

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

B E T W E E N:

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

Applicant

- and -

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

Respondents

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

**MOTION RECORD
(Returnable August 9, 2024)**

July 29, 2024

Goodmans LLP

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

B E T W E E N:

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**NOTICE OF MOTION
(Lien Claims Resolution Order)
Returnable August 9, 2024**

Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as Court-appointed receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (collectively, the “**Debtors**”), will make a motion before Justice Osborne of this Court on August 9, 2024, at 10:00 a.m. (Toronto time), or as soon thereafter as the motion can be heard.

PROPOSED METHOD OF HEARING:

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

at 330 University Avenue, Toronto, Ontario M5G 1R7.

THIS MOTION IS FOR:

1. An order, substantially in the form attached at Tab 3 of the Receiver's Motion Record (the "**Lien Claims Resolution Order**"), establishing a procedure for resolving Lien Claims asserted in Lien Notices delivered pursuant to the Lien Regularization Order of this Court dated March 7, 2024 (the "**Lien Regularization Order**").¹
2. Such further and other relief as counsel may advise, and this Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:***Background***

3. The Debtors are entities established for the purpose of developing a mixed-use development project located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario ("**One Bloor**"), marketed as "The One" (the "**Project**").
4. On October 18, 2023, pursuant to the Receivership Order, A&M was appointed as Receiver, without security, of all of the assets, undertakings and properties of the Debtors,

¹ All capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Order (Appointing Receiver) of this Court dated October 18, 2023 (the "**Receivership Order**"), the Lien Regularization Order or the Fourth Report of the Receiver dated July 29, 2024 (the "**Fourth Report**").

acquired for, or used in relation to, a business carried on by the Debtors, including, without limitation, in connection with the Project.

5. The Receivership Order was granted upon application by KEB Hana Bank as trustee of (a) IGIS Global Private Placement Real Estate Fund No. 301 and (b) IGIS Global Private Placement Real Estate Fund No. 434 (the “**Applicant**”), senior secured lenders to the Debtors. Pursuant to the Receivership Order, the Receiver, as borrower, IGIS Asset Management Co., Ltd., as asset manager, and KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530, as lender, entered into a \$315 million Receivership Funding Credit Agreement (the “**RFCA**”) to finance the continuing construction of the Project during these receivership proceedings.
6. As further detailed in the First Report of the Receiver dated February 26, 2024, the Receiver determined that it was in the best interests of the Project and its stakeholders to disclaim the GC Agreement and the Construction Management Agreement with Mizrahi Inc., in its capacity as the former developer and general contractor of the Project (in such capacity, the “**Former Developer**”), and to engage SKYGRiD Construction Inc. as the new construction manager of the Project (in such capacity, the “**Construction Manager**”), effective March 13, 2024.
7. On March 7, 2024, this Court granted the Construction Continuance and Ancillary Relief Order and the Lien Regularization Order, which together have operated to ensure the uninterrupted construction of the Project during the transition of construction management from the Former Developer to the Construction Manager.

Lien Notices under the Lien Regularization Order

8. The Lien Regularization Order provides Lien Claimants with a streamlined process through which they may exercise their rights under the Provincial Lien Legislation in a manner that does not interfere with the ongoing funding of construction of the Project pursuant to the RFCA. In particular, the Lien Regularization Order contemplates the delivery of a Lien Notice by a Lien Claimant as a replacement to the various technical requirements for preserving and perfecting a construction lien under the Provincial Lien Legislation, including, in the circumstances, the registration of a Lien Claim on title to One Bloor.
9. Paragraph 23 of the Lien Regularization Order provides that the Receiver shall, at a time deemed by the Receiver to be appropriate, bring a motion seeking approval of a process for reviewing, determining or challenging: (a) the validity or timeliness of any Lien Notice; (b) the validity or quantum of the amounts set out in any Lien Notice; (c) the entitlement of any Asserting Lien Claimant to a Lien Charge established under the Lien Regularization Order; and (d) the attachment, quantum or priority of any Lien Charge established under the Lien Regularization Order.
10. As of the date hereof, there are three outstanding Lien Notices that have been delivered (or deemed to have been delivered) pursuant to the Lien Regularization Order, certain of which may require a claims resolution process.
11. In addition to the above-noted Lien Notices, as further outlined in the Fourth Report, the Receiver is aware of certain other unresolved trade and consultant claims that may result in the delivery of further Lien Notices pursuant to the Lien Regularization Order, and there

is the possibility of additional Lien Notices being delivered on an ongoing basis as construction of the Project continues.

12. Accordingly, the Receiver has determined that it is appropriate at this time to seek approval of the proposed Lien Claims Resolution Order such that a mechanism is in place to allow for the efficient resolution of any and all Lien Notices delivered pursuant to the Lien Regularization Order.
13. The proposed Lien Claims Resolution Order, the terms of which are further described in the Fourth Report, is fair and reasonable in the circumstances as it will provide for a uniform and efficient process for resolving all outstanding and future Lien Notices. In addition to expediting the resolution of such Lien Notices, the process contemplated by the proposed Lien Claims Resolution Order will also preserve judicial resources and provide cost savings to Lien Claimants and the receivership estate.
14. The proposed Claims Officers are highly reputable mediators and arbitrators, having significant experience in insolvency and construction matters.

Other Grounds:

15. The circumstances that exist that make the Lien Claims Resolution Order necessary and appropriate, including in that it will assist in ensuring the continuing stability of the Project.
16. Such other grounds as set out in the Fourth Report.
17. The provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, including sections 183 and 243(1)(c).

18. Section 101 of the *Courts of Justice Act*, R.S.O 1990, c. 43, as amended.
19. Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194, as amended.
20. Such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the Fourth Report and the appendices thereto; and
- (b) such further and other materials and evidence as counsel may advise and this Court may permit.

