

**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 MIZRAHI INC.

June 21, 2024

MORSE SHANNON LLP

**133 Richmond Street West
Suite 501
Toronto ON M5H 2L3**

**Jerome R. Morse (21434U)
jrmorse@morseshannon.com**

**David M. Trafford (68926E)
dtrafford@morseshannon.com**

**Tel: 416-863-1230
Fax: 416-863-1241**

**Lawyers for the Moving Party,
Mizrahi Inc.**

**ONTARIO
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2024

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Respondents

NOTICE OF MOTION

Mizrahi Inc. (“**MI**”) will make a motion before Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on August 9, 2024 as soon as it can be heard at the Courthouse at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard orally in-person.

THE MOTION IS FOR:

1. An order that any claims for set-off advanced by the court appointed receiver, Alvarez & Marsal Canada (“**A&M**” or the “**Receiver**”) be and are restricted to claims the Receiver identifies solely from a review of documentation provided by MI on or after May 27, 2024;
2. An order requiring the Receiver to increase the reserve set aside to address MI’s claim for payment in its pending motion to enforce paragraph 17 of the Receivership Order to \$11 million;

3. An order requiring the Receiver to obtain and produce to MI all documentation referable to the approval and/or denial of payments to MI, the approval and denial of construction draw requests for Project funds by MI, the payment of all approved payments and any other related documentation within the possession of the Receiver, or the Secured Senior Lender (defined below); and
4. An order requiring the Receiver to produce to Mr. Sam Mizrahi copies of all quantity survey reports, the daily logs of the Project's general contractor, Skygrid, updated construction schedules and budgets for the Project.

THE GROUNDS OF THE MOTION ARE AS FOLLOWS:

1. MI is a corporation beneficially owned by Mr. Sam Mizrahi. MI provides construction and development management services in Ontario.
2. Mr. Mizrahi (and related entities) have a 50% ultimate indirect voting interest in the beneficial owner of the Project, Mizrahi Commercial (The One) LP (the "Owner"). The other 50% indirect voting interest in the Owner is held by Ms. Jenny Coco (and related entities) (the "Coco Parties"). The registered owner of the Project is Mizrahi Commercial (The One), GP Inc.
3. On October 18, 2023, Justice Osborne granted an order appointing the Receiver (the "Receivership Order") over the Owner and related entities.

MI's Payment Motion and the Need to Increase the Amount Reserved by the Receiver

4. MI has brought a motion to enforce paragraph 17 of the Receivership Order seeking payment by the Receiver for fees and costs owed to MI by the Project for post-receivership work (the "Payment Motion").

5. To address potential prejudice to MI due to non-payment of its claim at issue in the Payment Motion, on or about March 7, 2024, the Receiver undertook to the court to reserve \$6 million to protect MI's claim for payment under the Payment Motion.
6. Since that time, MI's claim for non-payment at issue in the Payment Motion was increased substantially to \$10,911,766.25. As such, MI is again faced with significant prejudice of non-payment of its claim at issue in the Payment Motion. The amount claimed by MI in the Payment Motion is subject to interest at a per diem of \$3,040.02.
7. MI's claim at issue in the Payment Motion in the sum of \$10,911,766.25 includes \$4,529,644.83 referable to unpaid hard costs owed to third parties. The Receiver has not provided any response to MI's requests for information on why these third party hard costs remain unpaid.
8. MI is prejudiced by the potential of non-payment to its claim for fees and expenses owed pursuant to paragraph 17 of the Receivership Order for post-receivership work.
9. The Receiver has a practice of maintaining a reserve sufficient to pay unpaid costs claimed against the Project and should be required to maintain that practice to address the claims advanced by MI in the Payment Motion.
10. The reserve set aside by the Receiver to address the prejudice to MI due to the potential for non-payment should be increased given the increase in MI's claim for non-payment at issue in the Payment Motion to \$11 million.

The Receiver has Failed to Comply with the Timetable for the Payment Motion

11. In an Endorsement, dated March 18, 2024, Justice Osborne directed that the Receiver deliver its Responding Motion Record for the Payment Motion by May 31, 2024. This date was proposed by the Receiver over the objection of MI which sought a tighter timeline. The Receiver advised the court that it required time to investigate and consider potential claims for set-off against MI's claim for payment of fees and costs for post-receivership work required to be paid to MI pursuant to section 17 of the Receivership Order.
12. To date, the Receiver has only identified one claim for an alleged set-off.
13. On May 28, 2024, MI's counsel wrote to counsel for the receiver indicating MI required the delivery of the Receiver's Responding Motion Record by May 31, 2024, but agreed the record could be supplemented by any claims or evidence subsequently identified by the Receiver revealed in materials recently delivered or to be delivered.
14. The Receiver did not respond to this communication and did not deliver a Responding Motion Record by May 31, 2024 or at all.
15. The Receiver should be precluded from advancing any claims for a set-off, except for claims that are identified by the Receiver arising from documentation reviewed after May 27, 2024 as a result of its failure to comply with the timetable it proposed and as endorsed by Justice Osborne.

Production of Documentation Referable to the Approval of Payments to MI

16. The Receiver has suggested that it has concerns over the flow of money from the Project to the MI, but has refused to specify any of its concerns. There is no doubt that MI received significant sums of Project funds as fees, and to pay Project costs,

including amounts owed to third parties, such as subcontractors. In addition, one of the Project's lenders required its funds for the Project to be deposited into MI's bank accounts, before the funds were either directed to third parties as approved, directed to Project bank accounts, kept by MI as consideration for fees and expenses owed to it by the Project, or directed by MI to third parties for the payment of Project costs.

17. To date, the Receiver has not provided any particulars or information on the nature of its concerns. The records in the Receiver's possession reveal that all money received by MI from the Project was approved by the Senior Secured Lender, its administrative agent, and the quantity surveyor, Altus and for a period of time the Coco parties.

18. Furthermore, the Receiver has not identified any discrepancies with respect to the payment of MI or the payment by MI of third party costs, with one minor exception arising in February 2024, which was addressed by the Receiver and MI and resolved by agreement that the Receiver pay the third parties directly with the balance paid to MI.

19. Given the unspecified allegations of the Receiver of concerns with respect to payments made to MI from Project funds, MI seeks production of all documentation in the Receiver's possession concerning the approval and/or denial of Project payments to MI as the Receiver obtained from the Senior Secured Lender. If the Receiver has not obtained this information, MI seeks an order compelling the Receiver to obtain such information as it is empowered to do under the Receivership Order.

20. MI requires this information to adequately respond to any potential claims the Receiver may advance, even though no such claims have been identified by the Receiver.

Production of Quantity Survey Reports, Skygrid Daily Logs, Updated Budgets and Schedules for the Project

21. Mr. Sam Mizrahi is a 50% beneficial owner of the Project and is the principal of MI. Mr. Mizrahi is also a guarantor under the Project's outstanding debts, which has resulted in the Receivership Order.

22. Mr. Mizrahi, as owner of the Project and guarantor, is entitled to production of the quantity survey reports of the Project, the daily logs of the general contractor to the Project, Skygrid, updated budgets and schedules for the Project.

23. This production of this documentation to Mr. Mizrahi is relevant to his interests in the Project as owner and guarantor to the Project's debts.

24. The production of this documentation is subject to the implied undertaking rule and will be kept confidential by Mr. Mizrahi and his counsel.

25. Sections 4.2(1)(2) and 243 of the *Bankruptcy and Insolvency Act*.

26. The inherent and equitable jurisdiction of this Court.

27. Rules 1.04, and 37 of the *Rules of Civil Procedure*.

28. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE RELIED UPON:

1. The affidavit of Veronica Stasolla, affirmed June 21, 2024;
2. The affidavit of Mark Kilfoyle, affirmed June 21, 2024; and

3. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

June 21, 2024

MORSE SHANNON LLP

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Lawyers for the Moving Party,
Mizrahi Inc.

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

Applicant

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

NOTICE OF MOTION

MORSE SHANNON LLP

133 Richmond Street West Suite
501
Toronto ON M5H 2L3

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Lawyers for the Respondents

ONTARIO

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Respondents

AFFIDAVIT OF VERONICA STASOLLA

(affirmed June 21, 2024)

I, Veronica Stasolla, of the City of Toronto in the Province of Ontario SOLEMNLY AFFIRM:

1. I am a legal assistant at Morse Shannon LLP, the lawyers for Mizrahi Inc (“MI”) and as such, I have knowledge of the facts set out in this affidavit. This affidavit attaches as exhibits communications with counsel for the court appointed Receiver and the Receiver.
2. Attached as **Exhibit 1** is a letter dated April 2, 2024 from Mr. Dunn, counsel for the Receiver, to Mr. Morse, counsel for MI.

3. Attached as **Exhibit 2** is a letter dated April 8, 2024 from Mr. Morse, counsel for MI, to counsel for the Receiver.
4. Attached as **Exhibit 3** is a email dated April 16, 2024 from Mr. Dunn, counsel for the Receiver, to Mr. Morse, counsel for MI.
5. Attached as **Exhibit 4** is a letter dated May 3, 2024 from Mr. Morse, counsel for MI, to counsel for the Receiver.
6. Attached as **Exhibit 5** is a letter dated May 9, 2024 from Mr. Dunn, counsel for the Receiver, to Mr. Morse, counsel for MI.
7. Attached as **Exhibit 6** is a letter dated May 16, 2024 from Mr. Morse, counsel for MI, to counsel for the Receiver.
8. Attached as **Exhibit 7** is a letter dated May 21, 2024 from Mr. Dunn, counsel for the Receiver, to Mr. Morse, counsel for MI.
9. Attached as **Exhibit 8** is a letter dated May 27, 2024 from Mr. Morse, counsel for MI, to counsel for the Receiver.
10. Attached as **Exhibit 9** is a letter dated May 28, 2024 from Mr. Morse, counsel for MI, to counsel for the Receiver.
11. Attached as **Exhibit 10** is a letter dated May 29, 2024 from Mr. Morse, counsel for MI, to counsel for the Receiver.
12. Attached as **Exhibit 11** is a letter dated May 29, 2024 from Mr. Morse, counsel for MI, to counsel for the Receiver.
13. Attached as **Exhibit 12** is a e-mail dated June 5, 2024 from Mr. Trafford, counsel for MI, to counsel for the Receiver.
14. Attached as **Exhibit 13** is a letter dated June 11, 2024 from Mr. Morse, counsel for MI, to counsel for the Receiver.

15. Attached as **Exhibit 14** is a e-mail dated June 12, 2024 from Mr. Trafford, counsel for MI, to counsel for the Receiver.
16. Attached as **Exhibit 15** is a letter dated June 14, 2024 from Mr. Morse, counsel for MI, to counsel for the Receiver.
17. Attached as **Exhibit 16** is a e-mail dated June 14, 2024 from Mr. Trafford, counsel for MI, to counsel for the Receiver.
18. Attached as **Exhibit 17** is a e-mail dated June 19, 2024 from Mr. Trafford, counsel for MI, to counsel for the Receiver
19. Attached as **Exhibit 18** is a letter dated June 19, 2024 from Mr. Dunn, counsel for the Receiver, to Mr. Morse, counsel for MI.
20. Attached as **Exhibit 19** is a letter dated June 20, 2024 from Mr. Morse, counsel for MI, to counsel for the Receiver.
21. Attached as **Exhibit 20** is a General Guarantee, dated August 30, 2019.
22. Attached as **Exhibit 21** is a Cost Overrun and Completion Guarantee, dated August 30, 2019.

AFFIRMED before me by video conference at the City of Toronto, in the Province of Ontario, this 21st day of June, 2024, in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.




Commissioner for Taking Affidavits
(or as may be)

DAVID TRAFFORD



VERONICA STASOLLA

**EXHIBIT "1 " of the affidavit of
Veronica Stasolla affirmed June 21,
2024**

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: April 2, 2024 at 10:38 am
To: Jerome Morse <jmorse@morseshannon.com>
Cc: Weisz, Steven J <SWeisz@cozen.com>; Veronica Stasolla <vstasolla@morseshannon.com>; O'Neill, Brendan <boneill@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>; David Trafford <DTrafford@morseshannon.com>
Subject: RE: Mizrahi Inc.
Attachments:  1 Bloor West

Mr. Morse,

The Receiver's position on payment was set out in its e-mail to your client last night, which I have attached for ease of reference.

I look forward to receiving the requested documents.

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Jerome Morse <jmorse@morseshannon.com>
Sent: Tuesday, April 2, 2024 9:23 AM
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: Weisz, Steven J <SWeisz@cozen.com>; dlevangie@foglers.com; Veronica Stasolla <vstasolla@morseshannon.com>; O'Neill, Brendan <boneill@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>; David Trafford <DTrafford@morseshannon.com>
Subject: RE: Mizrahi Inc.

Mr. Dunn,

I expect to be able to respond tomorrow or Thursday.

Please explain why the Receiver has not paid what is owed my client on the last billing submitted.

Regards,

Jerome Morse

Certified Specialist in Civil Litigation
Fellow of American College of Trial Lawyers
Direct Line: 416-941-5867

MORSE | SHANNON LLP
PERSONAL INJURY • COMMERCIAL LITIGATION
J R. Morse Professional Corporation

From: Dunn, Mark <mdunn@goodmans.ca>

Sent: Monday, April 1, 2024 4:06 PM

To: Jerome Morse <jmorse@morseshannon.com>

Cc: Weisz, Steven J <SWeisz@cozen.com>; dlevangie@foglers.com; Veronica Stasolla <vstasolla@morseshannon.com>; O'Neill, Brendan <boneill@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>; David Trafford <DTrafford@morseshannon.com>

Subject: Mizrahi Inc.

Mr. Morse,

As you are aware, the Receiver was previously provided with copies of the bank statements for Mizrahi Inc.'s ("MI") Scotiabank Account #911320091618 for the period May 2017 to June 2021. These statements, however, were redacted by MI, at MI's discretion, on the basis that some information was alleged to be unrelated to the Project.

The Receivership Order (the "Order") requires that MI provide the Receiver with copies of all "Records", which includes all corporate and accounting records and information, of any kind, related to the Property or the Debtors. The Order does not permit MI to unilaterally redact portions of those documents, particularly where the Receiver has no ability to verify the propriety of the redactions.

To the extent MI has performed the redactions to the aforementioned bank statements on the basis that they contain information unrelated to the Project and related to other areas of MI's business, we do not agree that information can be withheld on that basis. The Bank statements are Records, within the meaning of the Receivership Order. The fact that MI chose to co-mingle Project funds with other funds does not change that.

Accordingly, the Receiver requests that MI provide it with unredacted copies of the bank statements for MI's Scotiabank Account #911320091618 for the period May 2017 to June 2021.

In addition, the Receiver requests that MI provide it with the following additional Records, in unredacted form:

1. Copies of all bank statements for MI's Scotiabank Account #911320222410 for the period from July 2014 to June 2021;
2. A listing of MI's bank accounts that were active for the period from July 2014 to October 2023 and the statements associated with these accounts;
3. The cash receipts journal report from MI's accounting system for the period from July 2014 to October 2023;
4. The cash disbursements journal report from MI's accounting system for the period from July 2014 to October 2023;
5. To the extent not included in the aforementioned documents:
 - a. Copies of all cashed cheques for the period from July 2014 to October 2023;
 - b. Copies of all wire transfers for the period from July 2014 to October 2023;
 - c. Copies of all EFT payments for the period from July 2014 to October 2023;
 - d. Evidence of any authorization from Sam Mizrahi and Jenny Coco for Project-related disbursements; and
 - e. MI's QuickBooks accounting records (in its native form related to the Project, including but not limited to Journal entries supporting the cash disbursements from MI's accounting system for the period from July 2014 to October 2023
 - f. Detailed MI Vendor listing;

The Receiver reserves the right to request further Records, as its investigation progresses.

Please let us know if you have any questions. We look forward to the prompt receipt of these documents.

