

**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 OF THE RECEIVER  
VOLUME 1 OF 4  
(*Re: Motion for Payment*)**

October 18, 2024

**GOODMANS LLP**  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

**Brendan O'Neill** LSO# 43331J  
boneill@goodmans.ca

**Christopher Armstrong** LSO# 55148B  
carmstrong@goodmans.ca

**Mark Dunn** LSO# 55510L  
mdunn@goodmans.ca

**Jennifer Linde** LSO# 86996A  
jlinde@goodmans.ca

Tel: 416.979.2211  
Lawyers for the Receiver

**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**

**SERVICE LIST  
(As at September 23, 2024)**

<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b> 100 King Street West, 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8</p> <p><b>Michael De Lellis</b> Direct: 416.862.5997 E-mail: mdelellis@osler.com</p> <p><b>Jeremy Dacks</b> Direct: 416.862.4923 E-mail: jdacks@osler.com</p> <p><b>Shawn Irving</b> Direct: 416.862.4733 E-mail: sirving@osler.com</p> <p><b>Mark Sheeley</b> Direct: 416.862.6791 E-mail: msheelley@osler.com</p> <p><i>Counsel to the Applicant, KEB Hana Bank as trustee of IGIS Global Private Placement Real</i></p>	<p><b>ALVAREZ &amp; MARSAL CANADA INC.</b> Royal Bank Plaza, South Tower 200 Bay Street, Suite 2900 P.O. Box 22 Toronto, ON M5J 2J1</p> <p><b>Stephen Ferguson</b> Direct: 416.847.5162 E-mail: sferguson@alvarezandmarsal.com</p> <p><b>Josh Nevsky</b> Direct: 416.847.5161 E-mail: jnevsky@alvarezandmarsal.com</p> <p><b>Melanie MacKenzie</b> Direct: 416.847.5158 E-mail: mmackenzie@alvarezandmarsal.com</p> <p><i>Receiver</i></p>
--	--

<p><i>Estate Fund No. 301 and as trustee of IGIS Global Private Placement Real Estate Fund No. 434</i></p>	
<p><b>GOODMANS LLP</b> Bay Adelaide Centre – West Tower 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7</p> <p><b>Brendan O’Neill</b> Direct: 416.849.6017 E-mail: boneill@goodmans.ca</p> <p><b>Christopher Armstrong</b> Direct: 416.849.6013 E-mail: carmstrong@goodmans.ca</p> <p><b>Mark Dunn</b> Direct: 416.849.6895 E-mail: mdunn@goodmans.ca</p> <p><b>Jennifer Linde</b> Direct: 416.849.6922 E-mail: jlinde@goodmans.ca</p> <p><i>Counsel to the Receiver</i></p>	<p><b>MORSE SHANNON LLP</b> 133 Richmond Street West, Suite 501 Toronto, ON M5H 2L3</p> <p><b>Jerome R. Morse</b> Direct: 416.941.5867 E-mail: jmorse@morseshannon.com</p> <p><b>David Trafford</b> Direct: 416-941-5850 E-mail: dtrafford@morseshannon.com</p> <p><i>Counsel to Mizrahi Inc., Sam M Inc., and Sam Mizrahi</i></p>
<p><b>BORDEN LADNER GERVAIS LLP (BLG)</b> Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON, Canada M5H 4E3</p> <p><b>Roger Jaipargas</b> Direct: 416.367.6266 E-mail: RJaipargas@blg.com</p> <p><i>Counsel to Mizrahi Inc., Sam M Inc., and Sam Mizrahi</i></p>	<p><b>MCCARTER GRESPAN LAWYERS</b> 539 Riverbend Drive, Kitchener, ON N2K 3S3</p> <p><b>Avril Lavallee</b> Direct: 519.571.8800 Ext. 135 E-mail: alavallee@mgbwlaw.com</p> <p><i>Counsel to Mizrahi Inc., Sam M Inc., and Sam Mizrahi</i></p>
<p><b>TORYS LLP</b> 79 Wellington Street West, Unit 3300 Toronto, Ontario, M5K 1N2</p> <p><b>David Bish</b> Direct: 416.865.7353 E-mail: dbish@torys.com</p> <p><i>Counsel to Coco International Inc. and 12823543 Canada Ltd.</i></p>	<p><b>FOGLER RUBINOFF LLP</b> 77 King Street West, Suite 3000, P.O. Box 95 Toronto, Ontario, M5K 1G8</p> <p><b>Nina Perfetto</b> Direct: 416.941.8866 E-mail: nperfetto@foglers.com</p> <p><b>David Levangie</b> Direct: 416.864.7603 E-mail: dlevangie@foglers.com</p> <p><i>Counsel to Coco International Inc. and 12823543 Canada Ltd.</i></p>

<p><b>BABIN BESSNER SPRY LLP</b> 185 Frederick St., Suite 101 Toronto, ON M5A 4L4</p> <p><b>Edward J. Babin</b> Direct: 416.637.3294 E-mail: ebabin@babinbessnerspry.com</p> <p><b>Cynthia L. Spry</b> Direct: 416.637.3295 E-mail: cspry@babinbessnerspry.com</p> <p><b>Michael Bookman</b> Direct: 647.725.2604 E-mail: mbookman@babinbessnerspry.com</p> <p><b>Brendan Monahan</b> Direct: 416.637.3296 E-mail: bmonahan@babinbessnerspry.com</p> <p><i>Counsel to CERIECO Canada Corp.</i></p>	<p><b>AVIVA INSURANCE COMPANY OF CANADA</b> c/o Westmount Guarantee Services Inc. 600 Cochrane Drive, Suite 205 Markham, ON L3R 5K3</p> <p><b>Brian Argue</b> Direct: 647.499.8249 X 203 E-mail: brian@westmountguarantee.com</p> <p><b>Marlon Brown</b> Direct: 647.499.8249 X 205 E-mail: marlon@westmountguarantee.com</p>
<p><b>CHAITONS LLP</b> 5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9</p> <p><b>Harvey Chaiton</b> Direct: 416.218.1129 E-mail: harvey@chaitons.com</p> <p><i>Counsel to Aviva Insurance Company of Canada</i></p>	<p><b>SINGLETON URQUHART REYNOLDS VOGEL LLP</b> 150 King St. West, Suite 2512 Toronto, ON M5H 1J9</p> <p><b>Bruce Reynolds</b> Direct: 416.585.8601 E-mail: breynolds@singleton.com</p> <p><i>Counsel to Aviva Insurance Company of Canada</i></p>
<p><b>HARRIS SHEAFFER LLP</b> 4100 Yonge Street, Suite 610 Toronto, ON M2P 2B5</p> <p><b>Michael J. Baum</b> Direct: 416.250.2892 E-mail: mbaum@harris-sheaffer.com</p> <p><i>Deposit Trustee</i></p>	<p><b>HANA ALTERNATIVE ASSET MANAGEMENT CO., LTD.</b> 21F, 66 Eulji-ro Jung-gu, Seoul 04538, Republic of Korea</p> <p><b>Cecilia Lee</b> Manager, Alternative Investment Division E-mail: chmlee@hanafn.com</p>
<p><b>FASKEN MARTINEAU DuMOULIN LLP</b> Bay Adelaide Centre, 333 Bay St. #2400 Toronto, ON M5H 2T6</p> <p><b>Stuart Brotman</b> Direct: 416.865.5419 E-mail: sbrotman@fasken.com</p> <p><b>Dylan Chochla</b> Direct: 416.868.3425 E-mail: dchochla@fasken.com</p>	<p><b>MIZRAHI INC.</b> 189 Forest Hill Road Toronto, ON M5P 2N3</p> <p><b>Sam Mizrahi</b> E-mail: sam@mizrahidevelopments.ca</p>



<b>Daniel Richer</b> Direct: 416.865.4445 E-mail: dricher@fasken.com  <i>Counsel to NongHyup Bank, in its capacity as trustee of Hana Private Real Estate Investment Trust No. 137</i>	
<b>SAM MIZRAHI</b> 189 Forest Hill Road Toronto, ON M5P 2N3  <b>Sam Mizrahi</b> E-mail: sam@mizrahidevelopments.ca	<b>SAM M INC.</b> 189 Forest Hill Road Toronto, ON M5P 2N3  <b>Sam Mizrahi</b> E-mail: sam@mizrahidevelopments.ca
<b>JENNY COCO</b> 271 Spadina Road, 5th Floor Toronto, ON M5R 2V3  <b>Jenny Coco</b> E-mail: jcoco@cocogroup.com	<b>ROCKY COCO</b> 271 Spadina Road, 5th Floor Toronto, ON M5R 2V3  <b>Rocky Coco</b> E-mail: rcoco@cocogroup.com
<b>DLA PIPER (CANADA) LLP</b> 1 First Canadian Place, Suite 6000 100 King StrAeet West Toronto, ON M5X 1E2  <b>Edmond F .B. Lamek</b> Direct: 416.365.4444 Email: edmond.lamek@dlapiper.com  <b>Danny M. Nunes</b> Direct: 416.365.3421 Email: danny.nunes@dlapiper.com  <i>Counsel to Hyatt Hotels of Canada Inc.</i>	<b>HYATT HOTELS OF CANADA, INC.</b> 150 North Riverside Plaza Chicago, IL 60606  <b>Mark Sweeney</b> Direct: 312.780.2928 Email: mark.sweeney@hyatt.com
<b>SPEIGEL NICHOLS FOX LLP</b> 1 Robert Speck Parkway, Suite 200 Mississauga, Ontario L4Z 3M3  <b>Allison J. Speigel</b> Direct: 905.366.9700 Ext. 280 E-mail: allison@ontlaw.com  <i>Counsel to Mappro Realty Inc.</i>	<b>NORTON ROSE FULBRIGHT CANADA LLP</b> 222 Bay Street, Suite 3000, P.O. Box 53 Toronto, ON M5K 1E7  <b>Evan Cobb</b> Direct: 416.216.1929 E-mail: evan.cobb@nortonrosefulbright.com  <i>Counsel to Read Jones Christoffersen Ltd.</i>
<b>TORYS LLP</b> 79 Wellington St. W., Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2	<b>MILLER THOMSON LLP</b> Vaughan Metropolitan Centre 100 New Park Place, Suite 700 Vaughan, ON L4K 0H9

<p><b>Adam Slavens</b> Direct: 416.865.7333 E-mail: aslavens@torys.com <i>Counsel to Tarion Warranty Corporation</i></p>	<p><b>Enzo Di Iorio</b> Direct: 905.532.6613 ediiorio@millerthomson.com <b>Paul Guaragna</b> Direct: 905.532.6679 pguaragna@millerthomson.com <i>Counsel to Innocon by its general partners Innocon Inc., Heidelberg Materials Canada Limited/Materiaux Heidelberg Canada Limitee, Lehigh Hanson Materials Limited, Lafarge Canada Inc. and Allmix Concrete Inc.</i></p>
<p><b>GARDINER ROBERTS LLP</b> Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3600 Toronto, ON M5H 4E3 <b>S. Michael Citak</b> Direct: 416.865.6706 E-mail: mcitak@grllp.com <i>Counsel to PSR Brokerage Ltd.</i></p>	<p><b>BISCEGLIA AND ASSOCIATES P.C.</b> 9100 Jane Street Suite 200, Building A Vaughan, ON L4K 0A4 <b>Emilio Bisceglia</b> Direct: 905.695.3100 E-mail: ebisceglia@lawtoronto.com <i>Counsel to Cult Iron Works Limited</i></p>
<p><b>COZEN O'CONNOR LLP</b> Bay Adelaide Centre - North Tower 40 Temperance Street, Suite 2700 Toronto, Ontario M5H 0B4 <b>Steven Weisz</b> Direct: 647.295.2616 E-mail: sweisz@cozen.com <b>Heidi Esslinger</b> Direct: 236.317.6885 E-mail: hesslinger@cozen.com <i>Counsel to Mizrahi Inc.</i></p>	<p><b>MCMILLAN LLP</b> Suite 4400, 181 Bay Street Toronto ON M5J 2T3 <b>Glenn Grenier</b> Direct: 416.307.4005 E-mail: glenn.grenier@mcmillan.ca <b>Jeffrey Levine</b> Direct: 416.865.7791 E-mail: jeffrey.levine@mcmillan.ca <i>Counsel to Gamma Windows and Walls International Inc.</i></p>
<p><b>RESERVE SUITES CORPORATION</b> 110 Eglinton Ave. East, Suite 500 Toronto, ON M4P 2Y1 <b>Sheldon Fenton</b> E-mail: shelley@reserveinvest.com <b>Shane Fenton</b> E-mail: shane@reserveinvest.com</p>	<p><b>KSV RESTRUCTURING INC.</b> 220 Bay Street, 13th Floor, PO Box 20, Toronto, Ontario, M5J 2W4 <b>Bobby Kofman</b> Direct: 416.932.6228 E-mail: bkofman@ksvadvisory.com <i>Receiver and manager of Mizrahi (128 Hazelton) Inc., Mizrahi 128 Hazelton Retail Inc., Sam M (180 SAW) LP Inc. and Sam M (180 SAW) Inc.</i></p>

<p><b>NORTON ROSE FULBRIGHT CANADA LLP</b>  222 Bay Street, Suite 3000, P.O. Box 53  Toronto, ON M5K 1E7</p> <p><b>Jenny Stam</b>  Direct: 416.202.6707  E-mail: jennifer.stam@nortonrosefulbright.com</p> <p><i>Counsel to KSV Restructuring Inc., as receiver and manager of Mizrahi (128 Hazelton) Inc., Mizrahi 128 Hazelton Retail Inc., Sam M (180 SAW) LP Inc. and Sam M (180 SAW) Inc.</i></p>	<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b>  Suite 3200, Bay Adelaide Centre - North Tower  40 Temperance Street  Toronto, ON M5H 0B4</p> <p><b>Jane Dietrich</b>  Direct: 416.860.5223  E-mail: jdietrich@cassels.com</p> <p><b>Jason Arbuck</b>  Direct: 416.860.6889  E-mail: jarbuck@cassels.com</p> <p><i>Counsel to Constantine Enterprises Inc.</i></p>
<p><b>TORKIN MANES LLP</b>  151 Yonge Street, Suite 1500  Toronto, ON M5C 2W7</p> <p><b>Jeffrey J. Simpson</b>  Direct: 416.777.5413  E-mail: jsimpson@torkin.com</p> <p><b>Ryan Hauk</b>  Direct: 416.643.8810  E-mail: rhauk@torkin.com</p> <p><i>Counsel to CORE Architects Inc.</i></p>	<p><b>KELLY SANTINI LLP</b>  160 Elgin St., Suite 2401  Ottawa ON K2P 2P7</p> <p><b>John Melia</b>  Direct: 613.238.6321 ext. 292  E-mail: jmelia@kellysantini.com</p> <p><b>Jason Dutrizac</b>  Direct: 613.238.6321 ext. 108  E-mail: jdutrizac@kellysantini.com</p> <p><b>Kara Takagi</b>  Direct: 613-238-6321 ext. 392  E-mail: ktakagi@kellysantini.com</p> <p><i>Counsel to Modern Niagara Toronto Inc.</i></p>
<p><b>GOLDMAN SLOAN NASH &amp; HABER LLP</b>  480 University Ave, Suite 1600  Toronto, Ontario, M5G 1V6</p> <p><b>Robert J. Drake</b>  Direct: 416.597.5014  E-mail: drake@gsnh.com</p> <p><b>Leonard Finegold</b>  Direct: 416.597.3376  E-mail: finegold@gsnh.com</p>	<p><b>DENTONS CANADA LLP</b>  99 Bank Street, Suite 1420  Ottawa, ON K1P 1H4</p> <p><b>Kenneth D. Kraft</b>  Direct: 416.863.4374  E-mail: kenneth.kraft@dentons.com</p> <p><b>Phil M. Rimer</b>  Direct: 613.783.9634  E-mail: philip.rimer@dentons.com</p>

*Ministries / Government Entities / Regulatory Authorities*

<p><b>CANADA REVENUE AGENCY</b>  1 Front Street West  Toronto, ON M5J 2X6</p> <p><b>General E-mail Inbox</b>  E-mail: agc-pgc.toronto-tax-fiscal@justice.gc.ca</p>	<p><b>DEPARTMENT OF JUSTICE (CANADA)</b>  Ontario Regional Office, Tax Law Section  120 Adelaide Street West, Suite 400 Toronto,  ON M5H 1T1</p> <p><b>General E-mail Inbox</b>  E-mail: agc-pgc.toronto-tax-fiscal@justice.gc.ca</p>
<p><b>MINISTRY OF FINANCE (ONTARIO)</b>  Insolvency Unit, Legal Services Branch  11-777 Bay Street Toronto, ON, M5G 2C8</p> <p><b>General E-mail Inbox</b>  E-mail: insolvency.unit@ontario.ca</p>	<p><b>CITY SOLICITOR'S OFFICE</b>  City of Toronto  Station 1260, 26th Floor  Metro Hall, 55 John Street  Toronto, ON M5V 3C6</p> <p><b>Christopher J. Henderson</b>  Direct: 416.397.7106  E-mail: Christopher.Henderson@toronto.ca</p> <p><b>Georgia Tanner</b>  Direct: 416-392-8364  E-mail: Georgia.Tanner@toronto.ca</p>
<p><b>HOME CONSTRUCTION REGULATORY AUTHORITY</b>  40 Sheppard Ave. W, Suite 400  Toronto, ON M2N 6K9</p> <p><b>Wendy Moir</b>  E-mail: wendy.moir@hcraontario.ca</p> <p><b>Marc Spector</b>  E-mail: marc.spector@hcraontario.ca</p> <p><b>James Ryu</b>  E-mail: james.ryu@hcraontario.ca</p> <p><b>General E-mail Inbox</b>  E-mail: info@hcraontario.ca</p>	

## E-MAIL DISTRIBUTION LIST:

mdelellis@osler.com; jdacks@osler.com; sirving@osler.com; msheeley@osler.com;  
rdavidge@osler.com; boneill@goodmans.ca; carmstrong@goodmans.ca; jlinde@goodmans.ca;  
mdunn@goodmans.ca; sstothart@goodmans.ca; sferguson@alvarezandmarsal.com;  
jnevsky@alvarezandmarsal.com; mmackenzie@alvarezandmarsal.com;  
fmak@alvarezandmarsal.com; asterling@alvarezandmarsal.com;  
ekrieger@alvarezandmarsal.com; RJaipargas@blg.com; jmorse@morseshannon.com;  
dtrafford@morseshannon.com; alavallee@mgbwlaw.com; nperfetto@foglers.com;  
dlevangie@foglers.com; dbish@torys.com; ebabin@babinbessnerspry.com;  
cspry@babinbessnerspry.com; mbookman@babinbessnerspry.com;  
bmonahan@babinbessnerspry.com; brabinovitch@babinbessnerspry.com;  
zpringle@babinbessnerspry.com; brian@westmountguarantee.com;  
marlon@westmountguarantee.com; mbaum@harris-sheaffer.com; chmlee@hanafn.com;  
sbrotman@fasken.com; dchochla@fasken.com; dricher@fasken.com;  
sam@mizrahidevelopments.ca; jcoco@cocogroup.com; rcoco@cocogroup.com; agc-  
pgc.toronto-tax-fiscal@justice.gc.ca; insolvency.unit@ontario.ca;  
Christopher.Henderson@toronto.ca; Georgia.Tanner@toronto.ca; edmond.lamek@dlapiper.com;  
danny.nunes@dlapiper.com; mark.sweeney@hyatt.com; wendy.moir@hcraontario.ca;  
marc.spector@hcraontario.ca; info@hcraontario.ca; james.ryu@hcraontario.ca;  
allison@ontlaw.com; evan.cobb@nortonrosefulbright.com; harvey@chaitons.com;  
breynolds@singleton.com; aslavens@torys.com; ediorio@millerthomson.com;  
pguaragna@millerthomson.com; mcitak@grllp.com; ebisceglia@lawtoronto.com;  
sweisz@cozen.com; hesslinger@cozen.com; glenn.grenier@mcmillan.ca;  
jeffrey.levine@mcmillan.ca; shelley@reserveinvest.com; shane@reserveinvest.com;  
bkofman@ksvadvisory.com; jennifer.stam@nortonrosefulbright.com; jdietrich@cassels.com;  
jarbuck@cassels.com; jsimpson@torkin.com; rhauk@torkin.com; jmelia@kellysantini.com;  
jdutrizac@kellysantini.com; ktakagi@kellysantini.com; drake@gsnh.com; finegold@gsnh.com;  
kenneth.kraft@dentons.com; philip.rimer@dentons.com

# INDEX

**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**

**INDEX**

<b>Tab</b>	<b>Document</b>	<b>Page No.</b>
<b>Volume 1</b>		
1.	Notice of Cross-Motion dated October 18, 2024	16
2.	Fifth Report of the Receiver dated October 11, 2024	34
1.	Appendix “1” – Receivership Order dated October 18, 2023	132
2.	Appendix “2” – Letter to Goodmans from MI dated June 14, 2024	154
3.	Appendix “3” – Receiver’s Email dated November 26, 2023	177
4.	Appendix “4” – Receiver’s Revised Analysis	181
5.	Appendix “5” – October 2023 and November 2023 Payment Letters and covering emails	183
6.	Appendix “6” – December 2023 Payment Letters and covering emails	206
7.	Appendix “7” – Clark Construction Management Inc. Contract dated July 2017	216
8.	Appendix “8” – E-mail sent by Mark Kilfoyle (MI’s CFO) to Jenny Coco on November 9, 2017 and Jenny Coco’s responding e-mail sent to Mark Kilfoyle	288
9.	Appendix “9” – GC Agreement dated May 14, 2019	293

Tab	Document	Page No.
<b>Volume 2</b>		
10.	Appendix “10” – Altus Preliminary Report No. 1 as at July 31, 2019 [Confidential]	342
11.	Appendix “11” – Mediator’s Proposal dated November 26, 2019	577
12.	Appendix “12” – E-mail exchange dated February 28, 2020	586
13.	Appendix “13” – CCM Termination Notice dated October 26, 2020	590
14.	Appendix “14” – Email from Sam Mizrahi to Mike Clark dated May 18, 2020	592
15.	Appendix “15” – Email from Sam Mizrahi to Jenny Coco dated October 26, 2020	594
16.	Appendix “16” – Written Submissions from Coco dated November 6, 2020	596
17.	Appendix “17” – Responding Written Submissions from Mizrahi dated November 9, 2020	626
18.	Appendix “18” – Payment Listing requesting Funds re: Senior Secured Lenders dated January 2021	631
19.	Appendix “19” – Example of an MI Staff Invoice [Confidential]	639
20.	Appendix “20” – Control Agreement dated May 2021	642
21.	Appendix “21” – Amendment to the GC Agreement dated May 4, 2022	650
22.	Appendix “22” – E-mail from MI to Altus sending the Unilateral Amendment dated August 28, 2023	654
23.	Appendix “23” – Arbitration Award dated June 24, 2023	703
24.	Appendix “24” – Control Resolution dated August 6, 2022	715
25.	Appendix “25” – Excerpts from the Payment Listings from August 2022 to September 2023	719
<b>Volume 3</b>		
26.	Appendix “26” – Cost to Date Report No. 1 as of March 12, 2024 [Confidential]	850
27.	Appendix “27” – Project Budget and Cost to Complete [Confidential]	871
28.	Appendix “28” – Preliminary Schedule [Confidential]	873
29.	Appendix “29” – Summary of KDC’s Relevant Experience	876
30.	Appendix “30” – Issues Log from KDC	879
31.	Appendix “31” – Excerpts from the Altus Reports [Confidential]	886



<b>Tab</b>	<b>Document</b>	<b>Page No.</b>
32.	Appendix “32” – MI’s Monthly Construction Management Report for October 2023	957
33.	Appendix “33” – Report by KDC dated December 31, 2023 [Confidential]	1112
34.	Appendix “34” – Memo to File - MI CM Issues dated January 2, 2024 [Confidential]	1288
35.	Appendix “35” – KDC Memo regarding Outstanding MI Deliverables dated January 18, 2024	1290
36.	Appendix “36” – Altus' Schedule Validator Report dated January 23, 2024	1293
<b>Volume 4</b>		
37.	Appendix “37” – Core Architects Inc.'s Construction Progress Report dated February 16, 2024 [Confidential]	1323
38.	Appendix “38” – MI Factum dated August 7, 2024	1487
39.	Appendix “39” – Summary of SKYGRiD Fees Chart	1495
40.	Appendix “40” – KDC Report dated August 21, 2024 [Confidential]	1497
41.	Appendix “41” – E-mail dated May 1, 2023	1506
42.	Appendix “42” – Correspondence dated October 5, 2023	1510
43.	Appendix “43” – Receivers’ letters to the Defaulting Purchasers dated May 1, 2024	1516
44.	Appendix “44” – Correspondence dated May 15, 2024	1531
45.	Appendix “45” – Marketing Agency Agreement with Magix Technologies LLC effective July 13, 2022	1534
46.	Appendix “46” – Correspondence re Senior Secured Lenders approved Magix	1546
47.	Appendix “47” – Listing Agreements with Royal LePage dated November 29, 2021 and March 11, 2022	1555
48.	Appendix “48” – Receiver’s calculation of the CM Fee overpayment to MI	1586
49.	Appendix “49” – Invoice from 1118741 Ontario Limited o/a Irpinia Kitchens dated February 2, 2023	1589
50.	Appendix “50” – Royal Bedrock Inc. invoices to SKYGRiD for the material required by the Project	1593
51.	Appendix “51” – Internal correspondence between MI employees relating to Royal Bedrock Inc.’s materials	1596
52.	Appendix “52” – Letter from MI to the Receiver dated May 29, 2024	1600

Tab	Document	Page No.
53.	Appendix “53” – Documents relating to payment of \$719,121.49 to MI	1603
3.	Notice of Dispute of Lien Claim and Referral for Determination dated October 18, 2024	1611

1

**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**

**NOTICE OF CROSS-MOTION  
(*Re: Payment Motion*)**

**TAKE NOTICE** that Alvarez & Marsal Canada Inc. in its capacity 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. (the “**Nominee**”), and Mizrahi Commercial (The One) GP Inc. (collectively, the “**Debtors**”), will make a motion to the Court on a date to be fixed at the court house at 330 University Avenue, Toronto, Ontario or by Zoom videoconference.

**THE MOTION IS FOR:**

1. A declaration that Mizrahi Inc. (“**MI**”) is not owed any further amounts by the Debtors or the Receiver;
2. an Order directing that MI pay to the Debtors \$9,539,853.71 for breach of contract;
3. an Order directing that MI pay the Debtors \$49,319,574.13 in respect of Labour Rates (as defined below) and applicable CM Fees (as defined below) that MI charged to the Debtors and was not entitled to charge;
4. an Order dismissing MI’s Lien Notice dated April 26, 2024 (the “**MI Lien Claim**”);
5. an Order directing MI to provide evidence that:
  - (a) 1118741 Ontario Limited o/a Irpinia Kitchens;
  - (b) Mar-Tec Woodworking Ltd.;
  - (c) Pereira Construction and Carpentry; and
  - (d) Royal Bedrock Inc. (together, the “**Contractors**”).

completed the work or supplied the materials, shown on the invoices submitted for payment by MI and paid by the Debtors;
6. an Order directing the Contractors to provide evidence with respect to all of the work they completed on the Project;
7. an Order sealing the Confidential Appendices to the Fifth Report of the Receiver;

8. costs of the motion; and
9. such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

10. In the motion brought by MI, the former developer and general contractor of the Project, MI seeks, among other things, an order directing the Receiver to pay MI fees and costs for labour and construction management services pursuant to the Receivership Order (the “**MI Payment Motion**”). In the MI Payment Motion, MI claims to be entitled to: (i) \$4,086,007.53 for the period from October 18, 2023 to February 22, 2024; and (ii) an unspecified amount for the period after February 22, 2024. The Receiver understands that MI claims to be owed approximately \$6.6 million as of May 31, 2024.<sup>1</sup>
11. MI is not entitled to any further payment from the Debtors for the following reasons:
  - (a) the MI Payment Motion is premised on the allegation that the Receivership Order requires the Receiver to continue the non-arm’s length payment practices used before the Receiver was appointed, but the Receivership Order imposes no such obligation;

---

<sup>1</sup> MI’s total claim, as of May 31, 2024, was for \$10.9 million. However, approximately \$4.3 million of this amount relates to claims by MI in respect of subcontractors who may claim against MI for unpaid invoices. The Receiver is addressing these claims directly with the relevant subcontractors.

- (b) the amount claimed by MI is not payable pursuant to any contract between the Debtors and MI, and MI has, in fact, been paid significantly more than it is contractually entitled to;
- (c) MI failed to fulfill its most fundamental obligations as general contractor of the Project, namely, its agreement to complete construction on the Project by December 31, 2022 for a total fixed price of \$583.2 million, plus HST; and
- (d) even if the Debtors owe MI anything (which the Receiver denies), MI owes the Debtors much more. MI received significant payments that it was not entitled to, and breached the contracts that governed its work on the Project.

#### **The MI Payment Motion and the MI Payment Practices**

12. The MI Payment Motion is founded on the assertion that the Receiver was required to pay MI using the same payment practices that Sam Mizrahi implemented when he controlled both MI and the Debtors (the “**MI Payment Practices**”). The MI Payment Practices involved paying MI, among other amounts:

- (a) a construction management fee (the “**CM Fee**”) equal to 5% of all hard costs incurred in connection with the Project; and
- (b) payments for time spent by staff hired by MI at rates (the “**Labour Rates**”) that significantly exceeded MI’s actual labour costs.

**The MI Payment Practices are not required by the Receivership Order**

13. MI alleges that paragraph 17 of the Receivership Order (“**Paragraph 17**”) required that the Receiver make payments based on “normal payment practices”, and that the MI Payment Practices constituted “normal payment practices” for the Project.
14. This is not what Paragraph 17 requires. Paragraph 17 exists for the *benefit* of the Receiver and the Project. It prohibits various parties from, among other things, discontinuing services required by the Receiver if certain conditions are met. MI did not try and discontinue its services, and the Receiver did not invoke Paragraph 17 to prevent MI from doing so. Paragraph 17 therefore has no application to MI, or to the MI Payment Motion.
15. More specifically, Paragraph 17 provides that all persons having agreements or mandates for the supply of goods and/or services to the Debtors and/or the Project are restrained from discontinuing the supply of such goods and/or services, provided that the normal prices or charges for such goods or services are paid by the Receiver in accordance with “normal payment practices”, such other practices as may be agreed with the Receiver, or as may be ordered by the Court. Payment based on one of these options is a condition to the Receiver enforcing the prohibition provided for in Paragraph 17, in effect permitting the Receiver to compel a supplier to continue providing services so long as it satisfies one of the conditions. Paragraph 17 does not, however, impose an independent payment obligation of any kind on the Receiver.



16. The Receiver did not pay MI for work done during the receivership based on the MI Payment Practices because it was under no obligation to do so. The Receiver paid MI on a different basis that it considered to be commercially reasonable in light of the services rendered by MI during this period, having regard for the need to continue advancing construction of the Project while the Receiver investigated various issues relating to the Project, including MI's performance as general contractor of the Project and the terms of the relevant contracts governing MI's various roles on the Project. If MI was not prepared to work on the Project in exchange for these payments, then it could have withdrawn its services and taken the position it was not subject to the prohibition in Paragraph 17. It did not do so.
17. While Paragraph 17 and its reference to "normal payment practices" is therefore irrelevant and inapplicable to the MI Payment Motion, even if it were, the Receiver does not agree that the MI Payment Practices were "normal". As described below, the MI Payment Practices were: (i) not authorized by any contract between MI and the Debtors; (ii) paid on a non-arm's length basis; and (iii) not commercially reasonable.

**The MI Payment Practices were not authorized by any contract between MI and the Debtors**

18. The relationship between MI and the Debtors was governed by a series of contracts involving MI, the Debtors, Coco (defined below), and Mizrahi (defined below). None of these contracts authorizes the MI Payment Practices.

19. The Debtors' contractual relationship with MI is relatively complicated because:  
(i) multiple contracts appear to have been in force at the same time; and (ii) the parties did not specifically state which contract took precedence.
20. The Receiver has concluded that MI is not contractually entitled to the amounts claimed in the MI Payment Motion and to significant sums that it charged the Debtors, both before and after the Receivership Order was entered.
21. **MI did not deliver the Project on or before December 31, 2022, for a total price of \$583.2 million, as it agreed to do.** MI entered into a CCDC2 Stipulated Price Contract dated May 14, 2019 with the Nominee (the "**GC Agreement**") that required MI to complete the Project by December 31, 2022, for a total fixed price of \$583.2 million (including all MI labour and third-party construction costs) (the "**Contract Price**"). MI did not fulfill its obligations under the GC Agreement, and the Project was not close to complete on December 31, 2022.
22. By the time MI's role on the Project had ended (i.e. March 13, 2024), MI had charged approximately 84% of the Contract Price to complete less than 50% of the Project. The Receiver now expects the total construction costs to complete the Project will significantly exceed the Contract Price with a Project completion date in the second half of 2027. MI's failure to complete the Project by December 31, 2022, has also caused a material increase to the Project's total soft costs and financing costs.

23. Leaving aside MI's obligations under the GC Agreement and its breach of those obligations, MI has been paid significantly more than it was ever entitled to, as further described below.
24. **MI was not entitled to charge the Labour Rates.** The Receiver has determined that there was no contractual basis for the Labour Rates that MI charged the Debtors. The GC Agreement specifically stated that the fixed price for the Project *included* the value for any labour provided by MI.
25. MI agreed to pay the Labour Rates to Clark Construction Management Inc. ("CCM", an experienced construction manager), pursuant to a CCDC 5A – 2010 Construction Management Contract dated July 2017 (the "**CCM Contract**") entered into between MI and CCM (the Debtors are not a party to the CCM Contract). On October 26, 2020, MI terminated the CCM Contract and purported to assign the CCM Contract to itself, which it could not do as that would create a contract between MI and itself.
26. More importantly, no agreement between MI and *the Debtors* authorized MI to charge the Labour Rates or required that the Debtors pay MI based on the Labour Rates.
27. **MI was only entitled to a 3.5% CM Fee, but charged a 5% CM Fee between August 2022 and March 2024.** The Receiver has concluded that, on the Appointment Date, MI was entitled to charge the Debtors a 3.5% CM Fee in accordance with the terms of a mediator's proposal dated November 19, 2019 agreed to by MI and Coco (as defined below) (the "**Mediator's Proposal**").