Date: July 29, 2024

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

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

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**NOTICE OF MOTION
(Lien Claims Resolution Order)
Returnable August 9, 2024**

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

JULY 29, 2024

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Appendix “A” – Lien Regularization Order dated March 7, 2024

1.0 INTRODUCTION

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

1.2 In connection with the Receiver’s motion heard on March 7, 2024, the Receiver prepared and filed with the Court, among other things, the First Report of the Receiver dated February 26, 2024 (the “**First Report**”). The First Report describes, among other things, the Receiver’s activities since the Appointment Date, including the Receiver’s decision to disclaim the Construction Management Agreement and the GC Agreement (each as defined in the Receivership Order) entered into with Mizrahi Inc. (“**MI**”, or the “**Former Developer**”) with the consent of KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (the “**RFCA Lender**”), and to engage SKYGRiD Construction Inc. as the new construction manager of the Project, effective March 13, 2024.

¹ All capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the Receivership Order, the Lien Regularization Order or the proposed Lien Claims Resolution Order (each as defined herein).

- 1.3 The First Report also provides information regarding the relief sought by the Receiver pursuant to the Construction Continuance and Ancillary Relief Order (the “**Construction Continuance Order**”) and the Lien Regularization Order (the “**Lien Regularization Order**”), which were sought by the Receiver to ensure the ongoing construction and uninterrupted funding of the Project and to deal with any potential Lien Claims in a fair and efficient manner. The Construction Continuance Order and the Lien Regularization Order were granted by this Court on March 7, 2024. A copy of the Lien Regularization Order is attached hereto as **Appendix “A”**.
- 1.4 On May 28, 2024, the Receiver filed its Second Report (the “**Second Report**”). The Second Report provides information regarding the relief sought by the Receiver pursuant to the Order (Reconfiguration and Letters of Credit Arrangement), the Order (Approval of SISP) and the Order (Holdback Release), each of which were approved by the Court at the Receiver’s motion on June 6, 2024.
- 1.5 In addition to the First Report and the Second Report, the Receiver has filed several other reports prepared primarily in connection with a motion brought by MI seeking to compel payment by the Receiver of certain amounts (the “**MI Payment Motion**”) and related document production motions, including the Supplemental Report to the First Report of the Receiver dated March 6, 2024, the Third Report of the Receiver dated June 21, 2024, and the Supplemental Report to the Third Report of the Receiver dated July 11, 2024.
- 1.6 Additional details regarding the Debtors and the Project, including an overview of the circumstances leading to the appointment of the Receiver, is contained in the application record dated October 17, 2023 of the Debtors’ senior secured lenders, KEB Hana Bank as

trustee of IGIS Global Private Placement Real Estate Fund No. 301 and of IGIS Global Private Placement Real Estate Fund No. 434 (together, the “**Applicant**”). Court-filed documents and notices in these receivership proceedings (the “**Receivership Proceedings**”) can be found on the Receiver’s case website at: www.alvarezandmarsal.com/theone (the “**Case Website**”).

2.0 OVERVIEW AND PURPOSE OF THE REPORT

- 2.1 The purpose of this Fourth Report (the “**Fourth Report**”) is to provide an overview of the relief sought by the Receiver pursuant to the proposed Lien Claims Resolution Order (the “**Lien Claims Resolution Order**”), which establishes a procedure for resolving Lien Claims asserted in Lien Notices delivered pursuant to the Lien Regularization Order.
- 2.2 As further described in the First Report, the Lien Regularization Order establishes a Court-supervised streamlined process, administered by the Receiver, to replace the various technical requirements under the Provincial Lien Legislation for claiming, preserving and perfecting a Lien Claim under the Provincial Lien Legislation. The Lien Regularization Order provides, among other things, that any person wishing to assert a Lien Claim against the Project shall do so by delivering a Lien Notice to the Receiver in accordance with the Lien Regularization Order, following which such Lien Claimant shall be deemed to have preserved and perfected its Lien Claim.
- 2.3 Paragraph 23 of the Lien Regularization Order provides that the Receiver shall, at a time deemed by the Receiver to be appropriate, bring a motion seeking approval of a process for reviewing, determining or challenging: (i) the validity or timeliness of any Lien Notice; (ii) the validity or quantum of the amounts set out in any Lien Notice; (iii) the entitlement

of any Asserting Lien Claimant to a Lien Charge established under the Lien Regularization Order; and (iv) the attachment, quantum or priority of any Lien Charge established under the Lien Regularization Order.

2.4 As of the date hereof, there have been four Lien Notices delivered (or deemed to have been delivered) pursuant to the Lien Regularization Order, each as further detailed below. In addition to these Lien Notices, the Receiver is aware of certain other unresolved trade and consultant claims that could result in the delivery of further Lien Notices pursuant to the Lien Regularization Order.

2.5 The Receiver believes that certain of the existing Lien Notices may need to be disputed (either in whole or in part) or otherwise resolved through a claims resolution process. The Receiver anticipates that this may also be the case for any future Lien Notices delivered pursuant to the Lien Regularization Order. Accordingly, the Receiver has determined that it is appropriate at this time to seek approval of the proposed Lien Claims Resolution Order and has filed this Fourth Report in support of its motion seeking approval of same.

3.0 TERMS OF REFERENCE AND DISCLAIMER

3.1 As noted above, the Receiver has prepared several reports since the commencement of the Receivership Proceedings, each of which is accessible on the Case Website. This Fourth Report should be read in conjunction with those reports.

3.2 In preparing this Fourth Report, the Receiver has obtained and relied upon unaudited financial information, books and records, and other documents of the Debtors (collectively, the “**Information**”). The Receiver has reviewed the Information for reasonableness,

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

3.3 This Fourth Report has been prepared to provide the Court with further information regarding the relief sought pursuant to the proposed Lien Claims Resolution Order. Accordingly, the reader is cautioned that this Fourth Report is not appropriate for any other purpose, and that the Receiver will not assume any responsibility or liability for any losses incurred by the reader as a result of the circulation, publication, reproduction or use of this Fourth Report.

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

4.0 LIEN NOTICES UNDER LIEN REGULARIZATION ORDER

(i) Existing Lien Notices

4.1 As of the date hereof, there have been four Lien Notices delivered (or deemed to have been delivered) pursuant to the Lien Regularization Order.

