

**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.

February 27, 2024

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TO: THE SERVICE LIST

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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 a date to be scheduled by the Court 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 directing the Court-appointed receiver, Alvarez & Marsal Canada Inc. (“**A&M**” or the “**Receiver**”), to comply with paragraph 17 of the Appointment Order of Justice Osborne dated October 18, 2023 (the “**Appointment Order**”) in connection with the payments required to be made to by the Receiver to MI in its capacity as general contractor in connection with the development of an 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario (the “**Project**”), for the advance of any goods or services provided by MI to the Receiver, pursuant to the terms of the Construction Management Agreement (as defined in the Appointment Order)

or the GC Agreement (as defined in the Appointment Order) (collectively, the “**Agreements**”) in the within receivership proceedings;

2. An Order directing the Receiver to forthwith pay MI its outstanding fees and costs for labour services and for MI’s entitlement to construction management fees in the amount of \$4,086,007.53 for the period from October 18, 2023 up to February 22, 2024 (the “**Past Due Amounts**”);
3. An Order directing the Receiver to pay MI its fees and costs for labour and other services based on the rates that were used in the approved monthly billings immediately prior to the Appointment Order, and for MI’s entitlement to construction management fees, from and after February 22, 2024, as specified in the monthly calculation to be filed by MI (the “**Future Amounts**”);
4. A declaration that the payment letters dated December 22, 2023, (the “**Disputed December Payment Letters**”) issued by the Receiver and mistakenly executed on behalf of MI are *void ab initio*, are set aside and declared null and void;
5. An order directing the Receiver to replace the Disputed December Payment Letters with the form of payment letter attached as Exhibit “G” of the Affidavit of Sam Mizrahi affirmed February 22, 2024 (the “**Approved Payment Letter**”);
6. An Order directing the Receiver to use the Approved Payment Letter for all payments made to MI from and after December, 2023 on a go forward basis;
7. Costs of the motion; and
8. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

9. MI is a corporation beneficially owned by Mr. Sam Mizrahi. MI provides construction and development management services in Ontario.
10. 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 registered owner of the Project is Mizrahi Commercial (The One), GP Inc.
11. On October 18, 2023, the Owner and related entities were placed into receivership pursuant to the terms of the Appointment Order.
12. Since the Project commenced in 2014, MI has been paid or reimbursed for construction services and labour provided to the Project based on time-based labour rates.
13. In addition, MI was paid a 5% construction management fee since the beginning of the Project, with one exception: between invoices dated December 2019 and April 2021, MI's entitlement to a construction management fee was reduced to 3.5% by agreement between the beneficial owners of the Project, but on April 2021 it was retroactively increased back to 5%.
14. MI has not been paid for the construction services and labour it has provided to the Project, based on its time-based labour rates and has not been paid the entirety of its entitlement to a 5% construction management fee for any services provided or fees earned after August 31, 2023, following the issuance of the Appointment Order, on application by the Project's senior lender(the “**Senior Lender**”). In total,

MI has outstanding invoices for fees and constructions services of \$4,086,007.53, as at February 22, 2024.

15. On July 7, 2014, MI entered into a CCDC 2 construction agreement for the Project, which was replaced by a substantially similar CCDC 2 contract, dated May 14, 2019, and later amended with amendments dated September 27, 2019 and May 4, 2022 (the “**Construction Contract**”).
16. The Construction Contract provides that MI is responsible to the Owner for the supply of Project labour.
17. On July 25, 2014 MI and the Owner entered into a Commercial Development Management Agreement, pursuant to which MI was retained as the GC for the commercial development and construction of the Project. The Commercial Development Agreement sets out, in part, MI’s entitlement to construction management fees and the cost of time-based labour rates.
18. Pursuant to MI’s obligation to provide labour to the Project, in July 2017, MI entered into a heavily modified CCDC 5A contract with Clark Construction Management (“**Clark**”), pursuant to which Clark agreed to provide certain supplemental construction management services and labour for the Project, in addition to what MI was providing.
19. Clark was entitled to payment equal to 1.5% of the Project’s construction costs, in addition to a fee based on time-based rates for certain labour provided by Clark to the Project.
20. MI paid Clark its invoice costs consistent with the CCDC 5A agreement on a monthly basis. Those costs were then recovered by MI by payment through a construction draw process with the Senior Lender.

21. The administrative agent for the Senior Lender who reviewed the construction draw requests on behalf of the Senior Lender, and Altus, the cost consultant, would closely scrutinize the requests for payment and the supporting invoices before the Senior Lender would issue the payment certificate and the release notice and, ultimately, pay the funds required to satisfy the construction draw request.

The 5% Construction Management Fee

22. From the very beginning of the Project, MI charged the Project a construction management fee equal to 5% on each and every monthly draw. The Senior Lender and all stakeholders were aware of MI's entitlement to a 5% construction management fee, which was paid to MI on a monthly basis through the construction draw request protocol after being approved by the Senior Lender, its Administrative Agent, and Altus.
23. During the time that Clark provided construction management services to the Project, MI paid Clark its 1.5% construction management fee required by the CCDC 5A contract, out of MI's 5% construction management fee chargeable to the Project. The Project always incurred a total construction management fee equal to 5% of the construction cost.

Labour provided to the Project based on time-based rates

24. In addition to Clark's construction management fee of 1.5%, Clark also provided certain labour to the Project based on time-based labour rates set out in Schedule A to the CCDC 5A contract with Clark. The time-based rates for Project labour were subject to a 3% annual increase.

25. These labour costs were paid on a monthly basis through the construction draw request protocol after being approved by the Senior Lender, its Administrative Agent, and Altus.

Payment practice after termination of Clark's contract

26. On October 26, 2020, MI terminated the CCDC 5A agreement with Clark. MI subsequently assumed Clark's responsibilities and duties to provide Clark's portion of the construction management services to the Project with the knowledge and approval of the Senior Lender.
27. Since taking over from Clark in October 2020, MI subsumed the construction management services that Clark had provided to the Project pursuant to the CCDC 5A contract and provided the Project labour at the same rates as Clark. Consistent with past practice, MI delivered construction draw requests each month to the Senior Lender, the Administrative Agent and Altus seeking payment of MI's costs and fees pursuant to the Construction Management Agreement and for MI providing the construction management services and labour previously provided by Clark. These costs included the exact same time-based labour rates provided for in the CCDC 5A contract with Clark and MI's entitlement to a 5% construction management fee.
28. Consistent with the normal and historical payment practices of the Project, in October 2023 MI was paid a 5% construction management fee of \$653,342.24, plus HST which was ordered payable to MI pursuant to paragraph 6 of the Appointment Order.
29. Since the Appointment Order, MI has received payment of \$783,305.03, as required by paragraph 6 of the Appointment Order, but has not received full

payment for its construction services and labour in accordance with past practices and as required by the agreements between MI and the Project and the Appointment Order. In particular, MI has not been paid its labour and other costs based on the time-based labour rates in the Clark CCDC 5A contract with the 5% construction management fee thereon, contrary to the years' long history of the Project, the Senior Lender, the Administrative Agents and the cost consultant, Altus, approving of such costs and payments to MI.

30. The Appointment Order obliges MI to continue to provide services to the Project. MI has complied with this obligation and performed the services it is required to provide to the Project pursuant to its contracts with the Project and by order of the Court, even though it has not been paid in full for these services that were properly undertaken by MI and charged to the Project consistent with the normal payment practices of the Project.
31. In total, MI claims a total shortfall of payments owed for fees earned and expenses incurred in the sum of \$4,086,007.53 as at -, 2024, representing shortfalls of \$1,173,534.90, \$938,478.87, \$1,076,434.11 and \$897,559.65 for September, October, November and December 2023 respectively.

