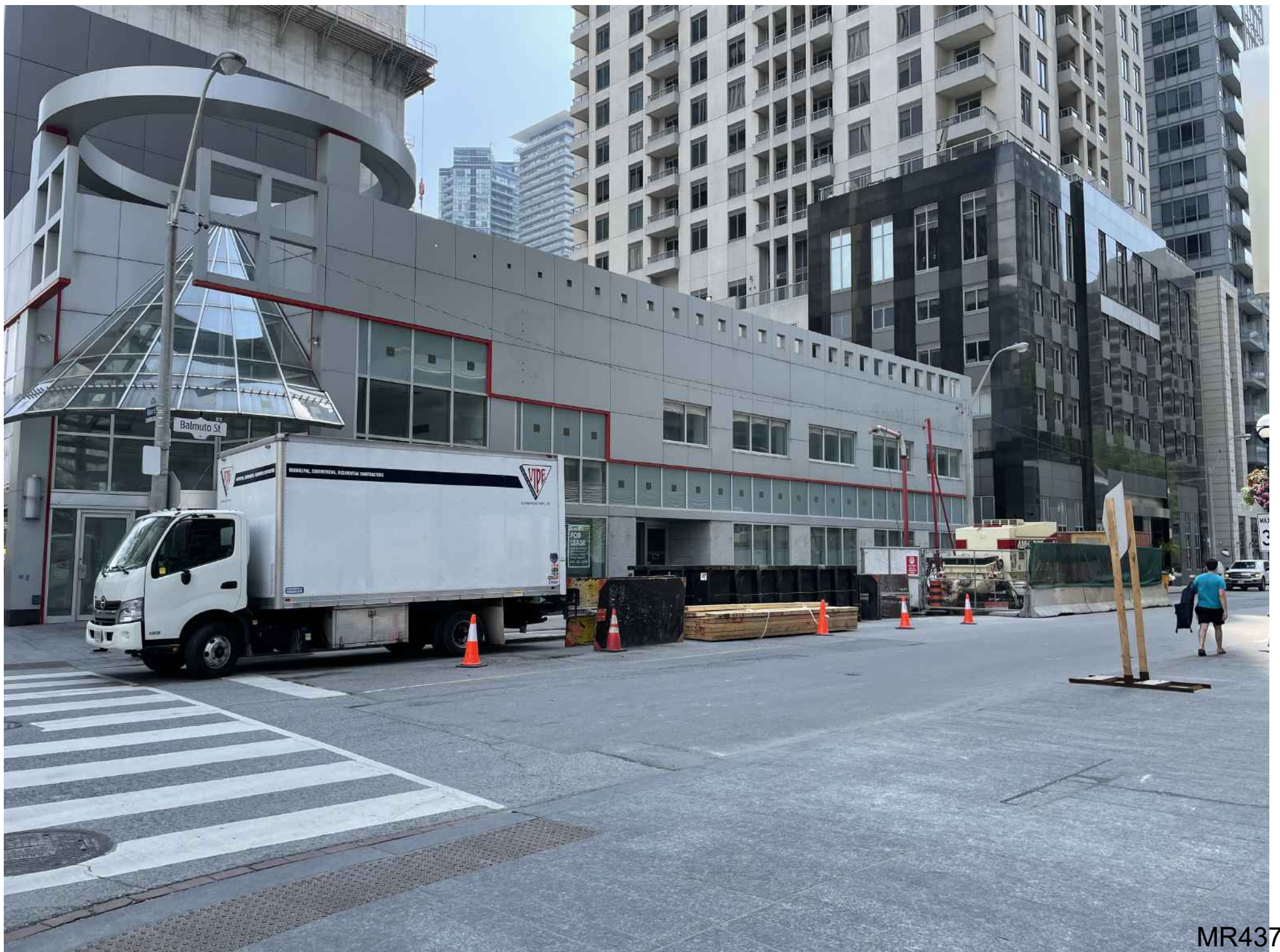
MR433





MR435







MR438

Claudia Lapa

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Friday, October 18, 2024 9:28 AM
To: Allison Spiegel
Cc: Jennifer Lake; Linde, Jennifer; Armstrong, Christopher; O'Neill, Brendan; Stothart, Sarah
Subject: RE: Order on consent

EXTERNAL SOURCE - Exercise caution.