4.2 First, a Lien Notice was delivered by Proline Hardware Ltd. (“**Proline**”), a hardware material supplier engaged on the Project, regarding a Lien Claim in the amount of \$70,399.72. Proline’s Lien Claim related to certain unpaid invoices and was ultimately

resolved upon payment of such invoices. Accordingly, the Proline Lien Notice was irrevocably withdrawn on April 19, 2024.

4.3 Second, upon the granting of the Lien Regularization Order on March 7, 2024, a Lien Notice was deemed to have been delivered by Cult Iron Works Limited (“**Cult Iron**”) in respect of its Lien Claim in the amount of \$444,669.05 (the “**Cult Lien**”), which was registered on title to One Bloor in December 2023.² Cult Iron was a subcontractor engaged on the Project to provide services and materials, including miscellaneous metals, until mid-November 2023. The Cult Lien relates to amounts Cult Iron alleges are owing to it in respect of holdback amounts (the “**Cult Iron Holdback**”) and a claim in respect of prolongation of Cult Iron’s services as a result of delays in the Project’s construction schedule (the “**Cult Iron Prolongation Claim**”). The Receiver does not agree that Cult Iron is entitled to the entirety of the amount asserted in the Cult Lien. The Receiver and Cult Iron have nonetheless resolved the portion of the Cult Lien relating to the Cult Iron Holdback such that only the Cult Iron Prolongation Claim in the amount of \$183,852.06 remains at issue.

4.4 Third, a Lien Notice was delivered by MI on April 26, 2024, in respect of a Lien Claim in the amount of \$11,041,387.76 (the “**MI Lien Notice**”). The delivery of the MI Lien Notice followed the scheduling of the MI Payment Motion as the latter pre-dated the Lien Regularization Order. MI’s Lien Claim relates to amounts MI alleges are owing to it for the work it performed on the Project in the post-receivership period in its capacity as Former Developer. The Receiver does not agree that MI is entitled to the amounts asserted

² Prior to the granting of the Lien Regularization Order, the Receiver posted approximately \$500,000 of security with the Court in respect of the Cult Lien, and the Cult Lien was vacated from title to One Bloor.

in the MI Lien Notice. The Receiver understands that MI's Lien Claim encompasses the amounts at issue in the MI Payment Motion. Accordingly, the MI Lien Notice is expected to be addressed in the context of the MI Payment Motion and is therefore not contemplated to be subject to the process contemplated by the proposed Lien Claims Resolution Order.

- 4.5 Fourth, on May 30, 2024, Gamma Windows and Walls International Inc. ("**Gamma**") delivered a Lien Notice in respect of a Lien Claim in the amount of \$1,839,681.92 (the "**Gamma Lien Notice**"). Gamma is a subcontractor engaged on the Project specializing in cladding and curtain wall supply and installation. Gamma's Lien Claim relates to amounts it alleges are owing to it in respect of certain unpaid invoices, holdback amounts, and certain amounts claimed by Gamma pursuant to a settlement agreement entered into between Gamma and MI on June 8, 2023. The Receiver does not agree that Gamma is entitled to the amounts it claims.
- 4.6 Gamma has also served a motion seeking to compel the Receiver to make payment of certain amounts that are the subject of the Gamma Lien Notice and to have the balance thereof referred to an Associate Judge for resolution. At a case conference held on July 15, 2024, the Receiver opposed Gamma's motion being scheduled, both because it was premature and because, in the Receiver's view, Gamma's claim should be resolved in accordance with the process contemplated by the proposed Lien Claims Resolution Order to ensure that all Lien Claims are dealt with fairly, uniformly and efficiently, and to conserve judicial resources. By Endorsement dated July 15, 2024, Justice Osborne held that these matters will be addressed on August 9, 2024.

4.7 As noted above, while the Proline Lien Notice has been withdrawn and the MI Lien Notice is expected to be dealt with in the context of the MI Payment Motion, the Receiver disputes, either in whole or in part, the amounts alleged to be owing to Gamma and Cult Iron pursuant to their respective Lien Claims. Accordingly, in the absence of the parties being able to achieve a consensual resolution, the Lien Notices of Gamma and Cult Iron will need to be addressed through the process contemplated by the proposed Lien Claims Resolution Order.

(ii) Additional Potential Trade and Consultant Claims

4.8 In addition to the above-noted outstanding Lien Notices, the Receiver is aware of certain other currently unresolved trade and consultant claims that may result in the delivery of further Lien Notices pursuant to the Lien Regularization Order. The Receiver and its advisors continue to engage with the relevant parties in an attempt to consensually resolve these claims; however, there is the possibility that Lien Notices could be filed that could require resolution.

4.9 In addition, although construction of the Project has proceeded smoothly in the post-receivership period with limited payment-related disputes, as with any construction project, there is the possibility of disputes arising as ongoing construction proceeds which could result in the delivery of further Lien Notices that require resolution.

5.0 LIEN CLAIMS RESOLUTION PROCESS

(i) Resolution of Lien Claims

- 5.1 In light of the unresolved Lien Notices delivered to date and the possibility of further Lien Notices being delivered in the future, the Receiver has determined that it is prudent at this juncture to seek approval of the Lien Claims Resolution Order to provide a mechanism to resolve disputed Lien Notices.
- 5.2 The Lien Claims Resolution Order provides that the Receiver will review all Lien Notices delivered pursuant to the Lien Regularization Order and at any time in its sole discretion may: (i) demand particulars from a Lien Claimant in connection with any Lien Claim in accordance with paragraph 22 of the Lien Regularization Order; (ii) attempt to consensually resolve and settle a Lien Claim asserted in a Lien Notice with the relevant Lien Claimant; (iii) by notice in writing to the relevant Lien Claimant, accept (in whole or in part) a Lien Claim asserted in a Lien Notice; and (iv) by notice in writing to the relevant Lien Claimant, dispute (in whole or in part) a Lien Claim asserted in a Lien Notice and refer such Lien Claim to a Claims Officer or the Court for determination.
- 5.3 Where a Disputed Lien Claim has been referred to a Claims Officer by the Receiver, the Claims Officer shall:
- (i) establish a process for the fair and expeditious resolution of any Disputed Lien Claim, having regard to the quantum of the Disputed Lien Claim, the complexity of the issues and any other matter the Claims Officer considers relevant;