The December 2023 Payment Letters Should be Set Aside

32. On or about October 27, 2023, the Receiver delivered payment letters to MI, in which MI acknowledged and agreed, among other things, that MI, as developer to the Project, would undertake to pay the appropriate amounts owed to the various trades working on the Project from the funds paid by the Receiver on behalf of the Project to MI for September 2023. Following delivery of an executed payment letter, MI's invoices for construction management services and labour were paid

to MI by the Receiver, except as noted above, since MI was not paid its full entitlement to the cost of the labour it provided to the Project based on the historical and normal practice of paying time-based labour rates plus a 5% construction management fee.

33. On November 30, 2023, the Receiver delivered substantially similar payment letters to MI for MI's October 2023 costs, which was executed by MI.
34. On December 22, 2023, Mr. Mizrahi was provided with the Disputed December Payment Letters for signature. The Disputed December Payment Letters were in a substantially different form than the payment letters signed in October and November 2023. The email providing Mr. Mizrahi with the Disputed December Payment Letters was not copied to MI's counsel. Mr. Mizrahi signed the Disputed December Payment Letters without reading them and without the benefit of legal advice and while Mr. Mizrahi was travelling. The terms and language of the Disputed December Payment Letters are improper and MI would not have signed them had the Receiver identified the significant and substantial changes it had made to the payment letters.
35. On January 31, 2024, MI signed further payment letters, in substantially the same form as the payment letters for October and November 2023.
36. MI has complied with its undertaking under the payment letters and ensured that the trades working on the Project are paid in accordance with the payment letters. MI is prepared to enter into payment letters to replace the Disputed December Payment Letters for November 2023 Project costs in a form substantially similar to the payment letters that were signed in October and November 2023 and January 2024.

37. Sections 4.2(1)(2) and 243 of the *Bankruptcy and Insolvency Act*.
38. The inherent and equitable jurisdiction of this Court.
39. Rules 1.04, 37 and 60 of the *Rules of Civil Procedure*.
40. Such further and other grounds as counsel may advise and this Honourable Court may permit.

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

41. The Affidavit of Mark Kilfoyle, affirmed February 27, 2024;
42. The Affidavit of Sam Mizrahi, affirmed February 27, 2024; and
43. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

February 27, 2024

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REAL ESTATE FUND NO. 434

Applicant

- and -

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ONE) INC., and MIZRAHI COMMERCIAL (THE ONE) GP INC.

Respondents

**AFFIDAVIT OF MARK KILFOYLE
(affirmed February 27, 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. This motion concerns, among other things, MI’s right to payment for construction management and general contracting services provided by MI as general contractor (“GC”) for the construction of an 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto at 1 Bloor St West (the “Project”).

3. MI is a corporation beneficially owned by Mr. Sam Mizrahi. MI provides construction and development management services in Ontario on this Project, as well as numerous others.
4. 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 registered owner of the Project is Mizrahi Commercial (The One) GP Inc.
5. On October 18, 2023, the Owner and related entities were placed into receivership by Order of Justice Osborne (the "Osborne Order").
6. I make this affidavit in support of MI's claim for payment of its invoices for construction labour services calculated based on time-based rates for labour provided to the Project and a 5% construction management fee from the date of the Osborne order onward in keeping with the historical and normal payment practices of the Project.
7. Since the Project commenced in 2014, MI has been paid or reimbursed for construction services and labour provided to the Project based on time-based labour rates.
8. In addition, MI was paid a 5% construction management fee since the beginning of the Project with one exception: between invoices dated December 2019 and April 2021 MI's entitlement to a construction management fee was reduced to 3.5% by agreement between the beneficial owners of the Project, but on April 2021 it was retroactively increased back to 5%.

9. MI has not been paid for the construction services and labour it has provided to the Project based on its time-based labour rates and has not been paid the entirety of its entitlement to a 5% construction management fee for any services provided or fees earned after August 31, 2023, following the Osborne Order and the appointment of a receiver on application by the Project's senior lender, Keb Hana (the "Senior Lender").
10. As shown below, there is a consistent historical practice of MI being paid for its construction services and labour based on time-based labour rates in addition to a 5% construction management fee.

MI's Entitlement to Fees and Expenses as GC

11. On July 25, 2014, MI and the Owner entered into a Commercial Development Management Agreement, pursuant to which MI was retained as the GC for the commercial development and construction of the Project. The Commercial Development Agreement was executed by Mr. Mizrahi on behalf of MI and by Ms. Jenny Coco on behalf of the Owner.
12. The Commercial Development Agreement sets out, in part, MI's entitlement to the payment of fees as GC (referred to as the Contractor) for the Project as follows:

5.5 Construction Management Fee

As part of the Developments Costs, the Owner shall be responsible for the fees payable to the Contractor, pursuant to the Commercial Construction Management Agreement (the "Construction Management Fees"). The Construction Management Fees shall be paid by the Owner as required in the Commercial Construction Management Agreement and in any event on a monthly basis for the duration of the construction of the Development, commencing at the start of demolition of any buildings or improvements on the Properties provided all monthly draws have been authorized by the Cost Consultant. [underlining added]

13. A copy of the Commercial Development Agreement, dated July 25, 2014 is attached hereto as **Exhibit A**.
14. The “Commercial Construction Management Agreement” referred to in article 5.5 of the Commercial Development Agreement refers to a CCDC 2 construction agreement, dated July 7, 2014, a copy of which is attached hereto as **Exhibit B**.
15. The July 2014 CCDC 2 contract was subsequently replaced by a substantially similar CCDC 2 contract, dated May 14, 2019, which was later amended with amendments, dated September 27, 2019 and May 4, 2022 (collectively the “Construction Contract”). Copies of the CCDC 2 construction agreement, dated May 14, 2019, the amendment dated September 27, 2019 and the further amendment dated May 4, 2022 are attached as **Exhibit C, D** and **E** respectively.
16. The Construction Contract provides that MI is responsible to the Owner for the supply of Project labour. In particular, MI is to provide the Project:
- all material, labour, tools, equipment and all facilities and the satisfactory performance of all work necessary for the complete construction of luxury Condominium building.
17. Pursuant to MI’s obligation to provide labour to the Project, in July 2017 MI entered into a heavily modified CCDC 5A contract with Clark Construction Management (“Clark”), pursuant to which Clark agreed to provide certain construction management services and labour for the Project. A copy of the CCDC 5A contract is attached hereto as **Exhibit F**.
18. Article A-3 of the CCDC 5A contract set out the scope of work required by Clark:

ARTICLE A-3 DESCRIPTION OF THE PROJECT

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

Scope of Work

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

19. Article A-5 of the CCDC 5A sets out Clark's entitlement to payment for its construction services and labour:

ARTICLE A-5 COMPENSATION FOR SERVICES

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

20. In summary, Clark was entitled to payment equal to 1.5% of the construction costs and a fee based on time-based rates for the labourers employed by Clark. Those time-based rates are set out in Schedule C to the CCDC 5A which is excerpted, in part, below:

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

21. As shown above and established by **Exhibit F**, Clark was entitled to be paid based on the number of hours worked for a particular class of labour at a specified rate. The time-based labour rates increased by approximately 3% each year.
22. Based on my experience in the development and construction industry, it is my understanding that Clark did not charge for the labour it provided to the Project at cost. Instead, there was a market based mark-up on the labour rates agreed to between Clark and MI and consistently invoiced and recovered from the Project.
23. MI paid Clark its invoice costs consistent with the CCDC 5A agreement on a monthly basis. Those costs were then recovered by MI by payment through a construction draw process with the Senior Lender.
24. I was very involved in the preparation of the construction draw documentation for the Project as Chief Financial Officer to MI. Initially Keb Hana Bank Canada acted as the Administrative Agent for the purposes of reviewing and approving construction draw requests. Later, Keb Hana Bank Canada was replaced by IGIS Asset Management Co ("IGIS") as the Administrative Agent. The Administrative Agent and the project cost consultant, Altus Group ("Altus"), reviewed each and every monthly construction draw request through a prescribed construction draw

protocol. In particular, MI recovered the costs it paid to Clark for construction management services and labour provided to the Project pursuant to the CCDC 5A contract from the Senior Lender after providing to the Administrative Agent, among other things, (1) an itemized payment listing and (2) supporting documentation, including invoices.