However, MI had continued charging a 5% CM Fee despite the fact that the agreement that authorized this higher fee expired in August 2022 (being the “Control Agreement” dated May 2021).

**The MI Payment Practices are not commercially reasonable**

28. The Receiver also concluded, after consulting with its advisors, that the MI Payment Practices were not commercially reasonable. Specifically, the Receiver concluded that MI charging a 5% CM Fee *and* Labour Rates (which included a very substantial embedded profit margin) significantly exceeded the amounts charged by other experienced construction managers for similar services. By way of example, SKYGRiD Construction Inc. (“SKYGRiD”), the construction manager hired by the Receiver to replace MI, has charged approximately \$1 million less per month than MI invoiced and has provided superior service in comparison to MI.

**MI’s performance on the Project did not justify above-market compensation.**

29. With the assistance of the experienced project manager that it retained to assist it, Knightsbridge Development Corporation (“KDC”), the Receiver assessed MI’s performance as general contractor of the Project. Based on this assessment, KDC and the Receiver identified that MI failed to implement a number of basic, industry standard procedures that are required to effectively manage a construction project of the nature and scale of the Project. Among other things, MI was unwilling or unable to produce reliable budgets or construction schedules and lacked basic procurement and site management procedures. These issues contributed to the significant difficulties faced by the Project.

### **Conclusion on the MI Payment Motion**

30. In summary, MI was significantly overpaid relative to the amounts that it was entitled to receive under the applicable contracts and the value of the services that it provided. The Receiver does not believe any further payment to MI is required or appropriate and the relief sought in the MI Payment Motion should be denied.
  
31. The MI Payment Motion seeks payment based solely on MI's incorrect interpretation of the terms of the Receivership Order. The Receiver's cross-motion seeks a declaration that no further payment is owed to MI under any agreement or the terms of the Receivership Order. The Receiver believes that the requested declaration is necessary to ensure that MI cannot claim fees from the Debtors on any basis and to provide certainty and finality with respect to MI's asserted claims as part of these proceedings.
  
32. MI served a Lien Notice dated April 26, 2024 (defined above as the "**MI Lien Claim**") asserting that it is entitled to a lien to secure, among other amounts, the amounts claimed on the MI Payment Motion. The Receiver concluded that no amounts were due to MI in respect of the MI Lien Claim, because no amounts are due to MI. By Notice of Dispute of Lien Claim and Referral for Determination, the Receiver referred the MI Lien Claim for determination together with the MI Payment Motion in accordance with the terms of the Lien Claims Resolution Order dated August 9, 2024.

**The Receiver has concluded that MI owes *the Debtors* significant amounts**

33. The Receiver has concluded that MI owes the Debtors approximately \$58.8 million.
34. As noted, the Receiver has concluded that MI had no contractual right to charge the Debtors for the Labour Rates. It made significant profits by charging approximately \$49.3 million (comprised of \$47.4 million in Labour Rates plus \$1.9 million in CM Fees that MI charged on the Labour Rates) to the Debtors, and the Receiver has concluded that MI is liable to return the amounts that it improperly charged.
35. The Receiver has also concluded that MI is liable to the Debtors for at least \$9,539,853.71 because it breached the contracts that governed its work on the Project, which is comprised as follows.

<b>Claim</b>	<b>Amount</b>
(i) Commissions that MI is obliged to return pursuant to the ELA (defined below)	\$1,816,012.85
(ii) Amounts paid to outside brokers in breach of the ELA	\$891,778.60
(iii) Reserve not held by MI in breach of the Mediator's Proposal	\$1,200,000.00
(iv) Marketing Fees improperly charged by MI	\$2,700,000.00
(v) CM Fees improperly charged by MI	\$2,932,062.26
<b>Total</b>	<b>\$ 9,539,853.71</b>

36. MI's breaches include the following:
- (a) Refusing to return sales commissions totaling approximately \$1.8 million after the underlying purchase agreements were terminated for purchaser

default. The Exclusive Listing Agreement dated July 12, 2017 (the “ELA”) between MI and the Debtors specifically requires that any commissions paid to MI in respect of a condominium unit must be returned to the Debtors if the condominium sale agreement is terminated for purchaser default. On May 13, 2024, the Receiver (on behalf of the Debtors) terminated several condominium sales agreements because the purchasers failed to pay the deposits they owed and, in many cases, had paid no deposit at all. MI was paid a commission in respect of all these sales, even those with no deposits paid. MI has refused to return commissions totaling \$1.8 million paid to it in respect of these transactions, in breach of the ELA;

- (b) MI is liable to the Debtors for approximately \$892,000 that it caused the Debtors to pay to third-party brokers in respect of commissions and other fees regarding condominium unit sales for which MI had also received commissions;
- (c) MI is also liable to the Debtors for \$1.2 million that it agreed to place in trust for the benefit of the Project. Under the terms of the Mediator’s Proposal, MI agreed to transfer the \$1.2 million it held as a reserve against a specific future potential liability to a trust fund or GIC. Such liability did not arise, and so the funds ought to have been returned and made available to the Project. MI has refused to provide these funds to the Receiver or explain what happened to them. MI’s failure to hold the funds in trust is a further breach of the Mediator’s Proposal;

- (d) MI is liable to the Debtors for marketing fees totaling \$2.7 million. Under the terms of the Mediator’s Proposal, MI was entitled to a 2% residential management fee (the “**Residential Management Fee**”) on the sale of condominium units. The fee was to provide *complete* compensation for MI’s marketing services, aside from the commissions owed under the ELA. Despite this agreement, MI now alleges that it is entitled to the Residential Management Fee *and* a monthly marketing fee of \$100,000 plus HST. The Receiver is not aware of any contract that authorized or required the payment of marketing fees to MI totaling \$100,000 per month. The unauthorized additional marketing fees totaled \$2.7 million; and
- (e) MI charged CM Fees to the Project that it was not entitled to, in the amount of approximately \$2.9 million. MI agreed to a 3.5% CM Fee as part of the Mediator’s Proposal. The parties agreed to increase the CM Fee to 5% in the Control Agreement, but the Control Agreement expired on August 30, 2022. MI should have charged a 3.5% CM Fee after August 30, 2022, but wrongly continued to charge a 5% CM Fee. MI breached the Mediator’s Proposal by charging fees that were not authorized.
37. In sum, the Receiver has concluded that the Debtors do not owe any further amounts to MI. To the contrary, as of the date of this Notice of Motion, MI owes at least \$58.8 million to the Debtors.



**Matters the Receiver continues to investigate**

38. In addition to the foregoing, the Receiver has reason to believe that MI submitted invoices (that were ultimately paid by the Debtors) for work that was not performed or material that was not supplied to the Project. Specifically, certain subcontractors have advised SKYGRiD that they did not do certain work or procure certain material shown on invoices submitted by MI and paid by the Debtors. In order to determine whether MI or the relevant subcontractors are liable for amounts that should not have been paid, the Receiver requires evidence about what work each relevant subcontractor performed or what material they supplied. The Receiver reserves the right to assert further claims after it has reviewed that evidence.
39. The provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, including sections 183 and 243(1)(c).
40. Section 14(1) of the *Bankruptcy and Insolvency General Rules*, CRC, c 368.
41. Section 101 of the *Courts of Justice Act*, R.S.O 1990, c. 43, as amended.
42. Rules 1.04, 1.05, 2.01, 2.03, 3.02, 16, 30, and 37 of the *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194, as amended.

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

43. The Fifth Report of the Receiver;

44. the Notice of Dispute of Lien Claim and Referral for Determination dated October 18, 2024;

45. the pleadings and proceedings herein; and

such further and other material as counsel may advise and as this Honourable Court may permit.

October 18, 2024

**Goodmans LLP**

Barristers & Solicitors

333 Bay Street, Suite 3400

Toronto, Canada M5H 2S7

**Brendan O'Neill** LSO# 43331J

boneill@goodmans.ca

**Christopher Armstrong** LSO# 55148B

carmstrong@goodmans.ca

**Mark Dunn** LSO# 55510L

mdunn@goodmans.ca

**Jennifer Linde** LSO# 86996A

jlinde@goodmans.ca

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

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

- and -

MIZRAHI COMMERCIAL (THE ONE)  
LP, MIZRAHI DEVELOPMENT GROUP  
(THE ONE) INC. et al

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

Applicant

Respondents

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

**NOTICE OF CROSS-MOTION**  
*(Re: Motion for Payment)*

**GOODMANS LLP**  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

**Brendan O'Neill** LSO# 43331J  
boneill@goodmans.ca

**Christopher Armstrong** LSO# 55148B  
carmstrong@goodmans.ca

**Mark Dunn** LSO# 55510L  
mdunn@goodmans.ca

**Jennifer Linde** LSO# 86996A  
jlinde@goodmans.ca

Tel: 416.979.2211  
Lawyers for the Receiver



2

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

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

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

Applicant

- and -

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

Respondents

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

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

**October 11, 2024**

## TABLE OF CONTENTS

1.0	INTRODUCTION.....	1
2.0	OVERVIEW AND PURPOSE OF THIS REPORT.....	1
3.0	RECEIVER’S REPORTS.....	12
4.0	TERMS OF REFERENCE AND DISCLAIMER .....	13
5.0	THE DEBTORS.....	15
6.0	THE PROJECT, MI AND MIZRAHI.....	15
7.0	PAYMENTS TO MI AND THE MI PAYMENT MOTION .....	17
8.0	THE RELATIONSHIP BETWEEN COCO, MIZRAHI, THE DEBTORS AND MI .....	27
9.0	TIMELINE OF RELEVANT CONTRACTS AND EVENTS.....	29
10.0	MI’S CONTRACTUAL ENTITLEMENT.....	47
11.0	MI’S WORK ON THE PROJECT .....	49
12.0	SKYGRID’S PERFORMANCE.....	58
13.0	THE DEBTORS’ CLAIMS AGAINST MI .....	65
14.0	ISSUES STILL UNDER INVESTIGATION BY THE RECEIVER.....	80
15.0	MI’S CLAIM FOR RESIDENTIAL MANAGEMENT FEES.....	83
16.0	CONFIDENTIALITY .....	85
17.0	CONCLUSION AND RECOMMENDATION .....	86

## SCHEDULES

Schedule “A”	–	Summary of Contracts Relevant to MI Payment Motion
Schedule “B”	–	Key Parties Referenced in the Fifth Report of the Receiver

## APPENDICES

Appendix “1”	–	Receivership Order dated October 18, 2023
Appendix “2”	–	Letter to Goodmans from MI dated June 14, 2024
Appendix “3”	–	Receiver’s Email dated November 26, 2023

<b>Appendix “4”</b>	–	Receiver’s Revised Analysis
<b>Appendix “5”</b>	–	October 2023 and November 2023 Payment Letters and covering emails
<b>Appendix “6”</b>	–	December 2023 Payment Letters and covering emails
<b>Appendix “7”</b>	–	Clark Construction Management Inc. Contract dated July 2017
<b>Appendix “8”</b>	–	E-mail sent by Mark Kilfoyle (MI’s CFO) to Jenny Coco on November 9, 2017 and Jenny Coco’s responding e-mail sent to Mark Kilfoyle
<b>Appendix “9”</b>	–	GC Agreement dated May 14, 2019
<b>Appendix “10”</b>	–	Altus Preliminary Report No. 1 as at July 31, 2019 <b>[Confidential]</b>
<b>Appendix “11”</b>	–	Mediator’s Proposal dated November 26, 2019
<b>Appendix “12”</b>	–	E-mail exchange dated February 28, 2020
<b>Appendix “13”</b>	–	CCM Termination Notice dated October 26, 2020
<b>Appendix “14”</b>	–	Email from Sam Mizrahi to Mike Clark dated May 18, 2020
<b>Appendix “15”</b>	–	Email from Sam Mizrahi to Jenny Coco dated October 26, 2020
<b>Appendix “16”</b>	–	Written Submissions from Coco dated November 6, 2020
<b>Appendix “17”</b>	–	Responding Written Submissions from Mizrahi dated November 9, 2020
<b>Appendix “18”</b>	–	Payment Listing requesting Funds re: Senior Secured Lenders dated January 2021
<b>Appendix “19”</b>	–	Example of an MI Staff Invoice <b>[Confidential]</b>
<b>Appendix “20”</b>	–	Control Agreement dated May 2021
<b>Appendix “21”</b>	–	Amendment to the GC Agreement dated May 4, 2022
<b>Appendix “22”</b>	–	E-mail from MI to Altus sending the Unilateral Amendment dated August 28, 2023
<b>Appendix “23”</b>	–	Arbitration Award dated June 24, 2023
<b>Appendix “24”</b>	–	Control Resolution dated August 6, 2022



<b>Appendix “25”</b>	–	Excerpts from the Payment Listings from August 2022 to September 2023
<b>Appendix “26”</b>	–	Cost to Date Report No. 1 as of March 12, 2024 <b>[Confidential]</b>
<b>Appendix “27”</b>	–	Project Budget and Cost to Complete <b>[Confidential]</b>
<b>Appendix “28”</b>	–	Preliminary Schedule <b>[Confidential]</b>
<b>Appendix “29”</b>	–	Summary of KDC’s Relevant Experience
<b>Appendix “30”</b>	–	Issues Log from KDC
<b>Appendix “31”</b>	–	Excerpts from the Altus Reports <b>[Confidential]</b>
<b>Appendix “32”</b>	–	MI’s Monthly Construction Management Report for October 2023
<b>Appendix “33”</b>	–	Report by KDC dated December 31, 2023 <b>[Confidential]</b>
<b>Appendix “34”</b>	–	Memo to File - MI CM Issues dated January 2, 2024 <b>[Confidential]</b>
<b>Appendix “35”</b>	–	KDC Memo regarding Outstanding MI Deliverables dated January 18, 2024
<b>Appendix “36”</b>	–	Altus' Schedule Validator Report dated January 23, 2024
<b>Appendix “37”</b>	–	Core Architects Inc.'s Construction Progress Report dated February 16, 2024 <b>[Confidential]</b>
<b>Appendix “38”</b>	–	MI Factum dated August 7, 2024
<b>Appendix “39”</b>	–	Summary of SKYGRiD Fees Chart
<b>Appendix “40”</b>	–	KDC Report dated August 21, 2024 <b>[Confidential]</b>
<b>Appendix “41”</b>	–	E-mail dated May 1, 2023
<b>Appendix “42”</b>	–	Correspondence dated October 5, 2023
<b>Appendix “43”</b>	–	Receivers’ letters to the Defaulting Purchasers dated May 1, 2024
<b>Appendix “44”</b>	–	Correspondence dated May 15, 2024
<b>Appendix “45”</b>	–	Marketing Agency Agreement with Magix Technologies LLC effective July 13, 2022

<b>Appendix “46”</b>	–	Correspondence re Senior Secured Lenders approved Magix
<b>Appendix “47”</b>	–	Listing Agreements with Royal LePage dated November 29, 2021 and March 11, 2022
<b>Appendix “48”</b>	–	Receiver’s calculation of the CM Fee overpayment to MI
<b>Appendix “49”</b>	–	Invoice from 1118741 Ontario Limited o/a Irpinia Kitchens dated February 2, 2023
<b>Appendix “50”</b>	–	Royal Bedrock Inc. invoices to SKYGRiD for the material required by the Project
<b>Appendix “51”</b>	–	Internal correspondence between MI employees relating to Royal Bedrock Inc.’s materials
<b>Appendix “52”</b>	–	Letter from MI to the Receiver dated May 29, 2024
<b>Appendix “53”</b>	–	Documents relating to payment of \$719,121.49 to MI

## 1.0 INTRODUCTION

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

1.2 A copy of the Receivership Order is attached hereto as **Appendix “1”**.

## 2.0 OVERVIEW AND PURPOSE OF THIS REPORT

### *(i) Purpose of the Report*

2.1 This fifth report (the “**Fifth Report**”) has been prepared for two purposes:

- (i) to provide the Court with information and evidence regarding the relief sought in the motion brought by Mizrahi Inc. (“**MI**”), the former developer and general contractor of the Project, seeking, among other things, an order directing the

---

<sup>1</sup> The Debtors are referred to collectively in this report, for convenience.

Receiver to pay MI fees and costs for labour and construction management services pursuant to the Receivership Order (the “**MI Payment Motion**”), and to set out the factual basis for the Receiver’s opposition thereto; and

- (ii) to provide evidentiary support for the Receiver’s cross-motion seeking, among other things, a declaration that no further amounts are owed to MI and granting judgment against MI for the amounts that MI owes to the Debtors, which amounts are particularized below.

**(ii) The Receiver’s position**

2.2 In the MI Payment Motion, MI claims to be entitled to: (i) \$4,086,007.53 for the period from October 18, 2023 to February 22, 2024; and (ii) an unspecified amount for the period after February 22, 2024. The Receiver understands that MI subsequently revised its claim amount to approximately \$6.6 million as of May 31, 2024.<sup>2</sup>

2.3 The Receiver’s position is that MI is not entitled to any further payment from the Debtors for the following reasons:

- (i) the MI Payment Motion is premised on the allegation that the Receivership Order requires the Receiver to continue the non-arm’s length payment practices used before the Receiver was appointed, but the Receivership Order imposes no such obligation;

---

<sup>2</sup> MI’s total claim, as of May 31, 2024, was for \$10.9 million. However, approximately \$4.3 million of this amount relates to claims by MI in respect of subcontractors who may claim against MI for unpaid invoices. The Receiver is addressing these claims directly with the relevant subcontractors.

- (ii) the amount claimed by MI is not payable pursuant to any contract between the Debtors and MI, and MI has, in fact, been paid significantly more than it is contractually entitled to;
- (iii) MI failed to fulfill its most fundamental obligations as general contractor of the Project, namely, its agreement to complete construction on the Project by December 31, 2022 for a total fixed price of \$583.2 million plus HST; and
- (iv) even if the Debtors owe MI anything (which the Receiver denies), MI owes the Debtors much more. MI received significant payments that it was not entitled to, and breached the contracts that governed its work on the Project.

**(iii) *The MI Payment Motion and the MI Payment Practices***

2.4 The MI Payment Motion is founded on the assertion that the Receiver was required to pay MI using the same payment practices that Sam Mizrahi (“**Sam**”) implemented when he controlled both MI and the Debtors (the “**MI Payment Practices**”). The MI Payment Practices involved paying MI, among other amounts:

- (i) a construction management fee (the “**CM Fee**”) equal to 5% of all hard costs incurred in connection with the Project; and
- (ii) payments for time spent by staff hired by MI at rates (the “**Labour Rates**”) that significantly exceeded MI’s actual labour costs (the “**Labour Costs**”).

**(iv) The MI Payment Practices are not required by the Receivership Order**

2.5 MI alleges that paragraph 17 of the Receivership Order (“**Paragraph 17**”) required that the Receiver make payments based on “normal payment practices”, and that the MI Payment Practices constituted “normal payment practices” for the Project.

2.6 This is not what Paragraph 17 requires. Paragraph 17 exists for the *benefit* of the Receiver and the Project. It prohibits various parties from, among other things, discontinuing services required by the Receiver if certain conditions are met. MI did not try and discontinue its services, and the Receiver did not invoke Paragraph 17 to prevent MI from doing so. Paragraph 17 therefore has no application to MI, or to the MI Payment Motion.

2.7 More specifically, Paragraph 17 provides that all persons having agreements or mandates for the supply of goods and/or services to the Debtors and/or the Project are restrained from discontinuing the supply of such goods and/or services, provided that the “normal prices or charges” for such goods or services are paid by the Receiver in accordance with “normal payment practices”, such other practices as may be agreed with the Receiver, or as may be ordered by the Court. Payment based on one of these options is a condition to the Receiver enforcing the prohibition provided for in Paragraph 17, in effect permitting the Receiver to compel a supplier to continue providing services so long as it satisfies one of the conditions. Paragraph 17 does not, however, impose an independent payment obligation of any kind on the Receiver.

2.8 The Receiver did not pay MI for work done during the receivership based on the MI Payment Practices because it was under no obligation to do so. The Receiver paid MI on a different basis that it considered to be commercially reasonable in light of the services

rendered by MI during this period, having regard for the need to continue advancing construction of the Project while the Receiver investigated various issues relating to the Project, including MI's performance as general contractor of the Project and the terms of the relevant contracts governing MI's various roles on the Project. If MI was not prepared to work on the Project in exchange for these payments, then it could have withdrawn its services and taken the position it was not subject to the prohibition in Paragraph 17. It did not do so.

- 2.9 While Paragraph 17 and its reference to "normal payment practices" is therefore irrelevant and inapplicable to the MI Payment Motion, even if it were, the Receiver does not agree that the MI Payment Practices were "normal". As described below, the MI Payment Practices were: (i) not authorized by any contract between MI and the Debtors; (ii) paid on a non-arm's length basis; and (iii) not commercially reasonable.

(v) ***The MI Payment Practices were not authorized by any contract between MI and the Debtors***

- 2.10 The relationship between MI and the Debtors was governed by a series of contracts involving MI, the Debtors, Coco (defined below), and Mizrahi (defined below). None of these contracts authorizes the MI Payment Practices.

- 2.11 The Debtors' contractual relationship with MI is relatively complicated because: (i) multiple contracts appear to have been in force at the same time; and (ii) the parties did not specifically state which contract took precedence. The key contracts that governed MI's relationship with the Debtors are summarized at **Schedule "A"** and in this section.

- 2.12 The Receiver has concluded that MI is not contractually entitled to the amounts claimed in the MI Payment Motion and to significant sums that it charged the Debtors, both before and after the Receivership Order was entered.
- 2.13 **MI did not deliver the Project on or before December 31, 2022 for a total price of \$583.2 million, as it agreed to do.** MI entered into a CCDC2 Stipulated Price Contract dated May 14, 2019 with the Nominee (the “GC Agreement”) that required MI to complete the Project by December 31, 2022 for a total fixed price of \$583.2 million (including all MI labour and third-party construction costs). MI did not fulfill its obligations under the GC Agreement, and the Project was not close to complete on December 31, 2022.
- 2.14 By the time MI’s role on the Project had ended (i.e., March 13, 2024), MI had charged approximately 84% of the Contract Price (defined below) to complete less than 50% of the Project.<sup>3</sup> The Receiver now expects the total construction costs to complete the Project [REDACTED] [REDACTED] with a Project completion date in the second half of 2027. MI’s failure to complete the Project by December 31, 2022, has also caused a material increase to the Project’s total soft costs and financing costs.
- 2.15 Leaving aside MI’s obligations under the GC Agreement and its breach of those obligations, MI has been paid significantly more than it was ever entitled to, as further described below.

---

<sup>3</sup> Based on an updated Project budget prepared by Finnegan Marshall (defined below) on June 10, 2024, approximately 49% of the Project’s construction was complete as at the Effective Date (defined below).



- 2.16 **MI was not entitled to charge the Labour Rates.** The Receiver has determined that there was no contractual basis for the Labour Rates that MI charged the Debtors – separate fees that MI was not contractually entitled to charge. The GC Agreement specifically stated that the fixed price for the Project *included* the value for any labour provided by MI.
- 2.17 MI agreed to pay the Labour Rates to Clark Construction Management Inc. (“**CCM**”), an experienced construction manager, pursuant to a CCDC 5A – 2010 Construction Management Contract dated July 2017 (the “**CCM Contract**”) entered into between MI and CCM (the Debtors are not a party to the CCM Contract). On October 26, 2020, MI terminated the CCM Contract and purported to assign the CCM Contract to itself, which it could not do as that would create a contract between MI and itself.
- 2.18 More importantly, no agreement between MI and *the Debtors* authorized MI to charge the Labour Rates or required that the Debtors pay MI based on the Labour Rates.
- 2.19 **MI was only entitled to a 3.5% CM Fee, but charged a 5% CM Fee between August 2022 and March 2024.** The Receiver has concluded that, on the Appointment Date, MI was entitled to charge the Debtors a 3.5% CM Fee in accordance with the terms of a mediator’s proposal dated November 19, 2019 agreed to by MI and Coco (as defined below) (the “**Mediator’s Proposal**”). However, MI had continued charging a 5% CM Fee despite the fact that the agreement that authorized this higher fee expired on August 30, 2022 (the “**Control Agreement**” dated May 2021).

**(vi) *The MI Payment Practices are not commercially reasonable***

2.20 The Receiver also concluded, after consulting with its advisors, that the MI Payment Practices were not commercially reasonable. Specifically, the Receiver concluded that MI charging a 5% CM Fee *and* Labour Rates (which included a very substantial embedded profit margin) significantly exceeded the amounts charged by other experienced construction managers for similar services. By way of example, SKYGRiD Construction Inc. (“**SKYGRiD**”), the construction manager hired by the Receiver to replace MI, has charged approximately \$1 million less per month than MI invoiced and has provided superior service in comparison to MI.

**(vii) *MI’s performance on the Project did not justify above-market compensation.***

2.21 With the assistance of the experienced project manager that it retained to assist it, Knightsbridge Development Corporation (“**KDC**”), the Receiver assessed MI’s performance as general contractor of the Project. Based on this assessment, KDC and the Receiver identified that MI failed to implement a number of basic, industry standard procedures that are required to effectively manage a construction project of the nature and scale of the Project. Among other things, MI was unwilling or unable to produce reliable budgets or construction schedules and lacked basic procurement and site management procedures. These issues, and others noted below, contributed to the significant difficulties faced by the Project.

**(viii) *Conclusion on the MI Payment Motion.***

2.22 In summary, MI was significantly overpaid relative to the amounts that it was entitled to receive under the applicable contracts and the value of the services that it provided. The

Receiver does not believe any further payment to MI is required or appropriate and the relief sought in the MI Payment Motion should be denied.

- 2.23 The MI Payment Motion seeks payment based solely on MI's incorrect interpretation of the terms of the Receivership Order. The Receiver's cross-motion seeks a declaration that no further payment is owed to MI under any agreement or the terms of the Receivership Order. The Receiver believes that the requested declaration is necessary to ensure that MI cannot claim fees from the Debtors on any basis and to provide certainty and finality with respect to MI's asserted claims as part of these proceedings.

***(ix) The Receiver has concluded that MI owes the Debtors significant amounts***

- 2.24 The Receiver has concluded that MI owes the Debtors approximately \$58.8 million.

- 2.25 As noted, the Receiver has concluded that MI had no contractual right to charge the Debtors for the Labour Rates. It made significant profits by charging approximately \$49.3 million (comprised of \$47.4 million in Labour Rates plus \$1.9 million in CM Fees that MI charged on the Labour Rates)<sup>4</sup> to the Debtors, and the Receiver has concluded that MI is liable to return the amounts that it improperly charged.

- 2.26 The Receiver has also concluded that MI is liable to the Debtors for at least \$9,539,853.71 because it breached the contracts that governed its work on the Project.

---

<sup>4</sup> MI had a significant mark-up embedded in the Labour Rates and then also charged a 5% CM Fee on the Labour Rates.

Claim	Amount
(i) Commissions that MI is obliged to return pursuant to the ELA (defined below)	\$1,816,012.85
(ii) Amounts paid to outside brokers in breach of the ELA	\$891,778.60
(iii) Reserve not held by MI in breach of the Mediator's Proposal	\$1,200,000.00
(iv) Marketing Fees improperly charged by MI	\$2,700,000.00
(v) CM Fees improperly charged by MI	\$2,932,062.26
<b>Total</b>	<b>\$ 9,539,853.71</b>

2.27 MI's breaches include the following:

- (i) Refusing to return sales commissions totaling approximately \$1.8 million after the underlying purchase agreements were terminated for purchaser default. The Exclusive Listing Agreement dated July 12, 2017 (the "ELA") between MI and the Debtors specifically requires that any commissions paid to MI in respect of a condominium unit must be returned to the Debtors if the condominium sale agreement is terminated for purchaser default. On May 13, 2024, the Receiver (on behalf of the Debtors) terminated several condominium sales agreements because the purchasers failed to pay the deposits they owed and, in many cases, had paid no deposit at all. MI was paid a commission in respect of all these sales, even those with no deposits paid. MI has refused to return commissions totaling \$1.8 million paid to it in respect of these transactions, in breach of the ELA;
- (ii) MI is liable to the Debtors for approximately \$892,000 that it caused the Debtors to pay to third-party brokers in respect of commissions and other fees regarding condominium unit sales for which MI had also received commissions;

- (iii) MI is also liable to the Debtors for \$1.2 million that it agreed to place in trust for the benefit of the Project. Under the terms of the Mediator's Proposal, MI agreed to transfer the \$1.2 million it held as a reserve against a specific future potential liability to a trust fund or GIC. Such liability did not arise, and so the funds ought to have been returned and made available to the Project. MI has refused to provide these funds to the Receiver or explain what happened to them. MI's failure to hold the funds in trust is a further breach of the Mediator's Proposal;
- (iv) MI is liable to the Debtors for marketing fees totaling \$2.7 million. Under the terms of the Mediator's Proposal, MI was entitled to a Residential Management Fee (as defined below) on the sale of condominium units. The fee was to provide *complete* compensation for MI's marketing services, aside from the commissions owed under the ELA. Despite this agreement, MI now alleges that it is entitled to the Residential Management Fee *and* a monthly marketing fee of \$100,000 plus HST. The Receiver is not aware of any contract that authorized or required the payment of marketing fees to MI totaling \$100,000 per month. The unauthorized additional marketing fees totaled \$2.7 million; and
- (v) MI charged CM Fees to the Project that it was not entitled to, in the amount of approximately \$2.9 million. MI agreed to a 3.5% CM Fee as part of the Mediator's Proposal. The parties agreed to increase the CM Fee to 5% in the Control Agreement, but the Control Agreement expired on August 30, 2022. MI should have charged a 3.5% CM Fee after August 30, 2022, but wrongly continued to charge a 5% CM Fee. MI breached the Mediator's Proposal by charging fees that were not authorized.

2.28 In sum, and as set out in detail below, the Receiver has concluded that the Debtors do not owe any further amounts to MI. To the contrary, as of the date of this Fifth Report, MI owes at least \$58.8 million to the Debtors.

**(x) *Matters the Receiver continues to investigate***

2.29 In addition to the foregoing, the Receiver has reason to believe that MI submitted invoices (that were ultimately paid by the Debtors) for work that was not performed or material that was not supplied to the Project. Specifically, certain subcontractors have advised SKYGRiD that they did not do certain work or procure certain material shown on invoices submitted by MI and paid by the Debtors. In order to determine whether MI or the relevant subcontractors are liable for amounts that should not have been paid, the Receiver requires evidence about what work each relevant subcontractor performed or what material they supplied. The Receiver's cross-motion includes a request that MI and the relevant subcontractors provide this evidence, and the Receiver reserves the right to assert further claims after it has reviewed that evidence.

**3.0 RECEIVER'S REPORTS**

3.1 The Receiver has filed seven reports to date, outlining its activities in respect of the Receivership:

- (i) the First Report dated February 26, 2024, and a Supplemental Report to the First Report dated March 6, 2024;
- (ii) the Second Report dated May 28, 2024;

(iii) The Third Report dated June 21, 2024, the Supplemental Report to the Third Report of the Receiver dated July 11, 2024, and the Second Supplemental Report to the Third Report of the Receiver dated August 7, 2024; and,

(iv) The Fourth Report dated July 29, 2024.

3.2 Additional details regarding the Debtors and the Project, including an overview of the circumstances leading to the appointment of the Receiver, are contained in the application record dated October 17, 2023, of the Debtors' senior secured lenders, KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 301 and of IGIS Global Private Placement Real Estate Fund No. 434 (collectively, the "**Senior Secured Lenders**").

3.3 The Receiver's reports and other 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](http://www.alvarezandmarsal.com/theone).

#### **4.0 TERMS OF REFERENCE AND DISCLAIMER**

4.1 In preparing this Fifth Report, the Receiver has obtained and relied upon bank account statements, cash receipts and disbursements, journal reports, as well as various other financial records from MI; electronic records, including e-mails, relating to the Project; certain payment applications and related documents provided by the Senior Secured Lenders; unaudited financial information, books and records, and other documents of the Debtors; and has held discussions with, and been provided with certain additional

information from, management and employees of MI, Coco, Coco International Inc., KDC and SKYGRiD (collectively, the “**Information**”).

- 4.2 The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.
- 4.3 This Fifth Report has been prepared to provide the Court with further information regarding the relief sought in the MI Payment Motion returnable on a date to be fixed by the Court and the Receiver’s cross-motion. Accordingly, the reader is cautioned that this Fifth 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 Fifth Report.
- 4.4 In this Fifth Report, the Receiver has referenced certain conclusions that it reached based on advice from counsel. Neither these references, nor any other statement in this Fifth Report constitutes a waiver of privilege.
- 4.5 Unless otherwise stated, all monetary amounts contained in this Fifth Report are expressed in Canadian dollars.



## 5.0 THE DEBTORS

5.1 The Debtors are comprised of the following entities: (i) the Beneficial Owner, an Ontario-based limited partnership formed to undertake the development of the Project; (ii) GP Inc., the Beneficial Owner's sole general partner, incorporated under the laws of Ontario; and (iii) the Nominee, a corporation incorporated under the laws of Ontario that is wholly owned by GP Inc. The Nominee is the registered owner of One Bloor as bare trustee on behalf of the Beneficial Owner.

5.2 Sam owns an indirect 50% equity interest in the Beneficial Owner through Sam M Inc. (together with Sam, "**Mizrahi**"). Jenny Coco ("**Jenny**") and Rocky Coco ("**Rocky**") own the other 50% equity interest in the Beneficial Owner through 8891303 Ontario Inc. (together with Jenny and Rocky, "**Coco**"). Sam and Jenny were directors of GP Inc. until the Receiver was appointed.<sup>5</sup>

5.3 A schedule outlining the key individuals and entities relevant to the MI Payment Motion is attached hereto as **Schedule "B"**.

## 6.0 THE PROJECT, MI AND MIZRAHI

6.1 MI is owned (directly or indirectly) and controlled by Sam. Sam and MI have had effective control over the Project from its inception in 2014 to the appointment of the Receiver on October 18, 2023. According to the Project's marketing website, the Project is "the singular vision of Sam Mizrahi".