- (ii) determine all substantive and procedural matters which may arise in respect of their determination of the Disputed Lien Claim, including but not limited to any participation rights for any stakeholder (provided that the Applicant and the RFCA Lender shall have the right to participate and make submissions in any proceeding before a Claims Officer), the manner in which any evidence may be adduced and the manner of submissions;
- (iii) determine the amount, validity, priority, timeliness and any other dispute in respect of such Disputed Lien Claim and shall provide written reasons;
- (iv) have the discretion to mediate any dispute that is referred to such Claims Officer at its election and with the consent of the parties; and
- (v) have the discretion to make a cost award against or in favour of the Receiver or the Lien Claimant relating to the determination of a Disputed Lien Claim.

5.4 The Receiver, the Lien Claimant, or any other stakeholder participant in a proceeding before the Claims Officer, may, within ten (10) days of such party receiving notice of the Claims Officer's determination of the Disputed Lien Claim, appeal such determination to the Court by serving and filing a notice of motion. The appeal shall be returnable for scheduling purposes within ten (10) days of filing such notice of motion. If no party appeals the determination of the Claims Officer within the aforementioned timeframe, the determination of the Claims Officer shall be final and binding upon the Receiver and the Lien Claimant and there shall be no further right of appeal, review or recourse to the Court.

(ii) Claims Officers

- 5.5 The Receiver is proposing that both the Honourable Thomas J. McEwen and Mr. Joel Richler be appointed to act as the Claims Officers pursuant to the proposed Lien Claims Resolution Order. Former Justice McEwen and Mr. Richler are each highly reputable mediators and arbitrators, having significant experience in insolvency and construction matters.
- 5.6 Former Justice McEwen was a Justice of the Superior Court for over 14 years, the former head of the Commercial List and has managed numerous high-profile, complex matters, including some of the most significant and complicated insolvency cases in Canada.
- 5.7 Mr. Richler is an arbitrator and mediator with nearly 40 years of experience as a litigation partner at a large law firm in downtown Toronto. Mr. Richler has particular expertise in construction disputes and, among other relevant experiences, has acted as a construction contractor adjudicator and as a mediator in many domestic and international cases.
- 5.8 The appointment of two Claims Officers, each with a vast breadth of experience, provides optionality not only in terms of scheduling, but also in terms of selecting the Claims Officer whose expertise is best suited to resolve the particular Lien Notice at hand.

6.0 CONCLUSION AND RECOMMENDATION

- 6.1 For the reasons set out in this Fourth Report, the Receiver is of the view that the claims resolution process contemplated in the proposed Lien Claims Resolution Order is fair and efficient, and will provide sufficient flexibility to ensure that a Claims Officer may deal with each Lien Notice in the manner that it determines is most appropriate in the particular

circumstances of the underlying Lien Claim. Therefore, the Receiver is of the view that the relief sought in the proposed Lien Claims Resolution Order is reasonable, appropriate and necessary having regard to the circumstances outlined herein, in particular so that there is a mechanism to resolve disputed Lien Notices to assist in advancing the Receivership Proceedings for the benefit of stakeholders. Accordingly, the Receiver respectfully requests that the Court grant the proposed Lien Claims Resolution Order.

All of which is respectfully submitted,

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

Per:



Name: Stephen Ferguson
Title: Senior Vice-President

Per:



Name: Josh Nevsky
Title: Senior Vice-President

APPENDIX “A”
LIEN REGULARIZATION ORDER



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

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

THE HONOURABLE

)

THURSDAY, THE 7TH

)

JUSTICE OSBORNE

)

DAY OF MARCH, 2024

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

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

Respondents

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

LIEN REGULARIZATION ORDER

THIS MOTION, made by Alvarez & Marsal Canada Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (collectively, the “**Debtors**”), was heard this day at 330 University Avenue, Toronto.

ON READING the Notice of Motion of the Receiver dated February 26, 2024, and the First Report of the Receiver dated February 26, 2024, and on hearing the submissions of counsel

for the Receiver, counsel for the Applicant and KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (the “**RFCA Lender**”), and counsel for the other parties appearing as noted on the Counsel Slip, the Service List and those other persons specified in the affidavits of service of Jennifer Linde dated February 26 and 28, 2024, having been served,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the First Report is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that, for the purposes of this Order, the following definitions shall apply:
 - (a) “**Business Day**” means a day, other than a Saturday or a Sunday, on which banks are generally open for business in Toronto, Ontario;
 - (b) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
 - (c) “**Filing Date**” means October 18, 2023;
 - (d) “**Holdback**” means both Statutory Holdback and any Notice Holdback;
 - (e) “**Lands**” means the lands upon which the Project is being constructed, as legally described on Schedule A hereto;

- (f) **“Land Registry Office”** means the Land Titles Division of the Land Registry Office of Toronto (No. 80);
- (g) **“Lien Claim”** means the right of any Person to assert or claim a lien under the Provincial Lien Legislation in respect of the supply of labour, materials and/or services to the Project;
- (h) **“Lien Claimant”** means any Person having a Lien Claim under the Provincial Lien Legislation;
- (i) **“Lien Security”** means any bond, cash or other security posted in respect of a Vacated Lien;
- (j) **“Notice Holdback”** means any amounts in addition to the Statutory Holdback which are required to be, or have in fact been, withheld from payment as a result of notice by any Person that they may be asserting or claiming a lien pursuant to the Provincial Lien Legislation;
- (k) **“Owner”** means Mizrahi Development Group (The One) Inc.;
- (l) **“Project”** means the development of an 85-storey condominium, hotel and retail tower located on the Lands at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario;
- (m) **“Provincial Lien Legislation”** means the *Construction Act*, R.S.O. 1990, c. C.30, as amended;

- (n) **“Receivership Order”** means the Order (Appointing Receiver) of the Court issued in these proceedings on the Filing Date, as the same may be amended or amended and restated from time to time;
 - (o) **“Statutory Holdback”** means 10% of the value of services or materials supplied to the Project under any contract or subcontract which is required to be withheld from payment pursuant to the Provincial Lien Legislation; and
 - (p) **“Vacated Lien”** means a lien that has been vacated from title to the Lands by the posting of security either privately or pursuant to the Provincial Lien Legislation.
3. **THIS COURT ORDERS** that, unless otherwise indicated or defined herein, capitalized terms used herein shall have the meaning given to them in the Receivership Order.