Thank you,
Mark

Mark Dunn


He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

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333 Bay Street, Suite 3400
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***** Attention *****

This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, or wish to unsubscribe, please advise us immediately at privacyofficer@goodmans.ca and delete this email without reading, copying or forwarding it to anyone. Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, ON, M5H 2S7, www.goodmans.ca You may unsubscribe to certain communications by clicking here.

From: Krieger, Ethan <ekrieger@alvarezandmarsal.com>
Sent: April 1, 2024 at 09:45 pm
To: Sam Mizrahi <sam@mizrahidevelopments.ca>; Mark Kilfoyle <mark@mizrahidevelopments.ca>; Remy Del Bel <remy@mizrahidevelopments.ca>
Cc: Ferguson, Stephen <sferguson@alvarezandmarsal.com>; Nevsky, Joshua <jnevsky@alvarezandmarsal.com>; Sterling, Andrew <asterling@alvarezandmarsal.com>
Subject: 1 Bloor West
Attachments:  1BW - DRAFT - Outstanding Funded Invoices

Sam, Mark, Remy,

We are preparing to remit payment for February invoices. Prior to remitting payment, the Receiver requires Mizrahi Inc. provide wire or EFT confirmations for payment of all outstanding invoices which had previously been funded to Mizrahi Inc. A list of these invoices is attached. We reserve the right to supplement this list to the extent additional information becomes available to us.

Additionally, Proline Hardware Ltd. filed a lien on March 27, 2024 for outstanding invoices, all of which were previously funded by the Lenders or the Receiver but not paid by Mizrahi Inc. This lien is a direct result of Mizrahi Inc.'s lack of payment. As such, Mizrahi Inc. will need to ensure this lien is removed prior to receiving payment from the Receiver for any February invoices.

Please let us know any questions.

Thanks,

Ethan Krieger
Analyst
Alvarez & Marsal Canada
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**EXHIBIT "2 " of the affidavit of
Veronica Stasolla affirmed June 21,
2024**

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

April 8, 2024

BY EMAIL

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

Dear Counsel:

Re: Mizrahi Inc.
Our File No.: 50960

This responds to your Mr. Dunn's email dated Monday, April 1, 2024.

MI, as general contractor, is bound to comply with paragraph 10 of the Appointment Order that specifies MI is required to "... share information, with the Receiver in connection with all books and records,... and other documents in respect of the Debtors and or/the Property, solely in relation to the Project."

MI has done so.

MI has advised the Receiver that it has produced every bank record that reveals a receipt of a payment from the Project. Of course, the Receiver can verify the accuracy of such contention since it has the ability to ascertain what sums the Project has paid MI. If the Receiver has a record of a payment to MI that is not revealed in the banking records produced by MI, then no such discrepancy has been identified. If there are any such discrepancies, please advise so MI may ascertain if it is MI's error or an error on the part of the Project.

MI has also advised the Receiver that it has produced every bank record of MI's payment of "hard costs" and to subtrades of approved third party payments on the Project. These amounts owed by MI were approved by the Project so the Project can verify whether MI's bank records of these amounts paid for hard costs and subtrades correspond with the amounts approved by the Project. The Project (including Ms Coco) received reports of amounts paid on a monthly basis before the Receivership. MI has been recently

inundated by communications from these third parties advising MI that the Receiver sought and received from them proof of amounts paid to them referable to the Project. If the Receiver has a record of an MI payment to a third party not approved by the Project, please advise so we may ascertain if it is MI's error or an error on the part of the Project. Similarly if the Receiver contacted a third party who MI's records reveal was paid on the project who contends they did not receive the payment, please advise so we may ascertain if it's MI's error or the third party's error.

Scotiabank account #9113200222410 is the MI account that reveals the "hard costs" and subtrade payments of approved third party payments. Scotiabank account #911320091618 is MI's general account with a mix of transactions of other non-the One receipts and payments. MI has produced all records from this account that reveal what was received by MI from the project.

You state in paragraph 3 of your email: "The Bank statements are Records, within the meaning of the Receivership Order." This statement mischaracterizes the clear language of paragraph 10 of the Order. The bank account records that are "...solely in relation to the Project", as specified in paragraph 10 of the Receivership Order, must be and have been produced.

You contend in paragraph 3 of your email: "The fact that MI chose to comingle Project funds does not change that." This is a puzzling contention. If MI received money it was entitled to receive from the Project, which the Receiver can verify and presumably has done (with no discrepancies since none identified), MI could make use of what it was paid on the Project as it chooses, as would any of the third parties who received payment from MI on the Project. There is no authority for the Receiver to require third parties to produce banking records that reveal how they spent money owing and paid to them on the Project nor is there a need to do so. Why would MI be any different? It is MI's prerogative, as it would be for any third party, to spend money owing and received from the Project on dancing bears if that be the choice. Such a choice would not be the business of the Receiver nor would the records of such spending by MI or any third party be producible since "...not solely [or in fact in any way] in relation to the Project."

The Receiver overlooks the telling fact that there have been no liens on what, to date, has been a \$1B Project. Altus has approved the money the Bank has paid out to MI and MI has spent the money on the Project as approved or the Project would be inundated with liens. MI has no control over the release of funds payable to MI and it is only the bank who can authorize a payment to MI (no doubt on the recommendation of Altus).

I have addressed your email up to and including enumerated point 1. I will deal with the balance using your numbering:

2. All MI entries in all bank accounts that relate to the Project have been produced;

3. Previously produced;
4. Previously produced;
5. a. Previously produced;
 - b. Previously produced;
 - c. Previously produced;
 - d. Jenny Coco received monthly reports, as noted above, and signed the September 9, 2021, Credit Amending Agreement with KEB Hana with a revised project budget of \$1.539B (previous CCDC budgets were \$478M, then \$659M) and following September 9, 2021, Ms Coco was aware the budget was increased by the lender in August 2022 to \$1.668B and to \$2.004B by the lender in May 2023;
 - e. Previously produced; and
 - f. Previously produced.

MI has provided all historical documents that predate the use of Procore.

In a subsequent email you raised the issue of production of emails. MI has produced the drive contents of several employees and the balance is in progress. A litigation support entity has been hired and is undertaking the work associated with reviewing all the emails to identify for production to the Receiver all project-related emails.

The Receiver has not made any payment to MI on its February billings. A rationale for refusing to do so offered by the Receiver is a concern MI will not pay to third parties what MI is paid by the Receiver for those third parties. MI proposes that the Receiver pay the third parties and pay MI what the Receiver acknowledges is owed directly to MI. Another option is MI pays the third parties on the Receiver's undertaking MI will be reimbursed the full amounts MI pays to third parties with no attempt by the Receiver to reduce such amounts based upon a set off entitlement. Please advise.

Yours very truly,

J.R. Morse

Jerome R. Morse
JRM/spp

**EXHIBIT "3 " of the affidavit of
Veronica Stasolla affirmed June 21,
2024**

From: Dunn, Mark <mdunn@goodmans.ca>
Sent: April 16, 2024 at 11:16 am
To: Jerome Morse <jmorse@morseshannon.com>
Cc: Steve Weisz <SWeisz@cozen.com>; Veronica Stasolla <vstasolla@morseshannon.com>; Sally Powell <spowell@morseshannon.com>; Armstrong, Christopher <carmstrong@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>
Subject: RE: Mizrahi Inc.

Jerome,

We are in receipt of your correspondence dated April 8, 2024.

We do not agree with the interpretation of the Receivership Order or your assertions about what information has been provided.

With respect to the Receivership Order, nothing in the Receivership Order permits MI to redact Records that are provided to the Receiver. If a Record is within the scope of the Order, then it must be provided without alteration. The bank records that we have sought are, very plainly, within the scope of the Receivership Order. MI seems to have conceded that by producing a version of them. The only issue is whether MI is entitled to redact information. We believe that MI is not entitled to redact or alter the Records it must provide to the Receiver.

To the extent that MI has *bona fide* confidentiality concerns, we are prepared to agree that the Receiver will give MI notice before it files the documents requested in my April 1 letter with the Court, so that MI can seek a sealing order.

You appear to have misunderstood my reference to the co-mingling of funds. The Receiver is not seeking to understand how MI used funds paid to it by the Debtors for its services. The Receiver understands that significant amounts borrowed by the Debtors were paid into MI's accounts (rather than the Debtors' accounts), particularly funds borrowed from CERIECO. The Receiver is entitled to understand how these funds were used. The Receiver is also entitled to confirm that funds paid by the Debtors to MI for hard costs were, in fact, used to fund hard costs.

With respect to the numbered list beginning at the bottom of page two of your letter, you appear to have misidentified the subject entity from which the Receiver is requesting documents. We agree that the Project's Records held by MI were previously produced. The Receiver is not, however, requesting the Project's Records. Rather, the Receiver is now seeking MI's Records, which have not been previously provided. To the extent that MI's Records corresponding to the numbered list were previously produced, please advise when and how they are alleged to have been provided.

Your response with respect to the outstanding Project documents (including, but not limited to, e-mails) is, with respect, not sufficient at this juncture, more than four weeks after the Receiver requested the documents and MI confirmed they would be provided. I asked for specific information about when and how the documents would be provided. MI seems unwilling or unable to provide that information.

Finally, we note that the Mediator's Proposal dated November 26, 2019 (the "Mediator's Proposal") requires that the HST reserve of approximately \$1.2 million be transferred into a joint trust account or used to purchase a GIC. We understand that the HST reserve was not paid to CRA, and so we would appreciate being advised where the funds (which are property of the Debtors) are currently held.

Based on the foregoing, it seems likely that a motion will be required to resolve these issues. We will be in touch to schedule that motion, and reserve our right to adjust the schedule for MI's payment motion to reflect the resulting delay.

Regards,

Mark

Mark Dunn

He/Him
Goodmans LLP

416.849.6895 (office) 647.294.3866 (mobile)
mdunn@goodmans.ca

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7
goodmans.ca

From: Sally Powell <spowell@morseshannon.com>

Sent: Monday, April 8, 2024 7:10 PM

To: Dunn, Mark <mdunn@goodmans.ca>; boniell@goodmans.ca; Armstrong, Christopher <carmstrong@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>

Cc: Steve Weisz <SWeisz@cozen.com>; Jerome Morse <jmorse@morseshannon.com>; Veronica Stasolla <vstasolla@morseshannon.com>

Subject: Mizrahi Inc.

Please see the attached letter.

Sally Powell

Law Clerk
Direct Line: [416-941-5852](tel:416-941-5852)



133 Richmond St. West, Suite 501, Toronto, Ontario M5H 2L3
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PLEASE NOTE OUR NEW ADDRESS ABOVE!

***** Attention *****

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**EXHIBIT "4" of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

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

May 3, 2024

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

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

Dear Counsel:

Re: Mizrahi Inc.
Our File No. 50960

We write further to our call of May 2, 2024. During our call, you advised, for what we understand to be the first time, that the redacted banking documentation produced by our client to the receiver included redactions of payments made to third parties for project costs. This was not our understanding having not reviewed the banking documentation. On further investigation, we are advised that you are correct.

MI acknowledges that the receiver is entitled to banking documentation that reveals any project payments. MI is prepared to undertake the expense and spend the time on the process of redacting its banking records so that only non-project expenses are redacted from those records, but will only do so if the receiver agrees that it will accept such records. The definition of "Records" in the receivership order does not entitle the receiver to information that is irrelevant and unrelated to the project. If the receiver maintains its position that no redactions whatsoever are acceptable and that redacting documents to remove reference to non-project related payments or information is contrary to the order, then MI will not incur the expense and spend the time to redact its banking documentation and the parties should proceed to have the issue decided by the court.

MI is prepared to work with the receiver to ensure it is satisfied that the proposed redactions are proper to allay any concerns that the receiver may have.

We look forward to the receiver's position on this issue. Yours very truly,

J.R. Morse

Jerome R. Morse
DT/vs

cc: Steve Weisz
David Trafford

**EXHIBIT "5 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

From: Maldonado, Jessica <jmaldonado@goodmans.ca>
Sent: May 9, 2024 at 12:52 pm
To: Jerome Morse <jmorse@morseshannon.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Cohen, Kirby <kcohen@goodmans.ca>;
Armstrong, Christopher <carmstrong@goodmans.ca>; O'Neill, Brendan
<boneill@goodmans.ca>; David Trafford <DTrafford@morseshannon.com>; Veronica
Stasolla <vstasolla@morseshannon.com>; Linde, Jennifer <jlinde@goodmans.ca>;
Steve Weisz <SWeisz@cozen.com>
Subject: Mizrahi Inc.
Attachments:  Letter to J. Morse dated May 9, 2024

Good afternoon,

Please see attached the correspondence of today's date sent on behalf of Mr. Dunn.

Thank you,

Jessica Maldonado

Assistant to Harry Radomski,
Nando De Luca, Daniel Cappe, Mark Dunn,
Kirby Cohen and Jenene Roberts
Goodmans LLP

647-268-7664
ext. 3281
jmaldonado@goodmans.ca

Bay Adelaide Centre
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***** Attention *****

This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, or wish to unsubscribe, please advise us immediately at privacyofficer@goodmans.ca and delete this email without reading, copying or forwarding it to anyone. Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, ON, M5H 2S7, www.goodmans.ca You may unsubscribe to certain communications by clicking [here](#).

May 9, 2024

Our File No.: 232285

Via Email

Morse Shannon LLP
133 Richmond Street West
Suite 501
Toronto, ON M5H 2L3

Attention: Jerome Morse

Dear Mr. Morse:

Re: Mizrahi Inc. (“MI”)

We are writing to address issues raised in your correspondence dated May 3, 2024 and May 6, 2024. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Receiver’s First Report.

MI is obliged to provide unredacted bank statements

As you know, the Receiver has repeatedly requested copies of bank statements (the “**MI Account Statements**”) for MI’s bank account (the “**MI Account**”) so that the Receiver can understand how approximately \$200 million loaned to the Debtors was used. The MI Account Statements are Records within the meaning of the Receivership Order, and MI is obliged to produce them to the Receiver.

MI provided heavily redacted statements for the MI Account (the “**Redacted Statements**”) and repeatedly insisted that the Receiver was not entitled to any further information. In your letter dated May 3, 2024, MI conceded that the Receiver “is entitled to banking documentation that reveals any project payments” and that the Redacted Statements do not provide information about project payments. MI has offered to provide less redacted versions of the MI Account Statements, but “will only do so if the Receiver agrees that it will accept such records.”

The Receiver is not prepared to accept MI’s proposal, for several reasons:

- the MI Account Statements are “Records” within the meaning of the Receivership Order. Nothing in the Receivership Order allows MI (or anyone) to provide redacted copies of Records;

- MI has not articulated any legally cognizable explanation for the redactions. It would appear that MI simply does not want the MI Account scrutinized. This does not meet the high bar for redacting a relevant document;¹
- Even if some redactions were acceptable (and the Receiver does not agree that they are), the Receiver cannot agree to accept MI's proposed redactions – and seemingly forgo its ability to request unredacted records – without an opportunity to first review and analyze them; and
- The proposed redaction process will be time consuming, and the Receiver is seeking to move forward with its mandate expeditiously. Unredacted statements can be provided immediately.

Based on your correspondence, it seems clear that a motion will be required to address this issue.

Electronic Project Records

As you know, MI has an obligation to transfer all Project documents in its possession including, but not limited to, e-mails relating to the Project to the Receiver (the “**Project Documents**”). In your letter dated April 16, 2024, you advised that the Project Documents would be provided no later than May 8, 2024 (within “three or four weeks” of April 8, 2024). That deadline has now passed, and the Receiver has not received the Project Documents.

In light of the foregoing, we have been instructed to move for an order compelling production of the MI Account Statements and the Project Documents.

CM Fee on Holdback

MI has demanded payment of a 5% construction management fee on holdback amounts owed to contractors that worked (or are working) on the Project.

Without waiving any rights or admitting any fact for the purpose of the MI Payment Motion (as defined in the Supplemental Report to the First Report), the Receiver acknowledges that MI has not been paid a construction management fee on the holdback amounts (a “**Holdback CM Fee**”).