---

<sup>5</sup> Sam resigned as a director of GP Inc. shortly before the Appointment Date. The current directors of GP Inc. are Jenny Coco and Amanda Brown (who is an employee of MI).

6.2 Once completed, the Project will be among Canada’s tallest residential buildings. It is comprised of 85 floors, including 641,796 square feet of residential space and 188,952 square feet of commercial space. As initially envisioned by Sam, it was to include a luxury hotel, 416 residential condominium units and high-end retail spaces. The Project was marketed as a luxury development, with the top 23 floors to be comprised of ultra high-end units marketed as the “Limited Collection”.

6.3 MI had little or no prior experience developing, marketing or building real estate that approaches the size, scope and complexity of the Project. A summary of MI’s projects, based on publicly available information and marketing information provided by MI to the Receiver, is summarized below:

Project	Description	Status
Lytton Park	12 townhouse development in mid-town Toronto.	Completed.
133 Hazelton Avenue	9 floor, 36 suite mid-rise condominium in Yorkville.	Completed.
128 Hazelton Avenue	9 floor, 19 suite mid-rise development involving 20 condominiums in Yorkville.	Construction completed; receiver appointed over remaining units.
181 Davenport Avenue	12 floor, 68 suite mid-rise condominium in Yorkville.	Construction completed; receiver appointed over remaining property.
180 Steeles Avenue West	Six buildings, 5.5 acres, master plan community redevelopment.	Pre-development stage; receiver appointed over equity interests in the property.

Project	Description	Status
1451 Wellington Street	12 floor, 93 suite mid-rise condominium in the west end of Ottawa.	Under construction.

## 7.0 PAYMENTS TO MI AND THE MI PAYMENT MOTION

### (i) *The MI Payment Motion*

- 7.1 As further described in the First Report, MI continued to work as the general contractor of the Project for approximately five months after the Receiver was appointed. The Receiver issued a disclaimer notice to MI on February 26, 2024, in accordance with the terms of the Receivership Order, with such disclaimer becoming effective on March 13, 2024 (the “**Effective Date**”). MI’s role as developer and general contractor of the Project ended on the Effective Date. The rationale for the disclaimer was described in the First Report and included concerns regarding MI’s performance on the Project and its ability to work constructively with the Receiver, as well as the Receiver’s view that the disclaimer was more likely to facilitate a successful SISP.
- 7.2 On February 26, 2024, MI served the MI Payment Motion seeking to compel payment by the Receiver of: (i) \$4,086,007.53 for the period from October 18, 2023 to February 22, 2024; and (ii) an unspecified amount for the period after February 22, 2024.
- 7.3 The amount sought in the MI Payment Motion has varied since the MI Payment Motion was served. The Receiver understands that MI claims to be owed approximately \$10.9 million as of May 31, 2024.

7.4 The amount claimed by MI in its letter to the Receiver dated June 14, 2024 (and setting out MI's claim as of May 31, 2024) and attached as **Appendix "2"** includes approximately \$4.3 million claimed by third-party subcontractors that could potentially seek payment from MI. The Receiver is in the process of addressing these third-party claims, either consensually or through the dispute resolution process approved by this Court in the Lien Claims Resolution Order dated August 9, 2024.

7.5 Based on the foregoing, the Receiver understands that MI claims that it is entitled to \$6,350,762 for its own services (the "**MI Claimed Amount**"). As described further below, the MI Claimed Amount is comprised primarily of the profit component of the Labour Rates charged by MI for MI staff working on the Project (which is in addition to the profits made by MI on the CM Fee it charged to the Debtors).<sup>6</sup>

7.6 MI also claims that it is entitled to interest on the MI Claimed Amount at rates specified in the GC Agreement. The Receiver does not agree, for the reasons explained below.

**(ii) *The MI Payment Practices***

7.7 Upon its appointment, the Receiver conducted a comprehensive review and examination of the payments made to MI in its role as general contractor of the Project during the period from October 1, 2022 to September 30, 2023 (the "**Pre-Appointment Period**"). Based on this analysis, the Receiver concluded that during the Pre-Appointment Period, on a monthly basis, MI issued an invoice to the Project for, among other things, the following:

---

<sup>6</sup> As described below, the Receiver reimbursed MI for the labour costs that it actually incurred after the Appointment Date. The Receiver subsequently concluded that MI had no contractual right to this reimbursement.

- (i) costs in respect of subcontractors working on the Project (the “**Hard Costs**”);
- (ii) out-of-pocket recoverable costs, including various equipment rentals, storage, materials, and other third-party costs (the “**Recoverable Costs**”);
- (iii) the Labour Rates, which included two components: (a) the Labour Costs; and (b) a substantial mark-up on the Labour Costs (the “**Labour Profits**”). MI’s labour included its senior staff (including, for example, its project director, VP Construction, and Director of Construction) and its project managers, supervisors and site labour (including, for example, its general labourers, security staff and traffic control personnel);
- (iv) a marketing fee of \$100,000 per month for “creative design management coordination - new marketing development program” (the “**Monthly Marketing Fee**”); and
- (v) a 5% CM Fee on the sum of (i) Hard Costs, (ii) Recoverable Costs, and (iii) Labour Rates.

7.8 Based on the Receiver’s review of the Debtors’ books and records, during the Pre-Appointment Period, the Debtors paid \$25.2 million (excluding amounts paid to third-party subcontractors) to MI in its capacity as general contractor of the Project, which is comprised of the following amounts:

- (i) CM Fees totaling approximately \$6.3 million (exclusive of HST); and
- (ii) Labour Rates totaling \$18.9 million (exclusive of HST).

**(iii) The Project has been highly lucrative for MI**

7.9 As part of its assessment of MI's fees, the Receiver tried to ascertain how much profit MI had made from the Project in the Pre-Appointment Period. MI provided a calculation on or about November 20, 2023 (the "**MI Calculation**") that showed that it had made a profit of \$2.6 million during the 12-month period from November 1, 2022 to October 31, 2023. The Receiver reviewed the MI Calculation and concluded that: (i) MI had improperly included certain costs allegedly incurred to perform work on the Project; and (ii) MI had improperly excluded substantial revenue and other receipts it was paid in respect of the Project. Both errors had the effect of reducing the profit MI claimed to have made from the Project.

7.10 In particular, MI improperly included as costs:

- (i) a placeholder for a \$1 million payment to Sam personally;
- (ii) \$3.2 million in legal fees primarily related to Mizrahi's dispute with Coco and the receivership of another Mizrahi project;
- (iii) donations made to a variety of causes with no apparent connection to the Project;
- (iv) entertainment and travel costs with no apparent relation to the Project, including the cost of renting a private jet for unspecified travel; and
- (v) costs for staff with no known connection to the Project

(collectively, the "**MI Cost Errors**").

7.11 In addition, MI neglected to include as revenues:

- (i) the income generated from CM Fees in respect of the Project;
  - (ii) cash inflows from HST refunds (i.e., MI showed HST payments as costs but did not include the HST refunds received in respect of the same payments); and
  - (iii) the income generated from the Monthly Marketing Fee
- (together with the MI Cost Errors, the “**MI Calculation Errors**”).

7.12 The Receiver revised the MI Calculation to adjust for the MI Calculation Errors. Based on the Receiver’s adjusted calculation, the Receiver reached an initial conclusion that MI had made an estimated profit of approximately \$9.5 million. The Receiver’s e-mail communicating this conclusion to MI is attached at **Appendix “3”**.

7.13 The Receiver subsequently conducted a further revised analysis and determined that MI earned an estimated profit from the Project totaling approximately \$13.1 million during the Pre-Appointment Period. The Receiver’s revised analysis is set out in **Appendix “4”**.

**(iv) *Payments to MI during the Receivership***

7.14 The Receiver, with counsel’s assistance, reviewed the contracts between MI and the Debtors and determined that those contracts did not authorize the MI Payment Practices. In addition, the Receiver consulted with KDC and was advised that MI had been paid above-market fees for its work on the Project in the period prior to the Receivership.

7.15 In November 2023, the Receiver advised MI that it was not prepared to pay MI based on the MI Payment Practices, which it had determined were not commercially reasonable or

contractually required. At the same time, it was important to ensure that construction continued on the Project. Specifically, the Receiver determined that it was not appropriate to pay MI for the Labour Rates (i.e., inclusive of the embedded Labour Profits) as well as paying a 5% CM Fee on the Hard Costs, Recoverable Costs, and Labour Rates.

7.16 Accordingly, during the period between the Appointment Date and the Effective Date, the Receiver paid the following amounts to MI (or to subcontractors on behalf of MI):

- (i) Hard Costs;
- (ii) Recoverable Costs;
- (iii) Labour Costs (as opposed to the Labour Rates that MI invoiced for); and
- (iv) a 5% CM Fee on the sum of (a) Hard Costs, (b) Recoverable Costs, and (c) Labour Costs.

7.17 The Receiver's refusal to pay the Labour Profits (the profit embedded in the Labour Rates) resulted in a monthly reduction of approximately \$1 million relative to the amounts claimed by MI in the general contractor invoices submitted to the Receiver.

7.18 In or around January 2024, the Senior Secured Lenders retained Finnegan Marshall Inc. ("**Finnegan Marshall**"), a leading real estate and development cost consulting firm in Toronto.<sup>7</sup> As such, the Receiver began consulting with Finnegan Marshall, who also concluded that the MI Payment Practices were not consistent with market rates.

---

<sup>7</sup> Finnegan Marshall subsequently replaced Altus (defined below) as the Project's cost consultant in February 2024.



7.19 At the outset of its mandate, the Receiver was primarily focused on ensuring that construction continued to progress in order to maximize value for all stakeholders. Its decision to pay MI the amounts described above was not based on a conclusion that MI was legally entitled to those amounts. The Receiver made these payments (including the Labour Costs) as an interim measure and without affirming any contract between MI and the Debtors or admitting that any specific amount was owed to MI. As described below, the Receiver has now concluded that MI has been significantly overpaid.

*(v) The Payment Dispute*

7.20 MI did not agree with the Receiver's position with respect to the MI Payment Practices. MI asserts that the MI Payment Practices were reasonable, properly authorized by the Debtors, and binding on the Receiver. Despite this position and notwithstanding that the Receiver did not make payments in accordance with the MI Payment Practices, MI continued to work on the Project and never withdrew (or tried to withdraw) its services.

7.21 As a result, the Receiver and MI continued to disagree on, among other things, the appropriate amount required to be paid to MI in respect of its role as general contractor of the Project in the post-receivership period (the "**Payment Dispute**").

*(vi) The Payment Letters*

7.22 When it made payments to MI, the Receiver required that MI execute a form of payment letter (the "**Payment Letter**") pursuant to which MI acknowledged and agreed that the Receiver was making the monthly payment, and that MI would undertake to use the funding provided pursuant to the Payment Letter to make payment to the specified trades,

MI staff, and other service providers who had completed work on the Project in the relevant period. Copies of the October 2023 and November 2023 Payment Letters (for September 2023 and October 2023 costs, respectively) and related covering emails are attached hereto as **Appendix “5”** by way of example.

- 7.23 In late December 2023, the Receiver determined that it was appropriate to modify the form of Payment Letter to include certain additional terms. Although MI signed the revised Payment Letter, shortly following its execution, Sam advised the Receiver that he was not aware of the changes to the form of Payment Letter when he signed it. MI indicated it opposed the new form of Payment Letter and took the position that the December 2023 Payment Letters should be rescinded and deemed null and void. Copies of the December 2023 Payment Letters (for November 2023 costs) and related covering emails are attached hereto as **Appendix “6”**.
- 7.24 The Receiver does not believe that MI’s objection to the December 2023 Payment Letters is relevant to the outcome of the MI Payment Motion, because the Receiver does not take the position that MI is precluded from claiming the amounts it claims in the MI Payment Motion by virtue of the December 2023 Payment Letters.
- 7.25 In early January 2024, in light of ongoing issues between the Receiver and MI relating to the Payment Dispute and the appropriate form of Payment Letter, the Receiver and MI had an all-hands without prejudice meeting with their respective counsel to discuss and attempt to resolve these issues. However, and despite continuing without prejudice negotiations over January and into February, the parties did not reach a resolution.

(vii) *MI's position that the Receivership Order required the Receiver to follow the MI Payment Practices*

7.26 On the same day the Receiver issued the disclaimer notice to MI, MI served the MI Payment Motion. In the MI Payment Motion, MI alleges that Paragraph 17 requires that the Receiver continue the MI Payment Practices. Paragraph 17 is reproduced below for reference:

**17. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors, or the Developer or contractual, statutory or regulatory mandates for the supply of goods and/or services to the Debtors, or the Developer and/or the Project, including without limitation, all computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll and benefit services, warranty services, sub-contracts, trade suppliers, equipment vendors and rental companies, insurance, transportation services, utility, customers, clearing, warehouse and logistics services or other services to the Debtors, or the Developer and/or the Project are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver or the Developer, as determined by the Receiver, in accordance with normal payment practices of the Debtors or the Developer, as applicable, or, with respect to the Debtors or the Developer, such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court. [emphasis added]**

7.27 The Receiver does not agree with MI's interpretation of Paragraph 17. In the Receiver's view, Paragraph 17:

- (i) identifies a group of persons, specifically all Persons having oral or written agreements with the Debtors for the supply of goods and/or services to the Debtors and/or the Project;
- (ii) imposes a prohibition on those persons, specifically a prohibition on discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver;
- (iii) requires that “normal prices or charges” for the goods or services provided be paid to such persons as a condition to the Receiver enforcing this prohibition; and
- (iv) allows the Receiver to “determine” such normal prices or charges and to pay them in accordance with “normal payment practices of the Debtors”, a new agreement or a Court order.

7.28 Importantly, as previously described, Paragraph 17 does not impose any payment obligation on the Receiver. Rather, Paragraph 17 prevents parties from discontinuing the supply of goods and services to the Project so as long as they are paid the normal prices or charges for such goods or services in accordance with normal payment practices, a new agreement, or a Court order (the “**Payment Options**”). A party that is not paid based on one of the Payment Options is not restrained from discontinuing, altering, interfering with or terminating the supply of such goods and services as may be required by the Receiver. MI never sought to discontinue its services to the Project, and the Receiver, after unsuccessfully attempting to negotiate a mutually agreeable compensation arrangement with MI, ultimately issued a disclaimer notice to MI such that its services as general

contractor came to an end. Accordingly, the Receiver never needed to rely on the prohibition in Paragraph 17 in its dealings with MI.

- 7.29 In light of the foregoing, Paragraph 17 does not govern the quantum of fees to be paid to MI. MI's compensation is based on the contracts it entered into with the Debtors. The Receiver has reviewed those contracts and determined that MI was significantly overpaid, and that nothing further is owed to MI.

## **8.0 THE RELATIONSHIP BETWEEN COCO, MIZRAHI, THE DEBTORS AND MI**

### ***(i) MI's contractual entitlement is complex***

- 8.1 MI's role as general contractor of the Project, and the compensation for its work, were governed by a series of agreements. The Receiver has reviewed these agreements to determine which of them governed MI's compensation at various periods during the life of the Project. The Receiver's conclusions are summarized in section 10 below.
- 8.2 Determining what payment MI was entitled to receive at any given time is relatively complicated, because the parties did not clearly specify what contract governed MI's compensation, multiple inconsistent contracts existed at the same time, and MI was not always paid based on the terms of its contracts with the Debtors.
- 8.3 The Receiver has summarized the key contracts relevant to MI's compensation at **Schedule "A"** and summarized the timeline with respect to relevant contractual events in the paragraphs below.

**(ii) *The contentious relationship between Coco and Mizrahi***

8.4 The relationship between Coco and Mizrahi was contentious and litigious. In simple terms, Coco accused Mizrahi of acting unilaterally and in breach of the applicable contracts. Coco also lost confidence in Mizrahi's judgment and ability to complete the Project on schedule and within budget. Mizrahi accused Coco of interfering with the successful completion of the Project by withholding approvals and challenging Sam's judgment.

8.5 The Receiver has not conducted a detailed review of each of the disputes between Coco and Mizrahi, and (except to the extent explicitly stated below) it does not offer any opinion with respect to whether Coco's or Mizrahi's position was (or is) correct.

8.6 That said, the dispute between Coco and Mizrahi provides an important backdrop to the events that are relevant to the MI Payment Motion. One important issue on the MI Payment Motion is whether the Debtors agreed to any contract that required them to follow the MI Payment Practices. This, in turn, requires an evaluation of the history of the Debtors and the dispute between Mizrahi and Coco.

**(iii) *Coco's right to approve contracts between the Debtors and MI***

8.7 In order to determine whether the Debtors agreed to pay MI based on the MI Payment Practices, in addition to reviewing the agreements with MI, the Receiver reviewed the agreements between Coco and Mizrahi. As described below, the Receiver concluded that, except for the period from May 2021 to August 2022 (the "**Control Period**"), Mizrahi did not have the legal authority to unilaterally bind the Debtors; rather, Coco's approval was required for any agreement between MI and the Debtors to be valid.

## 9.0 TIMELINE OF RELEVANT CONTRACTS AND EVENTS

### *(i) July 7, 2014 – The First GC Agreement – MI agreed to complete the Project by September 30, 2021 for \$422.7 million*

9.1 MI and the Nominee entered into a CCDC2 Stipulated Price Contract dated July 7, 2014 (the “**First GC Agreement**”). The First GC Agreement was signed by Sam, on behalf of both MI and the Nominee. The terms of the First GC Agreement are substantially similar to the terms of the GC Agreement (which is described below). MI agreed to complete substantially all of the construction work on the Project in exchange for a stipulated price of approximately \$422.7 million, plus HST. MI agreed to commence work by February 8, 2015, and complete the work by September 30, 2021.

9.2 The First GC Agreement was a fixed price contract. It did not contemplate a CM Fee based on Hard Costs and it did not authorize MI to charge the Debtors for staff working on the Project based on the Labour Rates.

### *(ii) December 17, 2014 – Coco and Mizrahi execute agreements governing Coco’s investment in the Debtors*

9.3 Coco invested in the Project in or around 2014, and the parties entered into a series of agreements dated December 17, 2014 to govern that investment. These agreements, together with subsequent agreements between Mizrahi and Coco, effectively divided control of the Debtors between Coco and Mizrahi. This division of control was reflected in, among other things, a resolution of the Board of Directors of the Nominee dated November 2016 requiring that any contract entered into by the Nominee had to be executed by: (i) one of either Jenny or Rocky; and (ii) Sam. That resolution, reproduced from an Arbitral Award dated October 21, 2020, is set out below:

1. Any and all deeds, transfers, assignments, **contracts** and other documents....to be entered into from time to time by [the Nominee] shall be signed on behalf of [the Nominee] **by any one of Jenny Virginia Coco, Vice-President or Rock Anthony Coco, Vice President, together with Sam Mizrahi, President, unless the board of directors of the Corporation by unanimous decision** authorizes otherwise. ...

**(iii) July 2017 CCM Contract – MI entered into a construction management contract with CCM**

9.4 The Receiver understands that construction of the Project commenced in mid-2017. At the same time, MI retained CCM as construction manager pursuant to the CCM Contract.

9.5 CCM was founded by Mike Clark, an experienced construction manager formerly employed by a major Toronto construction company. The Receiver understands that up until CCM's termination in October 2020 (which is described below), CCM was primarily responsible for managing construction work on the Project including, among other things, managing the subcontractors working on the Project.

9.6 Pursuant to the CCM Contract, MI paid CCM a CM Fee equal to 1.5% of Hard Costs on the Project. MI also paid for CCM staff to work on the Project based on negotiated rates (i.e., the Labour Rates) that were incorporated into the CCM Contract. The Receiver understands that the Labour Rates are substantially higher than the actual cost that CCM paid the relevant staff and, as a result, CCM recovered some of its overhead and earned a profit by charging the Labour Rates. The CCM Contract is attached hereto as **Appendix "7"** hereto.

9.7 MI recovered the amounts that it paid to CCM with respect to the Labour Rates from the Debtors.



9.8 Importantly, for reasons described below, section 1.4 of the CCM Contract prohibited assignment of the CCM Contract by either party without the consent of the other.

9.9 During the period from July 2017 to October 2020, CCM had direct responsibility for managing certain aspects of the construction of the Project. CCM employed the staff responsible for, among other things, supervising subcontractors working on the Project, approving subcontractor invoices, and establishing and monitoring the construction schedule for the Project. CCM provided detailed reporting to the Project's stakeholders, including Coco and the Senior Secured Lenders.

*(iv) November 2017 – Coco and Mizrahi disagreed about fees charged by MI*

9.10 As previously noted, the First GC Agreement did not authorize any CM Fee to be paid to MI. According to MI's evidence on the MI Payment Motion, MI charged a 5% CM Fee from the outset of the Project. It appears that Jenny questioned MI's fees beginning in November 2017. According to an e-mail sent by Mark Kilfoyle ("Mr. Kilfoyle", MI's CFO and COO) to Jenny on November 9, 2017, and attached hereto as **Appendix "8"**:

**(2) The Mizrahi CM Fee is the 5% fee on construction costs as per the Subcontract Agreement.** The amounts on the List were based on the budgeted costs, and were as per the Altus Budget. **The amounts actually paid will be based on the actual Construction spends times the 5% fee.** Therefore it is unlikely the amount will be the same as the number in the estimate, it maybe higher or lower depending on spends. In the future the actual amount will move up and down depending on the construction spends in that given month. (emphasis added)

9.11 In his e-mail, Mr. Kilfoyle advised that the 5% CM Fee was authorized by the "Subcontract Agreement". Based on the Receiver's review, there is no "Subcontract Agreement"

between MI and the Debtors that authorized the 5% CM Fee when Mr. Kilfoyle sent his e-mail.

9.12 In the same e-mail, Mr. Kilfoyle told Jenny that MI was charging “GC Fees” to “keep the construction office running for Mike Clark and his team plus any costs by the Mizrahi Construction team.”

9.13 Mr. Kilfoyle told Jenny that the GC Fees were charged at cost and were “not a profit centre for Mizrahi Inc. and are in accordance with the Subcontract.” Jenny appears to have disagreed, and stated that Coco was “ONLY COMMITTING TO THE AGREEMENTS WE EXECUTED!” Jenny’s response is included in **Appendix “8”**.

(v) *May 14, 2019 – The GC Agreement – MI agreed to complete the Project for approximately \$583.2 million.*

9.14 MI has advised the Receiver that the primary agreement governing its role as general contractor in respect of the Project is the GC Agreement. The GC Agreement, without all schedules, is attached hereto as **Appendix “9”**.<sup>8</sup>

9.15 The GC Agreement, on its face, supersedes all “representations or agreements, either written or oral” and therefore replaces the First GC Agreement. In very simple terms, the GC Agreement requires that MI complete all of the construction work on the Project for a fixed price of approximately \$583.2 million plus HST (the “**Contract Price**”).

---

<sup>8</sup> The schedules omitted from **Appendix “9”** are voluminous and irrelevant to the MI Payment Motion.

- 9.16 According to a breakdown provided by MI to the cost consultant on the Project at the time, Altus Group Limited (“**Altus**”),<sup>9</sup> As set out below, the Contract Price had an embedded CM Fee included:<sup>10</sup>

<b>Cost Category</b>	<b>Budget<sup>11</sup></b>
Construction Hard Costs	\$510,656,521
Design and Post Contract Contingency	\$20,006,850
Hotel and Retail Finishes	\$24,731,000
Construction Management Fees (5%)	\$27,769,719
<b>Total</b>	<b>\$ 583,164,090</b>

- 9.17 The GC Agreement provided that MI was to be paid, subject to a 10% holdback, based on progress certified by the independent cost consultant, Altus. The relevant portion of the GC Agreement is excerpted below:

#### **ARTICLE A-5 PAYMENT**

- 5.1 Subject to the provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of TEN percent ( 10 %), the *Owner* shall:
- .1 make progress payments to the *Contractor* on account of the *Contract Price* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payments, and
  - .2 upon *Substantial Performance of the Work*, pay to the *Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
  - .3 upon the issuance of the final certificate for payment, pay to the *Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

<sup>9</sup> Altus was replaced as cost consultant by Finnegan Marshall in February 2024.

<sup>10</sup> MI was also entitled to certain development fees totaling \$30,000,000, but has confirmed these fees were paid. Therefore, these amounts are not relevant to the current issues.

<sup>11</sup> Based on the Altus Preliminary Report No. 1 as at July 31, 2019, and attached hereto as **Confidential Appendix “10”**. The Receiver notes that Altus was retained before the Debtors and MI executed the Credit Agreement (defined below) and produced a series of reports for the Project’s prior lenders. When Altus was retained by the Senior Secured Lenders, it restarted the numbering scheme for its reports. As a result, there are two reports titled Altus Report No. 1 with different dates. The first report was prepared for the Project’s prior lenders and the second report was prepared for the Senior Secured Lenders.

- 9.18 To be clear, the GC Agreement does not allow MI to charge a CM Fee of 5% (or any other amount) on all Hard Costs or its staff costs. According to the GC Agreement, MI was responsible for completing the work in exchange for the Contract Price. If the work to complete the Project cost more than the Contract Price, then (unless the Contract Price was adjusted in accordance with the terms of the GC Agreement) MI had to bear that loss. Conversely, if the work cost less than the Contract Price, then MI could earn a greater profit.
- 9.19 MI was entitled to be paid based on how much progress it made, not on how much time it spent or the cost of the work. By way of example, if Altus certified that the Project was 20% complete, then MI would be entitled to 20% of the fixed Contract Price (which includes the CM Fee), plus HST and less a 10% holdback, as required by the GC Agreement and the *Construction Act* (Ontario) as it existed immediately prior to July 1, 2018.
- 9.20 Payments to MI under the GC Agreement explicitly included the labour, products and services necessary for the performance of the Work. MI was not entitled to charge separately for labour that it provided for the Project (including both the Labour Rates and the Labour Costs).
- 9.21 The parties also agreed, in the GC Agreement, that they could only alter their obligations by specific written agreement.
- 9.22 The GC Agreement provided that MI is entitled to interest on unpaid amounts at a rate of prime plus 2% per annum for the first 60 days and 4% per annum thereafter. Interest is calculated based on the prime rate quoted by HSBC Bank of Canada.

- 9.23 MI also agreed, in the GC Agreement, to commence work on August 1, 2017 (although the GC Agreement was executed in May 2019) and achieve substantial performance of its work by December 31, 2022 (the “**Contract Schedule**”).
- 9.24 The GC Agreement provided that the Contract Price and the Contract Schedule could be adjusted in accordance with certain terms. Other than as described below, the Receiver is not aware of any formal adjustments to the GC Contract Price and Contract Schedule pursuant to these terms.
- 9.25 The GC Agreement remained in force until at least August 2022 (when Sam purported to amend it without Jenny’s consent), but the Debtors and MI do not appear to have followed its payment terms. MI also did not fulfill its obligation to complete the Project in accordance with the Contract Schedule.
- 9.26 Despite this, MI claims that it is entitled to interest on the claimed amounts pursuant to the terms of the GC Agreement. The Receiver is of the view that even if any amounts are due to MI (which the Receiver denies, for the reasons set out in this Fifth Report), no amounts are due to MI under the GC Agreement, and therefore, the interest provisions of the GC Agreement are irrelevant.
- (vi) ***August 30, 2019 – the Debtors entered into the Credit Agreement with the Senior Secured Lenders***
- 9.27 The Beneficial Owner and the Nominee, as borrower, the Senior Secured Lenders, IGIS Asset Management Co., Ltd., as asset manager, GP Inc., Sam, Jenny, MI and KEB Hana Bank Canada entered into a credit agreement dated August 30, 2019 (as amended, the “**Credit Agreement**”).

- 9.28 Pursuant to the Credit Agreement, the Senior Secured Lenders primarily advanced funds to the Project in order to fund specific construction costs. In order to secure funding under the Credit Agreement, the Debtors submitted (among other documents) a Construction Financing Release Request (also referred to as a “**Payment Listing**”) on a monthly basis.
- 9.29 Each Payment Listing set out the monthly expenses incurred on the Project. Those expenses were reviewed by the Senior Secured Lenders and then funded by monies loaned to the Debtors under the Credit Agreement. The Debtors then paid these funds to MI, and MI used (or should have used) these funds to pay the various Project expenses for the relevant month, less the amounts to be retained by MI on account of its fees and expenses.<sup>12</sup>
- 9.30 Altus was appointed as “Independent Cost Consultant” under the Credit Agreement to, among other things, review the ongoing cost of, and schedule for, the Project against the approved Project budget and schedule. The Senior Secured Lenders were entitled to receive confirmation from Altus with respect to the following, among other things,:
- (i) Altus had reviewed the Project budget and that the Project could be completed in accordance with that budget;
  - (ii) Altus had certified the construction costs incurred and identified cost overruns; and

---

<sup>12</sup> The Debtors also borrowed funds from other sources that were funded directly to MI and, according to MI, used to pay Project expenses.

- (iii) Altus had estimated the cost to complete the Project and confirmed that the cost of the entire Project (including both construction costs and all other costs including financing and land acquisition costs) would not exceed \$1.39 billion.<sup>13</sup>

9.31 MI has asserted that it was entitled to *all* amounts paid to it, including amounts paid based on the MI Payment Practices, because those amounts were “approved” by Altus and funded by the Senior Secured Lenders. The Receiver does not agree. MI’s entitlement was based on its contracts with the Debtors.

**(vii) *November 2019 – Coco and Mizrahi accept the Mediator’s Proposal – MI became entitled to a 3.5% CM Fee***

9.32 In September 2019, Coco commenced an arbitration against Mizrahi, which gave rise to an extended mediation process before Stephen Morrison (the “**Mediator**”). On November 26, 2019, the Mediator made the Mediator’s Proposal jointly to the parties. Both Mizrahi and Coco ultimately accepted the Mediator’s Proposal. The Mediator’s Proposal is attached hereto as **Appendix “11”**.

9.33 The Mediator’s Proposal intended to “reset the relationship” between Coco and Mizrahi with respect to the Project. As part of this effort, the Mediator’s Proposal made significant changes to certain fundamental aspects of the relationship among MI, Mizrahi, Coco, and the Debtors.

9.34 The Mediator’s Proposal revised the CM Fee structure charged by MI. The Mediator’s Proposal provided that MI was effectively entitled to a CM Fee of 2%. MI was also allowed

---

<sup>13</sup> The \$1.39 billion budget in the Credit Agreement included the Contract Price for MI’s scope as general contractor of the Project as set out in the GC Agreement.

to charge the Debtors for CCM's CM Fee of 1.5% resulting in a total CM Fee of 3.5% to be paid to MI.

- 9.35 These payment terms effectively superseded the payment terms of the GC Agreement, although the GC Agreement was never terminated or amended to reflect the terms of the Mediator's Proposal.
- 9.36 The Mediator's Proposal required that the parties implement "the disciplined use of basic financial control measures" including "budgets that are realistically established and regularly updated... segregated bank accounts and...accurate monthly reporting to stakeholders." The Mediator concluded that these changes were required because "I am not satisfied that all of these disciplines are being employed with the kind of diligence necessary to satisfy a substantial investor in the project."
- 9.37 In order to address these concerns, the Mediator's Proposal required that financial administration and management be transferred to a new employee, Maria Rico ("**Ms. Rico**"). Ms. Rico was to be given this position at MI, but she was to report primarily to Coco.
- 9.38 The Mediator's Proposal also required that a \$1.2 million reserve, being held partially in MI's bank accounts and partially in the Project's bank accounts to satisfy a potential liability (the "**Liability Reserve**"), be transferred to a GIC or joint trust account. This did not occur. The Liability Reserve is further described below.
- 9.39 The Mediator's Proposal also provided that MI was entitled to a Residential Management Fee (the "**Residential Management Fee**") equal to 2% of the sale price for condominium



units in the Project. MI was entitled to be paid half the Residential Management Fee (equal to 1% of the purchase price) when a purchaser signed an agreement and paid the appropriate deposit. The balance of the Residential Management Fee was due on closing of the sale of the condominium unit.

***(viii) December 2019 – Ms. Rico begins her involvement with the Project***

9.40 Ms. Rico began the role contemplated by the Mediator’s Proposal in or around December 2019.

9.41 Beginning in December 2019, the Receiver understands that Ms. Rico reviewed the Payment Listings submitted by the Debtors. These Payment Listings included the amounts paid by the Debtors to MI. MI was entitled to a 3.5% CM Fee under the Mediator’s Proposal, and MI’s invoices were consistent with this CM Fee. In addition, the Debtors paid MI certain amounts owed pursuant to CCM’s invoices. Those invoices included payments for CCM staff charged at the Labour Rates.

***(ix) February 4, 2020 – Coco and Mizrahi disagree about whether MI could charge the Debtors for its own staff***

9.42 MI also appears to have charged the Debtors certain “general conditions” costs relating to its own staff during the same period. This resulted in a dispute between Coco and MI on February 4, 2020, about whether MI was entitled to use Project funds to pay its own payroll. E-mails relating to the dispute are attached hereto as **Appendix “12”**. MI ultimately agreed to return the funds that it claimed for its payroll “under protest”.

*(x) October 26, 2020 – MI terminated CCM and began to charge the Labour Rates to the Project*

- 9.43 On October 26, 2020, MI terminated CCM and began charging the Project for amounts formerly charged by CCM. By termination notice dated October 26, 2020 (the “**CCM Termination Notice**”), MI terminated CCM as construction manager for the Project. The CCM Termination Notice, which is attached hereto as **Appendix “13”**, also purported to provide a notice of “Assignment of the Contract to [MI]”.
- 9.44 After terminating CCM, MI hired staff to complete the construction management tasks that were previously completed by CCM. MI charged the Debtors for its staff using the Labour Rates.
- 9.45 The Debtors did not enter into any contract with MI, before or after CCM’s termination, that authorized MI to charge the Debtors the Labour Rates for work on the Project. MI has asserted that, because it assigned the CCM Contract to itself, it was entitled to charge the Labour Rates for the staff that it hired.
- 9.46 The Receiver has reviewed the applicable documents and concluded, with assistance from counsel, that MI did not have the authority to assign the CCM Contract to itself. First, the CCM Contract itself requires the consent of both CCM and MI before an assignment could occur. The Receiver is not aware of any evidence that CCM consented to the purported assignment of the CCM Contract to MI.
- 9.47 Second, and more fundamentally, the CCM Contract was a contract between MI and CCM. The Debtors were not parties to the CCM Contract. Sam specifically confirmed this in an e-mail to Mike Clark dated May 18, 2020, and attached hereto as **Appendix “14”**. It

follows that when MI purported to assign the CCM Contract to itself, it purported to create a contract between MI and MI. The Receiver understands, based on advice from counsel, that this is not legally possible (and, even if it were, it would not bind the Debtors).