AMENDMENT TO THE RECEIVERSHIP ORDER

4. **THIS COURT ORDERS** that paragraph 15 of the Receivership Order is hereby deleted from the Receivership Order, and replaced, effective as of the date of this Order, such that paragraph 15 of the Receivership Order shall henceforth read as follows:

15. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, or against the Developer for matters arising after the date of this Order, including, without limitation, licenses and permits required for the Project regardless of who is the legal holder of any such licenses and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any “eligible financial contract” as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled

to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, or (iii) prevent the filing of any registration to preserve or perfect a security interest. For the avoidance of doubt, the registration of a construction lien shall not be permitted pursuant to the foregoing (iii).

STAY OF LIEN CLAIMS

5. **THIS COURT ORDERS** that, except as may be specifically contemplated by this Order, no Person shall be permitted to serve or register Lien Claims, or to otherwise preserve or perfect a lien under the Provincial Lien Legislation with respect to the Project, and that any Lien Claim in respect of the Project and any related action or proceeding be and is hereby stayed, and any Person seeking to serve or enforce such a claim shall be required to follow the procedures, and to seek the rights and remedies, set out in this Order.

LIENS ON THE PROJECT

6. **THIS COURT ORDERS** that any Lien Claim preserved by any Person prior to the date hereof in respect of the Project (a “**Preserved Lien Claim**” and the holder thereof a “**Preserved Lien Claimant**”), and which is not a Vacated Lien as of the date of this Order, be and is hereby vacated on terms that any Preserved Lien Claimant having such a Preserved Lien Claim shall be deemed to have provided the Lien Notice referred to in paragraph 11 herein on the date of preservation of such Preserved Lien Claim, and shall be entitled to the Lien Charge referred to in paragraph 12 herein.
7. **THIS COURT ORDERS** that, upon the registration in the Land Registry Office of a certified copy of this Order in the manner prescribed by the Land Registry Office, the land registrar is hereby directed to specifically vacate any Preserved Lien Claim (and any related

Certificate of Action) registered prior to the date hereof, as provided for in paragraph 6 herein.

8. **THIS COURT ORDERS** that any Person having a Vacated Lien as of the date of this Order shall be deemed to have provided the Lien Notice referred to in paragraph 11 herein on the date of registration of such Lien Claim, and shall also be entitled to the Lien Charge referred to in paragraph 12 herein, provided that all Lien Claimants shall have the right to share in any Lien Security posted for any Vacated Lien in accordance with the Provincial Lien Legislation.
9. **THIS COURT ORDERS** that any requirements for any Preserved Lien Claims to be perfected or set down for trial pursuant to the Provincial Lien Legislation are hereby deemed to have been complied with.
10. **THIS COURT ORDERS** that any request for information to the Debtors or the Receiver pursuant to the Provincial Lien Legislation, including any outstanding request as of the date hereof (an “**Information Request**”), is hereby stayed pursuant to the terms of this Order, provided that the Receiver may provide any information in respect of an Information Request, or other request for information, as the Receiver deems appropriate.

TREATMENT OF LIEN CLAIMS

11. **THIS COURT ORDERS** that, unless deemed to have delivered a Lien Notice in accordance with this Order, any Person who wishes to assert a Lien Claim in respect of the Project (an “**Asserting Lien Claimant**”), whether in respect of materials and/or services supplied before, on or after the Filing Date, shall deliver by email a notice in the form

attached as Schedule B hereto (the “**Lien Notice**”) to the Receiver’s attention in accordance with paragraph 26 hereof within the time frame prescribed by the Provincial Lien Legislation to preserve their Lien Claim for the Project. By delivery of the Lien Notice in accordance with this Order, the Asserting Lien Claimant shall be deemed to have preserved and perfected its Lien Claim. For the purposes of this Order, any Preserved Lien Claimant shall be deemed to be an Asserting Lien Claimant that has delivered a Lien Notice in accordance with this paragraph.

12. **THIS COURT ORDERS** that an Asserting Lien Claimant, upon delivering or being deemed to have delivered a Lien Notice in accordance with this Order, be and is hereby granted a charge (the “**Lien Charge**”) against the Project equivalent to, and only to the extent of, any security granted in respect of a Lien Claim under the Provincial Lien Legislation, but in all cases subject to the quantification and verification of all such Lien Charges in accordance with the procedures to be established pursuant to paragraph 23 hereof. Without limiting the generality of and subject to the foregoing, a Lien Charge shall attach to the following: (i) any property of the Debtors (including any property of the Owner) that, pursuant to the Provincial Lien Legislation, would be subject to a lien, charge or encumbrance securing the underlying Lien Claim secured by such Lien Charge; (ii) any Holdback against which the Asserting Lien Claimant’s Lien Claim described in the Lien Notice would otherwise have a lien, charge or encumbrance pursuant to, and solely to the extent of, the Provincial Lien Legislation; and (iii) any rights (if any) under any applicable Lien Security pursuant to, and solely to the extent of, the Provincial Lien Legislation. For greater certainty, a Lien Charge shall not attach to any property of any Debtor or other Person, or attach to any rights in any Lien Security, unless such property or Lien Security

would otherwise have been charged with or subject to the lien, charge or encumbrance underlying such Lien Claim pursuant to the Provincial Lien Legislation.