25. Following a review of the payment listing, supporting documentation and the issuance of a report by Altus, the Administrative Agent would issue a payment certificate and release notice approving the construction draw, after which it would release the payment of funds. This protocol was substantially identical for each and every month.

26. Attached as **Exhibit G, H, I, J and K** are the construction financing release notices and the itemized payment listings delivered to the Senior Lender and/or IGIS and Altus, and the supporting payment listings for August to December 2019 (**Exhibit G**), 2020 (**Exhibit H**), 2021 (**Exhibit I**), 2022 (**Exhibit J**) and January to September 2023 (**Exhibit K**). Attached as **Exhibit L** is a complete set of supporting invoices for MI's costs listed in the payment listings. This payment protocol was followed until September 2023 for August 2023 fees earned and expenses incurred by MI. The last payment MI received consistent with this protocol was on September 23, 2023.

27. The Administrative Agent would closely scrutinize the construction draw requests for payment and supporting invoices before the Senior Lender would issue the payment certificate and release notice and, ultimately, the funds required to satisfy the construction draw request. In numerous instances, I was required to provide further supporting documentation to the Administrative Agent to satisfy the

amounts claimed, and in some instances redo the construction draw request for a numerical discrepancy as minor as \$1.00 or less. Based on my experience and interaction with the representatives of the Senior Lender, I verily believe that they diligently reviewed each construction draw request, and were very familiar with the process and supporting documentation, including the fact that MI was charging a 5% construction management fee and that MI was charging for Clark's costs calculated, in part, based on the time-based labour rates set out in Schedule A to the CCDC 5A contract.

28. As established by the documentation supporting the monthly construction draws, from the very beginning of the Project, MI charged the Project a construction management fee equal to 5% on each and every monthly draw. This is consistent with the terms of a confidential May 2021 Control Agreement between the beneficial owners of the Project.

29. During the time that Clark provided construction management services to the Project, MI paid Clark the 1.5% construction management fee required by the CCDC 5A contract, out of MI's 5% construction management fee, which was included in the construction draw requests. In other words, the Project always incurred a total construction management fee referable to the Clark invoices

pursuant to the CCDC 5A agreement equal to 5% of the cost of services provided by Clark. This is reflected in the documentation for the construction draw requests in 2019 and until September 2020 found at **Exhibits G to K**.

30. On October 26, 2020, MI terminated the CCDC 5A agreement with Clark. MI subsequently assumed Clark's responsibilities and duties to provide construction services to the Project. MI's assumption of the scope of work performed by Clark was communicated to the various subcontractors in a letter November 10, 2020, a sample copy of which is attached as **Exhibit M**. This letter was shared with a representative of the Senior Lender, Meritz Securities Co ("Meritz") and IGIS in a slide deck presentation in an email dated, November 10, 2020, a copy of which is attached as **Exhibit N**.

31. Since taking over from Clark in October 2020, MI has been providing the construction management services that Clark had provided to the Project pursuant to the CCDC 5A contract. Consistent with past practice, MI delivered construction draw requests each month to the Senior Lender, and the Administrative Agent seeking payment of MI costs and fees pursuant to the Construction Management Agreement and for MI providing the construction management services and labour previously provided by Clark. These costs included the exact same time-based labour rates provided for in Schedule A to the CCDC 5A contract with Clark and MI's entitlement to a 5% construction management fee.

32. Each and every invoice delivered by MI to the Senior Lender, and the Administrative Agent seeking payment for construction services based on the Clark time-based labour rates included both the 5% construction management fee discussed above and sought payment for construction services and labour using

the exact same time-based labour rates as provided by Schedule A to the CCDC 5A contract. In other words, the Project has incurred the exact same costs with MI for the same services as it would have incurred had Clark's contract not been terminated.

33. At no time prior to the Osborne Order was there any concern or objection relayed to MI by the Senior Lender, the Administrative Agents, Meritz or Altus that MI was not permitted to charge the Project for construction services based on the time-based rates in the Clark CCDC 5A contract. Similarly, at no time prior to the Osborne Order was there any concern or objection relayed to MI by the Senior Lender, the Administrative Agent, Meritz or Altus that MI was not permitted to charge a 5% construction management fee to the Project. In an email dated November 16, 2020, a representative of the Senior Lender, Ms. Eunhye (Grace) Zo wrote to counsel for the Senior Lender at Oslers, Mr. Rod Davidge, and noted "5% CM fee was initially included in the Altus CF and construction budget". A copy of this email is attached as **Exhibit O**.

34. In an email dated November 26, 2023, a representative of the court appointed receiver for the Owner, Mr. Stephen Ferguson acknowledged that MI had historically received both the 5% construction management fee and payment of its invoices based on time-based labour rates, stating that it was a "historical practice prior to the commencement of the Receivership". A copy of Mr. Ferguson's email, dated November 26, 2023 redacted to remove information not relevant to this issue and that is confidential is attached as **Exhibit P**.

35. As I understand it, the Osborne Order addresses MI's claim to both a 5% construction management fee and labour costs provided to the Project. Paragraph 6 of the Osborne Order provides:

6. THIS COURT ORDERS that the Receiver is authorized and directed to pay the amount of \$783,305.03, in respect of the amounts owing to Mizrahi Inc. pursuant to the Construction Management Agreement and/or the GC Agreement for services performed on or prior to August 31, 2023, and the Receiver is further authorized to pay all fees owing under the Construction Management Agreement and the GC Agreement that are properly incurred on or after September 1, 2023, pursuant to the terms of such agreements; provided however that, for the avoidance of doubt, in making any payments pursuant to this paragraph 6, the Receiver is not affirming either the Construction Management Contract or the GC Agreement, and the Receiver shall have no personal liability for any payments or other obligations under either the Construction Management Contract or the GC Agreement. [underlining added]

36. The payment of \$783,305.03 ordered to be paid by the Project to MI is comprised as follows:

Description	Amount (\$ CAD)
Construction Management Fee	653,342.24
HST on the Construction Management Fee	84,934.49
Flight and Hotel Expenses	45,028.30
TOTAL:	783,305.03

37. The construction management fee set out above was approved by Altus and is calculated as 5% of \$13,066,844.80, which represents the total construction costs set out in Invoice No. C1403, which is the final invoice that was outstanding for

MI's recovery of hard costs, and construction management fee prior to the issuance of the Osborne Order.