***(xi) November 6, 2020 – Coco’s objection to CCM’s termination and MI’s increased control over the Project***

9.48 Sam and MI did not consult Coco before terminating CCM. Sam advised Jenny that CCM had been terminated by e-mail dated October 26, 2020, and attached hereto as **Appendix “15”**.

9.49 By written submissions dated November 6, 2020, and attached hereto as **Appendix “16”**, Coco sought to commence an arbitration relating to, among other things, the termination of CCM. Specifically, Coco asked for a declaration that:

- (i) MI breached the Mediator’s Proposal by terminating CCM; and
- (ii) the Debtors were not required to pay fees charged by MI for staff working on the Project.

9.50 Mizrahi responded to Coco’s written submissions by letter dated November 9, 2020. Mizrahi’s submissions are attached hereto as **Appendix “17”**.

9.51 Coco’s request for relief relating to CCM’s termination did not proceed to a hearing on the merits. Coco advised the Receiver that the arbitral panel with carriage of the matter denied Coco’s request for urgent relief, and that Coco and Mizrahi instead entered into negotiations relating to Coco’s potential sale of its interest in the Project. Coco advised that

it ultimately decided to pursue the possible sale of its interest and so it did not continue with its arbitration relating to MI's termination of CCM.

9.52 The Receiver understands that MI and the Debtors never entered into any agreement that allowed MI to charge the Debtors based on what CCM had formerly charged MI. After CCM's termination, the relationship between MI and the Debtors was still governed by the GC Agreement and the Mediator's Proposal.

*(xii) November 2020 to May 2021 – MI charged the Debtors a 3.5% CM Fee and staff costs based on the Labour Rates*

9.53 MI began charging the Labour Rates for staff working on the Project beginning in November 2020. During the period from November 2020 to May 2021 (when the parties executed the Control Agreement) both Mizrahi and Coco executed Payment Listings that requested funding from the Senior Secured Lenders for payments to MI. An example of such a Payment Listing, dated January 2021, and executed by both Sam and Jenny, is attached hereto as **Appendix "18"**.

9.54 MI has asserted that these Payment Listings, and the payments made by the Senior Secured Lenders based on the Payment Listings, are evidence that Coco, the Senior Secured Lenders and Altus all approved the MI Payment Practices.

9.55 In order to assess this claim, the Receiver requested, and received, documents relating to the approval of payments from Altus, the Senior Secured Lenders, and Coco (the **"Payment Documents"**). The Receiver also requested, and reviewed, electronic records (including e-mails) relating to the Project and stored on MI's servers.

9.56 Based on its review of the available information, the Receiver has reached the following conclusions:

- (i) The Receiver has been unable to locate specific evidence that the Senior Secured Lenders, Altus, or Coco explicitly approved the MI Payment Practices or payments to MI using the Labour Rates;
- (ii) The Senior Secured Lenders appear to have received invoices for some months beginning in July 2021 that showed how much MI had charged for staff working on the Project (the “**MI Staff Invoices**”). These MI Staff Invoices do not specify how the staff costs were calculated or specify the embedded Labour Profits included in the Labour Rates charged by MI. An example of such an invoice is attached hereto as **Confidential Appendix “19”**;
- (iii) The MI Staff Invoices were not included in the Payment Documents produced by either Coco or MI, and the Receiver was unable to locate any evidence that the MI Staff Invoices were provided to, or approved by, Coco; and
- (iv) Jenny executed Payment Listings in each month from November 2020 to May 2021 that included payments to MI.

9.57 It is unclear, based on the Receiver’s review of the Payment Documents, how much information MI provided to Coco, Altus or the Senior Secured Lenders about the Labour Rates.

9.58 In summary, in the period after CCM’s termination and before the Control Agreement was executed, MI appears to have been paid a CM Fee equal to 3.5% plus fees for MI’s staff

and labour calculated based on the Labour Rates. Coco signed Payment Listings that included amounts paid based on the Labour Rates and the Senior Secured Lenders advanced the funds requested in the Payment Listings. Coco did not, however, explicitly agree (or authorize the Debtors to agree) that MI would be entitled to charge the Labour Rates in addition to the CM Fee going forward.

*(xiii) May 2021 – the parties enter into the Control Agreement granting Sam control over the Project and MI a 5% CM Fee pending the sale of Coco’s interest in the Project*

9.59 In May 2021, Mizrahi and Coco, among others, entered into the Control Agreement to govern the operation of the Project pending completion of a contemplated purchase by Mizrahi of Coco’s interest in the Project (the “**Purchase**”) by August 30, 2022. The Debtors are not parties to the Control Agreement. The Control Agreement is attached hereto as **Appendix “20”**.

9.60 The Control Agreement effectively provided Mizrahi with sole control and management of the Project, with certain limitations, until the Purchase closed. Importantly, during this interim period, Mizrahi was entitled to execute most documents on behalf of the Debtors without Coco’s approval. This meant that, when the Control Agreement was in force (defined above as the “Control Period”), Mizrahi was able to authorize payments by the Debtors to MI without Coco’s approval.

9.61 The Control Agreement increased the CM Fee to 5% (as compared to the 3.5% fee allowed by the Mediator’s Proposal). This revised CM Fee was to be retroactive, meaning that to the extent any payments were made to MI at a rate of less than 5% of the Hard Costs prior to the date of the Control Agreement, the difference between those payments and the 5%

rate was to be paid to MI immediately upon execution of the Control Agreement. Sam caused the Debtors to make this retroactive payment to MI after executing the Control Agreement.

*(xiv) May 4, 2022 – Sam’s Unilateral Amendment to the GC Agreement*

9.62 As previously noted, the GC Agreement remained in force since May 2019, even though MI did not abide by the payment terms, budget or schedule pursuant to the GC Agreement.

9.63 Sam unilaterally executed an amendment to the GC Agreement dated May 4, 2022 (the “**Unilateral Amendment**”) by signing for both MI and the Nominee. The Unilateral Amendment is attached hereto as **Appendix “21”**. Coco did not sign the Unilateral Amendment, and Mizrahi has alleged that her signature was not required because the Control Agreement remained in force.

9.64 The Unilateral Amendment purported to remove any limit on the price that MI could charge to complete the Project, or the schedule to complete the Project. It replaced the Contract Price and Contract Schedule in the GC Agreement with the following term:

**1.1 Claims for a Change in the Contract Price**

The Owner and the Contractor agree that pursuant to Article GC 6.6 of the Original Contract, the Contract Price in Article A-4 and timelines set out in the Contract Documents, including the Construction Schedule (Schedule “B” shall be amended to reflect the updated progress reporting by the Consultant as provided from time to time.

9.65 The Unilateral Amendment purported to amend the budget and schedule for the Project based on Altus’ updated progress reports. However, Altus advised the Receiver that it did

not receive a copy of the Unilateral Amendment until August 28, 2023. The e-mail from MI to Altus sending the Unilateral Amendment is attached hereto as **Appendix “22”**.

- 9.66 Coco has advised that it was not provided with a copy of the Unilateral Amendment when it was executed, or at any time prior to the Appointment Date. The Senior Secured Lenders have also advised that they did not receive a copy of the Unilateral Amendment before the Appointment Date.
- 9.67 The Receiver has determined that the Unilateral Amendment is not an enforceable contract. An arbitral panel determined that the Control Agreement was intended to confer additional control to Mizrahi while the Purchase was pending. It did not authorize Mizrahi to make permanent changes to the relationship between MI and the Debtors. The relevant award (the “**2023 Award**”) is attached hereto as **Appendix “23”**.
- 9.68 Moreover, the Receiver is concerned that Sam unilaterally agreeing (on behalf of both MI and the Debtors) that the Debtors would pay MI an unlimited amount and waiving any deadline for completing the work (subject only to Altus’ updated progress reports) raises significant conflict of interest issues and issues with respect to Sam’s fiduciary and other duties to the Debtors.
- 9.69 In any event, the validity of the Unilateral Amendment is not directly relevant to the MI Payment Motion. The Unilateral Amendment does not authorize the MI Payment Practices. Indeed, the Unilateral Agreement does not authorize MI to charge any CM Fee (including a 5% CM Fee as claimed by MI) or any Labour Rates for its work on the Project.



*(xv) August 6, 2022 – Sam purported to execute Control Resolution extending his control over the Project indefinitely*

9.70 On August 6, 2022 (just prior to the expiration of the Control Agreement), Mizrahi unilaterally executed a resolution purporting to grant himself sole control over the Project (the “**Control Resolution**”), which would have effectively extended the Control Agreement indefinitely. The Control Resolution does not address the CM Fee to be paid to MI. The Control Resolution is attached hereto as **Appendix “24”**.

9.71 The Control Resolution was declared invalid in the 2023 Award.

*(xvi) August 30, 2022 to October 18, 2023 – the Control Agreement terminated and Coco objected to the amounts charged by MI*

9.72 Ultimately, Mizrahi did not close the Purchase by August 30, 2022. The Control Agreement was therefore terminated on August 30, 2022.

9.73 After the Control Agreement expired, Coco consistently objected to the amounts charged to the Project by MI, including the Labour Rates. Relevant excerpts from the Payment Listings from August 2022 to September 2023 are attached hereto as **Appendix “25”**.

## **10.0 MI’S CONTRACTUAL ENTITLEMENT**

10.1 As set out above, the Receiver has conducted a detailed review of the agreements between MI and the Debtors. It has concluded that the CM Fee that MI was entitled to charge varied over time, depending on the agreement that governed payment to MI at the relevant time. This is summarized in the table below.

Period	Agreement	CM Fee Authorized
July 7, 2014 - May 14, 2019	First GC Agreement	<b>No CM Fee authorized.</b> The First GC Agreement was a fixed price contract. MI agreed to complete the Project for \$422.7 million, and it was entitled to be paid based on progress achieved.
May 14, 2019 - November 26, 2019	GC Agreement	<b>No CM Fee authorized.</b> The First GC Agreement was a fixed price contract. MI agreed to complete the Project for \$583.2 million, and it was entitled to be paid based on progress achieved.
November 26, 2019 - May 2021	Mediator's Proposal	<b>3.5% CM Fee.</b>
May 2021 – August 30, 2022	Control Agreement	<b>5% CM Fee, including a retroactive payment.</b>
August 31, 2022 - March 13, 2024	Mediator's Proposal governed the parties' relationship after the Control Agreement expired	<b>3.5% CM Fee.</b>

10.2 At no time did any agreement between MI and the Debtors authorize payment of the Labour Rates.

10.3 In conclusion, the Receiver has been unable to find any evidence that the MI Payment Practices, and specifically the payment of Labour Rates plus the payment of a 5% CM Fee, were required pursuant to any agreement between MI and the Debtors. Accordingly, the Receiver is of the view that no contract between MI and the Debtors authorized the MI Payment Practices.

## 11.0 MI'S WORK ON THE PROJECT

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

### *(i) MI did not successfully execute the Project*

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

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

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

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

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

11.7 Based on the information available to the Receiver, it is anticipated that some or all of the Project's stakeholders will suffer a significant loss. It also appears, based on the information available to the Receiver, that Mizrahi made little or no equity investment in the Project.

11.8 The Project appears to have been a financial success for MI. MI has been paid significant fees for its work on the Project. Based on the Receiver's review of the books and records of the Debtors, those fees are summarized in the table below:

Fee	Amount
Development Fee	\$30.0 million
CM Fees	\$23.5 million <sup>14</sup>
Commissions	\$19.4 million
Labour Rates	\$47.4 million
Monthly Marketing Fees	\$2.7 million
<b>Total</b>	<b>\$123.0 million</b>

11.9 MI had to incur some expenses to earn the fees listed above (including the Labour Costs embedded in the Labour Rates) and the Receiver does not have the information required to calculate MI's actual profit on the Project. The Receiver notes, however, that MI appears to have charged most or all of the expenses that it incurred back to the Project. As a result, MI was likely able to retain a significant portion of the fees that it charged on the Project.

11.10 MI has advised the Receiver that several factors outside of its control, including the COVID-19 pandemic and global supply chain issues, adversely impacted the Project.

---

<sup>14</sup> This amount is based on the Receiver's review of the invoices provided by MI. The Receiver notes that this amount differs from Finnegan Marshall's cost to date report on the status of the Project as at March 12, 2024 by approximately \$1.5 million (with the Finnegan Marshall figure being lower).

While the Receiver acknowledges that these factors had some effect on the Project, the Receiver does not believe that these issues provide a complete explanation for the delays and cost overruns on the Project.

**(ii) *Issues with MI's Performance***

11.11 Shortly after it was appointed, the Receiver determined that it was necessary to engage a third-party project manager to oversee MI's work as general contractor. The Receiver engaged KDC on October 23, 2023, and KDC has maintained a full-time involvement with the Project ever since.

11.12 KDC is an experienced development manager and project manager. It has overseen the successful completion of a number of major projects, including the recent construction of "The Well", a major mixed-use development comprising 2.9 million square feet of new development on a 7.76 acre site in Toronto. A summary of KDC's relevant experience is attached hereto as **Appendix "29"**.

11.13 The Receiver worked with KDC to identify and address numerous deficiencies with MI's construction management processes. KDC prepared an Issues Log highlighting these problems, which is attached hereto as **Appendix "30"**. A summary of the major issues with MI's administration and management of the Project are listed below.

**(a) *MI's lack of formal processes***

11.14 A significant issue that permeated all aspects of the Project's construction before the Receivership was the overlap between Sam's role as president of the Debtors, and president of MI. This led to a blurring of lines between Mizrahi's role as owner and MI's role as

general contractor. Upon its appointment, the Receiver discovered that there was an absence of formal processes to approve MI's actions and inadequate oversight of MI's work.

- 11.15 Importantly, as of the Appointment Date, MI had not prepared a reliable budget or schedule for completion of the Project. By way of example, the construction schedule provided by MI to the Receiver shortly after the Receiver's appointment projected completion by March 14, 2025 (approximately 17 months from the Appointment Date). This was an entirely unrealistic projection, as less than 50% of the Project's superstructure (i.e., concrete structure) had been formed at that time. MI's schedule also indicated that work had been completed when it had not. For example, images from one of KDC's October 2023 site visits showed certain core slab progress and formwork preparation underway, despite the fact that MI's schedule indicated that these elements had been finished 50 working days earlier. In short, MI's construction schedule did not provide accurate or reliable information about the status of construction or the path forward.
- 11.16 The construction schedule provided by MI was also not regularly maintained or updated. Instead, MI worked based on three-week "lookahead" schedules, which limited long-term projections and lacked progress tracking, actual dates of work performed, and historical analysis. Further, copies of lookahead schedules obtained by KDC on November 14, 2023, revealed inconsistencies and/or multiple versions of these documents existed.
- 11.17 This appears to have been a persistent issue on the Project, as status reports from Altus (the "**Altus Reports**") dating back to at least December 2021 noted MI's failure to produce a

realistic budget and schedule for the Project. Excerpts from the Altus Reports articulating these concerns are attached hereto as **Appendix “31”**.

11.18 KDC and the Receiver also noted that MI’s management of the Project suffered from a number of issues, demonstrating a lack of governance, controls, and fiscal responsibility, including a lack of formal processes and procedures. KDC and the Receiver noted that:

- (i) MI had no formal process for managing changes to the work to be performed by subcontractors, or the resulting costs charged by those subcontractors;
- (ii) MI had no formal procurement plan or schedule, resulting in a disjointed procurement process;
- (iii) MI did not properly document, execute and electronically store documents relating to the Project on a consistent basis;
- (iv) MI did not demonstrate effective coordination on the Project amongst the different project managers;
- (v) MI did not have an accurate or current schedule and did not have an appropriate system in place to assess construction progress against the schedule;
- (vi) MI’s reporting was inadequate for a project of the size and scope of the Project;
- (vii) MI put forward incorrect construction progress data that was not in line with actual progress achieved;<sup>15</sup>

---

<sup>15</sup> For example, MI’s monthly construction management report for October 2023, which is attached as **Appendix “32”**, indicated the Project’s construction was approximately 83% complete. However, based on Altus’ report on the

- (viii) a failure to comply with statutory obligations, such as applying the required statutory holdback on key vendor invoices;
- (ix) multiple “scope gaps” in certain trade subcontracts and design consultant contracts resulting in the issuance of additional change orders, purchase orders, and other subcontract amendments to address such scope gaps; and,
- (x) a lack of internal budget management or cost control.

11.19 KDC concluded, and the Receiver agreed, that MI’s management of the Project significantly deviated from standard industry practice and failed to meet the standards expected of a general contractor, let alone the general contractor for a project of this scale and significance.

*(b) MI’s Failure to Resolve Identified Issues*

11.20 To address these issues, KDC and the Receiver attempted to work with MI throughout the fall and early winter to implement new practices and procedures to ensure that MI’s work on the Project was in alignment with industry standards. This included the implementation of more formal reporting processes and procedures, such as a formal change management process.

---

construction status of the Project as at October 31, 2023, the superstructure of the Project (i.e., the concrete structure) had only progressed to the 42<sup>nd</sup> floor (out of a total of 85 floors), curtainwall installation was commencing on the 12<sup>th</sup> floor, and minimal interior work had been completed (with the exception of the installation of plumbing risers, electrical panels, etc.).



- 11.21 Despite the efforts of KDC and the Receiver, issues with the quality of MI's management and administration of the Project continued.
- 11.22 On December 31, 2023, KDC provided the Receiver with its first comprehensive report addressing the current status of the Project and MI's work to date. Among other things, the report outlined the significant steps that would need to be taken to get the Project on track, including supporting the preparation of a revised procurement schedule, construction schedule, budget and projected cost to complete. A copy of that report is attached hereto as **Confidential Appendix "33"**.
- 11.23 On January 2, 2024, KDC provided the Receiver with a further memo outlining its continuing concerns regarding MI's work and practices in its role as general contractor. A copy of this memo is attached hereto as **Confidential Appendix "34"**.
- 11.24 KDC's memo and updated Issues Log indicated that MI had made very little progress addressing the issues first identified by KDC in the fall. Again, KDC highlighted that MI's team appeared to be disorganized and administratively weak, with a general lack of understanding of the standard practices expected of a general contractor on a major project, and its associated responsibilities to the Debtors and the Project's stakeholders.
- 11.25 KDC also reiterated that numerous issues with the Project's management persisted, including:
- (i) **General governance, control, and fiscal responsibility failures:** Among other things, MI had failed to meaningfully resolve problems such as the Project's general reporting, document management issues, and scheduling issues. MI also continued

to demonstrate a lack of critical path understanding to ensure that the Project's construction remained on schedule and a lack of effective coordination of trade activities.

(ii) **Refusal to Follow Implemented Procedures and Policies:** Although the Receiver and KDC attempted to implement new procedures and policies in the fall of 2023, such as the change management process, MI consistently failed to comply with these procedures by, among other things:

- (a) failing to respond to KDC's requests for further information in respect of MI's change requests;
- (b) failing to ensure that change orders reviewed by KDC and approved by the Receiver were finalized and executed by both parties;
- (c) failing to ensure that letters of intent entered into with subcontractors reviewed by KDC and approved by the Receiver were converted into contracts or change orders; and
- (d) improperly uploading change orders into the Project's construction management software for subcontractors/trades that did not have a properly executed contract.

(iii) **Poor Site-Level Management and Management of the Trades:** KDC concluded that MI mismanaged its relationships with key trades working on the Project and failed to address issues raised by them promptly and efficiently. For example, in response to payment issues caused by MI's failure to make timely payment to the

trades, MI attempted to deflect blame by advising certain of the trades that these payment issues stemmed from the Receiver and KDC.

- (iv) **Missed Key Deliverables:** MI also failed to meet deadlines for key Project deliverables. In addition, it refused to acknowledge these missed deadlines or to take corrective actions in respect of them. By way of example, MI failed to resolve a known issue with an elevator prior to calling for inspection, resulting in a failed inspection. This resulted in unnecessary delays in the Project schedule that could and should have been avoided.

11.26 Throughout January 2024, MI also continued to fail to meet deadlines for outstanding deliverables that it had communicated to KDC and the Receiver. KDC prepared a memo to the Receiver cataloguing these outstanding deliverables on January 18, 2024. A copy of this memo is attached hereto as **Appendix “35”**.

*(c) The Receiver Engaged Additional Consultants to Assist MI*

11.27 Given the significance and scale of the management issues identified by KDC, the Receiver, with the assistance of KDC, determined that it was necessary to engage additional third parties to assist with the assessment and planning of the Project. In furtherance of this goal, the Receiver commissioned the following reports and analyses:

- (i) on or about October 23, 2023, the Receiver engaged Altus to review the Project’s schedule for accuracy, and to revise the Project’s schedule accordingly. As part of this work, Altus discovered several inaccuracies in MI’s existing Project schedule, resulting in significant revisions. As noted above, prior Altus Reports had also

noted significant issues with the schedules provided by MI. A copy of Altus' report dated January 23, 2024, is attached hereto as Appendix "36"; and

- (ii) on or about January 22, 2024, the Receiver engaged the Project's architect, Core Architects Inc., MCW Consultants Ltd. and RJC Engineers Ltd. to review the status of the Project as of January 31, 2024, and prepare a construction progress report (the "**Construction Progress Report**"). The Construction Progress Report outlined significant issues with the Project's management, and particularly its documentation of trade contracts and invoices. The Construction Progress Report also identified that in several instances, the percentage of work completed by a trade was inconsistent with the amounts billed, either because the work performed exceeded the amounts billed to date (as no invoices were available for review or were not current), or because the amounts billed exceeded the percentage of work observed to be complete. A copy of the Construction Progress Report is attached hereto as **Confidential Appendix "37"**.

11.28 Put simply, every experienced professional that the Receiver has consulted with in respect of MI's performance as general contractor of the Project has identified significant issues.

## **12.0 SKYGRID'S PERFORMANCE**

- (i) ***SKYGRiD was able to provide superior service at a lower cost compared to MI***

12.1 As noted above, the Receiver replaced MI with SKYGRiD as the Project's construction manager in March 2024. In its factum with respect to a production motion dated August 7, 2024, and attached hereto as **Appendix "38"**, MI asserted that "the value of the work

provided by MI to the Project is, in part, informed by the costs the Project is currently incurring with SKYGRiD and the efficiencies and the progress made by SKYGRiD in constructing the building.” MI asserted that if it was paid less than SKYGRiD or made faster progress, then that would “conclusively establish” that MI was paid market rates.

12.2 Based on the Receiver’s analysis, SKYGRiD has significantly outperformed MI in terms of both construction progress and efficient project management. It has charged less than MI and has provided significantly better services.

12.3 As a preliminary matter, and as the Receiver expected when it hired SKYGRiD, SKYGRiD has charged substantially less for its work on the Project as compared to MI. The Receiver has summarized these fees in the chart attached hereto as **Appendix “39”**. SKYGRiD has, on average, charged approximately \$1 million per month less than MI in comparison to the MI Payment Practices.

12.4 SKYGRiD has also provided demonstrably better services than MI. Following MI’s removal as general contractor, the Receiver asked KDC to provide its analysis of SKYGRiD’s performance relative to MI’s performance. KDC concluded that it observed significant improvements in the Project’s construction management with respect to a number of key metrics. A copy of KDC’s report dated August 21, 2024 outlining these improvements is attached hereto as **Appendix “40”**. Among other things, KDC’s report identified the following:

- (i) **Improved Controls:** In previous reports, KDC determined that MI’s management was characterized by a lack of budgetary controls, tracking, and forecasting. These deficiencies necessitated the engagement of third-party services to help prepare a

detailed cost-to-complete estimate and baseline construction cost budget for the Project.

By contrast, on May 10, 2024 (less than 60 days after it was hired), SKYGRiD produced a comprehensive budget and schedule, without requiring the Receiver to retain additional third-party services. SKYGRiD's budget and schedule have been adopted by the Receiver, KDC and Finnegan Marshall.

- (ii) **Improved Procedure, Schedule, and Change Controls:** In prior reports, KDC determined that MI altogether lacked a formalized procurement schedule and process. As such, subcontracts and purchase orders were generally issued on an as-needed basis and consisted of “drip-fed” scope, resulting in several trades having multiple contracts, and/or contracts in various states of transition and execution. These contracting practices increased the risk of claims and liability.

SKYGRiD issued a formal procurement schedule alongside its budget and schedule on May 10, 2024. SKYGRiD also prepared transition strategy matrixes with respect to several subcontracts and purchase orders, which were provided to stakeholders for review/comment. Adjustments and amendments were likewise made within reasonable timeframes based on associated progress, requests, and requirements.

- (iii) **Inadequate use of Construction Management Software and Poor Document Management:** Throughout its tenure as general contractor, MI made ineffective use of its construction management software, known as “Procore”. MI implemented no formalized management of Procore and tasked each member of staff with the responsibility of maintaining their respective documentation. This resulted in

discrepancies, lack of continuity and organization, and document gaps system wide. As a result, the Receiver and KDC were required to rely upon Project consultants and trades, as well as records held by other third parties, to compile a significant amount of documentation related to the Project.

Since its appointment, SKYGRiD has commenced the process of transitioning to a new construction management software. It has dedicated staff to the ongoing administration of its construction management software and focused on continued improvement and functionality. Documentation is also now centralized in the new software and accessible as needed.

- (iv) **Quality Assurance and Quality Control Process:** Under MI, KDC determined that Project documentation, such as consultant site visit reports, general conformance reports, inspection and close-out reports, and Bulletin-19 related reporting archives, existed in various states of disarray. Archives of these records lacked continuity, organizational consistency, file structure, and overall document management controls. MI's approach to such documentation was siloed: project managers had restricted access to comprehensive Project documentation and were confined to their specific disciplines. Consultant and Project-related reports were frequently sent directly to MI executives, bypassing others. There was no centralized system or protocol for tracking or remedying deficiencies identified by consultants.

SKYGRiD has engaged all project consultants from the start, establishing formal systems for distributing, cataloging, and tracking reports and deficiencies.

Reporting is now centralized, giving all stakeholders and consultants direct access for effective communication and coordination. SKYGRiD also regularly updates, consolidates and distributes relevant documentation to stakeholders, and addresses concerns proactively during consultant coordination meetings.

- (v) **Off-Site Storage Agreements:** Under MI, off-site storage agreements were often limited or non-existent, even though subcontractors were paid for materials that were held in off-site storage locations. Agreements, inventory, cost details, insurance, and on-site inspections were incomplete, and addressed only after SKYGRiD took over construction management.

**(ii) *Improvements to Project Schedule***

- 12.5 On a complicated construction project, the project schedule is a key tool for both planning work (i.e., knowing when certain activities will be complete so the next part of the work can commence) and tracking progress (i.e., monitoring when work has been completed in order to fully understand how construction is progressing and whether the schedule is being met).
- 12.6 As described above, at the outset of the Receivership Proceedings, MI lacked an accurate and updated baseline schedule or budget. This made it difficult for anyone (including MI) to reliably track progress on the Project.
- 12.7 The Receiver and KDC tried to work with MI to develop a realistic construction schedule. Following the Receiver's appointment, MI was tasked with providing a revised baseline schedule to address such issues. However, even with the assistance of the Receiver, KDC



and Altus, the underlying schedule continued to contain several logic errors and remained a work in progress throughout MI's tenure.<sup>16</sup>

*(b) SKYGRiD significantly improved the Project schedule*

- 12.8 Upon taking over as construction manager of the Project, SKYGRiD prioritized developing a comprehensive schedule and budget, which were issued on May 10, 2024. SKYGRiD continues to refine the schedule, improve duration (i.e., the time that various construction activities would take to complete), and evaluate areas for potential efficiencies, with updates issued monthly. Its updated schedules now include progress tracking and actual dates of completed activities, showing ongoing improvements over both MI's projections and SKYGRiD's own baseline estimates.
- 12.9 SKYGRiD also continues to improve upon its own schedule projections. By way of example, SKYGRiD projects that it will achieve a 22-day gain on Tier 9 Corner Hanger installation, and a 54-day gain on curtainwall and cladding installation.
- 12.10 Overall, based on SKYGRiD's schedule, the Project is expected to be completed in the second half of 2027, in comparison to MI's last estimated completion date in the first half of 2028.

---

<sup>16</sup> MI submitted three iterations of a revised baseline schedule for review, none of which were in a form satisfactory to KDC, Altus and the Receiver. Each iteration of the schedule indicated a continuously deferred Project completion date from December 17, 2027 (per MI's schedule as of December 11, 2023) to May 15, 2028 (per MI's schedule as of February 29, 2024).

**(iii) Improvements in value engineering**

12.11 As SKYGRiD evaluates the existing and new scopes of work to be tendered on the Project, it has been effectively identifying and achieving value engineering (i.e., cost saving) opportunities. These include notable cost savings, such as:

- (i) approximately \$239,000 in cost savings with respect to the miscellaneous metals scope of work; and
- (ii) approximately \$4.8 million in respect of cost savings with respect to the sprinkler scope of work.

12.12 SKYGRiD has also identified considerable material, element, and sequencing substitutions where possible, including the following:

- (i) **April 16, 2024** – SKYGRiD shifted to the unitization of exterior wall and louvre systems, which had previously been installed under a “stick-built” or individual component methodology, resulting in potential cost savings of approximately \$5 million.
- (ii) **June 30, 2024** – SKYGRiD facilitated the relocation of the Project’s site office one block south of the previous location, resulting in monthly cost savings of approximately \$20,000 (which translates to an annual cost savings or approximately \$240,000).
- (iii) **August 13, 2024** – SKYGRiD substituted a galvanized heel-safe grille in lieu of drilled granite pavers at ground floor exterior, resulting in both substantial current cost savings at a material level, and future savings from a post-construction

maintenance perspective, resulting in potential cost savings of approximately \$300,000.

12.13 In sum, since SKYGRiD's appointment as the Project's construction manager, KDC has reported substantial improvements in Project management regarding several key performance indicators when compared to MI's tenure.

**(iv) Conclusion with respect to MI's claims against the Debtors**

12.14 For the reasons described above, the Receiver has concluded that MI is not entitled to any further payment by the Debtors. Contrary to MI's allegations, MI is not entitled to any further payment pursuant to the terms of the Receivership Order. It is not entitled to any further payment pursuant to any contract with the Debtors (and has, in fact, been significantly overpaid under those contracts). Finally, no further payment to MI is owed (or can be justified) based on MI's performance as general contractor.

**13.0 THE DEBTORS' CLAIMS AGAINST MI**

13.1 MI's claim for post-receivership work is only one part of a broader relationship between MI and the Debtors. As set out in the First Report and the Second Report, the Receiver has investigated, and continues to investigate, various potential claims that the Debtors have against MI.

**(1) MI was paid Labour Rates it is not entitled to**

13.2 As noted above, no agreement between MI and the Debtors allowed MI to charge the Labour Rates to the Debtors. MI charged the Debtors, and was paid, a total of approximately \$49.3 million, comprised of Labour Rates totaling \$47.4 million plus

\$1.9 million in applicable CM Fees that MI charged on the Labour Rates. The Receiver does not believe that MI was entitled to these amounts.

- 13.3 The GC Agreement specifically required that MI provide “and pay for” the labour required to complete the Project. The relevant section is reproduced below:

**GC 3.8 LABOUR AND PRODUCTS**

3.8.1 \* The *Contractor* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.

- 13.4 This term in the GC Agreement was not amended by any subsequent agreement or document. No separate document executed by the parties authorized MI to charge the Labour Rates.

**(2) Claims against MI for breach of the ELA and Mediator’s proposal**

- 13.5 In addition to this claim, the Receiver has identified the following claims against MI to date:

Claim	Amount
(i) Commissions that MI is obliged to return pursuant to the ELA	\$1,816,012.85
(ii) Amounts paid to outside brokers in breach of the ELA	\$891,778.60
(iii) Reserve not held by MI in breach of the Mediator’s Proposal	\$1,200,000.00
(iv) Monthly Marketing Fees improperly charged by MI	\$2,700,000.00
(v) CM Fees improperly charged by MI	\$2,932,062.26
<b>Total</b>	<b>\$9,539,853.71</b>

13.6 In summary, even if the Debtors owe any further amount to MI (which the Receiver denies), MI owes significantly more to the Debtors.

*(i) Commissions that MI is obliged to return pursuant to the ELA*

13.7 The Receiver has concluded that MI is required to repay commissions totaling approximately \$1.8 million that it received in respect of Condominium Sales Agreements (“CSAs”). Certain of the CSAs were terminated by the Receiver on behalf of the Debtors because the purchasers failed to pay all (and in several cases, any) of the deposits they owed.

*(a) The terms of the ELA*

13.8 Pursuant to the ELA, MI had the exclusive right to sell condominium units in the Project. It was entitled to be paid commissions on these sales, but MI had an obligation to return any commissions paid to it with respect to a sold condominium unit if the CSA for that unit was subsequently terminated for purchaser default. A number of the CSAs have been terminated for purchaser default, and MI is obliged to return the related commissions.

13.9 The relevant terms of the ELA are summarized below:

- (i) **Section 4(a)(i):** commissions of 4.89% of the net sale price are payable in respect of all sales other than those to “Friends and Family”, for which commissions of 2.5% of the net sale price are payable, and those to “equity investors”, for which no commission is payable;

- (ii) **Section 4(a)(ii):** commissions are payable: (a) 33% after 10 business days of execution of the CSA; (b) 33% upon construction financing; and (c) 34% upon final closing of each condominium unit;
- (iii) **Section 4(a)(iii):** MI is to receive advances of \$100,000 per month against commissions earned to a maximum of \$3.6 million from August 1, 2017, until the conclusion of the sales program, at which time advances will be reconciled against the commissions payable and any required adjustments will be made upon such final accounting;
- (iv) **Section 4(a)(v)(2):** upon termination of a CSA due to default by a condominium unit purchaser, any commissions paid to MI are promptly returnable to the Nominee; and
- (v) **Section 2(a):** the term of the ELA was originally three years from the date of execution but was revised thereafter to be five years, plus an additional three years (being until July 12, 2025).