13. **THIS COURT ORDERS** that a Lien Charge shall (i) with respect to other Lien Charges arising pursuant to paragraph 12 of this Order in respect of the Project, have a priority equal to the priority granted under the Provincial Lien Legislation, (ii) rank subordinate to the Receiver's Charge and the Receiver's Borrowings Charge, and (iii) have such priority with respect to other creditors of the Debtors as is accorded to Lien Claims under the Provincial Lien Legislation and the federal laws of Canada applicable in Ontario.
14. **THIS COURT ORDERS** that Lien Charges created by this Order shall not be rendered invalid or unenforceable, and the rights and remedies of any Asserting Lien Claimants entitled to the benefit of a Lien Charge shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings; (ii) any application(s) for bankruptcy order(s) issued in respect of any of the Debtors pursuant to the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**"), or any bankruptcy order made pursuant to any such applications; (iii) the filing of any assignments for the general benefit of creditors made by any of the Debtors pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or similar provisions with respect to borrowings, incurring debt or the creation of encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (each, an "**Agreement**") which binds the Receiver or any Debtor, and notwithstanding any provision to the contrary in any Agreement:

- (i) the creation of the Lien Charge shall neither create nor be deemed to constitute a breach by the Receiver or any Debtor of any Agreement to which it is a party;
- (ii) the granting of the Lien Charge, does not and will not constitute a preference, fraudulent conveyance, transfer at undervalue, oppressive conduct, or other challengeable or voidable transaction under any applicable law; and
- (iii) the Lien Charge shall be enforceable in any bankruptcy proceedings of any Debtor with the same priority as set out in paragraph 13 herein as against the property secured by the Lien Charge, including any Holdback.

TREATMENT OF HOLDBACK FUNDS

15. **THIS COURT ORDERS** that any Person who is in possession of Holdback funds or who is required to retain Holdback funds pursuant to the Provincial Lien Legislation, be and is hereby restrained from paying, setting-off, releasing or encroaching upon such Holdback funds until the day after the last day upon which a Lien Claim can be registered/delivered for the relevant contract pursuant to the Provincial Lien Legislation, at which time (or at such other time as may be agreed to by the Receiver), such Person shall (subject only to any present or future right of set-off claimed against the Holdback funds) pay the Holdback funds to the Receiver, to be held in a segregated account to be maintained by the Receiver, irrespective of whether any Lien Claims or Lien Notices have been made, delivered, preserved or perfected or written notice of any Lien Claim or Lien Notice has been received; provided, however, that any exercise of such set-off or claim to exercise future

set-off shall be subject to the Provincial Lien Legislation and to either (i) the prior written consent of the Receiver, who shall consult with all Persons who delivered Lien Notices for the Project, or (ii) further order of the Court, on notice to the Receiver, the Applicant, the RFCA Lender, and all Persons who delivered Lien Notices on the Project. Any of the foregoing parties shall be entitled to challenge such attempted set-off by motion to the Court (whether or not the Receiver consents to such set-off). Upon any challenge to such attempted set-off, the Holdback funds shall not be released or distributed until a final determination of the claims to such set-off or further order of this Court, after which the Holdback shall be paid to the Receiver pursuant to this paragraph less any set-off determined to be appropriate pursuant to the processes set out in this paragraph.

16. **THIS COURT ORDERS** that, upon payment of the Holdback funds to the Receiver pursuant to paragraph 15, the Person who was in possession of such Holdback funds shall be deemed to have been in the same position as if (i) no written notices of lien had been received, no Lien Claims had been made, asserted, delivered, preserved, or perfected, and (ii) no Lien Notice had been received, and such Person shall have no further liability for such Holdback funds to any Person. For greater certainty, provided that Holdback funds have been paid to the Receiver, net of any set-off amounts consented to or determined to be appropriate in accordance with the processes set out in paragraph 15, any Person who was in possession of Holdback funds or who was required to retain Holdback funds pursuant to the Provincial Lien Legislation, and who receives a written notice of lien, Lien Notice or other notice of a Lien Claim after that Person has released such Holdback funds to the Receiver, shall not be required to retain Notice Holdback with regard to that written notice of lien, Lien Notice or other notice of a Lien Claim.

17. **THIS COURT ORDERS** that the Receiver shall have no liability whatsoever, whether pursuant to the Provincial Lien Legislation, any other law, equity, or otherwise, save and except for any gross negligence or wilful misconduct on its part, to any Person (including any subcontractor of any level to the Owner, any other supplier of any level to the Owner, or creditor of the Debtors) in connection with amounts paid to the Receiver on or after the Filing Date pursuant to the terms of this Order in respect of the Project.
18. **THIS COURT ORDERS** that the Receiver shall serve a copy of this Order on any Person known to the Receiver who is or may be in possession of a Holdback fund.

GENERAL PROCEDURAL MATTERS

19. **THIS COURT ORDERS** that, without limiting the generality of paragraph 10 of the Receivership Order, all Persons, including, without limitation, Mizrahi Inc., shall be required to cooperate with the Receiver in carrying out the terms of this Order, and shall be required to share information with the Receiver in connection with any Lien Claim.
20. **THIS COURT ORDERS** that, for greater certainty, nothing in this Order or the Receivership Order shall affect the rights of any Person under the Provincial Lien Legislation with respect to any non-lien claims for damages or delay, provided that any such claims against the Debtors shall require the consent of the Receiver or leave of this Court to be commenced or continued.
21. **THIS COURT ORDERS** that, with respect to a Vacated Lien, nothing in this Order affects any rights under or recourse of any Person under the Provincial Lien Legislation to

the Lien Security posted with respect to the Vacated Lien, subject in all respects to the stay of proceedings set out in the Receivership Order.