38. The construction management fee ordered to be paid in paragraph 6 of the Osborne Order was earned by MI for services performed in August 2023. The payment of the construction management fee was deferred by the Administrative Agent, IGIS, in August 2023 on account of a funding shortfall. Attached hereto as **Exhibit Q** is a copy of my email correspondence dated September 27, 2023 with Jossung Yoon, a representative of the Senior Lender, and IGIS referable to the August 2023 construction draw request, in which Mr. Yoon closely scrutinizes the construction draw request and asks many questions about the nature of specific invoices and costs. Included with Mr. Yoon's email is a spreadsheet prepared by IGIS, which categorizes the payment of specific invoices sought in the August 2023 construction draw request as payable (marked with a '1'), identified for further review (marked with a '?') or deferred (marked with a 'D'). This invoice indicates that MI's site labour costs of \$1,055,932.06 referable to invoice C1395 was approved and payable. A copy of this spreadsheet is attached as **Exhibit R**. A copy of invoice C1395 is attached hereto as **Exhibit S**.

39. As shown above in paragraph 20 and Schedule A to the CCDC 5A contract at **Exhibit F**, the Clark time-based labour rate for a labourer was \$100.20 per hour for the time between September 2021 and August 2022, which was subject to an annual increase of 3%. Invoice C1395 found at **Exhibit S** and excerpted below establishes that MI charged \$103.21 per hour for a labourer, which is \$100.20 plus 3%:

		2023-08-12	2023-08-12		2023-08-19	2023-08-26	2023-09-02	2023-09-09	2023-09-16	Total Period SUM		
Occupation	Type	Estimate	Actual	Variance	Actual	Actual	Actual	Estimate	Estimate	Hours	Rate	Amount
General Labour	Total Reg Hrs	36.00	36.00	-	44.00	44.00	43.00	44.00	43.00	218.00	103.21	22,499.78

40. The CCDC 5A contract provided for an hourly labour rate of \$105.84 per hour for a labour foreman or supervisor and MI Invoice C1395, which was paid and approved by the Senior Lender, IGIS and Altus for services provided in August 2023 charged a time based labour rate of \$109.02 (equal to \$105.84 plus 3%). Similarly, the time based rate for traffic control in Invoice C1395 is \$96.66 or 3% more than the labour based rate for the same position, referred to as a 'flagman', in CCDC 5A contract at \$93.84 per hour. Both Clark and MI charged the same time based labour rate for security personnel as the flagman/traffic control given the interchangeable nature of the roles.

41. Since the Osborne Order, MI has received payment of \$783,305.03 as required by paragraph 6 of the Order, but has not received full payment for its construction services and labour in accordance with past practices and as required by the agreements between MI and the Project. In particular, MI has not been paid for the costs of the construction services it has provided to the Project based on the time-based labour rates in the Clark CCDC 5A contract with the 5% construction management fee, contrary to the years long history of the Project, the Senior Lender, the Administrative Agents and the cost consultant, Altus, approving of such costs and payments to MI.

42. As I understand paragraph 17 of the Osborne Order, it obliges MI to continue to provide services to the Project. MI has complied with this obligation and performed the services it is required to provide to the Project pursuant to its contracts with the Project and order of the court, even though it has not been paid for these services

that were properly undertaken by MI and charged to the Project consistent with the normal payment practices of the Project as required by paragraph 17 of the Osborne Order.

43. In total, MI claims a total shortfall of payments owed for fees earned and expenses incurred in the sum of \$4,086,007.53 as of the date of this affidavit, representing shortfalls of \$1,173,534.90, \$938,478.87, \$1,076,434.11 and \$897,559.65 for October, November and December 2023 and January 2024 respectively. The spreadsheet attached hereto as **Exhibit T** sets out the calculations of MI's entitlement to payment of these sums.

AFFIRMED before me by video
conference at the City of Toronto,
in the Province of Ontario, this 27th day of
February, 2024,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration
Remotely.

}

David Trafford

Commissioner for Taking Affidavits
(or as may be)

Mark Kilfoyle

MARK KILFOYLE

**EXHIBIT “A” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “B” to the affidavit of
Mark Kilfoyle affirmed February 21, 2024**

ACCESS [HERE](#)

**EXHIBIT “C” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “D” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “E” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “F” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “G” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “H” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “I” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “J” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “K” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “L” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “M” to the affidavit of
Mark Kilfoyle affirmed February 21, 2024**

ACCESS [HERE](#)

**EXHIBIT “N” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “O” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “P” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “Q” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “R” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “S” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**EXHIBIT “T” to the affidavit of
Mark Kilfoyle affirmed February 27, 2024**

ACCESS [HERE](#)

**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

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

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

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF MARK KILFOYLE
(affirmed February 27, 2024)**

MORSE SHANNON LLP

133 Richmond Street West
Suite 501
Toronto ON M5H 2L3

Jerome R. Morse (21434U)
jmorse@morseshannon.com

David M. Trafford (68926E)
dtrafford@morseshannon.com
Tel:
416.863.1230 Fax:
416.863.1241

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 SAM MIZRAHI
(affirmed February 27, 2024)**

I, Sam Mizrahi, of the City of Toronto in the Province of Ontario, solemnly affirm:

1. I am the President 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. I have reviewed the affidavit of Mark Kilfoyle, affirmed February 27, 2024 and agree with its contents.
3. Since July 2014, MI has been the general contractor (“GC”) for the construction of an 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto at 1 Bloor St West (the “Project”).

4. MI is a corporation that I beneficially own. MI provides construction and development management services in Ontario.
5. I (with 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 registered owner of the Project is Mizrahi Commercial (The One), GP Inc.
6. On October 18, 2023, the Owner and related entities were placed into receivership by Order of Justice Osborne (the "Osborne Order").
7. This motion concerns, among other things, MI's right to a declaration that the payment letter issued to MI by the court appointed receiver, Alvarez & Marsal ("AM"), on December 22, 2023 is *void ab initio*.
8. On or about October 27, 2023, I signed payment letters provided to MI by AM, under which MI acknowledged and agreed, among other things, that MI, as developer to the Project, would undertake to pay the appropriate amounts owed to the various trades working on the Project from the funds paid by AM on behalf of the Project to MI for September 2023 construction costs. Copies of the payment letters, dated October 27 and October 30, 2023 are attached as **Exhibit A**.
9. On November 30, December 4, and December 5, 2023, I signed substantially similar payment letters provided to MI by AM, for October 2023. Copies of the November 30, December 4 and December 5, 2023 payment letters are attached as **Exhibit B**.

10. The October and November 2023 payment letters had been reviewed and approved by MI's counsel prior to my signature. The Receiver and its counsel were aware that MI had retained counsel on these issues.
11. On December 22, 2023, I was provided via email with payment letters for my signature by Mr. Andrew Sterling, a representative of AM. I received the December 22, 2023 payment letter while I was waiting to board an airplane to begin the holiday season. I signed the payment letters without closely reviewing them, mistakenly believing them to be in substantially the same form as the payment letters signed for October and November 2023. The email from December 22, 2023 providing me with the payment letters was not copied to my counsel and the payment letters included material changes that were not reviewed and approved by MI's counsel. Copies of the December 22, 2023 payment letters are attached as **Exhibit C**. A copy of this email dated December 22, 2023 is attached as **Exhibit D**.
12. On December 23, 2023, I wrote to Mr. Sterling at AM and indicated that I signed the payment letters without reviewing them, without knowing that AM had made material changes to the form of payment letter, and without having received legal advice. A copy of this email is attached hereto as **Exhibit E**.
13. On December 27, 2023, MI's counsel, Mr. Roger Jaipargas, wrote to counsel for AM, following a telephone call between counsel on December 24, 2023, and set out MI's position and concerns with respect to the December 2023 payment letters. AM has refused to rescind the December 2023 payment letters. A copy of this email communication is attached as **Exhibit F**.