The Receiver does not, in any event, agree, that any Holdback CM Fee would be due now. The earliest any Holdback CM Fee could be due is if and when the underlying holdback amounts are released to contractors. The Receiver is considering when and how the holdback amounts should be released, and it expects to seek direction from the Court on this issue.

We note, to avoid any doubt, that the Receiver reserves all of its rights in respect of any Holdback CM Fee, including its right to set off any debts owed by MI to the Debtors against any Holdback CM Fee. Further, it has not determined whether any Holdback CM Fee is properly payable (in whole or in part) in the circumstances of the receivership.

¹ See, for example, *Beiko v Stone*, 2019 ONSC 1703.

MI Payment Motion Schedule

As you know, the current schedule for the MI Payment Motion contemplates delivery of the Receiver's motion record by May 31, 2024. We believe that the schedule will need to be adjusted to:

- allow the Receiver time to receive and review the MI Account Statements, following the determination of the motion; and
- allow the Receiver to consider, and respond to, the Lien Notice to Receiver (the "**Lien Notice**") delivered by MI on April 26, 2024, after MI particularizes its claim in response to the Receiver's demand for particulars dated May 2, 2024. Since the Lien Notice appears to relate to the same or similar issues to those raised in the MI Payment Motion, the two issues should likely be heard together. However, the Receiver cannot assess substantive or procedural issues relating to the Lien Notice until MI provides particulars of the claim advanced in the Lien Notice.

We understand that the MI Payment Motion has not yet been scheduled, and we believe that it is appropriate to advise the Court of these issues before hearing dates are fixed.

Conclusion

In light of the foregoing, the Receiver intends to contact the Court to canvass Justice Osborne's availability for a case conference to:

- Schedule the Receiver's motion for production of the MI Account Statements;
- Address any procedural issues relating to the Lien Notice; and
- Adjust the schedule for the MI Payment Motion.

I look forward to hearing from you.

Yours truly,

Goodmans LLP



Mark Dunn
Partner
MD/es

cc: Christopher Armstrong, Brendan O'Neill, Kirby Cohen and Jennifer Linde, Goodmans LLP
Stephen Ferguson, Joshua Nevsky, Melanie MacKenzie, Fiona Mak, Andrew Sterling and Ethan Krieger, Alvarez & Marsal Canada Inc.

1406-1517-5948

**EXHIBIT "6 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

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

May 16, 2024

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

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

Dear Counsel:

Re: Mizrahi Inc.
Our File No. 50960

This responds to your letter of May 9, 2024.

Production of Bank Statements

Our client disagrees that the Receivership Order requires our client to produce to the receiver banking statements which reveal non-project related expenses. Your client has conceded and acknowledged that the receiver has no need to review MI's use of its own money and is only concerned about the flow of project funds. Your client's interpretation of the meaning of the word "Records" in the Receivership Order is contrary to the language in paragraph 8 requiring the delivery of record "related to the business or affairs of the Debtors or the Property", contrary to the Order's plain and ordinary meaning and contrary to the very purpose for which delivery of such records is required. Our client's interpretation is further confirmed by paragraph 10 of the Order, which specifies that our client is required to "cooperate and share information...solely in relation to the Project". Your contention that our client has offered no legal basis for its position is meritless. We have cited your acknowledgement and the language of paragraph 8 of the Order. You have cited no authority to contradict your acknowledgement or why the receiver is entitled to records of how MI spent the money it earned (as approved) from the project, or monies it spent or earned on other unrelated projects.

MI has articulated a legally cognizable explanation for the proposed redactions, which is that the proposed redactions relate to non-project expenses and are not a Record within the meaning of the Receivership Order. The redactions would only be made to irrelevant information, which the parties agree the receiver has no use for. You are incorrect that MI

does not want its accounts scrutinized. MI does not want to reveal non-project related information to the receiver.

We agree it is clear that a motion to resolve this issue will be required.

Electronic Project Records

The consultant retained to analyze and prepare the enormous volume of project records and deliver them to the receiver has revised its estimate for the delivery of project records to June 4. We have advised them of the importance of completing their mandate without further delay.

MI Payment Motion

Our client disagrees that there is any need to revise the current timetable for the payment motion. Your client has insisted on production of unredacted bank records to obtain information your client acknowledges would not be related to the project. There is no conceivable basis for the receiver to require non-project related information, let alone waste the expense of reviewing such information. MI's motion for payment is a discrete issue and the receiver has failed to identify any connection between the dispute as to the meaning of Records within the Receivership Order and MI's motion for payment to time-based labour rates plus the 5% CM fee.

During our call on April 29, we specifically requested the receiver to provide its position on three questions:

1. Has the receiver identified any discrepancies of payments to third parties by MI other than the discrepancies identified and resolved in February 2024?
 - The receiver's position on this issue should be provided without further delay as it is relevant to its motion for the production of unredacted records and the delivery of non-project related information.
2. Has the receiver identified any discrepancies in what MI has been paid?
 - Similarly, the receiver's position on this issue should be provided without further delay as it is relevant to its motion for the production of unredacted records and the delivery of non-project related information.
3. Has the receiver identified any impropriety by MI, which we referred to as self-dealing?
 - MI is confident the receiver will find no impropriety or anything akin to self-dealing. The receiver's delay in responding to this request supports MI's position that the receiver's motion for production of non-project related information and documentation is nothing but a waste of time and money on a fishing expedition, since all records produced substantiate that only approved payments were

received by MI, in the correct amounts and that all third parties costs and hard costs were paid by MI as required.

The receiver knows that its threatened claims of amounts to be set off against MI's claim for payment under paragraph 17 of the Order are without merit. The receiver now seeks to delay MI's motion because MI will not produce banking records as to how it spent non-project related funds, including monies MI received from the project as payment as approved. It was only yesterday that the receiver finally identified a claim concerning commissions, despite the receiver having known of that purported claim for months. MI is preparing a fulsome response to the flawed demand of the receiver for the repayment of commissions.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT/vs

cc: Steve Weisz
David Trafford

**EXHIBIT "7 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

From: Seaby, Emily <eseaby@goodmans.ca>
Sent: May 21, 2024 at 01:57 pm
To: Jerome Morse <jmorse@morseshannon.com>
Cc: Dunn, Mark <mdunn@goodmans.ca>; Cohen, Kirby <kcohen@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; O'Neill, Brendan <boneill@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>; David Trafford <DTrafford@morseshannon.com>; Veronica Stasolla <vstasolla@morseshannon.com>; Weisz, Steven J <SWeisz@cozen.com>
Subject: Mizrahi Inc.
Attachments:  Letter to J. Morse dated May 21 2024

Good afternoon,

Please see attached the correspondence of today's date sent on behalf of Mr. Dunn.

Thank you,
Emily

Emily Seaby

She/Her

Assistant to Harry Radomski, Mark Dunn, Daniel Cappe,
Nando De Luca, Jenene Roberts and Kirby Cohen
Goodmans LLP

416.597.5906 x 3049
eseaby@goodmans.ca
goodmans.ca

***** Attention *****

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May 21, 2024

Our File No.: 232285

Via Email

Morse|Shannon LLP
133 Richmond Street West
Suite 501
Toronto, ON M5H 2L3

Attention: Jerome Morse

Dear Mr. Morse:

Re: Mizrahi Inc. (“MI”)

I am responding to your letter dated May 16, 2024 and Mr. Bannon’s letter dated May 16, 2024. Capitalized terms not otherwise defined have the meaning ascribed to them in the Receiver’s First Report.

Case Conference

We believe that a case conference is required to address the following issues:

- Scheduling the Receiver’s motion for production of unredacted copies of bank statements for the MI bank accounts (the “MI Accounts”) and the electronic project records (the “Electronic Records”);
- adjusting the schedule for the MI Payment Motion; and
- establishing a procedure for addressing MI’s Form of Lien Notice to Receiver (the “Lien Claim”).

We understand that Justice Osborne’s next available date for a case conference is June 3, 2024. Please advise if you are available on that date. If you are not, please provide alternate dates later that week.

MI Payment Motion and MI Account Statements

Your assertion that the Receiver “seeks to delay MI’s motion because MI will not produce banking records as to how it spent non-project related funds” is demonstrably false. MI has already admitted, in your letter dated May 5, 2024, that the Receiver is entitled to information about when and how it paid Project costs from the MI Accounts. It has also admitted, in the same letter, that it redacted this information from the statements that it provided.

The production motion is therefore not about *whether* MI must provide more information. The only dispute between the parties is *how* that information will be provided. MI says that it should create a

further set of redacted statements. The Receiver believes that MI must produce unredacted bank statements, for the reasons set out in my letter dated May 9, 2024. Even if MI succeeds on the production motion, it must still produce further information and the Receiver must consider that information before filing its responding motion record.

Your position that MI's motion for payment raises "a discrete issue" that should be determined prior to, and separate from, potential claims against MI was specifically rejected by Justice Osborne at the case conference held March 18, 2024. It is neither necessary nor appropriate to revisit this argument.

Electronic Project Records

In your letter, you advise that MI will deliver the Electronic Records by June 4, 2024. As you know, MI has previously provided (and then missed) a number of other deadlines for delivery of the Electronic Records. The Electronic Records contain important information required to (among other things) efficiently operate the Project. The Receiver's inability to access the historical information set out in the Electronic Records is causing significant harm to the Project, and the Electronic Records must be produced immediately.

In addition, we note that the Receiver requires certain information from the Electronic Records in order to respond to assertions made by MI in respect of the MI Payment Motion. Specifically, MI claims that various parties approved its fees. We understand that to the extent that certain parties approved or objected to those fees, the approvals or objections will be included in the Electronic Records. We therefore require access to the Electronic Records to respond to the MI Payment Motion.

Your comments about third party review also raise concerns about what documents will be provided. Please provide particulars of the review process undertaken on behalf of MI including, without limitation, how documents were collected and what searches (if any) were conducted to identify relevant documents. To be clear, MI must produce all non-privileged records related to the Project. To the extent that some of the documents are privileged, we will require the equivalent of a Schedule "B" to an Affidavit of Documents.

Request for "Discrepancies" and "Impropriety"

In your letter, you asked the Receiver to identify "discrepancies of payments to third parties by MI" and "discrepancies in what MI has been paid". To the extent you are referring to differences between the Project accounting records and amounts actually paid to MI and third parties, the Receiver is missing important information relevant to that question because MI redacted all information about third party payments from the bank statements that it provided. As we discussed on April 29, 2024, the Receiver is aware of multiple instances where MI received funding to pay a specific invoice but did not pay that invoice. These instances have previously been identified to MI.

With respect to your request for information about "impropriety" and "self-dealing", the Receiver continues to investigate potential claims against MI and it will report on these issues once its investigation is complete. It is neither necessary or appropriate to debate whether MI's conduct amounts to "impropriety" or "self-dealing" at this stage.

Commissions

With respect, your assertion that the Receiver delayed demanding repayment of certain commissions paid to MI is also wrong. As I explained in my letter dated May 15, 2024, the Receiver terminated certain sales contracts as of May 13, 2024 because the purchasers failed to pay all (or, in some cases, any) of the deposit amounts they owed. Under the terms of its Exclusive Listing Agreement, MI must now return the underlying commissions. That obligation crystallized on May 13, 2024 when the Receiver terminated the underlying agreements.

Lien Notice

We are also in receipt of Mr. Bannon's letter dated May 16, 2024 with respect to MI's Lien Notice to Receiver (the "Lien Notice"). By the Lien Notice, MI claims a lien in the amount of \$10,845,564.30 (the "Lien Claim"). The Lien Notice includes the amounts that are the subject of the MI Payment Motion, totaling approximately \$5,478,815.59, and additional claims in the amount of approximately \$5,366,748.41 (the "Additional Claims").

The Receiver has already paid a significant part of the Additional Claims, and details of those payments will be provided under separate cover. However, based on the Receiver's preliminary review, it appears that a portion of the Additional Claims will be disputed.

The Receiver will bring a motion to establish a process for resolving disputes relating to the Lien Claim, in accordance with the terms of the Lien Regularization Order. Any disputes relating to validity or priority of the Lien Claim should, in the Receiver's view, be determined together with the MI Payment Motion.

Conclusion

We note, in conclusion, that the Receiver is (and has been) willing to work with MI towards a fast and fair hearing of the MI Payment Motion and the Lien Claim. MI must, however, provide the information that the Receiver requires to enable the Receiver to prepare the full record contemplated by Justice Osborne's March 18, 2024 Endorsement. We would suggest that the parties focus on the efficient exchange of the information required to litigate the issues, and not on litigating the issues by correspondence.

Yours truly,

Goodmans LLP

Mark Dunn
Partner
MD/es

cc: Christopher Armstrong, Brendan O'Neill, Kirby Cohen and Jennifer Linde, Goodmans
LLP

1401-8010-0108

**EXHIBIT "8 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

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

May 27, 2024

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

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

Dear Counsel:

Re: Mizrahi Inc.
Our File No. 50960

Below is a link to a collection of documentation further to the receiver's requests for production from Mizrahi Inc ("Mizrahi"). Included is the following documentation from the time period of August 2019 to October 2023:

1. Hard Costs invoices from Mizrahi to the Project;
2. Copies of all subtrade invoices that were included in the respective monthly billing;
3. Copies of all EFT and or wire payments made to subtrades;
4. Summary Spreadsheet, summarizing each subtrade, reconciling to the invoice and reconciling to payments, with added notes and comments as needed to assist review; and
5. Other relevant information in Mizrahi's possession.

Bank Files Request - Files Sent May 16

This collection of information was provided to our office on May 16, and we misunderstood that it was sent to the receiver directly at that time. Going forward we will ensure that the delivery of documentation from our client is directed to you by us. We are providing this information without prejudice to Mizrahi's position in the motion for payment and its

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position that Mizrahi is entitled to redact non-project related information, which need not be delivered to the receiver under the terms of the Receivership Order.

With respect to the proposed case management conference before Justice Osborne, the dates you have identified will not work for our office. Our next availability for a case management conference is June 12.

Please provide copies of all communications between the Receiver and KEB Hana and Coco as well as the Altus reports since January. We remind the Receiver our client is an owner of the project and entitled to these communications and information.

We will provide a substantive response to your letters of May 15 and May 21 by tomorrow.
Yours very truly,

J.R. Morse

Jerome R. Morse
DT/vs

cc: Steve Weisz
David Trafford

**EXHIBIT "9 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

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

May 28, 2024

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

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

Dear Counsel:

Re: Mizrahi Inc.
Our File No. 50960

This responds to your letter of May 21, 2024.

While Mizrahi Inc ("MI") agrees that a case conference is required before Justice Osborne to schedule the Receiver's proposed motion for production of unredacted copies of bank statements of MI bank accounts, there should be no contest concerning "electronic project records" so no need to be part of the Moton. MI disagrees that there is any need to amend the existing timetable for MI's payment motion, nor is there a need to "establish a procedure for addressing" MI's lien claim. MI's payment motion should proceed as timetabled and the Receiver should deliver a responding motion record by month's end. The Receiver has now identified a potential set-off claim, being the repayment of commissions it claims are owed by MI. MI will substantively respond to this demand separately. If there is an additional set-off claim the Receiver wishes to advance after the delivery of its responding motion record referable to the banking records, it is agreed it may do so and the timetable be amended, but if no such claims arise from the banking records, then MI's motion for payment should proceed as scheduled with the one set-off claim identified by the Receiver to be determined.

Using the headings in your letter dated May 21, 2024 we respond as follows.

MI PAYMENT MOTION AND MI ACCOUNTS

You state it is demonstrably false that the Receiver seeks to delay MI's motion because MI will not produce banking records as to how MI spent non-project related funds, yet the Receiver will not agree that all it is entitled to see is banking records concerning project

related funds. In our letters, we were clear that MI acknowledged that the Receiver is entitled to all MI banking records that reveal payments to MI from the Project, as approved for the Project, received by MI for its entitlement, for third party costs and hard costs and MI's payment of those third party costs and hard costs. Regrettably we learned that the records provided did not provide this detail, but our client has committed to provide these records. Records from August 2018 onward have been provided. Records prior to 2018 will require significant redactions to remove information not related to the project. MI has never taken the position it will not produce banking records related to funds received from the Project, payable to MI and funds received for third party and hard costs and proof of such payments. It should not be overlooked that the Receiver already has all the records of what has been approved and paid to MI.