(b) *The Importance of Deposits*

13.10 Deposits are a key component of condominium sales that occur before, or during, construction of the condominium building. Sales can occur several years before the building is complete and the sale transaction can be closed. Condominium developers and builders typically require a significant deposit (typically in the range of 20% of the unit's purchase price) to ensure that purchasers are committed to completing the transaction, and

to potentially access a meaningful percentage of the capital required to complete the Project.

13.11 Deposits are particularly important for sales to foreign buyers. It can be difficult (and, depending on their location, practically impossible) to enforce contracts with foreign buyers. A foreign purchaser that does not pay a substantial deposit may be able to walk away from the contract without facing any meaningful consequence. Because of this risk, it is common to require that foreign buyers pay higher deposits.

13.12 As noted above, deposits can also be an important source of funding for a condominium project. The Debtors have used deposit funds totaling approximately \$102 million to finance construction of the Project. These amounts are described in paragraph 3.9(i) of the First Report.

13.13 The Credit Agreement recognized the importance of deposits and required that the Debtors enter into and maintain CSAs that constitute “Qualifying Sales Agreements” with projected “Gross Sale Proceeds” (as defined in the Credit Agreement) of not less than \$522,965,855 as a condition of funding.

13.14 A Qualifying Sales Agreement must meet the following criteria (undefined capitalized terms below have the meaning given to them in the Credit Agreement):

- (i) provide for a minimum deposit of 25% of the sale price in respect of which 20% has been received;

- (ii) have a purchaser who is not a non-resident of Canada, is not a Related Person of any of the Credit Parties, and is not (together with its Affiliates or Related Persons) acquiring more than two units; and
- (iii) not entitle the purchaser to rescind or terminate the CSA.

13.15 Based on the Receiver's analysis, there were approximately \$482 million worth of Qualifying Sales Agreements as of the Appointment Date. If a purchaser did not enter into a Qualifying Sales Agreement or failed to pay a required deposit, then that purchaser's sale is considered an "Unqualified Sale" under the Credit Agreement.

13.16 As described in greater detail below, in its review of the CSAs the Receiver identified numerous incidents of unpaid, short paid and below standard deposits. When the Receiver inquired with MI about this, MI provided an e-mail dated May 1, 2023, from an employee of the Senior Secured Lenders stating that "the terms of certain Agreements of Purchase and Sale (APS) from time to time deviated from those of the Standard Form Residential Sales Agreement. The dates and amounts to be received as the deposits on the APS are business decisions. However, please put your best effort to collect the deposits in a timely manner so it does not breach the APS." This e-mail is attached hereto as **Appendix "41"**.

*(c) Standard Deposit Requirements*

13.17 The standard form of the CSA executed with purchasers on the Project (the "**Standard CSA**") required an initial deposit upon execution of the CSA, plus an additional amount to be paid within 30 days, together totaling 5% of the gross sale price (inclusive of HST), plus additional 5% increments to be paid within 90, 180 and 360 days after execution of the



CSA (the “**Interim Milestones**”), and a final 5% on occupancy of the condominium unit such that the combined total was a 25% deposit by the time of occupancy.

- 13.18 Upon the Appointment Date: (i) the residential component of the Project was comprised of 416 condominium units; (ii) a total of 346 units were sold and subject to a CSA; and (iii) the Interim Milestones dates for all but 10 of the 346 units with CSAs had passed, such that deposit amounts totaling 20% were due and payable. The remaining 10 CSAs were executed within one year prior to the Appointment Date such that some, but not all, of the Interim Milestones dates had passed for those CSAs.

*(d) The Defaulting Purchasers*

- 13.19 Unit purchasers (the “**Defaulting Purchasers**”) with CSAs for a total of 28 units owed overdue deposits totaling approximately \$23.8 million. The Defaulting Purchasers breached the applicable CSA by failing to pay some or all of the deposit amounts in accordance with the Interim Milestones. Because of these breaches, the Debtors were entitled to terminate the CSAs for breach of this obligation.
- 13.20 The large number of short-paid deposits were identified before the Receiver was appointed. On October 5, 2023, the Senior Secured Lenders requested repayment of the commissions in respect of CSAs for which deposits had not been received at all. On October 6, 2023, MI suggested to the Senior Secured Lenders that such commissions be repaid either: (i) in equal installments over a 10-month period out of MI’s CM Fees, or (ii) from commissions on future sales and then re-adjusted as the respective deposits were paid. A copy of this correspondence is attached hereto as **Appendix “42”**. This proposal was not implemented before the Appointment Date.

13.21 The Receiver was particularly concerned about the CSAs for the following units (the “Default CSAs”):

- (i) two units (combined to form a single unit), representing the most expensive sale in the Project, were sold to a resident of the United States who plead guilty to fraud in the United States. The deposit on this unit was significantly short-paid and represented less than 0.1% of the gross sale price;
- (ii) three units were sold to members of a family resident in Iran on the eve of the *Prohibition on the Purchase of Residential Property by Non-Canadians Act* (Canada) (the “Act”) coming into effect on January 1, 2023. The Act does not apply to non-Canadians who entered into a binding CSA before January 1, 2023. However, as no deposits were paid on these sales, their validity was determined to be questionable. Sam advised the Receiver that these parties are all from a single family, the principal of which (and the individual who was funding the purchases) died shortly after executing these agreements, and that the estate is in the equivalent of probate in Iran; and
- (iii) one unit was sold to a company located in the United Arab Emirates purported to be owned by a Princess of Liechtenstein. This CSA required only a 10% deposit as of the Appointment Date (significantly below the Standard CSA), of which only \$20,000 had been paid.

13.22 The Default CSAs referenced above are summarized in the chart below:

Unit Number	Commission paid to MI	Purchase Price	Deposit Paid
6803	\$224,828.22	\$7,847,844.00	\$0
7003	\$231,150.22	\$8,069,194.00	\$0
7303	\$232,561.13	\$8,118,594.00	\$0
7603	\$249,963.21	\$8,727,888.00	\$19,967.50
7901/7902	\$877,510.07	\$30,700,000.00	\$20,000.00
<b>Total</b>	<b>\$1,816,012.85</b>	<b>\$63,463,520.00</b>	<b>\$39,967.50</b>

13.23 Thus, on the Default CSAs alone, MI sold units worth \$63.5 million and received commissions of approximately \$1.8 million, but collected deposits totaling less than \$40,000. The deposits received on these units represent approximately 0.06% of the aggregate purchase price.

*(e) Termination of the Default CSAs*

13.24 In light of the significant deposit defaults under the Default CSAs, and doubts about whether the purchasers could or would complete the sale transactions, the Receiver sent notices to those relevant Defaulting Purchasers on May 1, 2024 (each, a “**Default Notice**”). The Default Notices required that each Defaulting Purchaser with a Default CSA cure their default by May 13, 2024, by paying the overdue deposits, failing which the Default CSA would be terminated and any deposit amounts paid forfeited. None of the Defaulting Purchasers to whom Default Notices were sent responded to the Default Notice, nor did they pay any further deposit amounts. Accordingly, on May 13, 2024, the Default CSAs were terminated. Copies of the Receiver’s letters sent to the respective Defaulting Purchasers are attached hereto as **Appendix “43”**

13.25 Pursuant to section 4(v)(2) of the ELA, upon termination of a CSA due to purchaser default, MI must promptly repay the Debtors the associated commissions. Accordingly, on May 15, 2024, the Receiver wrote (through counsel) to MI to advise of the termination of the Default CSAs and to request that the associated commissions of \$1,816,012.85 be returned by June 1, 2024. A copy of this correspondence is attached hereto as **Appendix “44”**. By a responding letter dated May 29, 2024, MI refused to repay any commissions.

*(f) Other units with purchasers in default*

13.26 The Receiver has identified a further 22 CSAs for which Defaulting Purchasers owed approximately \$12.0 million of deposits as of the Appointment Date. The Receiver may seek to terminate these CSAs in the future. MI has been paid commissions of approximately \$2.3 million on these units. If these CSAs are terminated due to purchaser default, MI would be obligated to repay the Debtors the associated commissions pursuant to the ELA.

**(ii) Amounts paid to outside brokers in breach of the ELA**

13.27 The Receiver has also concluded that the Debtors are entitled to a return of the commissions and related amounts paid to third-party brokers in breach of the ELA.

13.28 In addition to the ELA, the Receiver has identified agreements with third-party brokers to which either MI or the Nominee are the counterparties. These agreements entitle the third-party brokers to commissions on top of those provided for in the ELA. Pursuant to these agreements, the third-party brokers have invoiced \$1.6 million for commissions and a retainer, \$892,000 of which has been paid.

13.29 The ELA did not authorize MI to hire third-party brokers to do the work that MI agreed to do. To the extent that MI decided to delegate certain responsibilities under the ELA to a third-party broker then MI, not the Debtors, is responsible for the resulting cost. MI was especially not entitled to claim its own commission *and* also cause the Debtors to pay a separate commission to a third-party broker.

(a) *Magix Technologies LLC*

13.30 MI entered into a Marketing Agency Agreement (the “**MAA**”) with Magix Technologies LLC (“**Magix**”) effective July 13, 2022. A copy of the MAA is attached hereto as **Appendix “45”**. Pursuant to the MAA, Magix received a non-refundable retainer of \$367,500 to act as sales agent for MI in the Middle East and North Africa and a 5% commission on condominium unit sales.

13.31 The Senior Secured Lenders approved the retention of Magix. A copy of this correspondence is attached hereto as **Appendix “46”**. However, the Receiver is not aware of any evidence that Coco (and therefore the Debtors) or the Senior Secured Lenders approved both Magix and MI being paid commissions for the same unit sale. To date, Magix has been paid \$190,000 by the Debtors out of \$571,000 of commissions invoiced in respect of two units, one of which is among the Default CSAs that have since been terminated. This is in addition to the \$368,000 in commissions paid to MI for the same units.

13.32 The MAA provides that commissions are to be paid to Magix by MI on a pro-rata basis as amounts are paid by the purchaser. However, it appears that Magix billed commissions to and was paid by the Debtors in advance of when they were due under the MAA.

*(b) Royal LePage*

13.33 MI entered into listing agreements with Royal LePage (the “**Listing Agreements**”). A copy of the Listing Agreements are attached hereto as **Appendix “47”**. Pursuant to the Listing Agreements, Royal LePage was to receive a 2.5% to 5% commission on condominium unit sales. To date, Royal Le Page has been paid \$334,000 in commissions by the Debtors, with \$353,000 remaining owing in respect of three units. This is in addition to the \$545,000 of commissions paid to MI for the sale of the same units.

13.34 As noted, the ELA, which grants MI the exclusive rights to sell the units, states that MI “shall be responsible and shall pay for...the advertising and sales promotion in connection with the sales of the Units inclusive of promotional material and displays”. Neither the ELA nor any other agreement allows MI to charge third-party commissions and its own commissions on the same units, nor were the Debtors obligated to pay any commissions to Magix or Royal LePage.

*(iii) Reserve not held by MI in breach of the Mediator’s Proposal*

13.35 At the time of the mediation that led to the Mediator’s Proposal, MI was holding \$1.2 million partially in a non-segregated MI account and partially in a segregated MI account as a reserve against a potential future liability (the “**Reserve**”).

13.36 The Mediator’s Proposal (which Mizrahi and MI accepted) required that the Reserve be transferred into a joint trust account or used to purchase a GIC, to be held in trust in the event that the potential future liability arose.

13.37 The Receiver understands that the Reserve was not transferred into a trust account, used to purchase a GIC, or used to satisfy any Project-related liability. The Receiver has concluded that MI is liable for the missing reserve.

**(iv) *Marketing fees improperly charged by MI***

13.38 Pursuant to the terms of the ELA, MI was responsible for all marketing costs in connection with the sale of condominium units for the Project. This responsibility was specifically affirmed in the Mediator's Proposal.

13.39 Despite these terms, MI charged a marketing fee of \$100,000, plus HST, every month. The Mediator's Proposal provided that MI's sole compensation for marketing and selling the Project (apart from the commissions described above) was to be a Residential Management Fee (which is described below):

This fee will include all efforts and services rendered associated with marketing and selling the remaining units, including all creative direction provided by Sam Mizrahi. It is intended to include everything save and except for services provided by arm's-length consultants and suppliers, save and except for the current real estate commission structure, which as I have already said, remains the same. To be more specific, Sam will no longer mark up third-party marketing invoices.

13.40 Based on the foregoing, the Receiver has concluded that MI is not entitled to the marketing fees it invoiced from June 2021 to August 2023, totaling \$2.7 million.

**(v) *CM Fees improperly charged by MI***

13.41 In addition to the foregoing, the Receiver has concluded that MI was paid more on account of the CM Fee than it was entitled to.

13.42 As noted, the Mediator's Proposal permitted a 3.5% CM Fee. Coco and Mizrahi authorized an increase to the CM Fee from 3.5% to 5% during the Control Period pursuant to the Control Agreement. The Control Agreement expired in August 2022, yet MI continued to charge a 5% CM Fee thereafter.

13.43 The Receiver has reviewed the Control Agreement and considered the circumstances surrounding its execution and the period when it was to be in force. The Receiver has also considered the findings set out in the 2023 Award with respect to the scope and purpose of the Control Agreement. Specifically, as the 2023 Panel noted in the 2023 Award, when the parties entered into the Control Agreement, the documents required to complete the Purchase were being held in escrow pending the satisfaction of certain conditions (including payment of the purchase price). The Control Agreement was intended to address control of the Project while the documents were held in escrow:

J. The parties wish to provide for certain matters with respect to the operation and control of the GP and the Partnership during the period from the date hereof until the mutual release of the escrow (the "**Escrow Period**");

13.44 The Control Agreement provided that Mizrahi could cause the Debtors to pay a CM Fee equal to 5% of Hard Costs "in accordance with the terms of the construction management agreement between [MI] and [the Debtors]". This was an increase from the 3.5% CM Fee allowed by the Mediator's Proposal, which governed MI's compensation before the Control Agreement was executed.

13.45 The Control Agreement does not indicate that MI is entitled to charge a 5% CM Fee after its expiration. Moreover, the 2023 Panel specifically found that the Control Agreement



“was entered into between the parties for a specific and limited purpose which was to provide Sam with exclusive operational control of the Project during the Escrow Period.”

- 13.46 The Receiver accepts the finding in the 2023 Award that the Control Agreement was intended to operate during (and not after) the Control Period. Accordingly, the Receiver believes that the Control Agreement did not authorize MI to charge a 5% CM Fee after the Control Period ended.
- 13.47 As noted above, after the Control Period ended, Coco consistently objected to the 5% CM Fee charged by Sam. The Receiver has not seen any evidence that Coco (and, by extension, the Debtors) agreed to pay a 5% CM Fee after the Control Period ended.
- 13.48 In the period from August 30, 2022 (when the Control Period ended) to March 13, 2024 (when MI was replaced as general contractor), MI charged CM Fees of approximately \$9.6 million. If MI had charged a 3.5% CM Fee for this period, then MI would have been paid CM Fees of \$6.7 million. As noted above, the Receiver paid MI a 5% CM Fee during this period on an interim basis and without affirming any contract between MI and the Debtors.
- 13.49 In light of the foregoing, the Receiver has concluded that MI overcharged the Project for the CM Fees in the approximate amount of \$2.9 million. The Receiver’s calculation of the CM Fee overpayment is set out in **Appendix “48”**.

#### **14.0 ISSUES STILL UNDER INVESTIGATION BY THE RECEIVER**

##### ***(i) Amounts charged for work that may not have been performed***

14.1 In addition to the claims identified above, the Receiver has identified a number of subcontractors that appear to have been paid for work (using funds from the Debtors) that they did not actually perform. The Receiver has not yet asserted a claim against MI in respect of these matters, because it wants to provide MI and the relevant subcontractors with an opportunity to provide evidence that they did the work they were paid to do on the Project. However, based on the evidence currently available to the Receiver, there is reason to doubt whether the subcontractors completed the work they were paid to do. The aggregate amount of the costs outlined below total approximately \$3.7 million (net of HST).

14.2 As noted above, MI was responsible for managing the various subcontractors that it hired to perform work on the Project. MI was also responsible for ensuring that these subcontractors performed the work that they were paid to perform and ensuring that it only invoiced the Debtors for work that was actually performed.

##### ***(ii) Payments to subcontractors where the Receiver has been unable to confirm the work was performed***

14.3 1118741 Ontario Limited o/a Irpinia Kitchens (“**Irpinia**”) invoiced and was paid by MI using funds from the Debtors for \$565,000 (net of HST and 10% holdback) for “Early Procurement of Material” for the Project’s kitchens on February 2, 2023. The Project had not advanced to the point that kitchen material was required (or close to being required) by February 2023. The invoice is attached hereto as **Appendix “49”**.

- 14.4 SKYGRiD (on behalf of the Receiver) asked Irpinia to deliver the material that it had been paid to procure for the Project. Irpinia advised SKYGRiD that it did not procure any material. Irpinia then claimed that the payment was compensation for meetings with MI.
- 14.5 The Receiver has reviewed the Electronic Project Records produced by MI. It has not found any evidence of an agreement by MI to pay Irpinia to attend meetings, and it has found relatively few references to meetings between MI and Irpinia.
- 14.6 More importantly, Irpinia admitted that it did not perform the procurement work that it was paid to perform.
- 14.7 Pereira Construction and Carpentry (“**Pereira**”) invoiced and was paid by MI using funds from the Debtors for \$204,417 (net of HST and 10% holdback) as a “deposit for material”. Pereira has advised SKYGRiD that it did not purchase any materials for the Project. It claims that the payments to it related to the rental of a shop for millwork.
- 14.8 Mar-Tec Woodworking Ltd. (“**Mar-Tec**”) invoiced and was paid by MI using funds from the Debtors for \$111,870 (net of HST and 10% holdback) for “Shop Drawings for Commercial Retail Fitout”. SKYGRiD asked Mar-Tec to provide the shop drawings that it prepared, but Mar-Tec advised SKYGRiD that it did not prepare shop drawings.
- 14.9 Royal Bedrock Inc. (“**Royal Bedrock**”) invoiced MI, and was paid using funds from the Debtors, a total of \$2,798,261.50 (net of HST) to supply certain stone hardscape material for the Project. Most of these payments were for materials that Royal Bedrock agreed to provide to the Project when they were required. However, SKYGRiD has not been able to

determine that the goods that were paid for were actually received and delivered to the Project, which the Receiver continues to investigate.

14.10 Anthony Guido of Royal Bedrock sent additional invoices to SKYGRiD for the material required by the Project. These invoices are attached hereto as **Appendix “50”**. According to records available to the Receiver, the Debtors have already paid MI for the material listed in Royal Bedrock’s invoices. Indeed, internal correspondence between MI employees, attached as **Appendix “51”**, expressed significant surprise about the cost of the stone. Esteban Yanquelevech, MI’s Vice President, Construction, wrote that the material to be supplied by Royal Bedrock was to cost “no more than \$1 million” and that he would “lose it” if MI had spent \$2.8 million on stone.

14.11 In light of the current uncertainty about whether Royal Bedrock has already been paid for the materials for which MI invoiced the Debtors, the Receiver seeks further information with respect to what the payments to Royal Bedrock relate to.

14.12 The Receiver’s investigation into the above remains ongoing, including providing MI and the contractors listed above the opportunity to provide evidence that they actually provided the services or materials to the Project that they were paid for. After considering that evidence, the Receiver will determine how to proceed.

**(iii) Ongoing forensic review**

14.13 The Receiver also continues to analyze various issues relating to MI’s work on the Project, including how various funds paid into MI’s bank accounts were used. This investigation has been made more difficult by MI’s failure to produce certain accounting records held in

its QuickBooks accounting system in their native format. Although MI claims that it is technically unable to export these files, it previously exported other QuickBooks files in their native format from the same system.

- 14.14 In the absence of native files, the Receiver has been forced to manually navigate excel files in order to reconcile various transactions. This cumbersome process has delayed the completion of the Receiver's investigation. The Receiver reserves the right to assert further claims against MI once its investigation is complete.

## 15.0 MI'S CLAIM FOR RESIDENTIAL MANAGEMENT FEES

- 15.1 MI asserted by letter dated May 29, 2024, and attached hereto as **Appendix "52"**, that the Debtors owe MI approximately \$20.4 million and so it has no obligation to pay any amount to the Debtors even if it is found liable for any amount claimed by the Receiver. MI's claim is summarized below:

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

- 15.2 As a preliminary matter, the Receiver notes that any debt owed by the Debtors to MI in respect of the Residential Management Fee would be an unsecured pre-receivership debt and it would rank behind all secured claims.

- 15.3 The Mediator's Proposal does provide for payment of a Residential Management Fee equal to 2% of the selling price of a condominium unit. Half of this amount is payable upon "entering into a firm agreement of purchase and sale with payment of the appropriate deposit." The other half is payable upon "closing of each unit."
- 15.4 Based on the Receiver's analysis, as at the Appointment Date, there were Qualifying Sales Agreements totaling \$482,466,690. This would translate to a Residential Management Fee owing to date of \$4,824,666.90 (not the \$6.2 million claimed by MI).
- 15.5 In addition, based on its review of the Debtors' books and records, the Receiver has determined that MI has already been paid \$719,121.49 of that amount, leaving \$4,105,545.41 unpaid. Documents relating to this payment are attached hereto as **Appendix "53"**.
- 15.6 Moreover, parties related to Mizrahi purchased units in the Project with deposit requirements that are approximately \$2.7 million below those required by the Standard CSA (allowing for certain provisions of the Mediator's Proposal) and have paid only \$40,000 of such deposits. MI is of the view that if the Residential Management Fee is determined to be owed, the difference between the Standard CSA deposit requirements and the deposit amounts actually paid by the Mizrahi related parties should be deducted from the Residential Management Fee. If these deductions are accepted, then the amount owing to MI would be \$1,400,905.41.
- 15.7 The Receiver does not believe that there is any amount owed in respect of MI's other claims with regards to the Residential Management Fee. Specifically:

- (i) MI claims \$6.2 million in respect of “amounts owed at closing”. As noted, half of the Residential Management Fee is owed “on closing of each unit”. These closings have not occurred, and there is no certainty with respect to when (or if) the sales will be completed. There is no basis for MI to claim that these fees are owed now as they may never be owed. Further, as noted above, this claim is similarly inflated relative to the actual value of the Qualifying Sales Agreement; and
- (ii) MI claims a further \$10.7 million in respect of “amount owing on unsold units”. This appears to be an estimate of what MI would have been owed on the Residential Management Fee if it had sold the remaining units in the Project. However, MI did not sell these units and accordingly no amount is owed under the terms of the Mediator’s Proposal.

15.8 In light of the foregoing, the Receiver has concluded that MI has significantly overstated the amount it is owed in respect of the Residential Management Fee. To the extent that the Residential Management Fee is relevant to the MI Payment Motion at all (which the Receiver does not accept), the value of MI’s claim is approximately \$1.4 million and not \$20.4 million, as claimed by MI.

## **16.0 CONFIDENTIALITY**

16.1 The proposed Confidential Appendices contain confidential and sensitive commercial information regarding the business and operations of the Debtors. Public disclosure of the Confidential Appendices and the information contained therein may negatively impact the ongoing sale and investment solicitation process for the Debtors and other restructuring initiatives to the detriment of the Debtors and their stakeholders.

16.2 In addition, certain Confidential Appendices contain personally identifying information relating to employees and former employees of MI.

16.3 As such, the Receiver recommends that the Confidential Appendices be filed with the Court on a confidential basis and remain sealed pending further order of the Court.

## **17.0 CONCLUSION AND RECOMMENDATION**

17.1 For the reasons set out in this Fifth Report, the Receiver is of the view that MI is not entitled to the relief sought on the Payment Motion, having regard to the circumstances outlined herein. The Receiver has also determined that MI owes significant amounts to the Debtors. Accordingly, the Receiver respectfully requests that the Court deny the relief sought in the Payment Motion and grant the relief sought on the Cross-Motion.

\*\*\*\*\*



All of which is respectfully submitted,

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

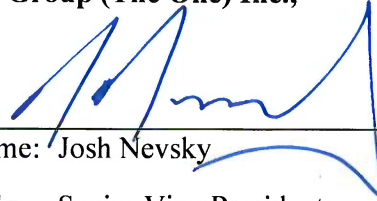
Per:



Name: Stephen Ferguson

Title: Senior Vice-President

Per:



Name: Josh Nevsky

Title: Senior Vice-President

**SCHEDULE “A”**  
**SUMMARY OF CONTRACTS RELEVANT TO MI PAYMENT MOTION**

<b>Date</b>	<b>Document</b>	<b>Parties</b>	<b>Description</b>	<b>Amounts Authorized by Agreement</b>	<b>Amounts charged by MI</b>
July 7, 2014	CCDC2 Stipulated Price Contract dated July 7, 2014 (the “ <b>First GC Agreement</b> ”)	MI and Mizrahi Development Group (The One) Inc.	Fixed price contract. MI agreed to complete the Project for a fixed price of \$422.7 million, plus HST.  MI agreed to commence work by February 8, 2015 and complete the work by September 30, 2021.	This was a fixed price contract. No CM Fee or Labour Rates were payable.	The Receiver understands that MI charged CM Fees totaling \$490,000 during this period, although there were no hard costs incurred.
July 2017	Construction Management Contract (the “ <b>CCM Contract</b> ”)	MI and Clark Construction Management Inc. (“ <b>CCM</b> ”)	MI agreed to pay a 1.5% CM Fee and pay CCM staff costs based on the Labour Rates.	The Debtors were not parties to the CCM Contract.	MI charged the Labour Rates to CCM to the Debtors, although the Debtors were not parties to the CCM Contract.

Date	Document	Parties	Description	Amounts Authorized by Agreement	Amounts charged by MI
May 14, 2019	CCDC2 Stipulated Price Contract dated May 14, 2019 (the “GC Agreement”)	MI and Mizrahi Development Group (The One) Inc.	GC Agreement required that MI complete the Project by December 31, 2022, for a total fixed price of approximately \$583.2 million plus HST.	<b>The GC Agreement does not contemplate payment of a CM Fee or Labour Rates to MI.</b>  MI was to be paid based on progress, and its profit (if any) depended on its ability to complete the Project for the agreed-upon amount.	During this period, <b>MI charged a 5% CM Fee</b> , and also charged certain staff costs to the Debtors as “general condition” costs.
November 26, 2019	Mediator’s Proposal	Coco and Mizrahi	Both Mizrahi and Coco accepted a Mediator’s Proposal made by Stephen Morrison to resolve their dispute with respect to, among other things, the fees charged by MI.	The Mediator’s Proposal allowed MI to charge a <b>3.5% CM Fee</b> .  MI was to pay a 1.5% CM Fee to CCM in accordance with the terms of the CCM Contract.	MI charged the Debtors a 3.5% CM Fee, and paid 1.5% to CCM.
October 26, 2020	Termination Notice to CCM	MI and CCM	MI terminated CCM as construction manager of the Project	MI purported to terminate CCM and assign the CCM Contract to itself.	MI continued to charge the Debtors a 3.5% CM Fee and also began charging staff costs based on the Labour Rates.

Date	Document	Parties	Description	Amounts Authorized by Agreement	Amounts charged by MI
May 2021	Control Agreement	Coco and Mizrahi	Control Agreement to govern the operation of the Project pending completion of a contemplated purchase by Mizrahi of Coco's interest in the Project. The Control Agreement effectively granted Mizrahi sole control and management of the Project, with certain limitations	The Control Agreement authorized a 5% CM Fee retroactively.	MI charged a 5% CM Fee and staffing costs based on the Labour Rates.
August 2022	Expiration of Control Agreement	Coco and Mizrahi	The Control Agreement expired on August 30, 2022, because the purchase of Coco's interest contemplated by the Control Agreement did not close.	After the Control Agreement expired, MI's compensation was again governed by the Mediator's Proposal. MI was entitled to charge a 3.5% CM Fee.	MI continued to charge a 5% CM Fee together with staffing costs based on the Labour Rates.

## SCHEDULE “B”

### KEY PARTIES REFERENCED IN THE FIFTH REPORT OF THE RECEIVER

12823543 Canada Ltd. (“128”) (previously 8891303 Ontario Inc.) – one of the limited partners of the Beneficial Owner. Holds 50% of the common shares of GP Inc., and has a 50% equity interest in the Project. Owned, directly or indirectly, by members of the Coco family.

Altus Group Limited (“Altus”) – the independent cost consultant for the Project until February 2024, appointed to review the cost and schedule of the Project against the approved Project budget and schedule.

Alvarez & Marsal Canada Inc. (the “Receiver”) – The receiver and manager, without security, of all of the assets, undertakings and properties of the Debtors, acquired for, or used in relation to the development of an 85-storey condominium, hotel and retail tower located on the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario.

Clark Construction Management (“CCM”) – the construction manager for the Project between July 2017 and October 2020. Retained as a subcontractor to MI.

Jenny Coco (“Jenny”) – a director and indirect owner of the Debtors. She (together with Rocky Coco) has a 50% indirect interest in the Beneficial Owner through 128.

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 (the “Senior Secured Lenders”) – the Debtors’ senior secured lenders.

Knightsbridge Development Corporation (“KDC”) – Project Manager retained by the Receiver on October 23, 2023.

Mark Kilfoyle (“Mr. Kilfoyle”) – the Chief Financial Officer and Chief Operating Officer of MI.

Mizrahi Commercial (The One) GP Inc. (“GP Inc.”) – The Beneficial Owner’s sole general partner, incorporated under the laws of Ontario. One of the Debtors.

Mizrahi Commercial (The One) LP (the “Beneficial Owner”) – an Ontario-based limited partnership formed to undertake the development of the Project and the beneficial owner of One Bloor. One of the Debtors.

Mizrahi Development Group (The One) Inc. (the “Nominee”) – a corporation incorporated under the laws of Ontario that is wholly owned by GP Inc. It is the registered owner of One Bloor as bare trustee on behalf of the Beneficial Owner. One of the Debtors.

Mizrahi Inc. (“MI”) – a corporation incorporated under the laws of Ontario owned and controlled by Sam Mizrahi. The former developer and general contractor of the Project from 2014 until March 13, 2024.

Rocky Coco (“Rocky”) – Together with Jenny Coco, has an 50% indirect interest in the Beneficial Owner through his indirect ownership of 128.

Sam M Inc. (together with Sam, “Mizrahi”) – one of the limited partners of the Beneficial Owner. Holds 50% of the common shares of GP Inc., and has a 50% equity interest in the Project. Owned, directly or indirectly, by Sam or members of his family.

Sam Mizrahi (“Sam”) – the president, a previous director, and an indirect owner of the Debtors, and the president and ultimate owner of MI. He has a 50% indirect interest in the Beneficial Owner through his ownership of Sam M Inc.

SKYGRiD Construction Inc. (“SKYGRiD”) – replaced MI as the construction manager on the Project in March 2024.

**APPENDIX “1”**  
**RECEIVERSHIP ORDER DATED OCTOBER 18, 2023**



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

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

THE HONOURABLE MR.

JUSTICE OSBORNE

)

)

)

WEDNESDAY, THE 18TH

DAY OF OCTOBER, 2023

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

Applicant

- and -

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

Respondents

**ORDER  
(Appointing Receiver)**

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



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

## **SERVICE AND REFERENCES**

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

## **APPOINTMENT**

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

## **RECEIVER’S POWERS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

## **NO INTERFERENCE WITH THE RECEIVER**

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

## **CONTINUATION OF SERVICES**

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

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

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

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

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

## EMPLOYEES

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

## PIPEDA

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

## LIMITATION ON ENVIRONMENTAL LIABILITIES

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

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

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

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

### **RECEIVER’S ACCOUNTS**

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

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

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

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

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

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

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

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

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

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

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

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

## SERVICE AND NOTICE

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

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

## GENERAL

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

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

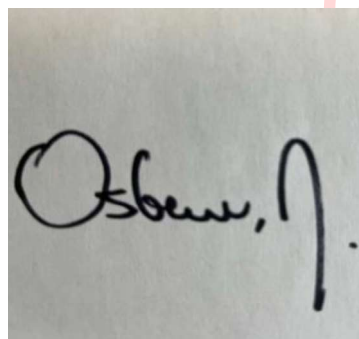
36. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order.