22. **THIS COURT ORDERS** that the Receiver is hereby authorized to demand particulars from a Lien Claimant in connection with any Lien Claim and that a Lien Claimant shall provide written particulars with respect to such Lien Claim within ten (10) days of delivery of a demand for particulars by the Receiver, or such further period of time as the Receiver may agree to.
23. **THIS COURT ORDERS** that the Receiver shall, at a time deemed by the Receiver to be appropriate, bring a motion on notice to the Service List, and to all subcontractors and suppliers to the Project who are known to the Receiver but not on the Service List, seeking the approval of a process for reviewing, determining or challenging (i) the validity or timeliness of any Lien Notice, (ii) the validity or quantum of the amounts set out in any Lien Notice, (iii) the entitlement of any Asserting Lien Claimant to a Lien Charge under this Order, and (iv) the attachment, quantum or priority of any Lien Charge under this Order. For the avoidance of doubt, nothing in this paragraph shall be construed so as to restrict the ability of the Receiver or any other Person to seek a determination by this Court of any of the foregoing with respect to any Lien Claim at any time upon notice to the relevant Asserting Lien Claimant.
24. **THIS COURT ORDERS** that the Receiver may, if necessary and at a time deemed by the Receiver to be appropriate, bring a motion on notice to the Service List seeking the approval of a dispute resolution process among the Receiver and any payer in connection with the Project.

NOTICES AND COMMUNICATIONS

25. **THIS COURT ORDERS** that, except as set out in this Order, any notice or other communication to be given under this Order by the Receiver to a Lien Claimant shall be given in accordance with paragraphs 32 and 33 of the Receivership Order, provided that, for greater certainty, the Receiver may provide any notice or communication to a Lien Claimant by e-mail where the e-mail addresses of the Lien Claimant and/or its counsel are known by the Receiver.
26. **THIS COURT ORDERS** that any notice or other communication (including, without limitation, Lien Notices) to be given under this Order by a Lien Claimant to the Receiver shall be in writing and, where applicable, substantially in the form provided for in this Order and will be sufficiently given only if given in the following manner: to the Receiver's attention: at sferguson@alvarezandmarsal.com and jnevsky@alvarezandmarsal.com, with a copy to Goodmans LLP, counsel to the Receiver, at boneill@goodmans.ca, carmstrong@goodmans.ca and jlinde@goodmans.ca, and with a copy to Osler, Hoskin & Harcourt LLP, counsel to the Applicant and the RFCA Lender, at mdelellis@osler.com and rdavidge@osler.com.

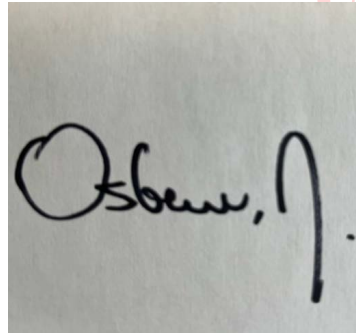
GENERAL

27. **THIS COURT ORDERS** that, in discharging its obligations under this Order, the Receiver (i) shall have all of the protections given to it by the Receivership Order, this Order, any other orders of the Court in these receivership proceedings, the BIA and other applicable law; (ii) shall incur no liability or obligation as a result of carrying out matters or any act or omission in connection with this Order; (iii) shall be entitled to rely on the

books and records of the Debtors and any information provided by representatives of the Debtors, all without independent investigation; (iv) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information; and (v) may seek such assistance as may be required to carry out matters in connection with this Order.

28. **THIS COURT ORDERS** that the Receiver shall be entitled to assert and enforce any and all rights, remedies and defences in respect of the Lien Claim of any Lien Claimant which may be available to the Receiver or the Debtors under the Provincial Lien Legislation or otherwise at law.
29. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in respect of the discharge of its powers and duties hereunder.
30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

A rectangular box containing a handwritten signature in black ink. The signature appears to be "J. Osburn" written in a cursive style.

2024.03.
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11:04:05
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SCHEDULE A
LEGAL DESCRIPTION OF THE LANDS

PIN: 21109-0244 (LT)

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

**SCHEDULE B
FORM OF LIEN NOTICE TO RECEIVER**

Name of Lien Claimant:

Address for Service:

Name of Owner:

Address:

Name of person to whom Lien Claimant supplied services or materials:

.....

Time within which services or materials were supplied:

from: to:

(date supply commenced)

(date of most recent supply)

Short description of services or materials that have been supplied:

.....

Contract price or subcontract price: \$.....

Amount claimed as owing in respect of services or materials that have been supplied and which are capable of being subject to a Lien Claim:

\$.....

(Use **A** where the lien has attached to the Lands; use **B** where the lien has not attached to the Lands).

- A. The Lien Claimant (if claimant is a personal representative or an assignee, this must be stated) asserts a Lien Claim against the Project (as such term is defined in the Lien Regularization Order).
- B. The Lien Claimant (if claimant is a personal representative or an assignee, this must be stated) claims a charge against the holdbacks required to be retained under the Provincial Lien Legislation (as such term is defined in the Lien Regularization Order) and any additional amount owed by a payer to the contractor or to any subcontractor whose contract or subcontract was in whole or in part performed by the services or materials that have been supplied by the Lien Claimant in relation to the Project.

[LIEN CLAIMANT]

Per: _____

Name: _____

Title: _____

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

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

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

| Applicant | Respondents |
|-----------|--|
| | <div>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto</div> <div>LIEN REGULARIZATION ORDER</div> <div>GOODMANS LLP Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7 Brendan O'Neill LSO# 43331J boneill@goodmans.ca Christopher Armstrong LSO# 55148B carmstrong@goodmans.ca Jennifer Linde LSO#86996A jlinde@goodmans.ca Tel: (416) 979-2211 Fax: (416) 979-1234 Lawyers for the Receiver</div> |

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

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

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

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**FOURTH REPORT OF THE RECEIVER
ALVAREZ & MARSAL CANADA INC.
JULY 29, 2024**

GOODMANS LLP
Barristers & Solicitors
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

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boneill@goodmans.ca

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Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for the Receiver

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

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

THE HONOURABLE

)

FRIDAY, THE 9TH

)

JUSTICE OSBORNE

)

DAY OF AUGUST, 2024

B E T W E E N:

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

Applicant

- and -

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

Respondents

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

LIEN CLAIMS RESOLUTION ORDER

THIS MOTION, made by Alvarez & Marsal Canada Inc., in its capacity as Court-appointed receiver and manager (the “**Receiver**”), without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (collectively, the “**Debtors**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Receiver dated July 29, 2024, and the Fourth Report of the Receiver dated July 29, 2024, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant and KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (the “**RFCA Lender**”), and counsel for the other parties appearing as noted on the counsel slip, no one else appearing for any party although duly served,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINED TERMS

2. **THIS COURT ORDERS** that, unless otherwise defined herein, capitalized terms used herein shall have the meaning given to them in the Lien Regularization Order of this Court made in the within proceedings dated March 7, 2024 (the “**LRO**”).