We disagree that the Receiver requires the redacted or unredacted (as the court will determine) banking records to deliver a responding motion record. The Receiver knows what MI has invoiced, been paid and the shortfall sought by MI so there will be nothing to add to the payment motion arising from MI's banking records, which will just confirm what the Receiver knows from the records of the Senior Lender.

The Receiver agreed to a timetable to advance its cross-claims. So far the Receiver has identified a claim with respect to commissions. The Receiver should be held to the timetable directed by Justice Osborne.

ELECTRONIC PROJECT RECORDS

With respect to the production of project records, Ricoh was provided with the following instructions:

The goal of this project is to provide emails relating to the development and construction of The One, a condominium tower at the corner of Yonge and Bloor in Toronto.

The project is under receivership and we have to provide all project related emails. No other records are required to be provided, including any that relate to our other projects: 181 Davenport Road, 133 Hazelton Avenue, 128 Hazelton Avenue, 100 Steeles Avenue West, 180 Steeles Avenue West, 1451 Wellington Street West. Only emails regarding 1 Bloor Street West.

We were terminated as General Contractor as of March 12, 2024.

Ricoh was provided with a list of consultants, suppliers and trades that worked on the project and also used the following key word searches: 1 Bloor, 1BW, 1 Bloor Street West, 1 Bloor St W, and Bloor.

In your letter you indicate that the inability to access project records is causing significant harm to the project. Please explain what harm you claim the project has suffered and advise what needs to be produced to address such harm, so that MI may obtain it with its forces or have Ricoh prioritize this information. MI is highly skeptical of this contention

given the cooperation it has afforded the Receiver to enable the Receiver to terminate MI and transition the GC role to Skygrid. If there is any validity to the contention, it is difficult to understand why the Receiver raises it for the first time on May 21, 2024.

You claim the Receiver requires certain information from the Electronic Records with respect to the approval of and objection to fees requested and paid to MI by the project. We specifically raised the issue of the approval of payments to MI in our letter of April 19, 2024. Your May 21 letter is the first request we are aware of for this specific category of information. Why it was not requested as a response to our April 19, 2024 letter is difficult to understand. Of course the Receiver has access to such records from KEB Hana in the period of time it funded the project. Our client is now working expeditiously to collect this category of information and will provide it as soon as possible. This request should have been identified weeks ago and is no justification to delay the payment motion.

Our client will request that Ricoh provide a document, equivalent to a Schedule B in an affidavit of documents, listing documents for which there is a claim for privilege. This is no basis to amend the timetable.

REQUEST FOR DISCREPANCIES AND IMPROPRIETY

With respect to the purported discrepancies in payments made to MI, you indicate the Receiver is aware of multiple instances where MI received funding to pay a specific invoice, but did not pay that invoice. Please confirm all such instances that the Receiver is aware of so we may ensure there are no misunderstandings. During our call on April 29, 2024, we asked the Receiver to confirm that the only discrepancies the Receiver had identified arose from the February 2024 payment cycle. We specifically requested the Receiver to identify any discrepancies with respect to third parties and none were identified. It defies credulity that the Receiver paid MI \$20,361.40 for February billings after deducting all outstanding third party payments that the Receiver chose to pay directly and now contends following our April 29, 2024 call that there are other third party invoices not paid by MI.

MI is prepared to agree to amend the timetable if the banking records reveal some impropriety that reasonably gives rise to a claim against MI, but as of now the Receiver has not identified any such impropriety even when specifically requested based on the Receiver's review of the voluminous records produced and made available to it to date.

LIEN NOTICE

On why there is no need to establish a procedure to address the lien claim, our client previously communicated that the lien notice was provided by MI to preserve any rights it may have as a lien claimant before the expiry of the time within which the lien notice had to be provided and any such entitlement will be determined on the payment motion since what was sought to be protected by the lien is the amount in issue on the payment motion.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT/vs

cc: Steve Weisz
David Trafford

**EXHIBIT "10 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

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

May 29, 2024

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

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

Dear Counsel:

Re: Mizrahi Inc.
Our File No. 50960

We write to request production of all of the quantity surveyors reports for the Project since MI ceased to be the general contractor on the project, along with the updated schedule and budgets. In addition, please provide particulars of the payments made and costs to date for the project since Skygrid took over as general contractor. We make this request on behalf of our client, in his capacity as an owner of the project.

In addition, in our last telephone discussion you purported to admonish us for contacting the court to obtain the availability of Justice Osborne for a case conference without copying you, yet your office has done the same thing and, in fact, has proceeded to schedule a motion without any advanced notice or requests for our availability. Please copy us on all your communications with the court. We are reviewing your client's motion record returnable June 6 and will provide our client's position in due course. We note we are unavailable to attend the motion on June 6.

Please copy us on communications with the court concerning the June 12 date for the attendance before Osborne regarding the Receiver's intended motion.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT/vs

cc: Steve Weisz
David Trafford

**EXHIBIT "11 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

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

May 29, 2024

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

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

Dear Counsel:

Re: Mizrahi Inc.
Our File No. 50960

We write with respect to the receiver's demand for the repayment of commissions paid to Mizrahi Inc ("MI") pursuant to the Exclusive Listing Agreement, dated July 12, 2017 (the "ELA"). Our client denies that any amounts are owing to the project. In addition, any amount that is found to be owing by MI under the ELA would be set off against the significant amount of monies MI is owed by the project for residential development fees, and for a deposit on the MI units. Firstly, we request that the receiver produce its correspondence with the purchasers and notice of termination for the units identified. We note that the receiver has sent out numerous letters advising unit purchasers that the agreements of purchase and sale may be canceled. It is unreasonable to expect potential purchasers to pay significant deposits on units for a project in receivership when the receiver has indicated it may cancel those agreements. MI takes the position that the receiver's decision to cancel the agreements identified is evidence of an ulterior motive to find a claim against MI to advance in defence of the payment motion. The Senior Lender has always been aware that these units have no deposits and elected not to cancel them.

Even if agreements were canceled on a good faith basis, the fact is that the project owes MI for unpaid fees that are vastly greater than the claimed liability for the repayment of commissions under the ELA. The November 26, 2019 Mediator's Proposal which became binding terms of settlement entitles MI to a residential management fee, for which MI is currently owed \$20,460,905.32. The Mediator's Proposal provides:

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

MI calculates its entitlement to a residential management fee as follows:

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

You will note that this calculation also accounts for MI's entitlement to a credit on deposits of the MI units in the project in the sum of \$2,704,640.

As a result of the significant amount of money the project owes MI as noted above, in addition to the liability owed and at issue in MI's payment motion, MI disagrees that there is any amount owing for the repayment of commissions under the ELA.


Yours very truly,

J.R. Morse

Jerome R. Morse
DT/vs

cc: Steve Weisz
David Trafford

**EXHIBIT "12" of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

From: David Trafford <DTrafford@morseshannon.com>
Sent: June 5, 2024 at 09:16 am
To: Dunn, Mark <mdunn@goodmans.ca>; Armstrong, Christopher <carstrong@goodmans.ca>; O'Neill, Brendan <boneill@goodmans.ca>
Cc: Jerome Morse <jmorse@morseshannon.com>; Veronica Stasolla <vstasolla@morseshannon.com>; Steve Weisz <SWeisz@cozen.com>
Subject: Mizrahi Inc
Attachments:  Ex P C1506

Counsel,

Thanks for your time this morning.

Below is a chart which sets out the \$3,410,321.13 in 3rd party hard cost payments, which our client recently learned were not paid. Please provide the receiver's position on the non-payment of these costs or advise if they have been paid or when they will be paid.

Vendor	Outstanding	Invoice #
2218840 Ontario Inc.	\$39,583.90	684
Bike Rack Mfg. & Dist.	\$16,611.00	012124KKP
CanAM Waste Products Inc.	\$70,173.00	205484
Modern Niagara Toronto Inc.	\$2,730,565.83	INTO0079831, INTO0080281
UCC Group Inc.	\$308,643.49	11780, 11703, 11900
Klaus Multiparking Inc.	\$171,819.01	1Bloor-STG17HB
United Drywall Ltd	\$72,924.90	7255193, 7255194

We will provide a reconciliation in response to your letter on Mizrahi's lien notice and confirm the exact quantum and interest calculation that is subject of the Payment Motion.

I confirm we have reached an agreement in principle that the amount set aside by the Receiver to pay MI's claim for payment in the Payment Motion will be reviewed and further negotiated and will be subject of argument at a case conference if no agreement is reached. The increase in the amount set aside will include MI's claim for payment of a 5% fee on certain holdback amounts as set out in C1506.

We look forward to your proposed revised language to the Holdback Order to address MI's claim to a 5% fee on the holdback amounts as set out in the attached invoice C1506.

David Trafford

Partner

Direct Line: [416-941-5850](tel:416-941-5850)

MORSE | SHANNON LLP
PERSONAL INJURY • COMMERCIAL LITIGATION

133 Richmond St. West, Suite 501, Toronto, Ontario M5H 2L3

Tel: 416-863-1230 1-888-745-1230 Fax: 416-863-1241

www.morseshannon.com

PLEASE NOTE OUR NEW ADDRESS ABOVE!

Mizrahi Inc.
125 Hazelton Ave
Toronto ON M5R 2E4
416-922-4200
HST Registration No.: 833650526RT0001

Invoice

BILL TO
1 Bloor Mizrahi Commercial (The One) GP Inc. 189 Forest Hill Road Toronto ON M5P 2N3

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
C1506	04/02/2024	\$697,460.58	04/02/2024	Due on receipt	

DATE	DESCRIPTION	TAX	QTY	RATE	AMOUNT
	Construction Management Fee oh Holdback balance as per attached	H	1	617,221.75	617,221.75

SUBTOTAL	617,221.75
HST @ 13%	80,238.83
TOTAL	697,460.58
BALANCE DUE	\$697,460.58

TAX SUMMARY

RATE	TAX	NET
HST @ 13%	80,238.83	617,221.75

Vendor	HB Amount on Contract	Last INV #	Draw Month
Alenfrage	\$ 5,500.00	2	Oct 2023 Draw
Bass	\$ 51,987.69	3895	April Draw
Bass	\$ 119,262.15	3318	April Draw
Bike Rack	\$ 13,877.50	012124KKP - 101723AZXC- 101523MPPL-071623MMNL- 051523MKOPL	Feb Draw
Blockwall	\$ 114,006.72	3049	March Draw
Bothwell	\$ 35,136.09	19J008631	April Draw
Bothwell	\$ 85,219.44	19J008470	March Draw
CanAm	\$ 6,900.00	205484	March Draw
CanAm	\$ 3,275.00	205249	Dec 2023 Draw
Clifford	\$ 269,772.54	013671A	Jan Draw
Cult	\$ 247,081.59	SI-9009	Dec 2023 Draw
DA Steel	\$ 2,210.00	872	March Draw
ElStructure	\$ 1,668.00	1031	March Draw
Gage	\$ 21,884.75	1514	Jan 2023 Draw
Gamma	\$ 626,172.92	1808-56	April Draw
GNI	\$ 16,585.95	1676290	March Draw
Guardtek	\$ 26,134.25	23866	Dec 2023 Draw
Guardtek	\$ 53,620.00	25128	April Draw
Hardwall	\$ 1,830,772.09	J007711	April Draw
Irpinia Kitchen	\$ 55,555.56	IN033927	Feb 2023 Draw
Modern	\$ 3,585,143.51	INTO0077252	Feb Draw
Nortem	\$ 24,500.00	20-2629	Nov 2023 Draw
On Floor Solutions	\$ 41,439.80	20230625-1	July 2023 Draw
Onyx	\$ 26,322.74	22545	Dec 2023 Draw
Otis	\$ 2,619,631.60	FTM659048056	Feb Draw
Ozz	\$ 1,183,989.15	J027446	March Draw
Pereira Carpentry	\$ 21,340.50	74	Feb Draw
Riverside	\$ 152,253.50	8602	April Draw
Riverside	\$ 31,750.70	8574	Dec 2023 Draw
Seele	\$ 9,257.14	1762-23-102	Nov 2023 Draw
Service Plus Aquatics	\$ 91,455.76	1881	Nov 2023 Draw
Tractel	\$ 131,684.22	8L45	April Draw
UCC	\$ 273,375.03	11780	Jan Draw
United Drywall	\$ 67,626.12	7255188	March Draw
United Drywall	\$ 128,310.13	7255189	March Draw
Uniqspace	\$ 3,253.00	5757	March 2023 Draw
Walters	\$ 363,679.80	B111576	March Draw
Vipe	\$ 2,800.00	2023-6671	Feb Draw

HB TOTAL	\$ 12,344,434.93
5%	\$ 617,221.75

**EXHIBIT "13 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

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

June 11, 2024

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

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

Dear Counsel:

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

We write with respect to the receiver's motion for the production of unredacted banking records. We are instructed to bring a cross-motion for an increase in the amount set aside for the Payment Motion to include confirmation of what has not been paid to third parties (if the parties cannot reach agreement), a direction that the receiver may not file responding materials on the Payment Motion for anything not related to the recently produced banking records, the project emails and the documentation produced arising out of the receiver's motion (as set out in our letter of May 28) and, finally, that the receiver produce on a confidential basis copies of the quantity survey reports for the Project, an updated schedule and budgets to our client in his capacity as co-owner (as requested in our letter of May 29).

Prior to the deadline based upon the agreed upon time table, the issue of commissions was identified as a set off claim to be advanced by the receiver, yet no responding materials were filed by the deadline to support the claim. Similarly, we have pressed you to identify any other claims and no other claims have been identified. MI relies on the foregoing, amongst other reasons, for its position on the cross-motion that only claims for set off arising out of the review of documentation not yet reviewed may be advanced and that the timetable be amended accordingly only if there should be any such claims. Since the receiver has had access to records of all payments to MI and all records of approval of such payments to MI, it is highly unlikely the records to be reviewed will give rise to any cross-claims.

During our call on June 6, we discussed providing a reconciliation for the exact amount at issue in the Payment Motion. This will also be relevant to the proposed increase in the reserve set aside by the receiver to address our client's claim in the Payment Motion. We understood your firm to represent to the court during the June 6 attendance that (with the exception of Gamma) all hard cost payments were paid or were to be paid by the receiver. We have identified a number of hard cost payments that our client understands were not paid. Please provide the receiver's position on the payment of these hard costs so we may finalize the reconciliation of the amounts at issue in the Payment Motion.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT/vs

cc: Steve Weisz
David Trafford

**EXHIBIT "14 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

From: David Trafford <DTrafford@morseshannon.com>
Sent: June 12, 2024 at 10:10 am
To: Dunn, Mark <mdunn@goodmans.ca>
Cc: O'Neill, Brendan <boneill@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; Jerome Morse <jmorse@morseshannon.com>; Linde, Jennifer <jlinde@goodmans.ca>; Cohen, Kirby <kcohen@goodmans.ca>; Steve Weisz <SWeisz@cozen.com>; Veronica Stasolla <vstasolla@morseshannon.com>
Subject: RE: Mizrahi Inc. - Lien reconciliation

Good morning,

Mr. Mizrahi and Sam M Inc as a beneficial owner of the Project and as guarantors under the debt owed by the Project seek the daily logs of Skygrid, the quantity survey reports, the updated Project schedule and budgets to assess the progression of the Project and to understand their potential liability on the Project debt and the cause of such liability.

During last week's court attendance, we understood the receiver to advise the court that the tower is now 58 floors with 16 floors added since the date of the receivership. We note Justice Osborne's endorsement says the tower is at floor 56. We have not been able to confirm this information. Our client advises us that MI had achieved progress of construction to floor 55 when terminated. If the receiver's advice to the court is correct, Skygrid has progressed at a rate of 1 floor every 28 days. The delay of the project due to Skygrid not meeting MI's rate of production creates a massive loss to the project compared to the receiver's contention it could save the project \$1 million per month by terminating MI given that interest on the project accrues at approximately \$900,000 per day.