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

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

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

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



2023.10.  
18  
13:21:12  
-04'00'



## **SCHEDULE “A”**

### **LEGAL DESCRIPTION OF THE PROJECT**

PIN 21109-0244 (LT)

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

## SCHEDULE "B"

### RECEIVER CERTIFICATE

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

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

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

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

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

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

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

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

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

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

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

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

Name:

Title:

<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</div> <div>Applicant</div>	<div>MIZRAHI COMMERCIAL (THE ONE) LP, et al.</div> <div>and</div> <div>Respondents</div>
	<div>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</div> <div>PROCEEDING COMMENCED AT: TORONTO</div>
	<div>ORDER</div>
	<div>OSLER, HOSKIN &amp; HARCOURT LLP 100 King Street West, 1 First Canadian Place Suite 6200, P.O. Box 50, Toronto ON M5X 1B8</div> <div>Michael De Lellis (LSO# 48038U) Tel: 416.862.5997 Email: <a href="mailto:mdelellis@osler.com">mdelellis@osler.com</a></div> <div>Jeremy Dacks (LSO# 41851R) Tel: 416.862.4923 Email: <a href="mailto:jdacks@osler.com">jdacks@osler.com</a></div> <div>Shawn Irving (LSO# 50035U) Tel: 416.862.4733 Email: <a href="mailto:sirving@osler.com">sirving@osler.com</a></div> <div>Mark Sheeley (LSO# 66473)) Tel: 416.862.6791 Email: <a href="mailto:msheelley@osler.com">msheelley@osler.com</a></div> <div>Lawyers for the Applicant</div>

**APPENDIX “2”**  
**LETTER TO GOODMAN FROM MI DATED JUNE 14, 2024**

## Seaby, Emily

---

**From:** David Trafford <DTrafford@morseshannon.com>  
**Sent:** Friday, June 14, 2024 12:40 PM  
**To:** Dunn, Mark; Linde, Jennifer; Armstrong, Christopher; O'Neill, Brendan  
**Cc:** Jerome Morse; Steve Weisz; Veronica Stasolla  
**Subject:** Mizrahi Inc  
**Attachments:** 2024-06-14 Letter to Goodmans.pdf; Unpaid General Conditions Costs to 06-14-2024.xlsx; 1709BB03-The\_One-2024-03-06.pdf

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

### David Trafford

*Partner*

Direct Line: 416-941-5850



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

[www.morseshannon.com](http://www.morseshannon.com)

**PLEASE NOTE OUR NEW ADDRESS ABOVE!**



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

June 14, 2024

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

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

Dear Counsel:

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

---

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

### **Increase in the Reserve for the Payment Motion**

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

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

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



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

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

### **The Status of Construction**

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

### **Claims of the Receiver Against MI**

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

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

Yours very truly,

*J.R. Morse*

Jerome R. Morse

DT

cc: Steve Weisz  
David Trafford



<p> <b>Additional Interest if Paid</b>  <b>June 30, 2024</b> </p>	<p> <b>Additional Interest if Paid</b>  <b>June 30, 2024</b> </p>
---	---

160

Entity	2017	2016	2015	2014	2013
Bank of America & Bank International Inc.	75,124.28	-	-	-	-
Bank of America & Bank International Inc.	75,124.28	-	-	-	-
Bank of America & Bank International Inc.	75,124.28	-	-	-	-
Bank of America & Bank International Inc.	75,124.28	-	-	-	-

C1302 - Site Labourer (Includes 5% CM Fee)	\$29,691.71
C1304 - CM Fee (5%) on Materials	\$87,060.38
Subtotal Amounts as per Bid Item 8	\$1,081,912.54
C1308 - Rebarwork (Includes 5% CM Fee)	2,415.07
C1309 - Steel Deck (Includes 5% CM Fee)	4,100,000.00

© 2013

### Schedule A

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

## 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
<b>Total</b>	<b>\$2,688,140.07</b>	

**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
<b>Total</b>	<b>\$1,402,633.74</b>	

**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
<b>Total</b>	<b>\$920,464.95</b>	

### SCHEDULE A

Vendor	Invoice Amount	Invoice
Equipment Cost	13,449.31	C1479
Recoverable Cost	1,252,340.15	C1477
Less: Morrow Equipment Company LLC	(333,443.79)	C00013107, R18101337, R18101338
Less: AlumaSafway Inc.	(211,520.18)	PC#25, PC#28- 20252A
Less: E.S. Fox Limited	(76,947.33)	B0321090
Less: Amherst Concrete Pumping Ltd.	(74,410.14)	200078, 203011
Less: Doka Canada Ltd.	(68,531.04)	D442000604
Construction Staff Cost	439,357.63	C1478
Crane Labour	71,650.49	C1470
Less: Amherst Crane Rentals Ltd.	(71,650.49)	727016, 727017, 727086, 727087, 727209, 727210, 727287, 727288
Site Labour	501,542.89	C1476
Less: Clonard Group Inc.	(353,834.08)	24021331
Less: ASG Security Group Ltd.	(147,708.81)	14-12206, 14-12207, 14-12208, 14-12209, 14-12210, 14-12211, 14-12138, 14-12139, 14-12140, 14-12141, 14-12142, 14-12143, 14-12144
CM Fee on Crane and Site Invoices	28,659.67	5% of Site and Crane amounts
CM Fee on Gamma (subsequent approval)	16,841.81	C1481
<b>Total</b>	<b>\$985,796.09</b>	



Hard Costs Paid by Receiver	Invoice Amount	Invoice	
Livingston International Inc.	78,039.31	419-248784, 419-313124, 419-357562, 419-377347, 302000929501, 305-619996	
Guardtek Systems Inc.	101,700.00	24856	
Livingston International Inc.	36,776.08	419-357690, 419 477041	
Hardwall Construction LTD.	954,972.74	J007711	
Innocon Partnership	111,438.54	719159539, 719126911, 719126912, 718987473, 718715308, 719129074, 719102485	
Myer Salt Limited	223,825.16	10324U1346-IN	
Bothwell-Accurate Co. Inc.	16,644.79	19408631	
Gamma Windows & Walls International Inc.	-	1808-55, 1808-56	
Bass Curtainwalls Inc.	22,443.16	3318	
Bass Installation A Division of 1587855	528,714.82	3895	
Bass Curtainwalls Inc.	-	3319, 3896	
Yarl Metal Fabrications Inc.	3,535.77	64249	
Earl Paddock Transportation Inc.	6,616.15	300309C, 301481C, W700258, W700259	
Riverside Group LTD.	168,522.94	8602, 8603	
Tractel LTD.	-	8L45-Mar2024	
Modern Niagara Toronto Inc.	13,305.35	INTO0080287	
Ozz Electric Inc.	29,899.80	J027587	
Clifford Restoration Limited	-	013764	
Detal International Co. Limited	25,896.81	DTE-3098-08A	
Klaus Multiparking Inc.	-	1Bloor-STG17HB	
<b>Total</b>	<b>\$2,322,331.42</b>		
CM Fee on Above	116,116.57		
March Recoverable Costs	Invoice Amount	Invoice	Note
<b>Paid by Receiver</b>			
AlumaSafway Inc.	60,763.15	PC#27-03.12.2024, PC#30 03.12.24	
Amherst Concrete Pumping Ltd	27,958.00	203728	
2 Bloor Inc.	45,036.12	May Rent	
Canadian Springs Div. of Aquaterra	655.25	21019182 031524	
City Disposal Group 2015 Inc.	27,529.63	3505, 3521	Invoice #3521 added
Dell-Core Equipment Ltd	654.38	D019286, D019287	
Dell-Core Edge Protection Ltd	25,834.70	Q025154, Q024897, Q024896	
Doka Canada Ltd	68,531.04	D44200605	
E.S. Fox Limited	156,263.27	B0323598	
EY Design Inc.	-	1144	Subject to additional review
EY Design Inc.	-	1146	Not approved
Federal Wireless Communications Inc	220.35	1030737	
Herc Rentals Inc	2,289.95	63897-0001, 58522-0023	
Imperial Parking Canada Corp	96.09	Account # 438804	
Jordahl Canada Inc	19,430.24	307905, 307611, 307610, 308095, 307910, 307890, 307958	Invoice 307958 for \$2,486.90 removed.
Live Patrol Inc.	-	22936	Services rendered on March 13, 2024
Morrow Equipment Company LLC	19,959.19	C00013225	Invoice for services rendered post March 1;
My Construction Supply Corp	-	INV179630	
Safety First Consulting Ltd	33,207.48	38985, 38986, 2302	Invoice for services rendered post March 1;
Scaf-Tech Inc.	4,264.76	2024-201, 2024-168, 2024-169, 2024-147	
Stephenson's Rental Services Inc.	7,967.86	1081100669-0002, 1081093044-0023, 1081094938-0019, 1081096068-0018, 1081096400-0018, 1081097291-0017, 1081099162-0014, 1081099305-0014, 1081100672-0012, 1081100802-0013, 1081102894-0010, 1081103283-0010, 1081106521-0004, 1081107075-0003, 1081107836-0002	
Super Save Fence Rentals Inc	71.98	#1278041, #1282978	
Super Save Toilet Rentals Inc	-	1456914	Invoice for services rendered post March 1;
The Fence People Limited	488.16	FP78664, FP78663, FP78665	
Toshiba Tec Canada Business Solutions Inc	619.87	AR4846217	
Tote Recycle	3,796.80	#255, #256, #257, #258	
Sheffield Moving and Storage	-	n/a	Not approved
<b>Paid / To be Paid by Mizrahi Inc</b>			
Rogers	567.12	n/a	
Fedex	129.08	n/a	Mizrahi Inc. to pay invoice
Xerox	734.50	n/a	Mizrahi Inc. to pay invoice
Toronto Hydrc	22.47	n/a	
Toronto Police Services	4,444.29	n/a	
<b>Total</b>	<b>\$511,635.73</b>		
March Mizrahi Inc Amounts	Amount	Invoice	
HST	264,982.46	C1505	
HST	3,366.59	C1516	
CM Fee	116,116.57	C1508 & C1516 per above Hard Cost Listing	
CM Fee	40,248.28	CM Fee on C1505 from USD payments	
Recoverable Cost Paid by Mizrahi Inc.	5,897.46	C1509	
CM Fee on Approved Recoverables	25,576.79	C1509	
Crane Labour	28,182.21	C1499	
Less: Amherst Crane Rentals Ltd	(28,182.21)	728115, 728156, 728157, 728114	
CM Fee on Crane Labour	1,409.11	C1499	
Site Labour	62,177.55	C1504	
Less: ASG Security Group LTD.	(62,177.55)	14-12384R, 14-12383R, 14-12390, 14-12389, 14-12385, 14-12386, 14-12387, 14-12388	
CM Fee on Site Labour	3,108.88	C1504	
<b>Total</b>	<b>\$460,706.14</b>		
February Mizrahi Inc Amounts	Amount	Invoice	
Haimul Guangzhou	(7,689.75)	C1497	
HST	133,874.71	C1486	
CM Fee	13,029.35	C1486 (5% of Delta between CAD total with HST and nominal \$US total)	
CM Fee	314,294.15	5% of amounts funded on C1497 (See Schedule)	
CM Fee	183,465.68	5% on Modern Niagara - INTO0075937	
Equipment Cost	7,654.66	INTO0077252, INTO0075901	
Recoverable Cost	1,774,198.22	C1491	
Less: Direct Payment by Receiver	(1,727,177.20)	C1495	
CM Fee on Recoverable Invoice	88,709.90	C1495	
Construction Staff Cost	172,884.36	C1490	
Crane Labour	82,086.03	C1493	
Less: Amherst Crane Rentals Ltd	(82,086.03)	727422, 727423, 727612, 727613, 727748, 727800, 727945, 727946	
Site Labour	768,495.37	C1492	
Less: Clonard Group Inc.	(597,209.24)	24032130	
Less: ASG Security Group LTD.	(171,286.13)	14-12280, 14-12281, 14-12282, 14-12283, 14-12284, 14-12285, 14-12327, 14-12328, 14-12329, 14-12330, 14-12331, 14-12332, 14-12333	
CM Fee on Crane and Staffing	42,529.07	5% of amounts paid related to C1493, C1492	
<b>Subtotal</b>	<b>\$995,173.15</b>		
<b>Less: Direct Payment by Receiver:</b>			
Cropac Equipment Inc.	(19,196.54)	\$12733	
Morrow Equipment Company LLC	(580,464.74)	R18101329, C00012840, C00012852, P18101336, R18101330, C00012898, C00012899, C00012931, R18101331, R18101332, Less MI Payment 02.29.24	
ASG Security Group LTD.	(81,656.21)	14-11150, 14-11292, 14-11452, 14-11455, 14-11456, 14-11457, 14-11547, 14-11553, 14-11566	
Scaf-Tech Inc.	(49,582.14)	2023-379, 2023-392, 2023-397, 2023-409, 2023-460, 2023-462, 2023-477, 2023-506, 2023-507	
Hardwall Construction LTD.	(27,159.56)	J007415, J007388, J007330	
Safety First Consulting Ltd.	(69,356.30)	36909, 36491, 1691T	
Proline Hardware Ltd.	(14,588.70)	112243, 112258, 112251, 112274, 112296, 112348, 112361, 112397, 112413, 112478	
Herc Rentals Inc	(19,313.81)	119000534-0029, 119000534-0024, 58032-0019, 59711-0011, 58522-0015	
DDJ Developments Inc	(24,805.12)	Invoice #46	
1735178 Ontario Inc. (a.k.a. J Murva Consulting Ltd.)	(73,803.13)	2024-002, 2024-005, 2024-011	
EY Design Inc.	(15,085.50)	1147	
<b>Total</b>	<b>\$20,361.40</b>		

Description	Lien Amount	Receiver Paid	Disputed Amounts <sup>1</sup>	Additional Amounts	Revised Amount	Notes
C1499 - Crane Labour (Includes 5% CM Fee)	39,065.02	(29,591.32)	-	-	9,473.70	Amount paid May 3rd
C1504 - Site Labour (Includes 5% CM Fee)	390,978.14	(65,286.43)	-	-	325,691.71	Amount paid May 3rd
C1509 - Recoverable (Includes 5% CM Fee)	626,615.00	(585,220.17)	(47,423.00)	8,501.27	2,473.10	See Below Reconciliation
C1508 - Hard Costs (Includes 5% CM Fee)	3,486,163.64	(2,183,915.18)	(354,716.33)	6,315.59	953,847.72	See Below Reconciliation
C1506 - CM Fee (5%) on holdback	697,460.58	-	-	-	697,460.58	
C1507 - Livingston Invoices	126,466.37	(126,466.37)	-	-	-	Paid in Full + CM Fee
Reconciliation Amount Agreed with the Receiver	20,361.40	(20,361.40)	-	-	-	
Motion Amounts as per Enclosure A	5,478,815.59	(280,763.05)	(113,000.00)	-	5,085,052.54	
TOTAL	10,865,925.74	(3,291,603.92)	(515,139.33)	14,816.86	7,073,999.35	
Note 1. Disputed Amounts Reconciliation						
Original Lien Amount		10,865,925.74				
Less: Payments		(3,291,603.92)				
Less: Disputed Amounts (detail below)		(515,139.33)				
(i) Invoice Revisions or Cancellations	(361,283.02)					
(ii) Not Approved Project Costs	(131,420.17)					
(iii) Services Rendered Post March 13	(22,436.14)					
Add: Additional Amounts		14,816.86				
Revised Total		7,073,999.35				
Recoverable Invoice	Invoiced	Paid	Disputed Amounts	Additional Amounts	Outstanding	Notes
AlumaSafway Inc.	60,783.15	(60,783.15)	-	-	-	
Amherst Concrete Pumping Ltd.	27,958.00	(27,958.00)	-	-	-	
2 Bloor Inc.	45,036.12	(45,036.12)	-	-	-	
Canadian Springs	691.85	(655.25)	-	-	36.60	HST Variance
City Disposal Group 2015 Inc.	19,433.18	(27,529.63)	-	8,096.45	-	Note: One additional invoice added
Dell-Core Equipment Ltd.	654.38	(654.38)	-	-	-	
Dell-Core Edge Protection Ltd.	25,834.70	(25,834.70)	-	-	-	
Doka Canada Ltd.	68,531.04	(68,531.04)	-	-	-	
E.S. Fox Limited	156,263.27	(156,263.27)	-	-	-	
EY Design Inc.	54,361.64	(48,107.65)	(6,253.99)	-	-	Invoice revised by EY Designs to correct double counting of HST. CM Fee is outstanding on this invoice.
EY Design Inc.	16,865.02	-	(16,865.02)	-	-	Ineligible Invoice - Not an approved project cost
Federal Wireless Communications Inc.	220.35	(220.35)	-	-	-	
Herc Rentals Inc.	2,289.95	(2,289.95)	-	-	-	
Imperial Parking Canada Corp.	108.58	(96.09)	-	-	12.49	HST Variance
Jordahl Canada Inc.	21,917.14	(19,430.24)	(2,486.90)	-	-	One Invoice Ineligible - Post March 13th
Live Patrol Inc.	7,684.00	-	(7,684.00)	-	-	Invoice Ineligible - Post March 13th
Morrow Equipment Company LLC	19,959.19	(19,959.19)	-	-	-	
My Construction Supply Corp.	5,845.67	-	(5,845.67)	-	-	Invoice Ineligible - Post March 13th
Safety First Consulting Ltd.	33,207.48	(33,207.48)	-	-	-	
Scaf-Tech Inc.	4,264.76	(4,264.76)	-	-	-	
Stephenson's Rental Services Inc.	7,967.86	(7,967.86)	-	-	-	
Super Save Fence Rentals Inc.	71.98	(71.98)	-	-	-	
Super Save Toilet Rentals Inc.	5,351.18	-	(5,351.18)	-	-	Invoice Ineligible - Post March 13th
The Fence People Limited	488.16	(488.16)	-	-	-	
Toshiba Tec Canada Business Solutions Inc.	619.87	(619.87)	-	-	-	
Tote Recycle	3,796.80	(3,796.80)	-	-	-	
Sheffield Moving and Storage	678.00	-	(678.00)	-	-	Ineligible Invoice - Not an approved project cost
Rogers	568.03	(567.12)	-	-	0.91	HST Variance
Fedex	138.92	(129.08)	-	-	9.84	HST Variance
Xerox	734.50	(734.50)	-	-	-	
Toronto Hydro	27.10	(22.47)	-	-	4.63	HST Variance
TPS	4,444.29	(4,444.29)	-	-	-	
Subtotal	596,776.16	(559,643.38)	(45,164.76)	8,096.45	64.47	
CM Fee	29,838.81	(25,576.79)	(2,258.24)	404.82	2,408.60	CM Fee on EY Designs Invoice Outstanding
Total	626,614.97	(585,220.17)	(47,423.00)	8,501.27	2,473.07	
	(0.03)					

596776.16 559643.38  
 596776.16 528120.496 495259.628  
 29838.81 26406.0248 24762.9814 559643.38  
 0.05





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

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

## Daily Log: Wednesday 3/6/2024



### Daily Log Completed & Distributed

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

### WEATHER REPORT

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

### DAILY SNAPSHOT

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

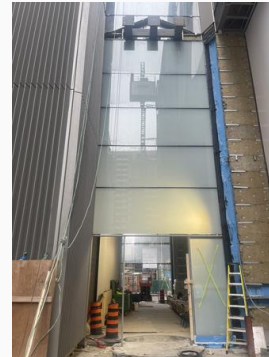
### OBSERVED WEATHER CONDITIONS

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

### PHOTOS



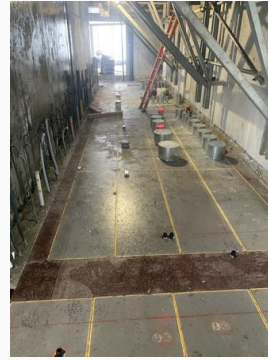
[IMG\\_3880.jpeg](#)



[IMG\\_0864.JPG](#)



[IMG\\_0865.JPG](#)



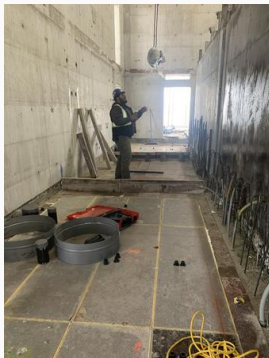
[52FD7875-C592-4D3F-82AB-1B9D7090F044.jpeg](#)



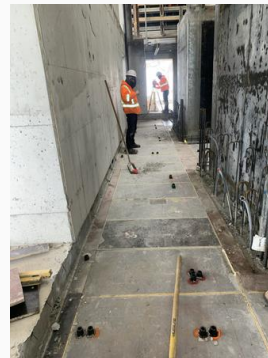
[83772057-D639-42C5-852E-D74ADA8DC359.jpeg](#)



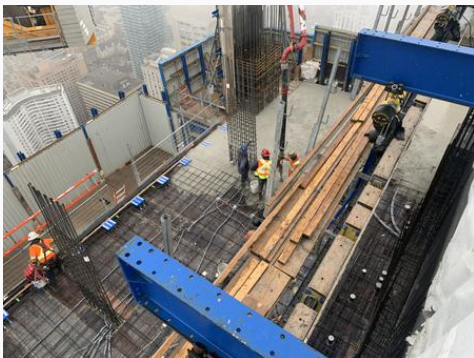
[20CBBDAC-2E7B-4AE5-A11B-B12AF858D294.jpeg](#)



[F7D41B28-EFCA-4136-9F1B-C4E6F45D5CD1.jpeg](#)



[10E26A3A-D98C-4ADD-BC36-CE134B414B57.jpeg](#)



[99AE1772-8B65-47DB-8B6E-02AA3A59733D.jpeg](#)

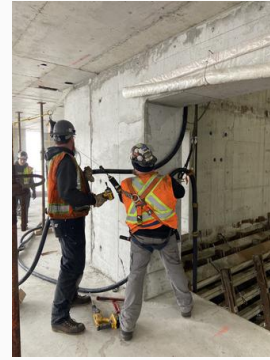


[08F1E973-C03E-461B-8F3A-AFE53659EA04.jpeg](#)

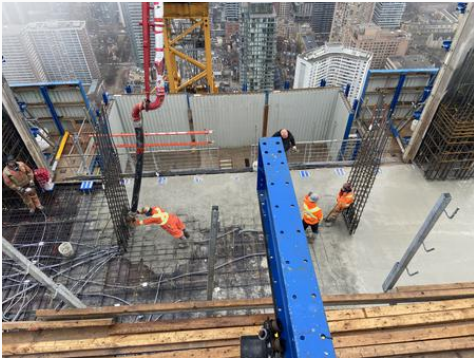




[1E636780-DD8B-448B-805C-3FD9D6C4EE78.jpeg](#)



[IMG\\_3912.jpeg](#)



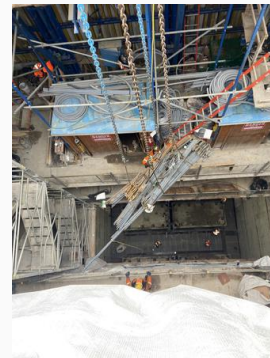
[IMG\\_3914.jpeg](#)



[IMG\\_3915.jpeg](#)



[IMG\\_3916.jpeg](#)



[IMG\\_3917.jpeg](#)



[IMG\\_3920.jpeg](#)



[IMG\\_3923.jpeg](#)



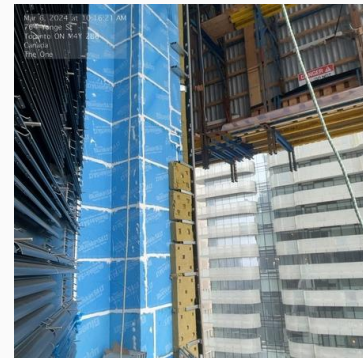
[IMG\\_3927.jpeg](#)



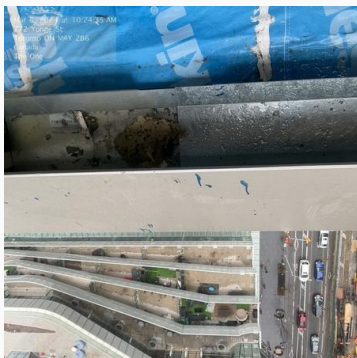
[IMG\\_3933.jpeg](#)



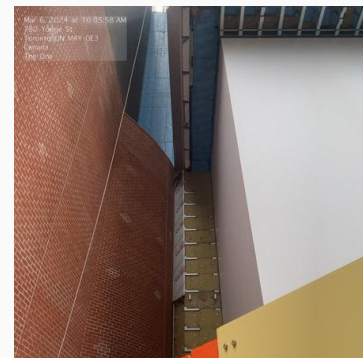
[IMG\\_3935.jpeg](#)



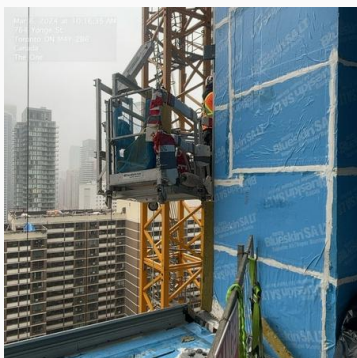
[TC\\_04018.JPG](#)



[TC\\_04021.JPG](#)



[TC\\_04015.JPG](#)



[TC\\_04020.JPG](#)



[TC\\_04013.JPG](#)

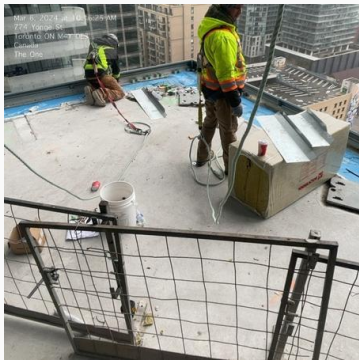




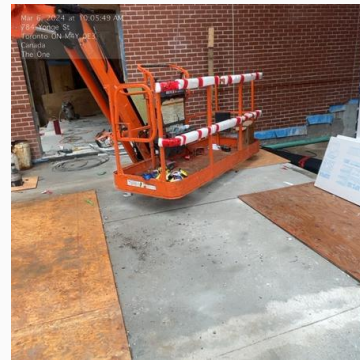
[TC\\_04012.JPG](#)



[TC\\_04017.JPG](#)



[TC\\_04019.JPG](#)



[TC\\_04014.JPG](#)

## MANPOWER LOG

212 Workers | 1,908.0 Man Hours


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



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

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

## NOTES LOG

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

### Notes Log's Attachments:

2. \_\_\_\_\_



[a9d2926ca2426b8d70a89ddc8bfc47b1.JPG](#)

## DELIVERY LOG

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

## DELIVERY LOG

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

By \_\_\_\_\_

Date \_\_\_\_\_

Copies To \_\_\_\_\_

**APPENDIX “3”**  
**RECEIVER’S EMAIL DATED NOVEMBER 26, 2023**

**From:** [Ferguson, Stephen](#)  
**To:** [Sam Mizrahi](#)  
**Cc:** [Nevsky, Joshua](#); [Sterling, Andrew](#)  
**Subject:** MI Cost Review  
**Date:** Sunday, November 26, 2023 11:12:00 PM  
**Attachments:** [image001.png](#)

---

Hi Sam,

Further to our meeting last Monday and the subsequent discussions / information sharing between Mark, Remy and Andrew, we write to provide you with an update of our ongoing review of the information you have provided and of the underlying project contracts between Mizrahi Inc. ("MI") and the entities to which we are the Receiver of, being Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc. (collectively, the "Debtors"), in respect of ongoing construction services for One Bloor West (the "Project").

As we indicated during our meeting, based on our review of the Project contracts and related documentation, the Receiver sees no basis for paying for both the 5% Construction Management Fee ("CM Fee") and a profit margin on out-of-pocket direct and indirect labour costs (the "Labour Costs"), despite historical practice prior to the commencement of the Receivership.

During our meeting you provided us with MI's calculation of revenue and costs attributed to the Project for the 12-month period ending October 31, 2023 (the "MI Calculation"). The MI Calculation (reproduced in the chart below) indicates a net cash flow directly related to the Project of \$2.6 million, while including a \$1 million placeholder for payment to yourself and \$3.2 million of legal fees (which based on our review of the supporting journal entries primarily related to shareholder litigation between yourself and the Coco parties and receivership matters related to another MI project).

Through our review we noted several potential adjustments to the MI Calculation, including but not limited to:

1. Revenue – the MI Calculation did not include the recoverable expenses, which we have included as a flow through revenue and expense.
2. Revenue – the MI Calculation included only revenue from the Labour Costs but did not include approximately \$6.9 million in CM Fees paid by the Debtors to MI.
3. Hourly Labour – the Labour Costs included in the MI Calculation include a provision for HST, which is fully recoverable by MI and accordingly should not be recognized as an expense.

Based on those these adjustments alone (and as set out in the calculation below) the net cash flow earned by MI from the Project over the past 12 months is in excess of \$9.5 million, while also still accounting for substantial legal costs unrelated to the direct construction of the Project.

		Per Mizrahi			A&M Proforma	
Item	Note	Cost	Allocation (%)	P&L	Change	Proforma P&L
<u>Revenue</u>						
Staffing & Labour		\$20,782,721	100%	\$20,782,721	-	\$20,782,721
Recoverable & Equipment	[1]	-	n/a	-	11,675,893	11,675,893
CM Fee	[2]	-	n/a	-	6,142,477	6,142,477
<b>Total Revenue</b>		<b>20,782,721</b>	<b>100%</b>	<b>20,782,721</b>	<b>17,818,369</b>	<b>38,601,090</b>
<u>Recoverable Costs:</u>						
Hourly Labour Agency Costs	[3]	(6,809,791)	100%	(6,809,791)	\$783,427	(\$6,026,364)
Recoverable & Equipment	[1]	-	n/a	-	(\$11,675,893)	(\$11,675,893)
<u>Direct Labour:</u>						
Construction Team Salaries		(2,850,108)	100%	(2,850,108)	-	(\$2,850,108)
Construction Team Contractors		(1,475,000)	100%	(1,475,000)	-	(\$1,475,000)
Burden on Salaries		(570,022)	100%	(570,022)	-	(\$570,022)
Recruiting Fees		(107,700)	100%	(107,700)	-	(\$107,700)
<b>Gross Margin</b>		<b>\$8,970,100</b>		<b>\$8,970,100</b>	<b>\$6,925,904</b>	<b>\$15,896,003</b>
<u>Indirect Labour:</u>						
Sam Mizrahi		(1,000,000)	100%	(1,000,000)	-	(\$1,000,000)
Indirect Staff Costs		(2,136,826)	60%	(1,282,096)	-	(\$1,282,096)
Burden on Salaries		(427,365)	60%	(256,419)	-	(\$256,419)
<u>SG&amp;A:</u>						
Legal Costs		(3,183,168)	100%	(3,183,168)	-	(\$3,183,168)
Rent & Office Overhead		(472,587)	60%	(283,552)	-	(\$283,552)
Bank & Payroll Fees		(13,214)	60%	(7,928)	-	(\$7,928)
Liability Insurance		(32,400)	60%	(19,440)	-	(\$19,440)
Entertainment		(42,839)	60%	(25,703)	-	(\$25,703)
Advertising & Donations		(305,627)	60%	(183,376)	-	(\$183,376)
Travel		(170,064)	60%	(102,038)	-	(\$102,038)
<b>Net Cash Flow</b>				<b>\$2,626,379</b>	<b>\$6,925,904</b>	<b>\$9,552,283</b>
		% of Revenue		12.6%		24.7%

In addition, based on review by the Receiver, certain costs incurred by MI and included in the MI Calculation do not directly relate to the Project. Such costs include, but are not limited to:

1. Indirect staff costs at 60% for certain MI staff that we have not met or had any interaction with, in connection with the Project;
2. Legal costs (noted above) which appear to be primarily related to shareholder disputes and ongoing receivership of another MI property;
3. Advertising costs in respect of a donations made (with no direct Project connection); and
4. Travel costs appearing to be related to jet rental.

Therefore, similar to the amount that was not paid by the Receiver relating to the September invoices, the Receiver believes there is no basis for reimbursing MI for the incremental profit margin on Labour Costs and at the same time paying a 5% CM Fee on the sum of (i) Labour Costs, (ii) reimbursable expenses and (iii) hard costs paid by MI.

The Receiver would also like to advise you that based on a review of the costs noted above, and following discussion with our counsel, on a go-forward basis the Receiver is required to take a 10% holdback on all payments made to MI.

Based on the information that has been provided to us to date, the Receiver completed a 'proforma' monthly estimate (adjusting for the CM Fee, and the above non-recurring and/or non-Project related expenses) which shows that MI should be generating positive cash flow on a go-forward basis relating to the Project, even after accounting for the holdback.

As we have indicated, the Receiver is prepared to work with MI in respect of its liquidity pertaining to its services performed for, and payments received from, the Project. If there are particular issues you are concerned with, we are happy to discuss further, and as previously suggested on a number of occasions, we would be pleased to review any additional information that you can provide regarding the issues noted above, or regarding specific costs that need to be paid by MI that are causing any cash flow issues.

As a reminder, 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 or other contracts with MI (collectively, including the Construction Management Agreement and the GC Agreement, the "Contracts"). The Receiver has not affirmed any Contracts and will not affirm any Contracts except by signed written communication to MI. For greater certainty, in making any payment to MI, the Receiver is not affirming any Contracts. In addition, the Receiver shall have no, and hereby disclaims any, personal liability under any of the Contracts.

Happy discuss further.

Steve

---

**Stephen Ferguson CPA, CA, CIRP, LIT**

*Managing Director*

**Alvarez & Marsal Canada ULC**

200 Bay Street, Suite 2900

Royal Bank South Tower

Toronto ON M5J 2J1

Phone: 416 847 5162

Cell: 416 845 6191

[sferguson@alvarezandmarsal.com](mailto:sferguson@alvarezandmarsal.com)

Alvarez & Marsal employs CPAs but is not a licensed CPA firm

**APPENDIX “4”**  
**RECEIVER’S REVISED ANALYSIS**



## Profitability Analysis - October 1, 2022 to September 30, 2023 ("Pre-Appointment Period")

Canadian Dollars

		Per Mizrahi Inc.			Receiver Proforma	
Item	Note	Revenue / Cost	Allocation (%)	P&L	Change	Proforma P&L
<u>Revenue</u>						
Staffing & Labour	[1]	\$20,782,721	100%	\$20,782,721	(\$1,916,383)	\$18,866,338
Hard Costs & Recoverable Costs	[2]	-	n/a	-	107,223,297	107,223,297
Marketing Fees	[3]	-	n/a	-	1,100,000	1,100,000
CM Fee	[4]	-	n/a	-	6,298,231	6,298,231
<b>Total Revenue</b>			<b>100%</b>	<b>\$20,782,721</b>	<b>\$112,705,145</b>	<b>\$133,487,866</b>
<u>Third Party Costs:</u>						
Third Party Hourly Labour	[5]	(6,809,791)	100%	(6,809,791)	783,427	(6,026,364)
Hard Costs & Recoverable Costs	[2]	-	n/a	-	(107,223,297)	(107,223,297)
<u>Mizrahi Inc. - Direct Staff Labour:</u>						
	[6]					
Construction Team Salaries		(2,850,108)	100%	(2,850,108)	-	(2,850,108)
Construction Team Contractors		(1,475,000)	100%	(1,475,000)	-	(1,475,000)
Burden on Salaries		(570,022)	100%	(570,022)	-	(570,022)
<b>Costs of Goods Sold</b>				<b>(\$11,704,921)</b>	<b>(\$106,439,870)</b>	<b>(\$118,144,791)</b>
<b>Gross Margin</b>				<b>\$9,077,800</b>	<b>\$6,265,275</b>	<b>\$15,343,075</b>
<u>Mizrahi Inc. - Indirect Labour:</u>						
Sam Mizrahi	[7]	(1,000,000)	100%	(1,000,000)	1,000,000	-
Indirect Staff Costs	[8]	(2,136,826)	60%	(1,282,096)	-	(1,282,096)
Burden on Salaries	[8]	(427,365)	60%	(256,419)	-	(256,419)
Sales Centre Staff (including burden)	[9]	-	n/a	-	(290,400)	(290,400)
<u>Mizrahi Inc. Overhead - SG&amp;A:</u>						
Legal Costs	[10]	(3,183,168)	100%	(3,183,168)	3,183,168	-
Recruiting Fees		(107,700)	100%	(107,700)	-	(107,700)
Rent & Office Overhead	[11]	(472,587)	60%	(283,552)	-	(283,552)
Bank & Payroll Fees	[11]	(13,214)	60%	(7,928)	-	(7,928)
Liability Insurance	[11]	(32,400)	60%	(19,440)	-	(19,440)
Entertainment	[12]	(42,839)	60%	(25,703)	25,703	-
Advertising & Donations	[12]	(305,627)	60%	(183,376)	183,376	-
Travel	[12]	(170,064)	60%	(102,038)	102,038	-
<b>Indirect Costs</b>				<b>(\$6,451,421)</b>	<b>\$4,203,886</b>	<b>(\$2,247,535)</b>
<b>Estimated Profit</b>				<b>\$2,626,379</b>	<b>\$10,469,161</b>	<b>\$13,095,540</b>

## Notes:

- Staffing & labour include MI's invoiced amounts during the Pre-Appointment Period for costs related to construction office staff, site labour, and crane labour, all of which are based on the Labour Rates. Invoices dated outside the Pre-Appointment Period have been removed from the Proforma P&L.
- Flowthrough Hard Costs and Recoverable Costs were excluded by MI. The analysis has been adjusted to include both for completeness.
- MI invoiced the Debtors a monthly amount of \$100,000 (excluding HST) for marketing services, which were excluded by MI. The analysis has been adjusted to include the receipts MI received during the Pre-Appointment Period.
- MI excluded its revenues from CM Fees invoiced during the Pre-Appointment Period. The analysis has been adjusted to include same.
- Third party hourly labour costs per MI incorrectly includes HST which is a refundable cost. The Receiver has also adjusted for certain timing issues related to third party services provided.
- Direct staff labour include employees and contractors hired by MI who directly work on the Project and includes an illustrative 20% labour burden.
- MI included an annual payment of \$1 million to Sam Mizrahi for the services he renders to the Project in his capacity as president of MI. Costs allocated in respect of equity holders of MI have been excluded.
- Indirect staff costs and a 20% illustrative burden on same reflect the salaried costs of MI's office staff, such as accounting and administrative employees. It is assumed that 60% of the office staff's time is allocated to support the Project.
- Sales centre staff costs have been included and reflect the salaried costs of employees dedicated to support the Project's sales centre and include an illustrative 20% labour burden.
- Legal costs primarily relate to Mizrahi's dispute with Coco and the receivership of another MI project (181 Davenport Road). Given that these matters are not directly related to the Project, the analysis has been adjusted to remove these costs.
- It is assumed that 60% of MI's overhead costs are allocated to support the Project.
- Donations, entertainment, and travel costs, which include the cost of a private jet rental, do not appear to be a direct cost of the Project and have been removed from the analysis as an adjustment.