14. On January 31, 2024, I signed further payment letters for January 2024 which were in a substantially similar form to the payment letters signed in October and November 2023. A copy of the January 31, 2024 email is attached hereto as **Exhibit G**. These payment letters were accepted by the receiver on a without prejudice basis as to the appropriate form of payment letters on a go forward basis, as confirmed in a January 31, 2024 email from AM representative, Mr. Josh Nevsky, a copy of which is attached **Exhibit H**.
15. Consistent with its undertaking, MI has always ensured that the trades working on the Project are paid in accordance with the payment letters. MI is prepared to enter into a payment letter to replace the December 2023 payment letter for November 2023 Project hard costs in a form substantially similar to the payment letters that I signed in November 2023 and January 2024.

AFFIRMED before me by video
conference at the City of Toronto,
in the Province of Ontario, this 27th day
of February, 2024,
in accordance with O. Reg. 431/20,
Administering Oath or Declaration
Remotely.

}

David Trafford

Commissioner for Taking Affidavits
(or as may be)

[Signature]

SAM MIZRAHI



October 27, 2023

DELIVERED BY EMAIL

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

Attention: Mr. Sam Mizrahi

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

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

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

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

MIZRAHI INC.

Per: 

Name: Sam Mizrahi President

Title:

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President
cc: Brendan O'Neill, Goodmans LLP
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoice (Invoice #C1416)



October 30, 2023

DELIVERED BY EMAIL

Mizrahi Inc.

125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

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

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

MIZRAHI INC.

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

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President
cc: Brendan O'Neill, Goodmans LLP
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoice (Invoice #C1416)



December 4, 2023

DELIVERED BY EMAIL

Mizrahi Inc.

125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

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

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

MIZRAHI INC.

Per:



Name:

Title: **Sam Mizrahi President**

Yours very truly,

ALVAREZ & MARSAL CANADA INC.

**SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President

cc: Brendan O'Neill, Goodmans LLP

Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoices #C1429 and #C1437

Schedule A

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



November 30, 2023

DELIVERED BY EMAIL

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

Attention: Mr. Sam Mizrahi

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

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

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

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

MIZRAHI INC.

Per:

Name:

Title:

Sam Mizrahi President

Yours very truly,

ALVAREZ & MARSAL CANADA INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY

Per: Josh Nevsky, Senior Vice President

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

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

Schedule A

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



December 5, 2023

DELIVERED BY EMAIL

Mizrahi Inc.

125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

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

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

MIZRAHI INC.

Per:



Name:

Title: **Sam Mizrahi President**

Yours very truly,

ALVAREZ & MARSAL CANADA INC.

**SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President

cc: Brendan O'Neill, Goodmans LLP

Chris Armstrong, Goodmans LLP

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

Schedule A

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



November 30, 2023

DELIVERED BY EMAIL

Mizrahi Inc.

125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

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

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

MIZRAHI INC.

Per:

Name:

Title: **Sam Mizrahi President**

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President
cc: Brendan O'Neill, Goodmans LLP
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoices

Schedule A

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



December 22, 2023

DELIVERED BY EMAIL

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

Attention: Mr. Sam Mizrahi

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

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

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

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

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

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

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

Yours very truly,

**ALVAREZ & MARSAL CANADA INC., SOLELY IN ITS
CAPACITY AS RECEIVER AND MANAGER OF ALL OF
THE ASSETS, UNDERTAKINGS AND PROPERTIES OF
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI
DEVELOPMENT GROUP (THE ONE) INC., AND
MIZRAHI COMMERCIAL (THE ONE) GP INC. AND NOT
IN ITS PERSONAL OR CORPORATE CAPACITY**

Per:



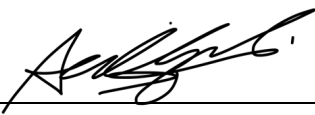
Name: Josh Nevsky

Title: Senior Vice-President

AGREED AND ACKNOWLEDGED this ____ day of December, 2023

MIZRAHI INC.

Per:



Name: Sam Mizrahi

Title: President

SCHEDULE A

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

A handwritten signature in black ink, appearing to be 'AM' or similar, with a large loop at the top.



December 22, 2023

DELIVERED BY EMAIL

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

Attention: Mr. Sam Mizrahi

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

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

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

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

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

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

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

Yours very truly,

ALVAREZ & MARSAL CANADA INC., SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF ALL OF THE ASSETS, UNDERTAKINGS AND PROPERTIES OF MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE) INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC. AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY

Per:



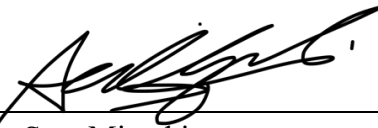
Name: Josh Nevsky

Title: Senior Vice-President

AGREED AND ACKNOWLEDGED this ____ day of December, 2023

MIZRAHI INC.

Per:



Name: Sam Mizrahi

Title: President

SCHEDULE A

Vendor	Invoice Amount	Invoice
2218840 Ontario Inc.	1,009.10	683
Bass Curtainwalls Inc.	193,164.47	3295
Blockwall Masonry 18 Inc.	28,311.04	2956
BM Windows Joint Stock Company	363,287.32	TOT-003
CanAM Waste Products Inc.	33,306.75	205249
Cult Iron Works LTD	5,085.00	SI-9009
Detal International Co. Limited	1,154,746.41	DTE-3087-02, DTE-3096-04 DTE-3096-05, DTE-3096-06 DTE-3098-04
Gamma Windows & Walls International Inc.	1,317,237.87	1808-50
GNI Management Group Inc.	24,322.44	1645048
Guardtek Systems Inc.	678,890.78	23865 , 23866
Hardwall Construction LTD.	1,759,922.12	J007596
Huizhou Alcade Curtainwall Co. Limited	247,551.37	3097-02
Innocon Partnership	528,461.40	Various
Modern Niagara Toronto Inc.	2,030,307.84	INTO0072493
Onyx Fire Protection Services Inc.	267,702.31	22545, 22546
Otis Canada Inc.	1,232,541.59	FTM659048067
Ozz Electric Inc.	302,567.44	J027038
Earl Paddock Transportation Inc.	30,295.30	W700126, W700127
Riverside Group LTD.	950,715.67	8574, 8575, 8576
Read Jones Christoffersen Ltd.	66,115.72	425363, 425697
Salit Steel	652,100.26	11123U1010 11123U1062
Tecooustics Limited	142,973.25	39971, 39973
Tractel LTD.	11,921.27	8L45-Nov 2023
United Drywall LTD	424,348.31	7255157, 7255158
Walters Inc.	45,861.62	B111430
Yarl Metal Fabrications Inc.	6,305.54	63517
Todd & Don Expense	28,262.59	C1444
Previously Submitted - Haimul	(1,100.00)	C1448
Previously Submitted - Detal	(2,136.25)	C1448
Previously Submitted - BM	(20,084.60)	C1448
Total	\$12,503,993.93	

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

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



Subject:

RE: November 2023 Hard Cost Payment

On Dec 22, 2023, at 11:30 AM, Sterling, Andrew <asterling@alvarezandmarsal.com> wrote:

Sam,

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

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

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

Vendor	Invoice Amount	Invoice
2218840 Ontario Inc.	1,009.10	683
Bass Curtainwalls Inc.	193,164.47	3295
Blockwall Masonry 18 Inc.	28,311.04	2956
BM Windows Joint Stock Company	363,287.32	TOT-003
CanAM Waste Products Inc.	33,306.75	205249
Cult Iron Works LTD	5,085.00	SI-9009
Detal International Co. Limited	1,154,746.41	DTE-3087-02, DTE-3096-04 DTE-3096-05, DTE-3096-06 DTE-3098-04
Gamma Windows & Walls International Inc.	1,317,237.87	1808-50
GNI Management Group Inc.	24,322.44	1645048
Guardtek Systems Inc.	678,890.78	23865 , 23866
Hardwall Construction LTD.	1,759,922.12	J007596
Huizhou Alcade Curtainwall Co. Limited	247,551.37	3097-02
Innocon Partnership	528,461.40	Various
Modern Niagara Toronto Inc.	2,030,307.84	INTO0072493
Onyx Fire Protection Services Inc.	267,702.31	22545, 22546
Otis Canada Inc.	1,232,541.59	FTM659048067
Ozz Electric Inc.	302,567.44	J027038
Earl Paddock Transportation Inc.	30,295.30	W700126, W700127
Riverside Group LTD.	950,715.67	8574, 8575, 8576
Read Jones Christoffersen Ltd.	66,115.72	425363, 425697
Salit Steel	652,100.26	11123U1010 11123U1062
Tecoustics Limited	142,973.25	39971, 39973
Tractel LTD.	11,921.27	8L45-Nov 2023
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Vendor	Invoice Amount	Invoice
CM Fee to Mizrahi Inc.	625,199.70	C1448
Total	\$625,199.70	

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

Thanks,

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



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David Trafford

Subject: RE: November 2023 Hard Cost Payment

From: Sam Mizrahi <sam@mizrahidevelopments.ca>
Date: December 23, 2023 at 8:27:51 AM EST
To: "Sterling, Andrew" <asterling@alvarezandmarsal.com>
Cc: Mark Kilfoyle <Mark@mizrahidevelopments.ca>, Remy Del Bel <remy@mizrahidevelopments.ca>, "Ferguson, Stephen" <sferguson@alvarezandmarsal.com>, "Nevsky, Joshua" <jnevsky@alvarezandmarsal.com>, boneill@goodmans.ca, carmstrong@goodmans.ca
Subject: Re: November 2023 Hard Cost Payment

Good morning Andrew,

I just noticed that you have changed the from that I signed yesterday. I was in a rush, under stress, and in transit right before the holidays and did not notice you added 2 new sections to the letter that I had not seen when I electronically signed before my flight was just taking off with my family thinking it was the same document as previously signed by me in prior months and the same letter that was reviewed by my Counsel and approved and it was not. I did not have my Counsel review this new document I signed yesterday thinking it was the same document and I do not know what these two new added sections that you have inserted means and I did not notice it until earlier this morning, as per my previous email.

I am having Counsel review this new change and will get back to you. I wish you would have advised me that there was a change to your letter from previous ones.



Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4210
C. 416.818.5288
F. 1.866.300.0219
E. Sam@MizrahiDevelopments.ca

On Dec 22, 2023, at 11:30 AM, Sterling, Andrew <asterling@alvarezandmarsal.com> wrote:

Sam,

The Receiver will be making the following two payments to Mizrahi Inc. today. Prior to making the payments, can you please review and sign the attached 'November Hard

Cost Payment Letter' confirming that the hard cost payment will be paid on to the individual trades per Schedule A of the attached.

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Riverside Group LTD.	950,715.67	8574, 8575, 8576
Read Jones Christoffersen Ltd.	66,115.72	425363, 425697
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Vendor	Invoice Amount	Invoice
CM Fee to Mizrahi Inc.	625,199.70	C1448
Total	\$625,199.70	

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

Thanks,

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



This communication may contain information that is PRIVILEGED and CONFIDENTIAL. If you are not the intended recipient(s), you are hereby notified that any dissemination of this communication is strictly prohibited. When addressed to our clients, any advice contained in this communication and any attachments are subject to the terms and conditions expressed in the appropriate client engagement agreement and no other party may rely on the information or advice contained herein for any purpose. If you have received this communication in error, please erase all copies of the message and its attachments and notify us immediately. Email messages may be monitored for reasons of security, to protect our business, and to ensure compliance with legal and regulatory obligations and our internal policies. Emails are not a secure method of communication, can be intercepted and cannot be guaranteed to be error free.

Subject:

FW: November 2023 Hard Cost Payment

On Dec 27, 2023, at 10:18 AM, Jaipargas, Roger <RJaipargas@blg.com> wrote:

Hi Brendan,

I hope that each of you have been enjoying the holidays. I acknowledge receipt of your email of December 24, 2023 that is set out below and I wanted to thank you for speaking with me on the afternoon of December 24, 2023, as I know the timing was not the best, but I appreciated you taking the time to do so, given the urgency of this matter.

Further to our discussion of December 24, 2023 and Sam's email to the Receiver and Goodmans on the morning of December 23, 2023, we wanted to surface the concerns that our client has in connection with the two letters dated December 22, 2023 that were sent by the Receiver to Sam, in connection with the November 2023 payment of the GC costs and the November 2023 payment of the Hard Costs (collectively, the "**Payment Letters**"), which are attached for ease of reference. The background on this is as follows:

1. The Payment Letters were sent to Sam by the Receiver on December 22, 2023 (the "**Payment Email**"), just prior to break for the holidays.
2. The Payment Email from the Receiver with the Payment Letters did not highlight that the Receiver and its counsel had made material changes to the Payment Letters from the form of payment letter that Sam was asked to execute in the past. In connection therewith, see the attached payment letter dated December 5, 2023 (the "**Existing Payment Letter**") on the payment of the Hard Costs for October 2023.
3. When Sam received the Payment Email from the Receiver with the Payment Letters, that email did not include blacklines of Payment Letters to the Existing Payment Letter, to highlight the material changes that were made to the Payment Letters, which was a departure from the Existing Payment Letter.
4. The Payment Email was copied to counsel for the Receiver, but I was not copied on same, nor was my co-counsel, Scott Hutchinson (HH) and Keith Bannon (Glahot). While I encourage Sam to continue to have an open dialogue with the Receiver, much of which does not require the involvement of his counsel, when it comes to legal issues such as the issues raised by the Payment Letters, Sam's counsel should be included on such communication, so that we can consider and advise on same.
5. When Sam received the Payment Letters, he was on a flight and assumed that they were in the form of the Existing Payment Letter. It was on that basis that he executed and returned the Payment Letters. It was not until later that he discovered the material changes that were made to the Payment Letters, at which time he immediately sent his email of December 24, 2023 to the Receiver and its counsel, which you have acknowledge receipt of.
6. The concern with the Payment Letters is particularly with regard to paragraphs numbered (iii) and (iv) which should not have been included in the Payment Letters. However, there is other language that is included in the Payment Letters that was not in the Existing Payment Letter, which should not have been included in the Payment Letters. The Payment Letters should be in the form of the Existing Payment Letter.

The circumstances surrounding the timing and process invoked for the issuance of the Payment Letters was not ideal on many levels. That is not meant to be a criticism, as I know that this was being done on the eve of the holidays, when all of this transpired. I think that the parties need to agree that the Payment Letters executed by Sam should be rescinded and deemed null and void and that new payment letters should be issued on December 28, 2023 (in the form of the Existing Payment Letter) in respect of the November 2023 payment of the GC costs and the November 2023 payment of the Hard Costs for Sam's signature this week. I think this can be dealt with tomorrow. We are available on December 28th for a call at 10AM tomorrow to discuss the foregoing and to work with you and the Receiver to get this concern addressed this week. That is the immediate matter to be dealt with this week.