This request could also be relevant to MI's contest with the receiver on the Payment Motion. In its First and Supplemental First Report, the receiver identified a potential set off claim based on a theory that MI was paid at above-market rates for its work as general contractor. How the replacement contractor has performed in terms of rate of progression and costs is relevant to the issue.

In an earlier letter, we requested production of the receiver's communications with the Coco parties. Our client is concerned that the Coco parties are raising allegations against MI and Mr. Mizrahi with the receiver, which have already been litigated. In addition, we have advised you that the Coco parties for a period of time had control over the Project financials and MI cost approval process and our client needs to confirm that the receiver has sought this information from the Coco parties to confirm MI's position it has only been paid what Coco and the senior lender approved in that period of time. In addition, our client seeks production of the receiver's communication with the senior secured lender on issues of the approval of payments to MI whilst it was in control of the project, again so the receiver can be satisfied MI was paid no more than approved by the senior lender and its consultants.

We maintain that Sam M Inc and Mr. Mizrahi are entitled to this information as a shareholder in the Project and a guarantor of the Project's debt and if MI is not successful in precluding the receiver's set off claim due to its failure to meet the timetable to advance the set off claim identified.

With respect to the receiver's position on what it describes as the 'maximum amount of MI's claim'. Our client is analyzing this response today and we will have a number of questions based on these figures. We can advise MI disagrees with the calculations. It appears you have removed any claim for interest. Please provide an explanation of the receiver's position on the issue of interest.

Direct Line: [416-941-5850](tel:416-941-5850)



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www.morseshannon.com

PLEASE NOTE OUR NEW ADDRESS ABOVE!

From: Dunn, Mark <mdunn@goodmans.ca>

Sent: Tuesday, June 11, 2024 10:52 PM

To: Jerome Morse <jmorse@morseshannon.com>; David Trafford <DTrafford@morseshannon.com>; Steve Weisz <SWeisz@cozen.com>

Cc: O'Neill, Brendan <boneill@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>; Cohen, Kirby <kcohen@goodmans.ca>

Subject: Mizrahi Inc. - Lien reconciliation

Counsel,

The Receiver has reviewed the most recent claim quantification provided by MI (Exhibit Q to the Affidavit of Mark Kilfoyle).

The attached spreadsheet, as summarized below, has been updated to reflect the Receiver's records. To be clear, the Receiver believes that the amount below represents the maximum amount of MI's claim. The Receiver denies that MI is entitled to any amount.

<u>Summary</u>	<u>Exhibit Q Amount</u>	<u>Adjustment</u>	<u>Other</u>	<u>Revised Amount</u>
Amounts Claimed by Mizrahi Inc.	6,333,540.63	17,221.62	-	6,350,762.25
Interest Claimed by Mizrahi Inc.	265,928.16	-	(265,928.16)	-
3rd Party Unpaid Invoices	4,822,846.53	(523,812.35)	-	4,299,034.18
Total	11,422,315.32	(506,590.73)	(265,928.16)	10,649,796.43

In addition, your *aide memoire* seeks production of certain records at paragraph 13 on behalf of Mr. Mizrahi. Please advise why Mr. Mizrahi is requesting this information so that the Receiver can consider the request.

Regards,

Mark

***** Attention *****

This communication is intended solely for the named addressee(s) and may contain information that is privileged, confidential, protected or otherwise exempt from disclosure. No waiver of confidence, privilege, protection or otherwise is made. If you are not the intended recipient of this communication, or wish to unsubscribe, please advise us immediately at privacyofficer@goodmans.ca and delete this email without reading, copying or forwarding it to anyone. Goodmans LLP, 333 Bay Street, Suite 3400, Toronto, ON, M5H 2S7, www.goodmans.ca You may unsubscribe to certain communications by clicking here.

**EXHIBIT "15 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

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

June 14, 2024

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

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

Dear Counsel:

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

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

Increase in the Reserve for the Payment Motion

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

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

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

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

The Status of Construction

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

Claims of the Receiver Against MI

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

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




Yours very truly,

J.R. Morse

Jerome R. Morse
DT

cc: Steve Weisz
David Trafford

**EXHIBIT "16 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

From: David Trafford <DTrafford@morseshannon.com>
Sent: June 14, 2024 at 12:40 pm
To: Dunn, Mark <mdunn@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>;
Armstrong, Christopher <carmstrong@goodmans.ca>; O'Neill, Brendan
<boneill@goodmans.ca>
Cc: Jerome Morse <jmorse@morseshannon.com>; Steve Weisz <SWeisz@cozen.com>;
Veronica Stasolla <vstasolla@morseshannon.com>
Subject: Mizrahi Inc
Attachments:  2024-06-14 Letter to
Goodmans  Unpaid General Conditions
Costs to 06-14-2024  1709BB03-The_One-2024-03-
06

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

David Trafford

Partner

Direct Line: [416-941-5850](tel:416-941-5850)



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

PLEASE NOTE OUR NEW ADDRESS ABOVE!

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

June 14, 2024

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

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

Dear Counsel:

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

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

Increase in the Reserve for the Payment Motion

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

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

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

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

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

Claims of the Receiver Against MI

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

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

Yours very truly,

J.R. Morse

Jerome R. Morse
DT

cc: Steve Weisz
David Trafford



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

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

Daily Log: Wednesday 3/6/2024



Daily Log Completed & Distributed

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

WEATHER REPORT

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

DAILY SNAPSHOT

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

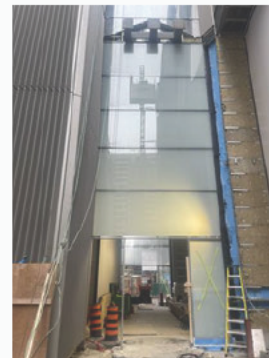
OBSERVED WEATHER CONDITIONS

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

PHOTOS



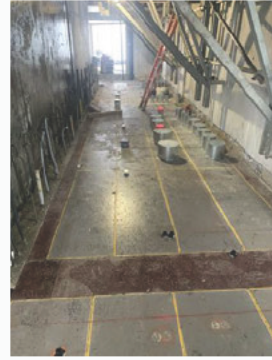
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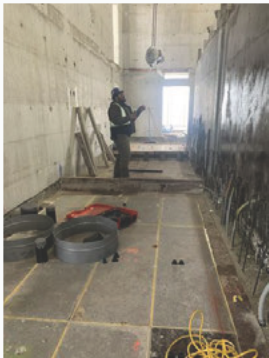
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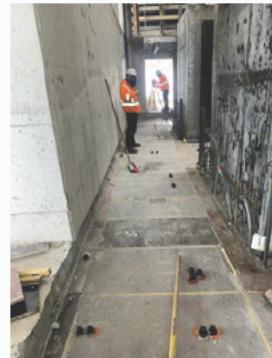
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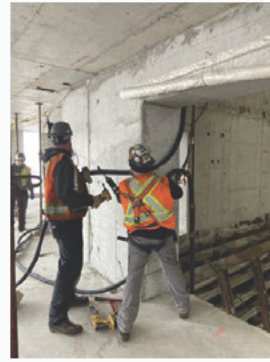
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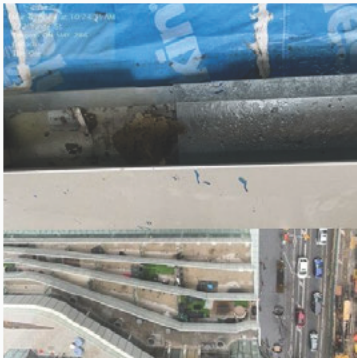
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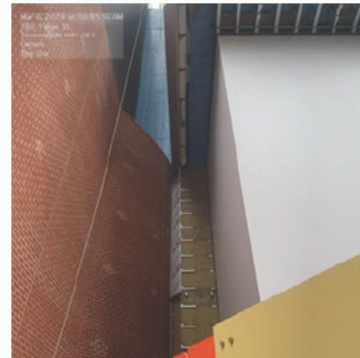
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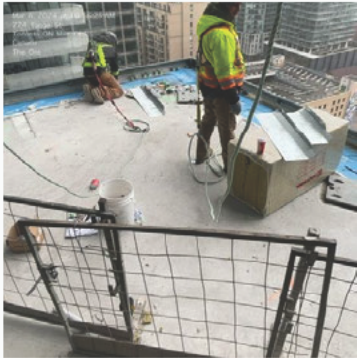
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[TC_04017.JPG](#)



[TC_04019.JPG](#)



[TC_04014.JPG](#)

MANPOWER LOG


212 Workers | 1,908.0 Man Hours

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

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

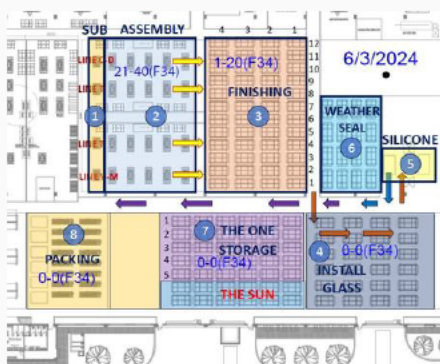
No.	Contact/Company	Cost Code	Workers	# Hours	Man Hours	Location
Created By: Adele DiGirolomo						
20	Walters Inc.		4	9.0	36.0	
Comments: Team on site installing shoes on Level 49. Created By: Adele DiGirolomo						
21	Western Mechanical Electrical Millwright Services Ltd		4	9.0	36.0	
Comments: Team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

NOTES LOG

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

Notes Log's Attachments:

2. _____



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DELIVERY LOG

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

DELIVERY LOG




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

By _____

Date _____

Copies To _____

**EXHIBIT "17 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

From: David Trafford <DTrafford@morseshannon.com>
Sent: June 19, 2024 at 10:01 am
To: Dunn, Mark <mdunn@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; O'Neill, Brendan <boneill@goodmans.ca>
Cc: Jerome Morse <jmorse@morseshannon.com>; Steve Weisz <SWeisz@cozen.com>; Veronica Stasolla <vstasolla@morseshannon.com>
Subject: RE: Mizrahi Inc
Attachments:  2024-06-14 Letter to Goodmans  Unpaid General Conditions Costs to 06-14-2024  1709BB03-The_One-2024-03-06

Counsel,

I'm following up on the receiver's position on the issues set out in the attached letter of June 14. In particular, the receiver agreed to negotiate in good faith with respect to the increase in the reserve set aside to address MI's claim in the Payment Motion. Please advise when we can expect a response to MI's position on this and the other issues raised.

David Trafford

Partner

Direct Line: [416-941-5850](tel:416-941-5850)



133 Richmond St. West, Suite 501, Toronto, Ontario M5H 2L3

Tel: 416-863-1230 1-888-745-1230 Fax: 416-863-1241

www.morseshannon.com

PLEASE NOTE OUR NEW ADDRESS ABOVE!

From: David Trafford
Sent: Friday, June 14, 2024 12:40 PM
To: Dunn, Mark <mdunn@goodmans.ca>; Linde, Jennifer <jlinde@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>; O'Neill, Brendan <boneill@goodmans.ca>
Cc: Jerome Morse <jmorse@morseshannon.com>; Steve Weisz <SWeisz@cozen.com>; Veronica Stasolla <vstasolla@morseshannon.com>
Subject: Mizrahi Inc

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

David Trafford

Partner

Direct Line: [416-941-5850](tel:416-941-5850)



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Tel: 416-863-1230 1-888-745-1230 Fax: 416-863-1241

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PLEASE NOTE OUR NEW ADDRESS ABOVE!

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

June 14, 2024

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

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

Dear Counsel:

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

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Increase in the Reserve for the Payment Motion

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Yours very truly,

J.R. Morse

Jerome R. Morse
DT

cc: Steve Weisz
David Trafford



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

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

Daily Log: Wednesday 3/6/2024



Daily Log Completed & Distributed

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DAILY SNAPSHOT

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OBSERVED WEATHER CONDITIONS

No.	Time Observed	Weather Delay	Sky	Temp	Average	Precipitation	Wind	Ground/Sea
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PHOTOS



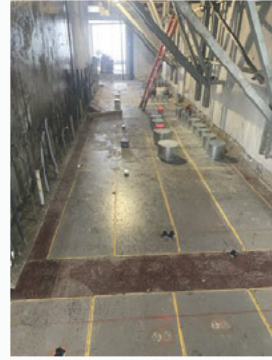
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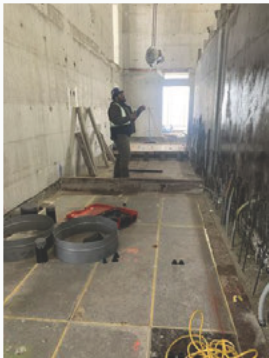
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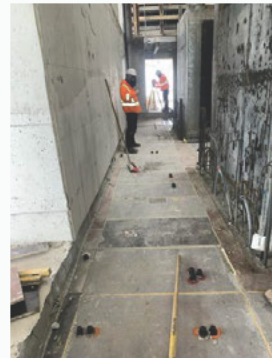
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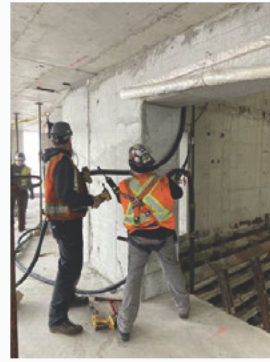
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[IMG_3923.jpeg](#)



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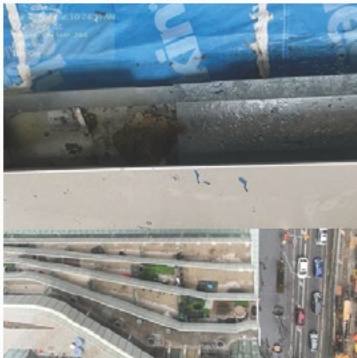
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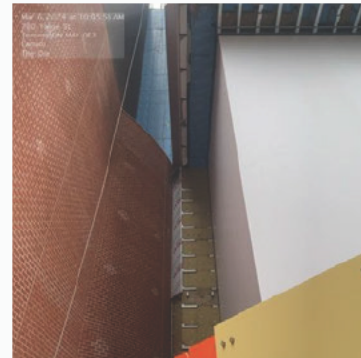
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[TC_04015.JPG](#)



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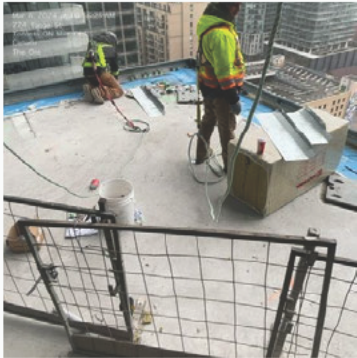
[TC_04013.JPG](#)



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[TC_04017.JPG](#)



[TC_04019.JPG](#)



[TC_04014.JPG](#)

MANPOWER LOG


212 Workers | 1,908.0 Man Hours

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

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

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

NOTES LOG

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

Notes Log's Attachments:

2. _____



[a9d2926ca2426b8d70a89ddc8bfc47b1.JPG](#)

DELIVERY LOG

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

DELIVERY LOG

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

By _____

Date _____

Copies To _____

**EXHIBIT "18 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

June 19, 2024

Our File No.: 232285

Via Email

Morse|Shannon LLP
133 Richmond Street West
Suite 501
Toronto, ON M5H 2L3

Attention: Jerome Morse

Dear Mr. Morse:

Re: Mizrahi Inc. ("MI")

We write in response to your email of June 12, 2024 and letter of June 14, 2024.

As a preliminary matter, we note that MI has sent a large number of letters setting out a variety of shifting demands for information and allegations against the Receiver. Although the Receiver prioritizes (and has always prioritized) transparency, it must also safeguard against the inefficient use of resources. The Receiver is concerned that responding to a stream of requests, often sent without any explanation and untethered to any specific dispute or proceeding, is not an efficient use of resources.