**APPENDIX “5”**  
**OCTOBER 2023 AND NOVEMBER 2023 PAYMENT LETTERS**  
**AND COVERING EMAILS**

---

**From:** Nevsky, Joshua <jnevsky@alvarezandmarsal.com>  
**Sent:** Friday, October 27, 2023 9:33 AM  
**To:** sam@mizrahidevelopments.ca; Mark Kilfoyle  
**Cc:** Remy Del Bel; Ferguson, Stephen; Sterling, Andrew  
**Subject:** September Payments  
**Attachments:** September Hard Cost Payment Letter.pdf; 2023-10-02 - C1416 - HC.pdf; ScotiaConnect - Pending Payment Details.pdf; ScotiaBank Wire Instructions - Mizrahi Segregated.pdf; ScotiaBank Wire Instructions - Mizrahi Inc.pdf

Sam and Mark –

The Receiver will be making the following two payments to Mizrahi Inc. today. Prior to making the payments, can you please review and sign the attached 'September Hard Cost Payment Letter' confirming that the hard cost payment will be paid on to the individual trades summarized in the attached EFT pending payment listing.

Please also confirm that the two amounts should be sent to the following accounts (full banking details attached):

1. September Hard Cost payment of \$7,053,439.42 paid to the segregated Scotia account #91132-002-0222410.
2. Agreed August payment of \$783,305.03 paid to the Scotia account # 91132-002-0091618.

Thank you,  
Josh

Josh Nevsky  
Alvarez & Marsal  
D: 416.847.5161  
M: 416.710.0910



October 27, 2023

**DELIVERED BY EMAIL**

**Mizrahi Inc.**

125 Hazelton Ave  
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

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

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

**MIZRAHI INC.**

Per:

Name: Sam Mizrahi President

Title:

Yours very truly,

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

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

Encl. General Contractor Invoice (Invoice #C1416)

---

**From:** Nevsky, Joshua <jnevsky@alvarezandmarsal.com>  
**Sent:** Monday, October 30, 2023 12:03 PM  
**To:** sam@mizrahidevelopments.ca  
**Cc:** Ferguson, Stephen; Sterling, Andrew  
**Subject:** September Cost Review  
**Attachments:** A&M re Mizrahi Inc (0222410) re Sept Mizrahi Inc Costs - Oct 30 2023.pdf; GC Cost Review (10.30).xlsx; 2023-10-12 - Crane Labour - C1410.pdf; 2023-10-12 - Equipment - C1408.pdf; 2023-10-12 - Recoverables - C1415 (Header).pdf; 2023-10-12 - Site Labour - C1409 (Header).pdf; 2023-10-12 - Staff - C1406.pdf

Sam,

Please see the schedule we discussed. While our review of the underlying contracts remains ongoing, we are comfortable funding the amounts supported by third-party invoices/payroll registers.

If you can please sign the attached letter and confirm the attached wire details, we will process payment today.

Thank you,  
Josh

Josh Nevsky  
Alvarez & Marsal  
D: 416.847.5161  
M: 416.710.0910



October 30, 2023

**DELIVERED BY EMAIL**

**Mizrahi Inc.**

125 Hazelton Ave  
Toronto, Ontario M5R 2E4

Attention: Mr. Sam Mizrahi

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

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

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

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

**MIZRAHI INC.**

Per:   
Name: \_\_\_\_\_  
Title: **Sam Mizrahi President**

Yours very truly,

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

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

Encl. General Contractor Invoice (Invoice #C1416)



---

**From:** Sterling, Andrew <asterling@alvarezandmarsal.com>  
**Sent:** Monday, December 4, 2023 12:58 PM  
**To:** Sam Mizrahi; Mark Kilfoyle  
**Cc:** Nevsky, Joshua; Ferguson, Stephen; O'Neill, Brendan; Armstrong, Christopher  
**Subject:** October 2023 Mizrahi Payments  
**Attachments:** Letter to Mizrahi Inc re. October Hard Costs.pdf; 2023-11-02 - C1429 - HC.pdf; 2023-11-30 C1437 - Aurora Generators.pdf

Sam,

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

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

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

Thanks,

**Andrew Sterling, CFA**

Associate  
Alvarez & Marsal Canada  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1  
Direct: +1 416 847 5152  
Mobile: +1 647 994 7646

[AlvarezandMarsal.com](http://AlvarezandMarsal.com)

**ALVAREZ & MARSAL**

LEADERSHIP. ACTION. RESULTS.™



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
<b>Total</b>	<b>\$2,155,104.31</b>	

---

**From:** Sterling, Andrew <asterling@alvarezandmarsal.com>  
**Sent:** Thursday, November 30, 2023 1:57 PM  
**To:** Sam Mizrahi; Nevsky, Joshua  
**Cc:** O'Neill, Brendan; Armstrong, Christopher; Ferguson, Stephen  
**Subject:** FW: October 2023 Hard Cost Payments  
**Attachments:** Letter to Mizrahi Inc re. Payment of October 2023 Hard Costs.pdf; 2023-11-02 - C1430 - HC.pdf; 2023-11-02 - C1429 - HC.pdf; ScotiaBank Wire Instructions - Mizrahi Inc.pdf; ScotiaBank Wire Instructions - Mizrahi Segregated.pdf

Sam,

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

Please also confirm that the two amounts should be sent to the following accounts (full banking details attached):

1. October Hard Cost payment of \$8,565,690.82 paid to the segregated Scotia account #91132-002-0222410.
2. October CM Fee (5% of the above) of \$428,284.54 paid to the Scotia account # 91132-002-0091618.

Thanks,

**Andrew Sterling, CFA**  
Associate  
Alvarez & Marsal Canada  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1  
Direct: +1 416 847 5152  
Mobile: +1 647 994 7646  
[AlvarezandMarsal.com](http://AlvarezandMarsal.com)  
**ALVAREZ & MARSAL**  
LEADERSHIP. ACTION. RESULTS.™



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
<b>Total</b>	<b>\$8,565,690.82</b>	



---

**From:** Sterling, Andrew <asterling@alvarezandmarsal.com>  
**Sent:** Tuesday, December 5, 2023 4:32 PM  
**To:** Sam Mizrahi  
**Cc:** Nevsky, Joshua; Ferguson, Stephen; O'Neill, Brendan; Armstrong, Christopher; Mark Kilfoyle; Remy Del Bel; Esteban Yanquelevec  
**Subject:** October 2023 Mizrahi Payments  
**Attachments:** Letter to Mizrahi Inc. re Payment of October 2023 Hard Costs.pdf; Inv C1438.pdf; 1 Bloor - (SI-9688 R3) - PI-33 R3 - Oct 2023 - Invoice.pdf

Sam,

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

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

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

Thanks,

**Andrew Sterling, CFA**  
Senior Associate  
Alvarez & Marsal Canada  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1  
Direct: +1 416 847 5152  
Mobile: +1 647 994 7646  
[AlvarezandMarsal.com](http://AlvarezandMarsal.com)  
**ALVAREZ & MARSAL**  
LEADERSHIP. ACTION. RESULTS.™



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
<b>Total</b>	<b>\$73,043.99</b>	

---

**From:** Sterling, Andrew <asterling@alvarezandmarsal.com>  
**Sent:** Thursday, November 30, 2023 2:42 PM  
**To:** Sam Mizrahi; Mark Kilfoyle  
**Cc:** O'Neill, Brendan; Armstrong, Christopher; Ferguson, Stephen; Nevsky, Joshua  
**Subject:** October 2023 Mizrahi Payments  
**Attachments:** Letter to Mizrahi Inc. re Payment of October 2023 Mizrahi Costs.pdf; GC Invoices Oct 2023.zip; GC Cost Review (11.30).xlsx; ScotiaBank Wire Instructions - Mizrahi Inc.pdf

Sam,

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

Please see the schedule we discussed. While our review of the underlying contracts remains ongoing, we are comfortable funding the amounts supported by third-party invoices/payroll registers.

If you can please sign the attached letter and confirm the attached wire details, we will process payment today.

Thanks,

**Andrew Sterling, CFA**  
Associate  
Alvarez & Marsal Canada  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1  
Direct: +1 416 847 5152  
Mobile: +1 647 994 7646  
[AlvarezandMarsal.com](http://AlvarezandMarsal.com)  
**ALVAREZ & MARSAL**  
LEADERSHIP. ACTION. RESULTS.™



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
<b>Total</b>	<b>\$2,256,539.13</b>	



**APPENDIX “6”**  
**DECEMBER 2023 PAYMENT LETTERS AND COVERING EMAILS**

---

**From:** Sterling, Andrew <asterling@alvarezandmarsal.com>  
**Sent:** Friday, December 22, 2023 11:33 AM  
**To:** Sam Mizrahi  
**Cc:** Mark Kilfoyle; Remy Del Bel; Ferguson, Stephen; Nevsky, Joshua; O'Neill, Brendan; Armstrong, Christopher  
**Subject:** November 2023 GC Cost Payment  
**Attachments:** Letter to Mizrahi Inc re. November 2023 GC Costs.pdf; GC Cost Review (12.22).xlsx; GC Invoices.zip

Sam,

The Receiver will be making the following payment to Mizrahi Inc. today. Prior to making the payment, can you please review and sign the attached 'November GC Cost Payment Letter' confirming that payment of costs included on the invoices in Schedule A of the attached will be paid.

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
<b>Total</b>	<b>\$2,688,140.07</b>	

Thanks,

**Andrew Sterling, CFA**  
Associate  
Alvarez & Marsal Canada  
200 Bay Street, Suite 2900  
Toronto, ON M5J 2J1  
Direct: +1 416 847 5152  
Mobile: +1 647 994 7646  
[AlvarezandMarsal.com](http://AlvarezandMarsal.com)  
**ALVAREZ & MARSAL**  
LEADERSHIP. ACTION. RESULTS.™



December 22, 2023

**DELIVERED BY EMAIL**

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

Attention: Mr. Sam Mizrahi

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



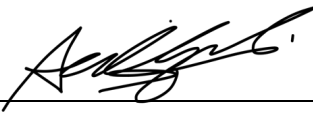
Name: Josh Nevsky

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
<b>Total</b>	<b>\$2,688,140.07</b>	

A handwritten signature in black ink, appearing to be 'AM' or similar, enclosed within a large, loopy oval stroke.

**From:** Sterling, Andrew <asterling@alvarezandmarsal.com>  
**Sent:** Friday, December 22, 2023 11:30 AM  
**To:** Sam Mizrahi  
**Cc:** Mark Kilfoyle; Remy Del Bel; Ferguson, Stephen; Nevsky, Joshua; O'Neill, Brendan; Armstrong, Christopher  
**Subject:** November 2023 Hard Cost Payment  
**Attachments:** Letter to Mizrahi Inc re. November 2023 Hard Costs.pdf; 2023-12-02 - C1444 - Todd & Don Expense.pdf; 2023-12-02 - HC - C1448.pdf

Sam,

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

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

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

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

Todd & Don Expense	28,262.59	C1444
Previously Submitted - Haimul	(1,100.00)	C1448
Previously Submitted - Detal	(2,136.25)	C1448
Previously Submitted - BM	(20,084.60)	C1448
<b>Total</b>	<b>\$12,503,993.93</b>	

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

<b>Grand Total</b>	<b>\$13,129,193.62</b>
--------------------	------------------------

Thanks,

**Andrew Sterling, CFA**

Senior Associate

Alvarez & Marsal Canada

200 Bay Street, Suite 2900

Toronto, ON M5J 2J1

Direct: +1 416 847 5152

Mobile: +1 647 994 7646

[AlvarezandMarsal.com](http://AlvarezandMarsal.com)

**ALVAREZ & MARSAL**

LEADERSHIP. ACTION. RESULTS.™



December 22, 2023

**DELIVERED BY EMAIL**

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

Attention: Mr. Sam Mizrahi

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

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

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

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

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


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



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

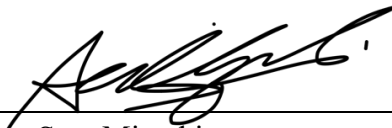
Yours very truly,

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

Per:   
Name: Josh Nevsky  
Title: Senior Vice-President

**AGREED AND ACKNOWLEDGED this \_\_\_\_ day of December, 2023**

**MIZRAHI INC.**

Per:   
Name: Sam Mizrahi  
Title: President

## SCHEDULE A

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
<b>Total</b>	<b>\$12,503,993.93</b>	

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

<b>Grand Total</b>	<b>\$13,129,193.62</b>
--------------------	------------------------



**APPENDIX “7”**  
**CLARK CONSTRUCTION MANAGEMENT INC. CONTRACT DATED JULY 2017**

**CCDC 5A****Construction Management Contract  
– for Services****2 0 1 0****1 Bloor - The One**

Apply a CCDC 5A copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE

## **TABLE OF CONTENTS**

### **ARTICLES OF AGREEMENT**

- A-1 The Services
- A-2 Agreements and Amendments
- A-3 Description of the Project
- A-4 Contract Documents
- A-5 Compensation for Services
- A-6 Payment
- A-7 Receipt of and Addresses for Notices in Writing
- A-8 Language of the Contract
- A-9 Succession

### **SCHEDULES**

- A1 Services and Compensation
- A2 Reimbursable Expenses Applicable to Schedule A1
- B1 Additional Services and Compensation
- B2 Reimbursable Expenses Applicable to Schedule B1
- C Time-Based Rates for Personnel Employed by the Construction Manager

### **DEFINITIONS**

Class A Construction Cost Estimate  
Class B Construction Cost Estimate  
Class C Construction Cost Estimate  
Class D Construction Cost Estimate  
Construction Cost  
Construction Cost Estimate  
Construction Documents  
Construction Manager  
Consultant  
Contract  
Contract Documents  
Contract Time  
Notice in Writing  
Owner  
Payment Certifier  
Place of the Project  
Project  
Project In-Use Date  
Services  
Substantial Performance of Work  
Supplier  
Temporary Work  
Trade Contractor  
Value Added Taxes  
Work  
Working Day

## **GENERAL CONDITIONS**

### **Part 1 General Provisions**

- GC 1.1 Contract Documents
- GC 1.2 Law of the Contract
- GC 1.3 Rights and Remedies
- GC 1.4 Assignment
- GC 1.5 Project Representatives

### **Part 2 Construction Manager's Responsibilities**

- GC 2.1 Services

### **Part 3 Owner's Responsibilities**

- GC 3.1 Provision of Information and Obligations

### **Part 4 Payment**

- GC 4.1 Applications for Payment
- GC 4.2 Payment

### **Part 5 Changes**

- GC 5.1 Changes to the Project
- GC 5.2 Changes in Services

### **Part 6 Default Notice**

- GC 6.1 Owner's Right to Terminate the Contract
- GC 6.2 Construction Manager's Right to Terminate the Contract

### **Part 7 Dispute Resolution**

- GC 7.1 Negotiation, Mediation and Arbitration

### **Part 8 Insurance**

- GC 8.1 Insurance

### **Part 9 Indemnification and Waiver of Claims**

- GC 9.1 Indemnification
- GC 9.2 Waiver of Claims

CCDC 5A is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 5A can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 5A.

## AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER – FOR SERVICES

This agreement made on the \_\_\_\_\_ day of \_\_\_\_\_ July \_\_\_\_\_ in the year 2017  
by and between

Mizrahi Inc.

hereinafter called the *Owner*  
and

Clark Construction Management Inc.

hereinafter called the *Construction Manager*

The *Owner* and *Construction Manager* agree as follows:

### ARTICLE A-1 THE SERVICES

The *Construction Manager* shall

- 1.1 perform the *Services* for  
1 Bloor - The One

*insert above the title of the Project*

located at

1 Bloor Street West, Toronto Ontario

*insert above the Place of the Project*

and as further described in Article A-3 – DESCRIPTION OF THE PROJECT, for which the Agreement has been signed

by the parties, and for which

CORE Architects

*insert above the name of the Consultant*

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

- 1.2 do and fulfill everything indicated by the *Contract Documents*, and
- 1.3 commence the *Services* by the \_\_\_\_\_ day of \_\_\_\_\_ July \_\_\_\_\_ in the year 2017 and continue in accordance with any schedule provided in Article A-3 – DESCRIPTION OF THE PROJECT. The *Construction Manager's* obligation to provide *Services* shall end no later than one year after the *Project In-Use Date*.

### ARTICLE A-2 AGREEMENTS AND AMENDMENTS

- 2.1 This *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Services*.
- 2.2 This *Contract* may be amended as provided in the *Contract Documents*.

CCDC 5A – 2010

*Note: This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.*

### 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.

## ARTICLE A-4 CONTRACT DOCUMENTS

4.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE SERVICES:

- the Agreement Between Owner and Construction Manager (including the Schedules to the Agreement)
- the Definitions
- the General Conditions

\*

Appendix A, B, C, D and E to the Supplementary Conditions

\* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents)

CCDC 5A – 2010

3

*Note: This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.*



## 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:
- .1<sup>F</sup> ~~A fixed amount of \_\_\_\_\_, and~~
  - .2<sup>F</sup> 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
  - .3<sup>F</sup> 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.

## ARTICLE A-6 PAYMENT

- 6.1 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Project*. The *Owner* shall pay the *Construction Manager*:
- .1 payments on account of the compensation described in Article A-5 of the Agreement – COMPENSATION FOR SERVICES together with such *Value Added Taxes* as may be applicable to such payments, and
  - .2 upon completion of the *Services*, the unpaid balance of the compensation together with such *Value Added Taxes* as may be applicable to such payments.
- 6.2 Should the *Owner* fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
- .1 2% per annum above the prime rate for the first 60 days.
  - .2 4% per annum above the prime rate after the first 60 days.
- Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

(Insert name of chartered lending institution whose prime rate is to be used)  
for prime business loans as it may change from time to time.

4  
Note: This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

## ARTICLE A-7 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

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

### Owner

Mizrahi Inc.

*name of Owner\**

189 Forest Hill Road, Toronto ON

*address*

(866) 300-0219

*facsimile number*

remy@mizrahidevelopments.ca

*email address*

### Construction Manager

Clark Construction Management Inc.

*name of Construction Manager\**

387124 20th Sideroad, Mono, On, L9W 6V5

*address*

mclark@clarkcm.ca

*facsimile number*

*email address*

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

## ARTICLE A-8 LANGUAGE OF THE CONTRACT

- 8.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English/French# language shall prevail.
- 8.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

# Complete this statement by striking out inapplicable term.

CCDC 5A – 2010

*Note:* This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

5

## ARTICLE A-9 SUCCESSION

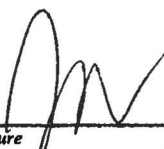
9.1 This Contract shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

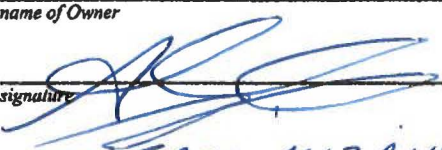
In witness whereof the parties hereto have executed this Agreement by their respective hands or by the hands of their duly authorized representatives.

SIGNED AND DELIVERED  
in the presence of:

WITNESS

OWNER  
Mizrahi Inc.

  
signature  
Joshua Cox - VP  
name of person signing

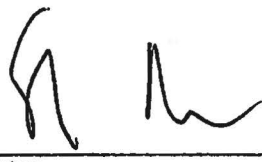
name of Owner  
  
signature  
Sam Mizrahi - President  
name and title of person signing

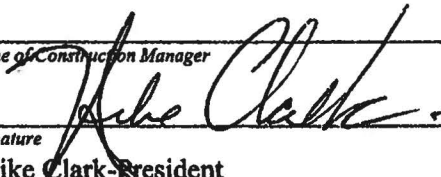
signature  
name of person signing

signature  
name and title of person signing

WITNESS

CONSTRUCTION MANAGER  
Clark Construction Management Inc.

  
signature  
Shawn Millican-General Superintendent  
name of person signing

name of Construction Manager  
  
signature  
Mike Clark-President  
name and title of person signing

signature  
name of person signing

signature  
name and title of person signing

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

## SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

1. PRECONSTRUCTION		Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)	Not Applicable
(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the Construction Manager based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)				
<b>1.1 General Services</b>				
.1 Attend regular <i>Project</i> meetings with the <i>Owner</i> and the <i>Consultant</i> .		<input type="checkbox"/>	F3	<input type="checkbox"/>
.2 Provide advice to the <i>Owner</i> and the <i>Consultant</i> with respect to construction and market conditions.		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>1.2 Predesign</b>				
<b>.1 Estimating:</b>				
(1) Confirm or prepare a <i>Class D Construction Cost Estimate</i> .		<input type="checkbox"/>	F3	<input type="checkbox"/>
(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action.		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>.2 Scheduling:</b> Prepare a preliminary overall <i>Project</i> schedule.		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>1.3 Schematic Design Phase</b>				
<b>.1 Constructability:</b> Provide advice on site use and possible improvements, selection of materials, assembly systems, and, equipment and provide recommendations on construction feasibility, availability of materials and labour, time requirements for installation and construction, and factors related to alternative designs and possible economies.		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>.2 Estimating:</b>				
(1) Prepare a <i>Class C Construction Cost Estimate</i> at the end of the Schematic Design Phase.		<input type="checkbox"/>	F3	<input type="checkbox"/>
(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action.		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>.3 Scheduling:</b> Prepare in consultation with the <i>Consultant</i> and the <i>Owner</i> a preliminary <i>Project</i> schedule for the <i>Owner's</i> review; such <i>Project</i> schedule shall take into consideration the sequence and timing of the required basic program decisions, including anticipated design time, approval period, preparation of documentation, bid calls and subsequent evaluations, trade contract awards, on-site construction activities, and the <i>Project-In-Use Date</i> .		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>.4 Other Services:</b> Assist in providing liaison and coordination among government authorities, utility companies, and other authorities having jurisdiction over the <i>Place of the Project</i> .		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>1.4 Design Development Phase</b>				
<b>.1 Constructability:</b>				
(1) Provide updates as necessary regarding the availability of materials and labour, building systems, and possible economies.		<input type="checkbox"/>	F3	<input type="checkbox"/>
(2) Make recommendations to the <i>Owner</i> and the <i>Consultant</i> regarding the scope of <i>Work</i> packages, to help facilitate the subsequent bidding and awarding of trade and supply contracts.		<input type="checkbox"/>	F3	<input type="checkbox"/>
(3) Review the specifications and drawings and at the end of the Design Development Phase, make recommendations to the <i>Owner</i> and the <i>Consultant</i> as to constructability and coordination among the <i>Trade Contractors</i> .		<input type="checkbox"/>	F3	<input type="checkbox"/>
(4) Prepare general functional layout of construction site access and organization and <i>Temporary Work</i> .		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>.2 Estimating and Cost Control:</b>				
(1) Prepare a <i>Class B Construction Cost Estimate</i> at the end of the Design Development Phase.		<input type="checkbox"/>	F3	<input type="checkbox"/>
(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendations for corrective action.		<input type="checkbox"/>	F3	<input type="checkbox"/>
(3) Establish a cost control program, and prepare a cash flow forecast for the <i>Project</i> .		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>.3 Scheduling:</b>				
(1) Review and update the <i>Project</i> schedule with appropriate details.		<input type="checkbox"/>	F3	<input type="checkbox"/>
(2) Advise the <i>Owner</i> if it appears that the <i>Project</i> schedule may vary from that specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i> , update the <i>Project</i> schedule, and make recommendations for corrective action.		<input type="checkbox"/>	F3	<input type="checkbox"/>
(3) Make recommendations to the <i>Owner</i> regarding any equipment or materials, which should be pre-ordered to meet the <i>Project</i> schedule.		<input type="checkbox"/>	F3	<input type="checkbox"/>

CCDC 5A-2010

**Note:** This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

## SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

1. PRECONSTRUCTION		Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)	Not Applicable
(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)				
<b>1.5 Construction Document Phase</b>				
<b>.1 Constructability:</b>		<input type="checkbox"/>	F3	<input type="checkbox"/>
(1) Provide updates as necessary regarding the availability of materials and labour, building systems, and possible economies.				
(2) Review the specifications and drawings and make recommendations to the <i>Owner</i> and the <i>Consultant</i> as to clarity, consistency, constructability, and coordination among the <i>Trade Contractors</i> .				
(3) Assist the <i>Owner</i> and the <i>Consultant</i> in preparing bid documents for <i>Trade Contractors</i> .				
(4) Assist the <i>Owner</i> in determining the contract security requirements of <i>Trade Contractors</i> .				
<b>.2 Estimating and Cost Control:</b>		<input type="checkbox"/>	F3	<input type="checkbox"/>
(1) Update the <i>Class B Construction Cost Estimate</i> at defined intervals of <i>Construction Documents</i> completion.				
(2) Prepare a <i>Class A Construction Cost Estimate</i> at the end of the Construction Document Phase.				
(3) Update the cash flow forecasts for the <i>Project</i> .				
(4) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget and make recommendations for corrective action.				
<b>.3 Scheduling:</b>		<input type="checkbox"/>	F3	<input type="checkbox"/>
(1) Review and update the <i>Project</i> schedule with appropriate details.				
(2) Advise the <i>Owner</i> if it appears that the <i>Project</i> schedule may vary from that specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i> , and make recommendations for corrective action, including changes to <i>Project</i> scope, schedule or budget.				
<b>.4 Make recommendations to the <i>Owner</i> regarding any equipment or materials which should be pre-ordered to meet the <i>Project</i> objective.</b>		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>.5 Prepare general requirements.</b>		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>.6 Collate, assemble and distribute bid documents.</b>		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>1.6 Construction Procurement Phase</b>				
<b>.1 Scheduling:</b>		<input type="checkbox"/>	F3	<input type="checkbox"/>
(1) Review and update the <i>Project</i> schedule with appropriate details.				
<b>.2 Contracting:</b>		<input type="checkbox"/>	F3	<input type="checkbox"/>
(1) Develop methods of solicitation for <i>Trade Contractors</i> and the distribution of addenda.				
(2) Prepare the prequalification criteria for <i>Trade Contractors</i> and <i>Suppliers</i> as required by the <i>Owner</i> .				
(3) Review for completeness and coordinate all bid documents for the solicitation of competitive bids for the <i>Work</i> of each <i>Trade Contractor</i> .				
<b>.3 Solicit bids.</b>		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>.4 Assist the <i>Owner</i> in the evaluation and awarding of contracts.</b>		<input type="checkbox"/>	F3	<input type="checkbox"/>
<b>.5 Update the cash flow forecasts for the <i>Project</i>.</b>		<input type="checkbox"/>	F3	<input type="checkbox"/>



## SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

<b>2. CONSTRUCTION</b>  (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)	Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)
<b>2.1 General Services</b> <b>.1</b> Chair and minute regular <i>Project</i> meetings with the <i>Owner</i> , the <i>Consultant</i> and <i>Trade Contractors</i> . <b>.2</b> Organize and distribute all documents related to the performance of the contract and execution of the <i>Work</i> of each <i>Trade Contractor</i> . <b>.3</b> Provide administration as described in the trade contract documents including. (1) Facilitate all communications among the <i>Owner</i> , the <i>Consultant</i> , the <i>Payment Certifier</i> , and <i>Trade Contractors</i> that relate to the <i>Project</i> . (2) In the first instance, receive all questions in writing by the <i>Owner</i> or <i>Trade Contractors</i> for interpretations and findings relating to the performance of the <i>Work</i> or the interpretation of the trade contract documents except with respect to financing information required of the <i>Owner</i> . (3) In the first instance, give interpretations and make findings on matters in question relating to the performance of any <i>Work</i> or the requirements of the trade contract documents, except with respect to any and all architectural and engineering aspects of the <i>Project</i> or financing information required of the <i>Owner</i> . (4) During the progress of the <i>Work</i> , issue supplemental instructions to <i>Trade Contractors</i> with reasonable promptness or in accordance with a schedule for such instructions agreed to by the <i>Construction Manager</i> and <i>Trade Contractors</i> . (5) Promptly investigate, make findings and inform the <i>Owner</i> , <i>Trade Contractors</i> and the <i>Consultant</i> concerning all concealed or unknown conditions which are discovered by the <i>Construction Manager</i> or of which <i>Notice in Writing</i> is given to the <i>Construction Manager</i> . (6) Make findings upon all claims for a change in any trade contract price, and provide <i>Notice in Writing</i> of such findings to all parties within 30 <i>Working Days</i> after receipt of such claim or within such other time period as may be agreed by the parties. (7) Give instructions necessary for the proper performance of <i>Work</i> of each <i>Trade Contractor</i> during any dispute so as to prevent delays pending settlement of such dispute. (8) Investigate the impact on <i>Work</i> of each <i>Trade Contractor</i> of the discovery of any fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the <i>Place of the Project</i> , and advise the <i>Owner</i> concerning the issuance of appropriate instructions for any change in <i>Work</i> as a result of such discovery. (9) Act on behalf of the <i>Owner</i> , <i>Trade Contractors</i> and the <i>Consultant</i> for the purpose of adjusting the amount of any loss or damage payment with insurers under property or boiler and machinery policies affecting any <i>Work</i> .		F3  F3  F3
<b>2.2 Project Control and Scheduling</b> <b>.1</b> (1) Establish and implement organization and procedures with respect to all aspects of the <i>Project</i> . (2) Provide to <i>Trade Contractors</i> the <i>Project</i> schedule that indicates the timing of major activities of the <i>Project</i> in sufficient detail for <i>Trade Contractors</i> to schedule their <i>Work</i> . (3) Provide coordination and general direction for the progress of the <i>Project</i> . (4) Monitor the <i>Work</i> of each <i>Trade Contractor</i> . (5) Coordinate all <i>Trade Contractors</i> in the performance of their respective <i>Work</i> , with one another and with the activities and responsibilities of the <i>Owner</i> and the <i>Consultant</i> . (6) Review the performance of <i>Trade Contractors</i> ' personnel and equipment and the availability of materials and supplies to meet the <i>Project</i> schedule and recommend courses of action to the <i>Owner</i> when requirements of a trade contract are not being met. (7) Provide regular monitoring of the schedule as construction progresses. Identify potential variances to planned completion dates. Review schedule for work not started or incomplete and recommend to the <i>Owner</i> and <i>Trade Contractors</i> adjustments in the schedule to achieve the <i>Project In-Use Date</i> . Provide summary reports of each monitoring and document all changes in schedule.		F3