Brendan, as I indicated to you on our call on December 24th, there are other concerns that we need to take up with the Receiver and its counsel with regard to the quantum of the payments that have been made to Mizrahi Inc. under the terms of the Appointment Order of Justice Osborne and the existing arrangements which were in place prior to the issuance of the Appointment Order. I understand that Sam has raised these concerns with the Receiver. I think that we will need a call with the Receiver and its counsel in early January, 2024 to further discuss these concerns that Sam has raised to date with the Receiver, in the hope that we can achieve a resolution of same, as the status quo is not acceptable to our client. Perhaps we can discuss dates for that call on the call tomorrow?

Many thanks Brendan.

Regards,

Roger

<image002.jpg>

Roger Jaipargas

T 416.367.6266 | RJaipargas@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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Borden Ladner Gervais LLP

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From: O'Neill, Brendan <boneill@goodmans.ca>

Sent: December 24, 2023 3:13 PM

To: Sam Mizrahi <sam@mizrahidevelopments.ca>; Sterling, Andrew <asterling@alvarezandmarsal.com>

Cc: Mark Kilfoyle <Mark@mizrahidevelopments.ca>; Remy Del Bel <remy@mizrahidevelopments.ca>;

Ferguson, Stephen <sferguson@alvarezandmarsal.com>; Nevsky, Joshua

<jnevsky@alvarezandmarsal.com>; Armstrong, Christopher <carmstrong@goodmans.ca>;

O'Neill, Brendan <boneill@goodmans.ca>; Jaipargas, Roger <RJaipargas@blg.com>

Subject: RE: November 2023 Hard Cost Payment

[External / Externe]

Hi Sam and Roger.

Sam – your email below is received and acknowledged (as well as the same email you sent in respect of the Friday GC letter as well), and I just spoke with Roger, and then with A&M, and as suggested by Roger, let's circle up next week after the Xmas holiday to discuss and address any concerns. A&M and Goodmans will resurface on the 28th and we can all have a call together then. Please let us know some times on the 28th that would work for you both. In the meantime, the Receiver asks that you be sure to pay out the trades in accordance with the letter so that operations are not affected. Thank you.

Roger – if you could email around a few bullets specifying the concerns you have with the latest form of letter some time in advance of the 28th that would be appreciated and will help focus the discussion on the 28th. Thank you.

We wish you both a happy holiday and look forward to speaking with you on this on the 28th.

Best regards,

Brendan

Brendan O'Neill

☎ Office Tel: 416.849.6017
☎ MOBILE Tel: 416-301-8745
✉ E-mail: boneill@goodmans.ca
🌐 Web: http://www.goodmans.ca/People/Brendan_O_Neill

Goodmans LLP

Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario
M5H 2S7 Canada

From: Sam Mizrahi <sam@mizrahidevelopments.ca>
Sent: Saturday, December 23, 2023 8:28 AM
To: Sterling, Andrew <asterling@alvarezandmarsal.com>
Cc: Mark Kilfoyle <Mark@mizrahidevelopments.ca>; Remy Del Bel <remy@mizrahidevelopments.ca>; Ferguson, Stephen <sferguson@alvarezandmarsal.com>; Nevsky, Joshua <jnevsky@alvarezandmarsal.com>; O'Neill, Brendan <boneill@goodmans.ca>; Armstrong, Christopher <carmstrong@goodmans.ca>
Subject: Re: November 2023 Hard Cost Payment

Good morning Andrew,

I just noticed that you have changed the from that I signed yesterday. I was in a rush, under stress, and in transit right before the holidays and did not notice you added 2 new sections to the letter that I had not seen when I electronically signed before my flight was just taking off with my family thinking it was the same document as previously signed by me in prior months and the same letter that was reviewed by my Counsel and approved and it was not. I did not have my Counsel review this new document I signed yesterday thinking it was the same document and I do not know what these two new added sections that you have inserted means and I did not notice it until earlier this morning, as per my previous email.

I am having Counsel review this new change and will get back to you. I wish you would have advised me that there was a change to your letter from previous ones.



Sam Mizrahi
President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4210
C. 416.818.5288
F. 1.866.300.0219
E. Sam@MizrahiDevelopments.ca

On Dec 22, 2023, at 11:30 AM, Sterling, Andrew
<asterling@alvarezandmarsal.com> wrote:

Sam,

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

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

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

Vendor	Invoice Amount	Invoice
2218840 Ontario Inc.	1,009.10	683
Bass Curtainwalls Inc.	193,164.47	3295
Blockwall Masonry 18 Inc.	28,311.04	2956
BM Windows Joint Stock Company	363,287.32	TOT-003
CanAM Waste Products Inc.	33,306.75	205249
Cult Iron Works LTD	5,085.00	SI-9009
Detal International Co. Limited	1,154,746.41	DTE-3087-02, DTE-3096-04 DTE-3096-05, DTE-3096-06 DTE-3098-04
Gamma Windows & Walls International Inc.	1,317,237.87	1808-50
GNI Management Group Inc.	24,322.44	1645048
Guardtek Systems Inc.	678,890.78	23865 , 23866
Hardwall Construction LTD.	1,759,922.12	J007596
Huizhou Alcade Curtainwall Co. Limited	247,551.37	3097-02
Innocon Partnership	528,461.40	Various
Modern Niagara Toronto Inc.	2,030,307.84	INTO0072493

Onyx Fire Protection Services Inc.	267,702.31	22545, 22546
Otis Canada Inc.	1,232,541.59	FTM659048067
Ozz Electric Inc.	302,567.44	J027038
Earl Paddock Transportation Inc.	30,295.30	W700126, W700127
Riverside Group LTD.	950,715.67	8574, 8575, 8576
Read Jones Christoffersen Ltd.	66,115.72	425363, 425697
Salit Steel	652,100.26	11123U1010 11123U1062
Tecoustics Limited	142,973.25	39971, 39973
Tractel LTD.	11,921.27	8L45-Nov 2023
United Drywall LTD	424,348.31	7255157, 7255158
Walters Inc.	45,861.62	B111430
Yarl Metal Fabrications Inc.	6,305.54	63517
Todd & Don Expense	28,262.59	C1444
Previously Submitted - Haimul	(1,100.00)	C1448
Previously Submitted - Detal	(2,136.25)	C1448
Previously Submitted - BM	(20,084.60)	C1448
Total	\$12,503,993.93	

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

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

Thanks,

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

<image003.jpg>



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<Letter to Mizrahi Inc. re Payment of October 2023 Hard Costs.pdf>

<Letter to Mizrahi Inc re. November 2023 GC Costs.pdf>

<Letter to Mizrahi Inc re. November 2023 Hard Costs.pdf>



January 31, 2024

DELIVERED BY EMAIL

Mizrahi Inc.

125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

Pursuant to the Receivership Order, the Receiver is entitled to, among other things, make payments owing by the Debtors, whether directly or indirectly, to suppliers, contractors, subcontractors and other creditors, including in connection with The One Project. For the purposes of payment of the December 2023 hard construction costs (excluding the construction management fee), the Receiver has: (a) determined to make payment in the amount of \$5,218,722.26 directly to subcontractors, as set out in Schedule A hereto; and (b) agreed to make payment directly to the Developer in the amount of \$2,986.07, as set out in Schedule B hereto (the “**Payment**”), subject to the Developer’s confirmation of the following.