REVIEW OF LIEN NOTICES

3. **THIS COURT ORDERS** that the Receiver shall review all Lien Notices delivered pursuant to the LRO and at any time in its sole discretion may:

- (a) demand particulars from a Lien Claimant in connection with any Lien Claim in accordance with paragraph 22 of the LRO;
- (b) attempt to consensually resolve and settle a Lien Claim asserted in a Lien Notice with the relevant Lien Claimant;

- (c) by notice in writing to the relevant Lien Claimant, accept (in whole or in part) a Lien Claim asserted in a Lien Notice; and
- (d) by notice in writing to the relevant Lien Claimant, dispute (in whole or in part) a Lien Claim asserted in a Lien Notice and refer such Lien Claim to a Claims Officer (as defined below) for determination, or in the alternative, refer such Lien Claim to the Court for determination (any such disputed Lien Claim so referred for determination by the Receiver being referred to herein as a “**Disputed Lien Claim**”).

4. **THIS COURT ORDERS** that where a Lien Claim has been settled or accepted (in whole or in part) by the Receiver, the Receiver shall be authorized to pay the amount so settled or accepted without any further order of the Court; provided that nothing herein shall preclude the Receiver from seeking Court approval of any such settlement or acceptance of a Lien Claim at its election.

RESOLUTION OF DISPUTED LIEN CLAIMS

5. **THIS COURT ORDERS** that, where a Disputed Lien Claim has been referred to a Claims Officer by the Receiver, the Claims Officer shall:

- (a) establish a process for the fair and expeditious resolution of any Disputed Lien Claim, having regard to the quantum of the Disputed Lien Claim, the complexity of the issues and any other matter that the Claims Officer considers relevant;
- (b) determine all substantive and procedural matters which may arise in respect of their determination of the Disputed Lien Claim, including but not limited to any participation rights for any stakeholder (however, the Applicant and the RFCA

Lender shall have the right to participate and make submissions in any proceeding before a Claims Officer), the manner in which any evidence may be adduced, and the manner of submissions (which, for greater certainty, may be limited to written submissions);

- (c) determine the amount, validity, priority, timeliness and any other dispute in respect of such Disputed Lien Claim in accordance with this Order and shall provide written reasons;
- (d) have the discretion to mediate any dispute that is referred to such Claims Officer at its election and with the consent of the parties; and
- (e) have the discretion to make a cost award against or in favour of the Receiver or the Lien Claimant relating to the determination of a Disputed Lien Claim (including in respect of the fees and expenses of the Claims Officer).

6. **THIS COURT ORDERS** that the Receiver and/or the Lien Claimant, or any other stakeholder participant in a proceeding before a Claims Officer, may, within ten (10) days of such party receiving notice of the Claims Officer's determination of the Disputed Lien Claim, appeal such determination to the Court by serving and filing a notice of motion, and the appeal shall be initially returnable for scheduling purposes within ten (10) days of filing such notice of motion.

7. **THIS COURT ORDERS** that, if no party appeals the determination of the Claims Officer of the Disputed Lien Claim within the time set out in paragraph 6, the determination of the Claims Officer shall be final and binding upon the Receiver and the Lien Claimant, and there shall be no

further right of appeal, review or recourse to the Court from the final determination of the Claims Officer.

CLAIMS OFFICERS

8. **THIS COURT ORDERS** that (a) the Honourable Thomas J. McEwen, McEwen Resolutions Inc., (b) Mr. Joel Richler, and (c) such other person(s) as may be appointed by the Court from time to time on a motion by the Receiver (which motion may be made in writing if unopposed), be and are hereby appointed as claims officers for determining Disputed Lien Claims pursuant to this Order (each, a “**Claims Officer**” and, collectively, the “**Claims Officers**”).

9. **THIS COURT ORDERS** that the Claims Officers shall incur no liability or obligation as a result of their appointment or in acting as the Claims Officers pursuant to the provisions of this Order. No proceeding or enforcement process in any court or tribunal shall be commenced against or in respect of the Claims Officers, except with prior leave of this Court granted in the within proceedings.

NOTICES AND COMMUNICATIONS

10. **THIS COURT ORDERS** that any notice or other communication to be given under this Order by the Receiver to a Lien Claimant shall be given in accordance with paragraphs 32 and 33 of the Receivership Order, provided that, for greater certainty, the Receiver may provide any notice or communication to a Lien Claimant pursuant to this Order by e-mail where the e-mail addresses of the Lien Claimant and/or its counsel are known by the Receiver.

GENERAL

11. **THIS COURT ORDERS** that, in discharging its obligations under this Order, the Receiver (a) shall have all of the protections given to it by the Receivership Order, the LRO, this Order, any other orders of the Court in these receivership proceedings, the *Bankruptcy and Insolvency Act* (Canada) and other applicable law; (b) shall incur no liability or obligation as a result of carrying out matters or any act or omission in connection with this Order; (c) shall be entitled to rely on the books and records of the Debtors and any information provided by representatives of the Debtors, all without independent investigation; (d) shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information; and (e) may seek such assistance as may be required to carry out matters in connection with this Order.

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

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

14. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date hereof and is enforceable without further need for entry or filing.

**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, et al.**

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

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceeding commenced at Toronto

**LIEN CLAIMS
RESOLUTION ORDER**

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Lawyers for the Receiver

**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**

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(THE ONE) LP, et al.**

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

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceeding commenced at Toronto

**MOTION RECORD
(Returnable August 9, 2024)**

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