We believe that all parties would benefit from a streamlined process for the exchange of information. We therefore repeat our request that the parties agree to an adjusted schedule for the exchange of evidence and information in advance of the MI Payment Motion that accounts for the late delivery of the electronic Project records and MI's increased claims (including the new claim for the Residential Management Fee).

As part of an overall schedule, the Receiver would be prepared to consider a staged delivery of materials. Once the Receiver is able to complete its review of the electronic project records provided on June 9, 2024 (and assuming those records are complete), it can deliver a report addressing all issues that do not require access to the MI Account Statements, provided that the schedule provides an opportunity for the Receiver to tender further evidence once the Receiver obtains and reviews the MI Account Statements.

Please advise if MI is prepared to engage constructively in a discussion about the schedule for the MI Payment Motion.

We will respond, briefly, to the other concerns that you have articulated in your recent correspondence:

- With respect to the reserve, the Receiver intends to address outstanding third party claims directly with the claimants. We can also advise that it is the Receiver's practice to maintain a reserve sufficient to satisfy outstanding invoices, including the full amount claimed by MI and the third party invoices listed on the spreadsheet included in your email of June 14, 2024. We note, as well, that MI has already filed a lien notice to preserve its rights in accordance with the Lien Regularization Order;
- With respect to MI's claim for interest, we are not aware of any contract that requires that the Debtors pay interest on the amounts that are the subject to the MI Payment Motion. We understand that there are contracts between MI and the Debtors that contemplate interest on overdue amounts, but these contracts do not authorize the amounts claimed by MI;
- With respect to the pace of construction, the Receiver's evidence is set out in its First Report and Second Report. In the Receiver's view, all aspects of construction management (including the pace of construction) have improved since MI was replaced by SKYGRiD. The Receiver can elaborate on this position if and when it is necessary to do so. We note, as well, that there is a minor typographical error in Justice Osborne's endorsement. It refers to 56 storeys being poured, when the Second Report states that 58 storeys had been poured;
- With respect to your request for information about construction, we note that MI has previously refused to sign the non-disclosure agreement (the "NDA") executed by other Project stakeholder, including stakeholders who are also shareholders in the Project and guarantors of the Project's debt. No confidential information can or will be provided without an appropriate NDA;
- With respect to MI's request for a list of claims and supporting documents, we believe that the parties should focus on agreeing to a schedule for the exchange of materials. We are prepared to consider a schedule that provides time for MI to review and respond to set-off claims before the Receiver's evidence is filed, but the Receiver only received the electronic records last week and must first review those records to complete various aspects of its investigation;
- With respect to your request for payment approval communications received from the Coco Parties, we can provide you with access to the payment approval documents that the Coco Parties provided to the Receiver so that MI can supplement those materials if it believes that they are incomplete; and
- We are not prepared to provide you with copies of the Receiver's communications with the Senior Lenders. To the extent that the Senior Lenders approved payments made to or by

MI then, by definition, MI has those approvals, as recognized by Justice Osborne at the recent case conference.

I trust that the foregoing clarifies the Receiver's position, and look forward to working towards an orderly process for the resolution of the various disputes between the parties.

Yours truly,

Goodmans LLP



Mark Dunn
Partner
MD/es

cc: Christopher Armstrong, Brendan O'Neill, Kirby Cohen and Jennifer Linde, Goodmans LLP

Stephen Ferguson, Joshua Nevsky, Melanie MacKenzie, Fiona Mak, Andrew Sterling and Ethan Krieger, Alvarez & Marsal Canada Inc.

**EXHIBIT "19 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

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

June 20, 2024

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

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

Dear Counsel:

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

We write in response to your letter of June 19, 2024.

We agree that the parties would benefit from a streamlined approach to the delivery of information, but we disagree our attempts to ascertain the receiver's position on the various issues in dispute results in an inefficient use of resources.

The Reserve for the Payment Motion

We understand that the receiver has a practice to maintain "a reserve sufficient to satisfy outstanding invoices", but your client has not committed to following that practice in this case. There was an agreement to negotiate in good faith on the quantum of the reserve. Please confirm the receiver agrees to set aside \$10,911,766.25 being the amount claimed by MI including outstanding third party invoices in keeping with the receiver's practice. Please provide a response to this issue as soon as possible, as if there is agreement the need for a motion to address this issue is obviated.

Revised Timetable for the Payment Motion

We are prepared to recommend that our client agree to a revised timetable for the Payment Motion, but only if the receiver identifies what issues it is investigating as part of its proposed claim for a set-off. The Supplemental Report to the First Report of the receiver notes that the "Debtors have significant potential claims against MI", it notes it is investigating the contractual basis for payment to MI, the commercial reasonableness of

payments to MI, and potential set-off claims for (1) commissions, (2) arrears owing to the Project, and (3) liability relating to CERIECO payments. If all of these claims are still in issue, please advise. We do not understand why the receiver will not identify now what claims it is investigating and what documents it will rely upon if the claim is advanced. If the intention is to preserve the September hearing date for the Payment Motion, we see no reason why the receiver will not provide this information, which will inform the discussion between the parties on the modification of the timetable for the Payment Motion.

We note that MI is not advancing a 'new claim' for a Residential Management Fee. In an aide memoire, dated March 15, 2024, our client advised that prior to the receivership order it was entitled to the Residential Management Fee. To be clear, MI does not seek payment of that claim in the Payment Motion, but rather intends to raise it in response to any set-off claim advanced by the receiver since as of the date of the receivership, our client was owed vastly in excess of what the receiver seeks as a set-off for commissions.

Production of Payment Documentation

Thank you for confirming you will share payment approval communications received from Coco. We ask that the same payment approval communications received from the Senior Lenders be provided on the same basis. Our client is not seeking delivery of your firm's communications with the Senior Lenders at this time.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT

cc: Steve Weisz
David Trafford

**EXHIBIT "20 " of the affidavit of
Veronica Stasolla affirmed June 21,
2024**

GUARANTEE

THIS GUARANTEE is dated as of August 30, 2019.

TO: **KEB HANA BANK CANADA**, as Administrative Agent for the benefit of the Secured Parties (defined below) (the “**Administrative Agent**”)

AND TO: **KEB HANA BANK AS TRUSTEE OF IGIS GLOBAL PRIVATE PLACEMENT REAL ESTATE FUND NO. 301 AND EACH OTHER PERSON THAT BECOMES A PARTY TO THE CREDIT AGREEMENT AS A LENDER** (the “**Lenders**”)

FROM: **SAM MIZRAHI, JENNY COCO and MIZRAHI COMMERCIAL (THE ONE) GP INC.** (collectively, the “**Guarantors**”)

RECITALS:

- A. The Lenders have made certain credit facilities (the “**Credit Facilities**”) available to Mizrahi Development Group (The One) Inc. and Mizrahi Commercial (The One) LP (collectively, together with their successors and permitted assigns, the “**Borrower**”) pursuant to the Credit Agreement (as defined below).
- B. In order to induce the Lenders and the Administrative Agent to enter into the Credit Agreement and each of the other Loan Documents (as defined in the Credit Agreement) and to induce the Lenders to make the Credit Facilities available pursuant to the Credit Agreement, the Guarantors have agreed to guarantee payment and performance of the obligations of the Borrower under the Loan Documents.

THEREFORE, the Guarantors agree as follows:

ARTICLE 1

DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions

Wherever used in this Guarantee, all capitalized terms used and not defined have the meanings ascribed to them in the Credit Agreement and the following words and terms have the following meanings:

“**Credit Agreement**” means the credit agreement made as of August 30, 2019 between, amongst others, the Borrower, the Guarantors and the Administrative Agent pursuant to which the Lenders have agreed to make available the Credit Facilities to the Borrower on the terms and subject to the conditions set forth therein, as amended, supplemented, restated, extended, renewed or replaced from time to time; and

“**Secured Parties**” means the Administrative Agent, the Lenders, and any other Person entitled to the benefit of the Security (as defined in the Credit Agreement) pursuant to the Credit Agreement and each of their respective successors and assigns.

1.2 Certain Rules of Interpretation

In this Guarantee:

- (a) **Consent** – Whenever a provision of this Guarantee requires an approval or consent and the approval or consent is not delivered within the applicable time limit, then, unless otherwise specified, the party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.
- (b) **Currency** – Unless otherwise specified, all references to money amounts are to the lawful currency of Canada.
- (c) **Governing Law** – This Guarantee is a contract made under and shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario.
- (d) **Headings** – Headings of Articles and Sections are inserted for convenience of reference only and shall not affect the construction or interpretation of this Guarantee.
- (e) **Including** – Where the word “including” or “includes” is used in this Guarantee, it means “including (or includes) without limitation”.
- (f) **No Strict Construction** – The language used in this Guarantee is the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.
- (g) **Number and Gender** – Unless the context otherwise requires, words importing the singular include the plural and *vice versa* and words importing gender include all genders.
- (h) **Severability** – If, in any jurisdiction, any provision of this Guarantee or its application to any party or circumstance is restricted, prohibited or unenforceable, such provision shall, as to that jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions of this Agreement and without affecting the validity or enforceability of such provision in any other jurisdiction or without affecting its application to other parties or circumstances.
- (i) **Statutory references** – A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, revises, restates, supplements or supersedes any such statute or any such regulation.
- (j) **Time** – Time is of the essence in the performance of the parties’ respective obligations under this Guarantee.
- (k) **References to Guarantee** – The term “this Guarantee” refers to this guarantee including all schedules, amendments, supplements, extensions, renewals, replacements, or restatements from time to time, in each case as permitted, and

references to “Articles” or “Sections” means the specified Articles or Sections of this Guarantee.

- (1) **Paramountcy** – If there is a conflict, inconsistency, ambiguity or difference between any provision of this Guarantee and the Credit Agreement, the provisions of the Credit Agreement shall prevail, and such provision of this Guarantee shall be amended to the extent only to eliminate any such conflict, inconsistency, ambiguity or difference. Any right or remedy in this Guarantee which may be in addition to the rights and remedies contained in the Credit Agreement shall not constitute a conflict, inconsistency, ambiguity or difference.

1.3 Nature of Obligations

Notwithstanding anything herein contained to the contrary, the obligations of each of the Guarantors hereunder are as principal debtor and not as surety and are joint and several with the obligations of each other Guarantor.

1.4 Entire Agreement

This Guarantee and the other Loan Documents constitute the entire agreement between the parties and set out all the covenants, promises, warranties, representations, conditions and agreements between the parties in connection with the subject matter of this Guarantee and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, pre-contractual or otherwise. There are no covenants, promises, warranties, representations, conditions or other agreements, whether oral or written, pre-contractual or otherwise, express, implied or collateral, whether statutory or otherwise, between the parties in connection with the subject matter of this Guarantee except as specifically set forth in this Guarantee and the other Loan Documents.

ARTICLE 2 GUARANTEE

2.1 Guarantee

Each of the Guarantors unconditionally and irrevocably guarantees to the Administrative Agent and the other Secured Parties the due and punctual payment and performance when due of all debts, liabilities and obligations of or owing by the Borrower to the Secured Parties at any time and from time to time, direct and indirect, absolute and contingent, arising from all agreements, undertakings and contracts from time to time in force between the Borrower and the Secured Parties, in respect of or contained in the Credit Agreement and all other Loan Documents entered into by the Borrower pursuant to or in connection with the Credit Agreement, and all amendments, restatements, supplements, extensions, renewals, or replacements of, and continuations to, each such agreement, undertaking or contract, and including without limitation, all liabilities of the Borrower arising as a consequence of its failure to pay or fulfil any of such debts, liabilities and obligations (the “**Guaranteed Obligations**”).

2.2 Payment and Performance

- (a) If the Borrower fails or refuses to punctually make any payment or perform the Guaranteed Obligations, the Guarantors or any of them shall unconditionally render any such payment or performance upon demand made on it in accordance with the terms of this Guarantee.
- (b) Nothing but payment and satisfaction in full of the Guaranteed Obligations shall release the Guarantors or any of them from the Guarantors' obligations under this Guarantee.

2.3 Continuing Obligation

- (a) The only condition (and no other document, proof or action other than as specifically provided in this Guarantee is) necessary as a condition of the Guarantors honouring their obligations under this Guarantee shall be written demand to the Guarantors or any of them following the occurrence of and continuation of an Event of Default. This Guarantee shall be a continuing guarantee, shall cover all the Guaranteed Obligations, and shall apply to and secure any ultimate balance due or remaining unpaid to the Secured Parties.
- (b) This liability of the Guarantors or any of them shall continue and be binding on the Guarantors or any of them, and as well after as before default and after and as before maturity of the Guaranteed Obligations, until all the Guaranteed Obligations are fully paid and satisfied, and regardless of:
 - (i) any amendment, supplement, restatement, extension, renewal or replacement of this Guarantee, any other Loan Document or any provision or term of this Guarantee or any other Loan Document;
 - (ii) whether any other Person or Persons (each an “**Additional Guarantor**”) shall become in any other way responsible to the Secured Parties for, or in respect of all or any part of the Guaranteed Obligations;
 - (iii) whether any such Additional Guarantor or any other Guarantor shall cease to be so liable;
 - (iv) the enforceability, validity, perfection or effect of perfection or non-perfection of any security interest securing the Guaranteed Obligations;
 - (v) any of the Guaranteed Obligations and the Loan Documents being or becoming illegal, invalid, void, voidable, unenforceable, ineffective or extinguished in any respect;
 - (vi) any failure by any Secured Party or any other Person to perform or comply with any of the provisions of the Loan Documents or to provide the Guarantors or any of them with notice of any such failure;
 - (vii) any other act, event, omission or thing, or any delay to do any other act or thing, which may or might operate to discharge, impair or otherwise affect

the liability of the Guarantors or any of them under this Guarantee or any of the rights, powers or remedies conferred upon the Secured Parties by the Loan Documents, this Guarantee or by law; or

- (viii) whether any payment of any of the Guaranteed Obligations has been made and where such payment is rescinded or must otherwise be returned upon the occurrence of any action or event, including the insolvency or bankruptcy of the Borrower or otherwise, all as though such payment had not been made.

2.4 Guarantee Unaffected

- (a) This Guarantee shall not be determined or affected, or the Administrative Agent or any other Secured Party's rights under this Guarantee prejudiced by, the termination, compromise, reduction, extinguishment or disallowance of any of the Guaranteed Obligations by operation of law or otherwise, including without limitation, the bankruptcy, insolvency, winding-up, liquidation or dissolution of the Borrower or any change in the name, business, powers, capital structure, constitution, objects, organization, directors or management of the Borrower, with respect to transactions occurring either before or after such change.
- (b) This Guarantee shall:
 - (i) bind the Person or Persons for the time being and from time to time carrying on the business now carried on by the Guarantors or any of them, notwithstanding any reorganization of the Guarantors or any of them or the amalgamation of the Guarantors or any of them with one or more other corporations (in this case, this Guarantee shall bind the resulting corporation and the term "Guarantors" shall include such resulting corporation); and
 - (ii) extend to the liabilities of the Person or Persons for the time being and from time to time carrying on the business now carried on by the Borrower notwithstanding any reorganization or merger of the Borrower or the amalgamation of the Borrower with one or more other corporations (in this case, this Guarantee shall extend to the liabilities of the resulting corporation and the term "Borrower" shall include such resulting corporation) and all of such liabilities shall be included in the Guaranteed Obligations.
- (c) Each of the Guarantors agrees that the manner in which the Administrative Agent and the other Secured Parties may now or subsequently deal with the Borrower, the Guarantors or any of them, or any other Credit Party (as defined in the Credit Agreement) or other guarantee in respect of the Guaranteed Obligations shall have no effect on the Guarantors' continuing liability under this Guarantee and each of the Guarantors irrevocably waives any rights it may have in respect of any of the above.

ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Representation - Authority and Enforceability

Each of the Guarantors represents and warrants to the Administrative Agent and the other Secured Parties that it has obtained all authorizations, consents and approvals necessary for the granting and performance of this Guarantee and that this Guarantee is enforceable against each of the Guarantors in accordance with its terms. The Administrative Agent and the other Secured Parties shall not be concerned to inquire into the Borrower's power or the powers of any of its directors, officers or other agents, acting or purporting to act on its behalf, and all moneys, advances, renewals and credits actually borrowed or obtained from the Administrative Agent and the other Secured Parties by the Borrower pursuant to the Credit Agreement shall be deemed to form part of the Guaranteed Obligations notwithstanding any lack or limitation of status or power, incapacity of the Borrower or of its directors, or that the Borrower may not be a legal entity capable of being sued, or any irregularity, defect or informality in the borrowing or obtaining of such moneys, advances, renewals or credits, whether known to the Secured Parties or not.

ARTICLE 4 POSTPONEMENT OF CLAIMS AND SUBROGATION

4.1 Postponement of Claims and Subrogation

- (a) All debts and claims against the Borrower now or subsequently held by the Guarantors or any of them and all of the Guarantors' rights of subrogation (all such debts, claims and rights, the "**Claims**") are postponed to the repayment and performance of the Guaranteed Obligations. During the continuance of an Event of Default, until all of the Guaranteed Obligations that are then due shall have been satisfied in full, any money that the Guarantors or any of them receives in respect of any such Claims shall be received by the Guarantors or any of them in trust for the Administrative Agent and shall be paid immediately to the Administrative Agent to be applied against the Guaranteed Obligations, all without prejudice to and without in any way affecting, relieving, limiting or lessening the Guarantors' liability under this Guarantee.
- (b) In the event of the insolvency, bankruptcy, winding up or distribution of assets of the Borrower, Guarantors or any of them, or any Additional Guarantor, the Secured Parties' rights shall not be affected or impaired by its omission to prove its claim in full or otherwise and it may prove such claim as it sees fit and may refrain from proving any claim in its sole discretion.
- (c) Each of the Guarantors acknowledges and agrees that it shall not have any rights of subrogation or indemnification unless it pays the Guaranteed Obligations in full. The Guarantors or any of them shall not prove a claim in the bankruptcy of the Borrower unless and until the Guaranteed Obligations are repaid in full.

ARTICLE 5 AMENDMENTS

5.1 Amendments

Each of the Guarantors authorizes the Administrative Agent and/or the other Secured Parties, at any time and from time to time, without notice to the Guarantors or any of them and without affecting, relieving, limiting or lessening the Guarantors' liability under this Guarantee, to alter the terms of all or any part of the Guaranteed Obligations and any guarantees including, without limitation, modification of principal amount, times for payment or interest rates.

ARTICLE 6 WAIVERS AND REMEDIES

6.1 Waivers

Each of the Guarantors waives each of the following, to the fullest extent permitted by law:

- (a) any defence based upon:
 - (i) the lack of authority of the Borrower;
 - (ii) the unenforceability, invalidity, illegality or extinguishment of all or any part of the Guaranteed Obligations, or other guarantee for the Guaranteed Obligations or any set-off of the Borrower's bank deposits against the Guaranteed Obligations;
 - (iii) any act or omission of the Borrower or any other person, including any Secured Party, that directly or indirectly results in the discharge or release of the Borrower or any other Person or any of the Guaranteed Obligations or any security for the Guaranteed Obligations; or
 - (iv) any Secured Party's present or future method of dealing with the Borrower, any Additional Guarantor, any Obligor or other guarantee for the Guaranteed Obligations;
- (b) any right (whether now or hereafter existing) to require any Secured Party, as a condition to the enforcement of this Guarantee:
 - (i) to accelerate the Guaranteed Obligations or proceed and exhaust any recourse against the Borrower or any other Person;
 - (ii) to marshall the assets of either the Borrower or the Guarantors or any of them or any other Person; or
 - (iii) to pursue any other remedy that the Guarantors or any of them may not be able to pursue itself and that might limit or reduce the Guarantors' burden;
- (c) presentment, demand, protest and notice of any kind including, without limitation, notices of default and notice of acceptance of this Guarantee;

- (d) any claims, set-off or other rights that the Guarantors or any of them may have against any Secured Party, whether or not related to the transactions contemplated by this Guarantee or any other Loan Documents;
- (e) all suretyship defences and rights of every nature otherwise available under Ontario law and the laws of any other jurisdiction, including the benefit of discussion and of division; and
- (f) all other rights and defences (legal or equitable) the assertion or exercise of which would in any way diminish the liability of the Guarantors or any of them under this Guarantee.

6.2 Limitation Periods

No limitation period under the *Limitation of Actions Act* (Ontario) shall expire earlier than the second anniversary of the date on which demand for payment of the Guaranteed Obligations under this Guarantee is made in accordance with the provisions of this Guarantee.

6.3 Administrative Agent's Right to Act

Each of the Administrative Agent (acting on the instructions of the Required Lenders) and the other Secured Parties, upon such terms as it deems appropriate and, in each case, without notice to the Guarantors or any of them and without in any way affecting, reducing, limiting, impairing, releasing, discharging or terminating the Guarantors' liability under this Guarantee, from time to time may deal with the Borrower, the Guarantors or any of them, any other Obligor, the Loan Documents creating or evidencing the Guaranteed Obligations now or subsequently held by the Lender (including without limitation, all amendments, supplements, restatements, extensions, renewals and replacements to such Loan Documents) as it may see fit, including:

- (a) grant time, renewals, extensions, indulgences, concessions, compromises, releases and discharges to any Person in respect of the Guaranteed Obligations;
- (b) cease or refrain from giving credit, continue to give credit, or make loans or advances to the Borrower;
- (c) accept partial payment or performance from the Borrower or any other Credit Party or otherwise waive compliance by the Borrower or any other Credit Party with the terms of any of the Loan Documents;
- (d) assign any of the Loan Documents to any Person or Persons provided that notice thereof shall have been provided to the Guarantors;
- (e) deal or dispose in any manner (whether commercially reasonably or not) with any other guarantee for the Guaranteed Obligations;
- (f) apply all dividends, compositions and moneys at any time received from the Borrower or others or from the security upon such part of the Guaranteed Obligations; or
- (g) obtain one or more additional guarantees of the Guaranteed Obligations.

6.4 Administrative Agent's Waiver

No term, condition or provision of this Guarantee or any right under this Guarantee or in respect of this Guarantee, shall be, or shall be deemed to have been, waived by any Secured Party, except by express written waiver signed by the Administrative Agent (acting on the instructions of the Required Lenders) in accordance with the terms of the Credit Agreement, all such waivers to extend only to the particular circumstances specified in such waiver.

6.5 Administrative Agent's Action or Inaction

No action or omission on the part of any Secured Party in exercising or failing to exercise its rights under this Guarantee or in connection with or arising from all or part of the Guaranteed Obligations shall make any Secured Party liable to the Guarantors or any of them for any loss occasioned to the Guarantors or any of them. Each of the Guarantors agrees that the Secured Parties have no obligation to provide or disclose information to the Guarantors or any of them with respect to any dealings it has with or in respect of the Borrower at any time or from time to time.

6.6 Rights

The rights and remedies provided in this Guarantee are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights or remedies provided by law.

ARTICLE 7 GENERAL

7.1 Acknowledgements

Each of the Guarantors acknowledges that it is providing this Guarantee at the request of the Borrower and that it has satisfied itself and is not relying upon the Secured Parties in respect of all or any information with respect to the transaction under or related to the Credit Agreement or this Guarantee. Each of the Guarantors acknowledges that it has been provided with and has reviewed a copy of the Credit Agreement.

7.2 Demand

The Administrative Agent (acting on the instructions of the Required Lenders) may make demand in writing to the Guarantors or any of them at any time and from time to time after the occurrence of an Event of Default which is continuing, each such written demand to be accepted by the Guarantors or any of them as complete and satisfactory evidence of non-payment or non-performance of the Guaranteed Obligations by the Borrower. The Guarantors or any of them shall pay to the Administrative Agent such amount or amounts payable under this Guarantee immediately upon such written demand.

7.3 Set-Off

Each of the Guarantors agrees that any and all deposits, general or special, term or demand, provisional or final, matured or unmatured, and any other indebtedness at any time owing by any Secured Party to the Guarantors or any of them or for the credit or account of the Guarantors or any of them, may be set-off and applied by the Secured Parties at any time and from time to

time, without notice (such notice being expressly waived by the Guarantors or any of them), against and on account of the Guaranteed Obligations even if any of them are contingent or unmatured.

7.4 Notices

Any notice, consent or approval required or permitted to be given in connection with this Guarantee (in this Section referred to as a “**Notice**”) shall be in writing and shall be sufficiently given if delivered in accordance with the Credit Agreement.

7.5 Costs and Expenses

The Guarantors agree to pay all reasonable costs and expenses incurred by the Secured Parties in connection with the enforcements of their rights under the under this Guarantee.

7.6 No Representations

Each of the Guarantors acknowledges that this Guarantee has been delivered free of any conditions and that there are no representations which have been made to the Guarantors or any of them affecting the Guarantors’ liability under this Guarantee except as may be specifically embodied in this Guarantee and agrees that this Guarantee is in addition to and not in substitution for any other guarantee(s) held or which may subsequently be held by or for the benefit of any of the Secured Parties.

7.7 Further Assurances

The Guarantors or any of them shall at all times do all such things and provide all such reasonable assurances as may be required to give the Secured Parties the full benefit and effect of, or intended by this Guarantee, and shall provide such further documents or instruments required by the Secured Parties as may be reasonably necessary or desirable to effect the purpose of this Guarantee and carry out its provisions.

7.8 Assignment and Enurement

A Secured Party shall be entitled to assign all of its rights under this Guarantee in conjunction with a permitted assignment pursuant to the Credit Agreement. This Guarantee shall enure to the benefit of the Secured Parties’ successors (including any successor by reason of amalgamation) and permitted assigns, and shall be binding upon the Guarantors and their respective heirs, executors, legal representatives, legatees, administrators, successors (including any successor by reason of amalgamation), as the case may be, and permitted assigns.

7.9 Submission to Jurisdiction

Each of the Guarantors submits to the non-exclusive jurisdiction of any Ontario courts sitting in Toronto in any action, application, reference or other proceeding arising out of or related to this Guarantee and agrees that all claims in respect of any such actions, application, reference or other proceeding shall be heard and determined in such Ontario courts. Each of the Guarantors irrevocably waives, to the fullest extent it may effectively do so, the defence of an inconvenient forum to the maintenance of such action, application or proceeding.

7.10 Judgement Currency

If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due under this Guarantee in any currency into another currency, the relevant provisions of the Credit Agreement shall apply to such conversion.

7.11 Execution and Delivery

This Guarantee may be executed in counterparts and may be executed and delivered by facsimile or by other electronic form and all such counterparts shall together constitute one and the same agreement. Each of the Guarantors acknowledges receiving a copy of this Guarantee.

[Remainder of page intentionally left blank]

IN WITNESS OF WHICH the Guarantors have duly executed this Guarantee as of the date first written above.

**MIZRAHI COMMERCIAL (THE ONE)
GP INC.**

By: 

Name: Sam Mizrahi

Title: President

By: 

Name: Jenny Coco

Title: Vice President

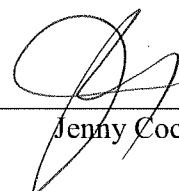
We have authority to bind the Corporation.

SIGNED, SEALED & DELIVERED

In the presence of:



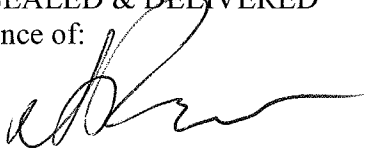
Witness



Jenny Coco

SIGNED, SEALED & DELIVERED

In the presence of:



Witness



Sam Mizrahi

**EXHIBIT "20 " of the affidavit of
Veronica Stasolla affirmed June
21, 2024**

COST OVERRUN AND COMPLETION GUARANTEE

THIS AGREEMENT dated as of August 30, 2019

IS MADE BY:

MIZRAHI COMMERCIAL (THE ONE) GP INC.

- and -

JENNY COCO

- and -

SAM MIZRAHI

(collectively, the “**Guarantors**”)

IN FAVOUR OF:

**KEB HANA BANK CANADA, as Administrative Agent for and
on behalf of the Lenders**

(the “**Administrative Agent**”)

RECITALS:

- A. The Borrower is constructing the Projects on the Secured Property.
- B. Pursuant to the Credit Agreement, the Administrative Agent and the other lenders defined therein (collectively, the “**Lenders**”) have agreed to make available the Credit Facilities to the Borrower on the terms and subject to the conditions more particularly set forth therein.
- C. It is a condition precedent to any initial drawdown under the Credit Facilities by the Borrower that this Agreement shall have been entered into.
- D. It is of benefit to the Borrower and the Guarantors that the Credit Facilities are made available to the Borrower.

NOW THEREFORE IN CONSIDERATION of the foregoing recitals and the mutual covenants and agreements hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Definitions

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

“**Act**” means the *Construction Act* (Ontario).

“**Agreement**”, “this Agreement”, “hereto”, “hereof”, “herein”, “hereby”, “hereunder” and similar expressions mean or refer to this guarantee as amended from time to time and any agreement or instrument supplemental or ancillary hereto or in implementation hereof and the expressions “Article”, “Section”, “Subsection”, “Paragraph” and “Subparagraph” followed by a number or letter mean and refer to the specified Article, Section, Subsection, Paragraph or Subparagraph of this agreement.

“**Borrower**” means, collectively, Mizrahi Development Group (The One) Inc. and Mizrahi Commercial (The One) LP.

“**Cost Overrun Amount**” has the meaning ascribed thereto in Section 3.2 hereof.

“**Credit Agreement**” means the credit agreement dated August 30, 2019 between, *inter alia*, the Borrower, as borrower, and the Administrative Agent, as administrative agent, as the same may be refinanced, amended, restated, supplemented or otherwise modified from time to time.

“**Demand**” means a demand given by the Administrative Agent (acting on the instructions of the Required Lenders) to the Guarantors pursuant to the terms of this Agreement, which demand shall state the following:

- (a) that such Demand is given pursuant to this Agreement; and
- (b) the Cost Overrun Amount if such Demand is given pursuant to Section 3.2.

1.2 Capitalized Terms

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

1.3 Applicable Law

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

1.4 Extended Meaning

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

1.5 Nature of Obligations

Notwithstanding anything herein contained to the contrary, the obligations of each of the Guarantors hereunder are as principal debtor and not as surety and are joint and several with the obligations of each other Guarantor.

1.6 Entire Agreement

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

1.7 Business Day

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

1.8 Statutory References

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

ARTICLE 2 COMPLETION GUARANTEE

2.1 Completion Guarantee

The Guarantors covenant and agree to do or cause to be done all things necessary to achieve Construction completion of the Projects in a timely manner in accordance with the terms of the Construction Schedule, the Plans and Specifications, the Permitted Encumbrances, the Material Agreements and all Applicable Law.

2.2 Completion Demand

The Administrative Agent (acting on the instructions of the Required Lenders) may, in its discretion, at any time following the occurrence of an Event of Default that is continuing and prior to Construction completion of the Projects, by way of a Demand, require the Guarantors to cause Construction completion of the Projects in accordance with the standard set forth in Section 2.1.

2.3 Intentionally Deleted

ARTICLE 3 COVENANTS REGARDING COSTS

3.1 Payment

- (a) The Guarantors covenant and agree with the Administrative Agent to pay, from time to time to all Persons entitled thereto, without duplication, the Cost Overrun

Amount within twenty (20) days of written notice by the Administrative Agent (acting on the instructions of the Required Lenders) to the Guarantors of such Cost Overrun Amount.

(b) **Intentionally deleted.**

- (c) For greater certainty, the Guarantors acknowledge and agree that the Lenders are not required to make amounts available to the Borrower under the Credit Facilities unless and until all conditions precedent thereto set forth in the Credit Agreement are satisfied from time to time. The covenant and agreement of the Guarantors to pay any Cost Overrun Amount pursuant to Section 3.1(a) shall continue (and remain unaffected) notwithstanding that the obligation of the Lenders to make amounts available pursuant to the Credit Agreement has been suspended and further notwithstanding that the conditions precedent to the Lenders' obligation to make such amounts available are not met.