The terms of the Receiver's consent are clear from my e-mail. It appears that the Amended Amended Statement of Claim (in its current form) is consistent with that consent. I note that:

- The Amended Amended Statement of Claim incorrectly identifies Dentons as counsel to the Debtors. Under the terms of the Receivership Order, the Receiver is responsible for defending any actions against the Debtors so if the case proceeds (and our position on that point is clear) then Goodmans will have carriage of the defence;
- Paragraph 56 incorrectly states that the Receiver consented to a subset of the relief on the stay motion and Mappro obtained an order on consent. This is not correct.

With respect to your inquiry about a potential injunction, the Receiver is (as you know) an officer of the Court. To the extent that the Debtors (as defined in the Receivership Order) are the subject of an injunction, the Receiver would cause them to comply with the terms of that injunction.

Thanks,
Mark

From: Allison Spiegel <allison@ontlaw.com>
Sent: Thursday, October 17, 2024 6:41 PM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Jennifer Lake <jennifer@ontlaw.com>; Linde, Jennifer <jlinde@goodmans.ca>; Armstrong, Christopher <carmsstrong@goodmans.ca>; O'Neill, Brendan <boneill@goodmans.ca>
Subject: RE: Order on consent

Mark,

- 1) To ensure there is no confusion, please confirm that the Receiver is consenting to lifting the stay to the extent necessary to allow Mappro to amend its statement of claim to that which is attached to this email (either on consent or with leave of the Court).
- 2) On a call that we had earlier this month, I believe that you indicated that if an injunction were to be granted against any one or more of the Mizrahi entities preventing them from using the staging area, the Receiver would abide by that injunction. Please confirm if that is the Receiver's position. If I have incorrectly stated the position, please set out what its position is with respect to a potential injunction.

Regards,
Allison

Allison J. Spiegel*



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*practicing through Allison Speigel Professional Corporation

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From: Dunn, Mark <mdunn@goodmans.ca>
Sent: Wednesday, October 16, 2024 8:57 PM
To: Allison Speigel <allison@ontlaw.com>
Cc: Jennifer Lake <jennifer@ontlaw.com>; Linde, Jennifer <jlinde@goodmans.ca>; Armstrong, Christopher <carmsstrong@goodmans.ca>; O'Neill, Brendan <boneill@goodmans.ca>
Subject: RE: Order on consent

EXTERNAL SOURCE - Exercise caution.

Allison,

We do not believe that a consent order is required. The Receivership Order requires either leave of the court or the Receiver's consent. The Receiver provided its consent (and the terms of that consent) in my e-mail dated October 8, 2024 of 11:07 am. The relevant paragraphs are pasted below, for ease of reference:

Paragraph 14 of the Receivership Order prohibits the commencement or continuation of Proceedings against or in respect of the Debtors or the Property except with the written consent of the Receiver or leave of the Court. The Receiver is prepared consent to a limited exception to the stay imposed by the Receivership Order so that your client can bring its motion to amend the claim against the Debtors and the City (but not the Receiver) in order to prevent any issue with the limitation period.

To avoid any doubt, the Receiver does not consent to any step in the Mappro litigation that is not specifically required to avoid the expiry of the limitation period and once your motion is heard and the stay imposed by the Receivership Order will preclude any further steps in the Mappro litigation absent further consent of the Receiver or leave of the Court being obtained.

Specifically, and without limiting the generality of the foregoing, the Receiver opposes the unfounded allegations of willful misconduct against it and will oppose any attempt to lift the stay in favour of the Receiver or to add the Receiver as a defendant in the Mappro litigation. To be clear, the facts alleged in the Notice of Motion are not sufficient to establish willful misconduct (as the term has been applied by the Court of Appeal) even if they are proven. This is why we have repeatedly asked for you to produce your motion record before we discuss a schedule for the responding materials.