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

AGREED AND ACKNOWLEDGED this 31st day of January, 2024

MIZRAHI INC.

Per:

Name: Sam Mizrahi

Title: President

[Remainder of page intentionally left blank]

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President
cc: Brendan O'Neill, Goodmans LLP
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoice #C1463



SCHEDULE A

Vendor	Invoice Amount	Invoice
Bass Curtainwalls Inc.	144,344.84	3304
BM Windows Joint Stock Company	537,146.25	TOT-004
Detal International Co. Limited	995,199.55	DTE-3096-05, DTE-3096-07, DTE-3096-08
Hardwall Construction LTD.	1,321,550.09	J007631
Innocon Partnership	260,098.69	717604380, 718656255, 719022590, 719036594, 719044602, 719049975, 719068205
Otis Canada Inc.	410,372.36	FTM659048068
Ozz Electric Inc.	298,459.96	J027110
Riverside Group LTD.	685,080.58	8582, 8583
Myer Salit Limited	285,269.18	11223U1113-IN, 11223U1156-IN
United Drywall Ltd	281,200.76	7255168, 7255169
Total	\$5,218,722.26	




SCHEDULE B

Vendor	Invoice Amount	Invoice
GNI Management Group Inc.	44,067.63	1657059
Greenlean Consulting	3,390.00	100986
Guardtek Systems Inc.	3,605.38	24002
Earl Paddock Transportation Inc.	46,126.60	W700141, W700142, W700180, W700181
Tractel LTD.	11,921.27	8L45-Dec2023
Credit: FX var - Haimul Guangzhou	(11,517.43)	C1463
Credit: FX var - Huizhou Alcade Curtainwall Co. Limited	(13,314.72)	C1463
Credit: FX var - BM Windows Joint Stock Company	(19,513.72)	C1463
Credit: FX var - Detal International Co. Limited	(61,778.94)	C1463
Total	\$2,986.07	





January 31, 2024

DELIVERED BY EMAIL

Mizrahi Inc.

125 Hazelton Ave
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

Pursuant to the Receivership Order, the Receiver is entitled to, among other things, make payments owing by the Debtors, whether directly or indirectly, to suppliers, contractors, subcontractors and other creditors, including in connection with The One Project. For the purposes of payment of the December 2023 costs, the Receiver has: (a) determined to make payment in the amount of \$1,402,633.74 directly to the trades as set out in Schedule A hereto; and (b) agreed to make payment directly to the Developer in the amount of \$920,464.95, set out in 0 hereto (the “**Payment**”), subject to the Developer’s confirmation of the following.

By signing below, the Developer acknowledges and agrees that the Receiver is making the Payment pursuant to 0, and that the Developer will undertake to pay the appropriate amounts owed to all trades and employees for their work on The One Project during the December 2023 period.

AGREED AND ACKNOWLEDGED this 31st day of January, 2024

MIZRAHI INC.

Per:

Name: Sam Mizrahi

Title: President

[Remainder of page intentionally left blank]

Yours very truly,

**ALVAREZ & MARSAL CANADA INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
MIZRAHI COMMERCIAL (THE ONE) LP, MIZRAHI DEVELOPMENT GROUP (THE ONE)
INC., AND MIZRAHI COMMERCIAL (THE ONE) GP INC., AND NOT IN ITS PERSONAL OR
CORPORATE CAPACITY**

Per: Josh Nevsky, Senior Vice President
cc: Brendan O'Neill, Goodmans LLP
Chris Armstrong, Goodmans LLP

Encl. General Contractor Invoices



SCHEDULE A

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



SCHEDULE B

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

A handwritten signature in black ink, appearing to be 'AN' or similar, with a large loop at the end.

Subject: RE: December Costs Payment Letters

From: "Nevsky, Joshua" <jnevsky@alvarezandmarsal.com>
Date: January 31, 2024 at 2:42:06 PM EST
To: sam@mizrahidevelopments.ca
Cc: "Ferguson, Stephen" <sferguson@alvarezandmarsal.com>, "Sterling, Andrew" <asterling@alvarezandmarsal.com>, "Armstrong, Christopher" <carmstrong@goodmans.ca>, boneill@goodmans.ca, "Linde, Jennifer" <jlinde@goodmans.ca>, "Roger Jaipargas" <rjaipargas@blgcanada.com> <rjaipargas@blgcanada.com>
Subject: December Costs Payment Letters

Dear Sam,

Further to our conversation this morning, please be advised that the Receiver will be making the following payments this week in connection with the December 2023 costs, subject to you countersigning the enclosed payment letters. Please note that for purposes of these payments, the Receiver is prepared to adopt the form of payment letters that were utilized and signed by you in October and November 2023, without prejudice to the appropriate form of payment letters to be used on a go forward basis.

1. Hard Costs
 - a. Hard costs totaling \$5,218,722.26 will be paid directly by the Receiver as shown in Schedule A of the attached Hard Costs Payment Letter.
 - b. The Receiver will also fund \$2,986.07 to the Mizrahi Inc. ("MI") segregated account for payment of the invoices listed in Schedule B of the attached Hard Costs Payment Letter. Prior to making this payment, we ask that you please review and sign the attached Hard Costs Payment Letter.
 - c. The Receiver will also fund \$445,897.16 in CM fees for: (i) the costs noted in (a) and (b) above; (ii) the Gamma amounts totaling \$3,390,026.46 previously paid by the Receiver; and (iii) the Todd Hallam expense report in the amount of \$15,310.42.
2. General Contractor costs in the amount of \$920,464.95 will be paid to MI. Prior to making this payment, we ask that you please review and sign the attached GC Costs Payment Letter. As was discussed and agreed, MI will provide proof of payment for each of the amounts, as set out in Schedule A of the GC Costs Payment Letter, immediately following receipt of the funds.
3. Soft Cost invoice amounts have been paid by the Receiver in the normal course.

We note the Receiver is making certain payments owing by MI directly to subcontractors and suppliers to the Project as authorized pursuant to paragraph 4(d) of the Receivership Order. In making these payments, the Receiver is not assuming any liability to any of those subcontractors or suppliers or under any of the related subcontracts or agreements, or agreeing to make any additional payments to those subcontractors or suppliers, and the Receiver shall have no, and hereby disclaims any, personal liability to such subcontractors and suppliers.

Further, as you know, the Receiver continues to consider the Debtors' rights and obligations under the Construction Management Agreement and the GC Agreement (each as defined in the

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

Finally, you have advised us of your view that the payments made by the Receiver to MI to date are less than what is due and owing to MI. To date, we have been unable to resolve this dispute. Accordingly, be advised that the Receiver reserves all rights regarding the amounts payable to MI in connection with its services for the Project, including, without limitation, the right to set-off amounts owing by MI to the Debtors against any payments owing to MI.

Thank you,
Josh

Josh Nevsky
Alvarez & Marsal
D: 416.847.5161
M: 416.710.0910



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<Redline - Hard Costs - October Payment Letter vs. December Payment Letter.pdf>

**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

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

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

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF SAM MIZRAHI
(affirmed February 27, 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 Respondents

**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

**MOTION RECORD OF
MIZRAHI INC**

MORSE SHANNON LLP

133 Richmond Street West Suite
501
Toronto ON M5H 2L3

Jerome R. Morse (21434U)
jmorse@morseshannon.com

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

Tel: 416.863.1230
Fax: 416.863.1241

Lawyers for the Moving Party, Mizrahi Inc.