3.2 Demand

The Administrative Agent (acting on the instructions of the Required Lenders) may in its discretion at any time and from time to time by way of a Demand to the Guarantors, require the Guarantors to pay any Cost Overruns (as defined in the Credit Agreement) that are then due and payable to the Persons entitled to such payment (the "**Cost Overrun Amount**").

3.3 Establishment of Cost Overrun Amount

The Administrative Agent (acting on the instructions of the Required Lenders) shall be entitled to establish the Cost Overrun Amount pursuant to Section 3.2 without regard to:

- (a) the value of any security or other guarantee or completion agreement held by the Administrative Agent at the time of Demand; and
- (b) any amount received on account of, or as proceeds of any enforcement or realization of, any security or guarantee or completion agreement held by the Administrative Agent at the time of such Demand, where such amount is received by the Administrative Agent subsequent to the Demand by the Administrative Agent from the Guarantors or any of them pursuant to this Agreement.

3.4 Payee

- (a) The Guarantors covenant and agree with the Administrative Agent that within twenty (20) days after receipt of a Demand, they will pay or cause to be paid by cash, certified cheque or official bank draft any Cost Overrun Amount specified in such Demand to the Persons entitled thereto pursuant to Section 3.2 and provide to the Administrative Agent evidence thereof. If the Guarantors or any of them fails to do so, the Administrative Agent (acting on the instructions of the Required Lenders) and/or the Lenders shall be entitled (but not obligated) to advance monies to pay Cost Overrun Amount or the unpaid portion thereof to the Persons entitled to such payment and any such monies advanced will be immediately due and payable by the Guarantors and added to the Obligations.

- (b) Without duplication of any interest payable by the Borrower pursuant to the Credit Agreement, each of the Guarantors agrees to pay to the Administrative Agent (acting on the instructions of the Required Lenders) on demand, interest on all amounts paid by the Administrative Agent and/or the Lenders pursuant to Section 3.4(a), calculated both before and after demand, default and judgment at a rate per annum calculated and compounded monthly which is equal to the Interest Rate applicable to the Term Facility, with interest on overdue interest calculated and payable at the same rate and in the same manner.

3.5 Right to Make Further Demand

The giving of any Demand at any time or from time to time hereunder regarding any Cost Overrun Amount required to be paid by the Guarantors hereunder shall in no way exhaust the right of the Administrative Agent (acting on the instructions of the Required Lenders) to give a further or other Demand at any time or from time to time hereunder requesting any further or other Cost Overrun Amount so required.

3.6 Obligations and Liabilities Not Contingent

- (a) The obligations of each Guarantor hereunder are not in any way contingent upon the carrying out by the Borrower, the Administrative Agent, the Lenders, any other Guarantor or any other Person of their respective obligations or liabilities hereunder or in the Credit Agreement, the Loan Documents or in any other agreement, or upon the Borrower or the Lenders availing themselves of any other source of funds required for Construction completion of the Projects or for the payment of Cost Overruns in the manner described in Article 2. Without limiting the generality of the foregoing, the application by the Borrower or the Administrative Agent (acting on the instructions of the Required Lenders) of any funds paid by the Guarantors hereunder shall in no way derogate from the obligation of each of the Guarantors to make payment in accordance with this Agreement.
- (b) No Guarantor shall be released or exonerated by time being given, or any other forbearance whatsoever whether as to time, performance or otherwise or by any release, discharge, loss or alteration in or dealing with all or any part of the Credit Agreement or the Loan Documents or any of them or by any failure or delay in giving any notice required under this Agreement or under the Credit Agreement or the Loan Documents or any of them, or by any variation in or departure from the provisions of the Credit Agreement or the Loan Documents or any of them (including without limitation the waiver by the Administrative Agent (acting on the instructions of the Required Lenders) and/or the Lenders of compliance with any conditions precedent to any advance of funds), or by any modification or alteration of the Credit Agreement or the Loan Documents or any of them, or by anything done, suffered or permitted by the Administrative Agent and/or the Lenders or any invalidity or unenforceability of, or any limitation on the liability of the Borrower or on the method or terms of payment under the Credit Agreement or the Loan Documents or any of them or any assignment or other transfer of all or any part of the Credit Agreement or the Loan Documents or any of them or any interest therein, whether before or after any Default or Event of Default under the Credit Agreement or the Loan Documents or any of them or any defence, compensation, set-off or

counterclaim which the Borrower or the Guarantors or any of them may have or assert or any other circumstance, whether or not the Guarantors or any of them shall have notice or knowledge of any of the foregoing.

- (c) The obligations of each of the Guarantors hereunder shall be separate and distinct and shall be continuing obligations and a fresh cause of action shall be deemed to arise in respect of each default. Each of the Guarantors agrees with the Administrative Agent that it will from time to time deliver to the Administrative Agent suitable acknowledgements of its continuing liability hereunder in such form as Lenders' Counsel may advise and as will prevent any action brought against it in respect of any default hereunder being barred by any statute of limitations or law of prescription now or hereafter in force in the Province of Ontario or elsewhere. The Guarantors will not, in any action brought against the Guarantors or any of them in respect of any default hereunder, plead or invoke any statute of limitations or law of prescription now or hereafter in force in the Province of Ontario or elsewhere.
- (d) Neither the Administrative Agent nor the Lenders shall be bound to seek or exhaust their recourse against the Borrower, any Guarantor or any other Person or against the property of the Borrower, any Guarantor or any other Person or against any security, guarantee or indemnity it may hold before requiring and being entitled to payment from a Guarantor hereunder and the Administrative Agent (acting on the instructions of the Required Lenders) and/or the Lenders may enforce the various remedies available to them and may realize upon the various security documents, guarantees and indemnities held by them or any part thereof in such order as they may determine. The Administrative Agent (acting on the instructions of the Required Lenders) shall not be bound to make demand upon or seek or exhaust its recourse against all of the Guarantors but rather shall be free to make demand upon or seek recourse against whichever Guarantor or Guarantors it chooses, in its sole discretion (acting on the instructions of the Required Lenders).

3.7 Subordination

Upon an Event of Default that is continuing, all indebtedness and liability, present and future of the Borrower to the Guarantors or any of them and the instruments, if any, evidencing such indebtedness and liability, are hereby assigned to the Administrative Agent and postponed to the Obligations, and all moneys received from the Borrower or for its account by the other Guarantors or any of them shall be received and held by the other Guarantors in trust for the Administrative Agent until this Agreement is cancelled pursuant to Section 5.1, all without prejudice to and without in any way limiting or lessening the liability of the Guarantors or any of them to the Administrative Agent under this Agreement, provided that such moneys are credited against amounts outstanding under this Agreement.

3.8 Subrogation

The Guarantors or any of them will not at any time claim to be subrogated in any manner to the position of the Administrative Agent and/or the Lenders nor will they claim the benefit of any security, guarantee or indemnity at any time held by or on behalf of the Administrative Agent and/or the Lenders until the Guarantors perform or make payment to the Administrative Agent of

all amounts owing by the Guarantors to the Administrative Agent under this Agreement or until all amounts owing under the Credit Agreement and other security have been repaid in full and this Agreement is terminated pursuant to Section 5.1. Following the termination of this Agreement pursuant to Section 5.1, the Guarantors will be subrogated to the position of the Administrative Agent under the Security Documents and the Agent will execute and deliver to the Guarantors the appropriate documents necessary to evidence to transfer of subrogation to the Guarantors of an interest in the obligations and any security held therefor resulting from such performance or payment by the Guarantor.

3.9 Obligations Absolute

This Agreement shall remain in full force and effect without regard to, and the obligations of the Guarantors or any of them hereunder are continuing obligations and neither this Agreement nor such obligations shall be affected or impaired by:

- (a) any amendment or modification of or addition or supplement to any of the Credit Agreement or other Loan Documents (other than this Agreement) or any other security (which term shall include, without limitation, a guarantee or indemnity) provided to the Administrative Agent and/or the Lenders; or
- (b) any exercise or non-exercise of any right, remedy, power or privilege in respect of the Credit Agreement or any of other Loan Documents provided to the Administrative Agent and/or the Lenders; or
- (c) any waiver, consent, extension, indulgence or other action, inaction or omission under or in respect of any of the Credit Agreement or other Loan Documents provided to the Administrative Agent and/or the Lenders; or
- (d) any invalidity or unenforceability of the Credit Agreement or other Loan Documents provided to the Administrative Agent and/or the Lenders (other than this Agreement); or
- (e) any merger, consolidation or amalgamation of the Credit Parties or any one of them, into or with any other entity or corporation; or
- (f) any insolvency, bankruptcy, liquidation, reorganization, arrangement, composition, winding-up, dissolution or similar proceeding involving or affecting the Obligors or any one of them or any other Person.

3.10 No Release

The liability of each Guarantor hereunder is not released, discharged, limited or in any way affected by anything done, suffered or permitted by the Administrative Agent (acting on the instructions of the Required Lenders), Lenders, or any of them in connection with any duties or liabilities of any Obligor to the Administrative Agent, Lenders, or any of them or any Security including any loss of or in respect of any Security. Without limiting the generality of the foregoing and without releasing, discharging, limiting or otherwise affecting in whole or in part the liability of any Guarantor hereunder, without obtaining the consent of or giving notice to any Guarantor,

the Administrative Agent (acting on the instructions of the Required Lenders) may, subject to the terms of this Agreement and the Credit Agreement:

- (a) discontinue, reduce, increase or otherwise vary the credit of the Borrower in any manner whatsoever;
- (b) make any change in the time, manner or place of payment under, or in any other term of, any Loan Document or the failure on the part of any Credit Party to carry out any of its obligations under any Loan Document;
- (c) grant time, renewals, extensions, indulgences, releases and discharges to any Credit Party;
- (d) take or abstain from taking or enforcing the Security or from perfecting Security;
- (e) accept compromises from any Credit Party;
- (f) apply all money at any time received from any Credit Party or from the Security upon such part of the Obligations as the Administrative Agent, Lenders or each of them may see fit or change any such application in whole or in part from time to time as each of them may see fit; and
- (g) otherwise deal with each Credit Party and all other Persons and the Security as the Administrative Agent, Lenders and each of them may see fit.

ARTICLE 4 MISCELLANEOUS

4.1 Successors

This Agreement shall enure to the benefit of and shall be binding on each of the Guarantors and the Administrative Agent and their respective heirs, executors, legal representatives, legatees, administrators, successors and assigns, as the case may be.

4.2 Notices

Any demand, notice or communication to be made or given hereunder shall be given in accordance with the provisions of the Credit Agreement.

4.3 Severability

If one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

4.4 Amendments

No amendment or variation of the terms, conditions, warranties, covenants, agreements or undertakings set forth herein shall be of any force and effect unless the same shall be reduced to

writing duly executed by all parties hereto in the same manner and with the same formality as this Agreement is executed.

4.5 Jurisdiction

Each of the Guarantors irrevocably:

- (a) submits and consents to the non-exclusive jurisdiction of the Courts of the Province of Ontario as regards any suit, action or other legal proceedings arising out of this Agreement;
- (b) waives, and agrees not to assert, by any motion, as a defense or otherwise, in any such suit, action or proceedings, any claim that they are not personally subject to the jurisdiction of the Courts of the Province of Ontario, that the suit, action or proceedings is brought in an inconvenient forum, that the venue of the suit, action or proceedings is improper or that this Agreement or the subject matter hereof may not be enforced in such courts; and
- (c) agrees not to seek, and hereby waives any right to seek judicial review by any court which may be called upon to enforce the judgment of the courts referred to in subsection (a) of this section, of the substantive merits of any such suit, action or proceeding in the event of failure of the Guarantors to defend or appear in any such suit, action or proceeding.

4.6 Conflict

This Agreement has been entered into pursuant to the provisions of the Credit Agreement and is subject to all the terms and conditions thereof and, if there is any conflict or inconsistency between the provisions of this Agreement and the provisions of the Credit Agreement, the rights and obligations of the parties will be governed by the provisions of the Credit Agreement and this Agreement shall be deemed to be amended accordingly. Notwithstanding the foregoing, in the event that this Agreement contains remedies which are in addition to the remedies set forth in the Credit Agreement, the existence of such remedies shall not constitute a conflict with the terms of this Agreement.

ARTICLE 5 TERMINATION

5.1 Termination

The provisions of this Agreement shall remain in full force and effect as general and continuing collateral security until payment in full of all Obligations, the performance of all Obligations, and until the Lenders have no further obligation to provide the Credit Facilities under the Credit Agreement, in which case this Agreement shall be and become fully ended and terminated and all covenants and agreements of the Guarantors hereunder shall be at an end and the Administrative Agent, upon the request and at the expense of the Borrower, shall execute such instruments, discharges or releases and give such notification or assurances as the Guarantors may properly require to fully release, discharge and cancel this Agreement in the circumstances.

5.2 Further Assurances

The Guarantors shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered every further act, deed, transfer, assignment, security agreement and assurance as the Administrative Agent (acting on the instructions of the Required Lenders) may require, acting reasonably, for better giving effect to the provisions of this Agreement.

ARTICLE 6 EXECUTION, ETC.

6.1 Counterparts and Formal Date

This Agreement may be executed in several counterparts, each of which, when so executed, shall be deemed to be an original and which counterparts together shall constitute one and the same instrument and notwithstanding the date of execution shall be deemed to bear date as of the date written in the beginning of this Agreement.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF the Guarantors have duly executed this Agreement as of the date first written above.

**MIZRAHI COMMERCIAL (THE ONE)
GP INC.**

By: _____

Name: Sam Mizrahi

Title: President

By: _____

Name: Jenny Coco

Title: Vice President

We have authority to bind the Corporation.

SIGNED, SEALED & DELIVERED

In the presence of:

Witness

Jenny Coco

SIGNED, SEALED & DELIVERED

In the presence of:

Witness

Sam Mizrahi

**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**

-and-

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

Applicant

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

AFFIDAVIT OF VERONICA STASOLLA

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Lawyers for the Respondents

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 OF MARK KILFOYLE
(affirmed June 21, 2024)

I, Mark Kilfoyle, of the City of Toronto in the Province of Ontario, solemnly affirm:

1. I am the Chief Financial Officer of the moving party, Mizrahi Inc (“MI”), and as such I have knowledge of the facts contained in this affidavit. Where my knowledge is based upon information or belief, I have stated the source of such information or belief and verily believe it to be true.
2. On February 27, 2024 I affirmed an affidavit setting out MI’s claim for payment at issue in its motion (the “Payment Motion”) to enforce paragraph 17 of the Order of Justice Osborne, dated October 18, 2023 (the “Receivership Order”). Since that time, MI’s claim for non-payment has increased significantly. Enclosed as **Exhibit A** is an updated spreadsheet calculating MI’s claim for non-payment in the Payment Motion. MI’s claim has increased to \$10,911,766.25 with interest

as of May 31, 2024, which includes \$4,529,644.83 for unpaid third party hard costs owed by the Project for which MI could be liable to the third parties if unpaid. MI claims interest on the outstanding amounts with a per diem of \$3,040.02.

AFFIRMED before me by video conference at
the City of Toronto,
in the Province of Ontario, this 21st day of
June, 2024, in accordance with O. Reg.
431/20, Administering Oath or Declaration
Remotely.

}

David Trafford

Commissioner for Taking Affidavits
(or as may be)

Mark

MARK KILFOYLE

**EXHIBIT “A” to the affidavit of
Mark Kilfoyle affirmed June 21, 2024**

**KEB HANA BANK as trustee of IGIS GLOBAL
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**MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI
DEVELOPMENT GROUP (THE ONE) INC., and MIZRAHI
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Applicant

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AFFIDAVIT OF MARK KILFOYLE

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Applicant

Respondents

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

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SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT TORONTO

MOTION RECORD

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