From: Allison Spiegel <allison@ontlaw.com>

Sent: Tuesday, October 15, 2024 5:56 PM

To: Dunn, Mark <mdunn@goodmans.ca>

Cc: Jennifer Lake <jennifer@ontlaw.com>; Linde, Jennifer <jlinde@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>

Subject: Order on consent

I attach a draft order on consent for a subset of the relief that Mappro is seeking. Can you please confirm as soon as possible that the Receiver will consent.

Regards,
Allison

Allison J. Spiegel*



Speigel Nichols Fox LLP

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***** Attention *****

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Phone: (416) 392-1803
Fax: (416) 392-7465
24 Hours Dispatch: (416) 392-5556

48 Hour Fax Notification:

Construction, Toronto Metro Hal 17 Floor

Permit No: 86576401

CA PM EqpMaterials

\$1,720.43

TEMPORARY STREET OCCUPATION PERMIT EQUIPMENT/MATERIAL

This is issued for the locations specified and subject to the Applicant complying with all of the relevant laws, By-laws and the Terms and Conditions set forth below and on the reverse, and shall be subject to cancellation at any time without notice.

APPLICANT: Clark Construction Management Inc.
33 Bloor St. East, Suite 304
Toronto, Ontario M4W 3H

CONTACT: Jay Cha
Phone: (416) 274-2629

LOCATION: 1 BLOOR ST W at BLOOR ST E to MAYFAIR MEWS

City Ward: 11

District: Toronto and East
York

PURPOSE: Concrete Truck -- Permission to occupy northbound lanes on Balmuto St for concrete pour

TIME PERIOD:

From:	To:	Restriction During Period
July 14, 2020	7:00 am	August 21, 2020
		7:00 pm (Daily) Monday-Friday

Standard Conditions

The applicant shall, at their expense, comply with the conditions described in Appendix A of Chapter 743 ("Use of Streets and Sidewalks") of the Toronto Municipal Code. A copy of these conditions can be found at http://www.toronto.ca/legdocs/municode/1184_743.pdf

SPECIAL CONDITIONS:

- 1.0 Approved by Steve Leyland, Work Zone Coordinator.
- 2.0 Proper traffic control set-up and signage required as per the Ontario Traffic Manual, Book 7: Temporary Conditions and submitted/discussed Traffic Management Plan.
- 3.0 Applicant is responsible to submit a RoDARS notification directly to the Toronto Traffic Management Centre (tmcdisp@toronto.ca) and area Traffic Work Zone Co-ordinator a minimum of 48 hours prior to work.
- 4.0 Applicant must maintain local accesses to all affected properties safely at all times.
- 5.0 Applicant must maintain 1.5m of clear open sidewalk for pedestrian passage at all times.
- 6.0 Five (5) certified traffic control persons required.
- 7.0 Southbound traffic to be maintained at all times during concrete pour

The Applicant, (and where applicable, all heirs, executors, administrators, successors and assigns), agrees to indemnify and save harmless the City of Toronto, and any other corporations, boards, commissions or entities having utilities or services in the vicinity of any work undertaken pursuant to this permit which as a result of such work suffers any loss, costs, damages, claims for lien, charges or expenses, (except such that are attributable to the negligence of the City, its servants, agents or contractors other than in granting this permit as requested). This indemnity shall survive the expiry of this permit. The cost of permanent repairs carried out by the City shall be paid by the Applicant.

NOTE: This permit authorizes occupation only during the times and at the location specified herein. Any change or extension of time or any change in location must be the subject of a new application to the General Manager of Transportation Services.

For: General Manager of
Transportation Services

Issued by: Sheel Radia

Date Issued: Jul 14, 2020

Applicant or Signing Officer:

Date Printed: Jul 14, 2020

MR443

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, No. CV-23-00707839-00CL
et al.

Respondents

Ontario
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT
TORONTO

MOTION RECORD

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Tel - 905-366-9700 ext. 280

Lawyers for the Plaintiff in the Mappro Action

RCP-F 4C (September 1, 2020)