CCDC 5A – 2010

*Note: This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.*

<b>2. CONSTRUCTION</b>  (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)	Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)
<b>2.3 Common Construction Facilities and Services</b> .1 Arrange for the required <i>Temporary Work</i> .		F3
<b>2.4 Cost Control and Accounting</b> .1 (1) Prepare and update the <i>Construction Cost</i> cash flow forecasts in accordance with the <i>Project</i> budget as specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i> . (2) Develop, implement and maintain a system of <i>Project</i> cost control and accounting. (3) Advise the <i>Owner</i> and the <i>Consultant</i> on the variances between actual cost and <i>Construction Cost Estimate</i> . (4) Provide reasonable assistance and information to permit recovery of all tax rebates where applicable. (5) Jointly with each <i>Trade Contractor</i> , prepare a schedule showing when items called for under cash allowances must be ordered to avoid delaying the progress of <i>Work</i> . (6) Provide recommendations to the <i>Owner</i> for necessary changes to maintain <i>Project</i> budget and <i>Project</i> schedule.		F3
<b>2.5 Changes in Work</b> .1 (1) Develop and implement a system for processing changes in any <i>Work</i> . (2) Recommend appropriate changes in any <i>Work</i> to the <i>Owner</i> and the <i>Consultant</i> . (3) Review requests for changes in any <i>Work</i> and provide recommendations to the <i>Owner</i> and the <i>Consultant</i> and, if necessary, assist in negotiation. (4) Prepare and issue to <i>Trade Contractors</i> change orders and change directives, including written descriptions of proposed changes in <i>Work</i> , all of which are to be prepared in consultation with the <i>Consultant</i> when they are related to the specifications and drawings.		F3
<b>2.6 Payments to Trade Contractors and Suppliers</b> .1 (1) Develop and implement a procedure for timely process of payments to <i>Trade Contractors</i> and <i>Suppliers</i> . (2) Promptly inform the <i>Owner</i> of the date of receipt of the <i>Trade Contractors</i> ' applications for payment. (3) Promptly forward to the <i>Payment Certifier</i> the applications for payment received from the <i>Trade Contractors</i> . .2 (1) Determine the amounts owing to <i>Trade Contractors</i> and issue certificates for payment based on the <i>Construction Manager</i> 's observations and evaluation of <i>Trade Contractors</i> ' applications for payment.		F3    F3
<b>2.7 Field Review</b> .1 (1) Develop, implement and maintain a system for quality assurance and quality control. (2) Reject work that in the opinion of the <i>Construction Manager</i> or the <i>Consultant</i> does not conform to the requirements of the trade contract documents and whenever it is considered necessary or advisable, require inspection or testing of work.		F3
<b>2.8 Health and Construction Safety</b> .1 (1) Subject to paragraph 3.1.2 of GC 3.1 – PROVISION OF INFORMATION AND OBLIGATIONS, be responsible for establishing, initiating, maintaining, and overseeing the health and safety precautions and programs required to be put in place at the <i>Place of the Project</i> and review with the <i>Owner</i> all safety programs for adequacy. (2) Review with the <i>Owner</i> the <i>Trade Contractors</i> ' safety programs for compliance.		F3

## SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

<b>2. CONSTRUCTION</b>  (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)	Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)
<b>2.9 Submittals</b> <b>.1</b> (1) Establish procedures for processing submittals. (2) Coordinate all relevant information required to perform any <i>Work</i> . (3) Upon request by any <i>Trade Contractor</i> or the <i>Consultant</i> , jointly prepare a schedule of the dates for provision, review and return of shop drawings. (4) Forward to the <i>Consultant</i> for review all shop drawings that are considered to be complete. (5) Indicate in writing the <i>Consultant's</i> acceptance or rejection of all deviations in the shop drawings from the requirements of the trade contract documents. (6) Return all shop drawings in accordance with the agreed schedule, or in the absence of such agreed schedule, with reasonable promptness so as to cause no delay in the performance of any <i>Work</i> .		F3
<b>2.10 Reports and Project Site Documents</b> <b>.1</b> (1) Keep a daily log available to the <i>Owner</i> and the <i>Consultant</i> . (2) Maintain copies of all necessary documents at the <i>Place of the Project</i> . (3) Collate and compile record documents and operating and maintenance manuals in accordance with the <i>Owner's</i> requirements.		F3
<b>2.11 Start-up</b> <b>.1</b> (1) Assist the <i>Owner</i> in coordinating and monitoring initial start-up and testing conducted by <i>Trade Contractors</i> . (2) Coordinate the commissioning of utilities, systems and equipment.		F3
<b>2.12 Substantial Performance of the Work</b> <b>.1</b> (1) Subject to applicable legislation, arrange for the issuance of the necessary certificates respecting <i>Substantial Performance of the Work</i> of each <i>Trade Contractor</i> or designated portions thereof, lists of incomplete or unsatisfactory items, and schedules for their completion. (2) Distribute certificates of <i>Substantial Performance of the Work</i> and final certificates for payment of <i>Work</i> of each <i>Trade Contractor</i> . (3) Arrange with <i>Trade Contractors</i> to finish <i>Work</i> to be completed or corrected.		F3
<b>2.13 Project In-Use Date</b> <b>.1</b> (1) Determine, in consultation with the <i>Owner</i> and the <i>Consultant</i> , and advise <i>Trade Contractors</i> in writing of, the <i>Project In-Use Date</i> .		F3
<b>2.14 Handover</b> <b>.1</b> (1) Inform the <i>Owner</i> and the <i>Consultant</i> in writing when <i>Work</i> of each <i>Trade Contractor</i> is ready for final review prior to issuance of final certificate for payment. (2) Seek, obtain and transmit to the <i>Owner</i> warranties (in consultation with the <i>Consultant</i> , if applicable), affidavits, releases, bonds, insurances, and waivers received from <i>Trade Contractors</i> . (3) Turn over to the <i>Owner</i> all keys and maintenance stocks. (4) Arrange for the issuance of the final certificate for payment for each <i>Trade Contractor</i> . (5) Assist the <i>Owner's</i> operating staff to facilitate a smooth and proper takeover of <i>Work</i> of each <i>Trade Contractor</i> and the <i>Project</i> , including all necessary training and instruction of the <i>Owner's</i> operating staff.		F3



<b>3. POST-CONSTRUCTION</b>  (*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)		Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)
<b>3.1 General Services</b>			
.1 (1) Chair and minute <i>Project</i> meetings with the <i>Owner</i> , the <i>Consultant</i> , and <i>Trade Contractors</i> . (2) Prepare final <i>Construction Cost</i> report.			F3
<b>3.2 Occupancy Review</b>			
.1 Assist the <i>Owner</i> in conducting post-construction occupancy review.			F3
<b>3.3 Warranties</b>			
.1 Assist the <i>Owner</i> in administering warranties.			F3

## SCHEDULE A2 – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE A1

Unless otherwise agreed to by the parties or as indicated in the following table, all expense items relating to *Services* are included in the *Construction Manager's* fee as described in paragraph 5.2 of Article of the Agreement A-5 – COMPENSATION FOR SERVICES.

	Costs Included in the Construction Manager's Fee (A5.2)	Reimbursable Expenses (A5.3)
1. Travel and subsistence expenses of the <i>Construction Manager's</i> personnel outside a radius of 50km from the <i>Place of the Project</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Charges for long distance telephone and facsimile communications, courier services, and reproduction of trade contract documents incurred in relation to the performance of this <i>Contract</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. The cost of <i>Project</i> specific information technology support in accordance with the method determined by the parties.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Deposits lost, provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		<input checked="" type="checkbox"/>
5. The costs to the <i>Construction Manager</i> that result from any <i>Trade Contractor's</i> insolvency or failure to perform.		<input checked="" type="checkbox"/>
6. Charges levied by authorities having jurisdiction at the <i>Place of the Project</i> .		<input checked="" type="checkbox"/>
7. Royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefore.		<input checked="" type="checkbox"/>
8. Any adjustment in taxes and duties directly related to the <i>Project</i> for which the <i>Construction Manager</i> is liable.		<input checked="" type="checkbox"/>
9. Losses and expenses sustained by the <i>Construction Manager</i> for matters which are the subject of the insurance coverages obtained pursuant to GC 8.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, within the deductible amounts or are not insurable.		<input checked="" type="checkbox"/>
10. The costs incurred due to emergencies affecting the safety of persons or property.		<input checked="" type="checkbox"/>
11. Legal costs incurred by the <i>Construction Manager</i> in relation to the performance of the <i>Services</i> provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		<input checked="" type="checkbox"/>
12. Such other costs directly incurred by the <i>Construction Manager</i> in the performance of this <i>Contract</i> as follows:  See Appendix B		<input checked="" type="checkbox"/>

CCDC 5A – 2010

Note: This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

13

# **SCHEDULE B1 – ADDITIONAL SERVICES AND COMPENSATION**

The *Construction Manager* will provide the following additional services and *Temporary Work* that are within the scope of the *Services*:

	Method of Compensation (*F1/F2/F3)

## SCHEDULE B2 – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE B1

Unless otherwise agreed to by the parties or as indicated in the following table, all expense items relating to additional services are included in the *Construction Manager's* fee as described in paragraph 5.2 of Article of the Agreement A-5 – COMPENSATION FOR SERVICES.

	Costs Included in the Construction Manager's Fee (A5.2)	Reimbursable Expenses (A5.3)
1. Travel and subsistence expenses of the <i>Construction Manager's</i> personnel outside a radius of 50km from the <i>Place of the Project</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Charges for long distance telephone and facsimile communications, courier services, reproduction of trade contract documents incurred in relation to the performance of this <i>Contract</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Deposits lost provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. The costs to the <i>Construction Manager</i> that result from any <i>Trade Contractor's</i> insolvency or failure to perform.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. The cost of all products purchased by the <i>Construction Manager</i> for the <i>Project</i> , including cost of transportation thereof.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. The cost of all equipment and services required for the <i>Construction Manager's</i> field office.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. The amounts of all contracts between the <i>Construction Manager</i> and subcontractors and suppliers.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. The cost of quality assurance such as independent inspection and testing services.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Any adjustment in premiums for insurance which the <i>Construction Manager</i> is required, by this <i>Contract</i> , to purchase and maintain.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. If applicable, the cost of time-based rate for labour in the direct employ of the <i>Construction Manager</i> in performing the additional services described in Schedule B1.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Charges levied by authorities having jurisdiction at the <i>Place of the Project</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
12. Royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefore.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
13. Any adjustment in taxes and duties directly related to the <i>Project</i> for which the <i>Construction Manager</i> is liable.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
14. Losses and expenses sustained by the <i>Construction Manager</i> for matters which are the subject of the insurance coverages obtained pursuant to GC 8.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, are within the deductible amounts or are not insurable.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
15. The costs incurred due to emergencies affecting the safety of persons or property.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
16. Legal costs, incurred by the <i>Construction Manager</i> in relation to the performance of the <i>Project</i> provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
17. Such other costs directly incurred by the <i>Construction Manager</i> in performing the additional services as follows:	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**SCHEDULE C – TIME-BASED RATES FOR PERSONNEL EMPLOYED BY THE CONSTRUCTION MANAGER**

[illegible]

16

CCDC 5A – 2010

16 CCDC 5A – 2010

**Note:** *This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.*

## DEFINITIONS

The following Definitions apply to the *Contract Documents*. References in the definition to the singular shall be considered to include the plural as the context requires.

### Class A Construction Cost Estimate

The *Class A Construction Cost Estimate* is an estimate of the *Construction Cost* based on the completed *Construction Documents*. *Class A Construction Cost Estimate* is the final estimate before the bid or proposal call. *Class A Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

### Class B Construction Cost Estimate

The *Class B Construction Cost Estimate* is an estimate of the *Construction Cost* with a level of precision that is based on the degree of completion of the *Construction Documents* at the time of preparation of the estimate. The *Class B Construction Cost Estimate* is typically prepared when all site or installation investigations are completed and the design of the major systems and sub-systems of the *Project* (including outline specifications and preliminary drawings and models) are well underway. *Class B Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

### Class C Construction Cost Estimate

The *Class C Construction Cost Estimate* is an estimate of the *Construction Cost* based on updated *Owner* requirements, general description of the *Project*, preliminary site information and existing conditions, and takes into consideration market conditions as well as basic implementation logistics. *Class C Construction Cost Estimate* shall include labour and material costs and the *Owner's* construction contingencies and allowances.

### Class D Construction Cost Estimate

The *Class D Construction Cost Estimate* is an estimate of the *Construction Cost* based on the *Owner's* functional requirements to the degree known at the time. The *Class D Construction Cost Estimate* shall as a minimum be based on historical cost data for similar projects, suitably adjusted for such factors as inflation, location, risk, quality, size, and time. All related factors affecting cost are considered to the extent possible. The *Class D Construction Cost Estimate* provides the *Owner* an indication of the order of magnitude of the *Construction Cost* for a project completed within the estimated completion date, and shall include labour and material costs and the *Owner's* construction contingencies and allowances.

### Construction Cost

*Construction Cost* means the actual cost of all elements of the *Project* including all applicable taxes but excluding the applicable value added taxes, whether recoverable or not. *Construction Cost* does not include the compensation of the *Construction Manager* and the *Consultant*.

### Construction Cost Estimate

*Construction Cost Estimate* is either a *Class A Construction Cost Estimate*, a *Class B Construction Cost Estimate*, a *Class C Construction Cost Estimate*, or a *Class D Construction Cost Estimate*, as the context shall require and is prepared with a level of precision commensurate with the level of detail of information available at the time.

### Construction Documents

The *Construction Documents* consist of the specifications and drawings that are consistent with the *Contract Documents* and are prepared by the *Consultant* and accepted by the *Owner* after execution of the Agreement for the performance of the *Project*.

### Construction Manager

The *Construction Manager* is the person or entity identified as such in the Agreement.

### Consultant

The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Project*.

### Contract

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

### Contract Documents

The *Contract Documents* consist of those documents listed in Article A-4 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

CCDC 5A – 2010

17

*Note: This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.*

**Contract Time**

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE SERVICES.

**Notice in Writing**

A *Notice in Writing*, where identified in this *Contract*, is a written communication between the parties that is transmitted in accordance with the provisions of Article A-7 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

**Owner**

The *Owner* is the person or entity identified as such in the Agreement.

**Payment Certifier**

The *Payment Certifier* is either the *Construction Manager* or the *Consultant* identified as such in a trade contract.

**Place of the Project**

The *Place of the Project* is the designated site or location of the *Project* identified in this Agreement.

**Project**

The *Project* means the total construction as described in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT contemplated by the *Owner*.

**Project In-Use Date**

*Project In-Use Date* shall have been reached when the *Project* is ready for use or is being used for the purpose intended and is so confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*.

**Services**

The *Services* means all services described in Schedule A1 to the Agreement – SERVICES AND COMPENSATION and Schedule B1 to the Agreement – ADDITIONAL SERVICES AND COMPENSATION to be performed by the *Construction Manager* under this *Contract*.

**Substantial Performance of the Work**

*Substantial Performance of the Work* is defined in the lien legislation applicable to the *Place of the Project* with respect to each *Trade Contractor*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* of each *Trade Contractor* is ready for use or is being used for the purpose intended and is so certified by the *Payment Certifier*.

**Supplier**

A *Supplier* is a person or entity having a direct contract with the *Owner* to supply products.

**Temporary Work**

*Temporary Work* means temporary supports, structures, facilities, services, and other temporary items required for the execution of *Work* but not incorporated into *Work*.

**Trade Contractor**

*Trade Contractor* is the person or entity identified as such in a trade contract between the *Owner* and the *Trade Contractor* to perform *Work*.

**Value Added Taxes**

*Value Added Taxes* means such sums as shall be levied upon the *Owner's* payment to the *Construction Manager* by the Federal or any Provincial or Territorial government and is computed as a percentage of such payment and includes the Goods and Services Tax, the Quebec Sales Tax, The Harmonized Sales Tax, and any other similar tax, the collection and payment of which have been imposed on the *Construction Manager* by tax legislation.

**Work**

*Work* means the construction and related services required to be performed by a *Trade Contractor*.

**Working Day**

*Working Day* means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Project*.



## GENERAL CONDITIONS

### PART 1 GENERAL PROVISIONS

#### GC 1.1 CONTRACT DOCUMENTS

##### 1.1.1 If there is a conflict within the *Contract Documents*:

- .1 the order of priority of documents, from highest to lowest, shall be
  - the Agreement between the *Owner* and the *Construction Manager* (including the Schedules to the Agreement),
  - the Definitions,
  - Supplementary Conditions, if any
  - the General Conditions.
- .2 later dated documents shall govern over earlier documents of the same type.
- .3 amendments to documents shall govern over documents so amended.

#### GC 1.2 LAW OF THE CONTRACT

##### 1.2.1 The law of the *Place of the Project* shall govern the interpretation of this *Contract*.

#### GC 1.3 RIGHTS AND REMEDIES

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

#### GC 1.4 ASSIGNMENT

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

#### GC 1.5 PROJECT REPRESENTATIVES

##### 1.5.1 The *Owner*, *Construction Manager* and *Consultant* may appoint one or more project representatives to assist in carrying out their responsibilities under this *Contract*. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing.

### PART 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

#### GC 2.1 SERVICES

- 2.1.1 The *Construction Manager* shall provide the basic services identified in Schedule A1 to the Agreement and additional services identified in Schedule B1 to the Agreement.
- 2.1.2 The *Construction Manager* shall retain the personnel named in the Agreement in their designated roles for the duration of the assignment and promptly inform and obtain approval by the *Owner* of any change.
- 2.1.3 In providing the *Services*, the *Construction Manager* assumes no responsibility for, nor offers any professional advice with respect to, any and all architectural or engineering aspects of the *Project* or the *Consultant's* services.
- 2.1.4 The authority of the *Construction Manager* as agent of the *Owner* is expressly limited to the provision of the *Services* more particularly described in Schedules A1 and B1 to the Agreement.
- 2.1.5 Interpretations and findings of the *Construction Manager* shall be consistent with the intent of the *Contract Documents* as they relate to the *Work*. In making such interpretations and findings the *Construction Manager* will not show partiality to either the *Owner* or *Trade Contractors*.

### PART 3 OWNER'S RESPONSIBILITIES

#### GC 3.1 PROVISION OF INFORMATION AND OBLIGATIONS

##### 3.1.1 The *Owner* shall:

- .1 retain the *Consultant* who shall be responsible for the design and design-related services required for the *Project*;
- .2 inform the *Construction Manager* of the scope and terms of the *Consultant's* services;

CCDC 5A – 2010

19

*Note:* This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.



- .3 inform the *Consultant* of the scope and terms of the *Services*;
  - .4 coordinate and facilitate the services of the *Construction Manager* and the *Consultant*;
  - .5 enter into contracts or written agreements with *Trade Contractors* to perform the *Work*. Such agreements shall be consistent with the requirements of CCDC 17 – STIPULATED PRICE CONTRACT BETWEEN OWNER AND TRADE CONTRACTOR FOR CONSTRUCTION MANAGEMENT PROJECTS;
  - .6 inform the *Construction Manager* of the scope and terms of each trade contract;
  - .7 upon request by the *Construction Manager*, furnish to the *Construction Manager* reasonable evidence that financial arrangements have been made and that adequate financing is available in order to ensure the completion of the *Project*;
  - .8 communicate with *Trade Contractors* through the *Construction Manager* except:
    - (1) for direct communications with the *Payment Certifier*,
    - (2) with respect to formal notices in writing, or
    - (3) when expressly specified in a trade contract.
  - .9 pay *Trade Contractors* in accordance with the terms and conditions of each trade contract;
  - .10 furnish promptly to the *Construction Manager* all information that is required for the *Project* regarding the *Place of the Project* including surveys as to the physical characteristics of the site, soils reports, subsurface investigations, legal limitations, utility locations, and legal description. The *Construction Manager* shall be entitled to rely on such information;
  - .11 provide full and timely information and approvals regarding the requirements of the *Project* for the orderly progress of the *Services*;
  - .12 review documents submitted by the *Construction Manager* and give the *Construction Manager* timely decisions for the orderly progress of the *Services*;
  - .13 obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits;
  - .14 provide, maintain and pay for the insurance coverages required for the *Project* in accordance with Part 8 of the General Conditions – INSURANCE;
  - .15 immediately notify the *Construction Manager* if the *Owner* observes or otherwise becomes aware of any fault or defect in the *Work*, the *Project* or any non-conformity with the requirements of the *Contract*;
  - .16 designate in writing a representative who shall be fully acquainted with the *Project* and shall have the authority to act on the *Owner's* behalf in relation to all duties and responsibilities of the *Owner* under this *Contract*; and
  - .17 designate in writing a *Payment Certifier* and advise the *Construction Manager* and the *Consultant*.
- 3.1.2 The *Owner* shall be responsible for construction health and safety at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable health and construction safety legislation.

## PART 4 PAYMENT

### GC 4.1 APPLICATIONS FOR PAYMENT

- 4.1.1 The *Construction Manager's* applications for payment shall be made monthly as the *Services* progress or in accordance with such other period agreed to by the *Owner* and the *Construction Manager*.
- 4.1.2 The amount claimed shall be in accordance with a schedule agreed to by the *Owner* and the *Construction Manager*, or in the absence of such a schedule, equal to the value of the *Services* provided as of the last day of the payment period.

### GC 4.2 PAYMENT

- 4.2.1 The *Owner* shall make payment to the *Construction Manager* on account in accordance with the provisions of Article A-6 of the Agreement – PAYMENT no later than 20 calendar days following the date of receipt of an application for payment.
- 4.2.2 No deductions shall be made by the *Owner* from amounts payable to the *Construction Manager* other than those for which the *Construction Manager* is proven to be responsible as in accordance with Part 7 – DISPUTE RESOLUTION or has agreed to pay.
- 4.2.3 Variance from the *Construction Cost Estimate* established under this *Contract* shall not constitute grounds for the *Owner* to withhold fees due to the *Construction Manager*.
- 4.2.4 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Project*.

## **PART 5 CHANGES**

### **GC 5.1 CHANGES TO THE PROJECT**

- 5.1.1 The *Owner*, without invalidating this *Contract*, may make changes in the *Project* provided they are within the general scope of the *Project* and of the *Services*.
- 5.1.2 The *Construction Manager* shall promptly advise the *Owner* if a change contemplated by the *Owner* under paragraph 5.1.1 will change the *Construction Manager's* compensation or the *Project In-Use Date*.
- 5.1.3 If the *Owner* and the *Construction Manager* agree on an adjustment to the *Construction Manager's* compensation or *Contract Time*, such agreement shall be recorded in writing.
- 5.1.4 If the *Owner* and *Construction Manager* cannot agree on the change in *Construction Manager's* compensation, the matter shall be determined in accordance with the provisions of Part 7 of the General Conditions – DISPUTE RESOLUTION.
- 5.1.5 If the *Contract Time* is exceeded or extended through no fault of the *Construction Manager*, the *Construction Manager's* compensation shall be adjusted accordingly to cover the *Construction Manager's* additional costs.

### **GC 5.2 CHANGES IN SERVICES**

- 5.2.1 Any agreement between the *Owner* and the *Construction Manager* on a change to the *Services* shall be recorded in writing.

## **PART 6 DEFAULT NOTICE**

### **GC 6.1 OWNERS' RIGHT TO TERMINATE THE CONTRACT**

- 6.1.1 If a party is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or a receiver is appointed because of its insolvency, the other party may, without prejudice to any other right or remedy it may have, terminate this *Contract* by giving the party or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 6.1.2 If the *Construction Manager* neglects to properly perform the *Service* or otherwise fails to comply with the requirements of this *Contract* to a substantial degree, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Construction Manager Notice in Writing* that the *Construction Manager* is in default of the *Construction Manager's* contractual obligations and instruct the *Construction Manager* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 6.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Construction Manager* shall be in compliance with the *Owner's* instructions if the *Construction Manager*:
  - .1 commences the correction of the default within the specified time, and
  - .2 provides an acceptable schedule to the *Owner* for such correction, and
  - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 6.1.4 If the *Construction Manager* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
  - .1 correct such default and deduct the cost thereof from any payment then or thereafter due to the *Construction Manager*, or
  - .2 terminate the *Construction Manager's* right to continue with the *Services* in whole or in part or terminate this *Contract*.
- 6.1.5 If the *Owner* terminates this *Contract* as provided in paragraphs 6.1.1 and 6.1.4, the *Owner* shall pay the *Construction Manager* within 30 calendar days of the date that an invoice is submitted for all *Services* properly performed to the effective termination date, including reimbursable expenses and applicable taxes then due.
- 6.1.6 The *Owner* may, if conditions arise which make it necessary for reasons other than as provided in paragraphs 6.1.1 and 6.1.4, terminate this *Contract* by giving *Notice in Writing* to that effect to the *Construction Manager*.
- 6.1.7 Suspension of the *Project* shall be deemed to have occurred if:
  - .1 the *Project* has been stopped at the *Owner's* request or due to no fault of the *Construction Manager*, and
  - .2 such stoppage or stoppages have continued individually for a period of 30 calendar days or collectively for a period of 60 calendar days.

CCDC 5A – 2010

21

*Note:* This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

6.1.8 If the *Owner* terminates this *Contract* as provided in paragraph 6.1.6 or suspends the *Project* as described in paragraph 6.1.7:

- .1 the *Owner* shall pay the *Construction Manager* within 30 calendar days of the date that an invoice is submitted for all *Services* performed to the effective termination date, including reimbursable expenses and applicable taxes then due; and
- .2 the *Construction Manager* shall be entitled to reasonable termination costs and an amount for anticipated loss of profit.

## **GC 6.2 CONSTRUCTION MANAGER'S RIGHT TO TERMINATE THE CONTRACT**

6.2.1 If the *Owner* fails to comply with the requirements of this *Contract* to a substantial degree, including but not limited to the non-payment of compensation for *Services* described in Article A-5 – COMPENSATION FOR SERVICES, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, give the *Owner* *Notice in Writing* that the *Owner* is in default of the *Owner's* contractual obligations and notify the *Owner* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.

6.2.2 If the *Owner* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Construction Manager* may have, the *Construction Manager* may terminate this *Contract*.

6.2.3 If the *Construction Manager* terminates this *Contract* as described in paragraph 6.2.2:

- .1 the *Owner* shall pay the *Construction Manager* within 30 calendar days of the date that an invoice is submitted for all *Services* performed to the effective termination date, including reimbursable expenses and applicable taxes then due; and
- .2 the *Construction Manager* shall be entitled to reasonable termination costs and an amount for anticipated loss of profit.

## **PART 7 DISPUTE RESOLUTION**

### **GC 7.1 NEGOTIATION, MEDIATION AND ARBITRATION**

7.1.1 Differences between the parties to this *Contract* as to the interpretation, application or administration of this *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, shall be settled in accordance with the requirements of this General Condition.

7.1.2 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.

7.1.3 If the parties so agree the dispute shall be submitted to mediation or arbitration in accordance with the provisions of the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect as at the date of this *Contract*.

7.1.4 If no agreement is made for mediation or arbitration as described in paragraph 7.1.3, the parties may refer the unresolved dispute to the courts or to any other agreed form of dispute resolution.

## **PART 8 INSURANCE**

### **GC 8.1 INSURANCE**

8.1.1 The *Owner* shall obtain, maintain and pay for 'wrap-up' general liability insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, all *Trade Contractors*, all subconsultants, and all trade subcontractors with limits of not less than \$10,000,000 per occurrence and a deductible not more than \$10,000. The insurance coverage shall be primary to all other insurance policies and shall not be substantially less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320, except for liability arising from damage to the *Project* during construction, which shall be limited to the completed operations period. The insurance shall be maintained from the date of commencement of the *Project* until 90 calendar days after the *Project In-Use Date*. The *Owner* is responsible to provide coverage for completed operations hazards from the *Project In-Use Date* for a period of 2 years.

- 8.1.2 The *Owner* shall obtain, maintain and pay for 'broad form' property insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*. The policy shall have limits of not less than the sum of 1.1 times the *Construction Cost Estimate* with a deductible not more than \$10,000. The "Broad Form" property insurance shall be provided from the date of commencement of the *Project* until the earliest of:
- .1 10 calendar days after the *Project In-Use Date*;
  - .2 on the commencement of use or occupancy of any part or section of the *Work* of any *Trade Contractors* unless such use or occupancy is for construction purposes, habitation, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Project*;
  - .3 when the *Place of the Project* is left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
- 8.1.3 The *Owner* shall or cause to obtain, maintain and pay for an Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Project*. The policy shall have limits of not less than \$10,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than \$5,000,000 for aircraft passenger hazard.
- 8.1.4 The *Construction Manager* shall provide, maintain and pay for general liability insurance that has limits of not less than \$5,000,000 per occurrence and a deductible not more than \$5,000. The policy shall be maintained from the date of commencement of the *Project* until the *Construction Manager* completes the *Services*. Liability coverage shall be provided for completed operations hazards on an ongoing basis for a period of 6 years following the *Project In-Use Date*.
- 8.1.5 The *Construction Manager* shall provide, maintain and pay for Automobile Liability Insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy. The policy shall have limits not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all vehicles owned or leased by the *Construction Manager*. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Construction Manager* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Construction Manager*.
- 8.1.6 Prior to commencement of the *Project* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the parties shall promptly provide each other with confirmation of coverage that they are responsible for and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Project*.
- 8.1.7 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of this *Contract*.
- 8.1.8 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Project*.

## PART 9 INDEMNIFICATION AND WAIVER OF CLAIMS

### GC 9.1 INDEMNIFICATION

- 9.1.1 The *Owner* and the *Construction Manager* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
    - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
    - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
  - .2 made by *Notice in Writing* within a period of 6 years from the date of *Project In-Use Date* or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Project*.
- The parties expressly waive the right to indemnify for claims other than those provided for in this *Contract*.
- 9.1.2 The obligation of either party to indemnify as set forth in paragraph 9.1.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is to be provided by either party pursuant to GC 8.1 – INSURANCE, the insurance limit for the loss so covered as prescribed in GC 8.1 – INSURANCE.

CCDC 5A – 2010

*Note:* This contract is protected by copyright. Use of a CCDC 5A document not containing a CCDC 5A copyright seal constitutes an infringement of copyright. Only sign this contract if the document cover page bears a CCDC 5A copyright seal to demonstrate that it is intended by the parties to be an accurate and unamended version of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

23



- 2 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 8.1 – INSURANCE, the *Construction Manager's* compensation as recorded in Article A-5 of the Agreement – COMPENSATION FOR SERVICES.
  - 3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 9.1.2.1 and 9.1.2.2 shall apply.
- 9.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 9.1.1 and 9.1.2 shall be inclusive of interest and all legal costs.
- 9.1.4 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Construction Manager*:
- 1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known to the party required to give such *Notice in Writing*;
  - 2 should either party be required as a result of its obligation to indemnify the other pay or satisfy a final order, judgment or award made against the party entitled by this *Contract* to be indemnified, then the indemnifying party, upon assuming all liability for any costs that might result, shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

## GC 9.2 WAIVER OF CLAIMS

- 9.2.1 As of the date of one year from the *Project In-Use Date*, the *Construction Manager* waives and releases the *Owner* from all claims which the *Construction Manager* has or reasonably ought to have knowledge of that could be advanced by the *Construction Manager* against the *Owner* arising from the *Construction Manager's* involvement in the *Project*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the *Project In-Use Date*, except as follows:
- 1 claims arising prior to or on the *Project In-Use Date* for which *Notice in Writing* of claim has been received by the *Owner* from the *Construction Manager* no later than 20 days after the *Project In-Use Date*;
  - 2 indemnification for claims advanced against the *Construction Manager* by third parties for which a right of indemnification may be asserted by the *Construction Manager* against the *Owner* pursuant to the provisions of this *Contract*;
  - 3 claims resulting from acts or omissions which occur after the *Project In-Use Date*.
- 9.2.2 The *Construction Manager* waives and releases the *Owner* from all claims referenced in paragraph 9.2.1.3 except for those referred in paragraph 9.2.1.2 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Construction Manager* within 395 calendar days following the *Project In-Use Date*.
- 9.2.3 As of the date of one year from the *Project In-Use Date*, the *Owner* waives and releases the *Construction Manager* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Construction Manager* arising from the *Owner's* involvement in the *Project*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the *Project In-Use Date*, except as follows:
- 1 claims arising prior to or on the *Project In-Use Date* for which *Notice in Writing* of claim has been received by the *Construction Manager* from the *Owner* no later than 20 days from the *Project In-Use Date*;
  - 2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Construction Manager* pursuant to the provisions of this *Contract*;
  - 3 damages arising from the *Construction Manager's* actions which result in substantial defects or deficiencies in the *Project*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Project* which affect the *Project* to such an extent or in such a manner that a significant part or the whole of the *Project* is unfit for the purpose intended by this *Contract*;
  - 4 claims arising from acts or omissions which occur after the *Project In-Use Date*.
- 9.2.4 The *Owner* waives and releases the *Construction Manager* from all claims referred to in paragraph 9.2.3.3 except for those referred in paragraph 9.2.3.2 and claims for which *Notice in Writing* of claim has been received by the *Construction Manager* from the *Owner* within a period of six years from *Project In-Use Date* should any limitation statute of the Province or Territory of the *Place of the Project* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- 1 any limitation statute of the Province or Territory of the *Place of the Project*; or
  - 2 the Civil Code of Quebec if the *Place of the Project* is the Province of Quebec.

- 9.2.5 The *Owner* waives and releases the *Construction Manager* from all claims referenced in paragraph 9.2.3.4 except for those arising from claims for which *Notice in Writing* has been received by the *Construction Manager* from the *Owner* within 395 calendar days following the *Project In-Use Date*.
- 9.2.6 *Notice in Writing* of claim as provided for in GC 9.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 9.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;
  - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
  - .3 a statement of the estimated quantum of the claim.
- 9.2.7 The party giving *Notice in Writing* of claim as provided for in GC 9.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 9.2.8 Where the event or series of events giving rise to a claim made under paragraphs 9.2.1 or 9.2.3 has a continuing effect, the detailed account submitted under paragraph 9.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events that gave rise to the claim.
- 9.2.9 If a *Notice in Writing* of claim pursuant to paragraph 9.2.1.1 is received on the 18th or 19th calendar day after the *Project In-Use Date*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 9.2.3.1 shall be extended to 24 calendar days after the *Project In-Use Date*.
- 9.2.10 If a *Notice in Writing* of claim pursuant to paragraph 9.2.3.1 is received on the 18th or 19th calendar day after the *Project In-Use Date*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 9.2.1.1 shall be extended to 24 calendar days after the *Project In-Use Date*.



SUPPLEMENTARY CONDITIONS TO CCDC 5A, 2010, CONSTRUCTION MANAGEMENT  
CONTRACTS FOR SERVICES

**A. GENERAL**

**PREAMBLE**

Without exception, the *Owner* assumes no legal duty or obligation in respect of the Request for Proposals or the Proposal process unless and until the *Owner* actually enters into a contract with the Proponent. The Request for Proposals and the Proposal process are expressly stated to be contingent on funds being committed for the *Project* to the satisfaction of the *Owner*.

**SC 1** These Supplementary General Conditions presuppose the use of the Standard Construction Document CCDC 5A, 2010 Construction Management Contracts – for Services consisting of the Agreement Between Owner and *Construction Manager* as amended (the "Agreement"), Definitions (the "Definitions"), Schedules (the "Schedules") and General Conditions of the Construction Management Contracts – for Services (the "General Conditions"), GC 1 to GC 20 inclusive in full. These "Supplementary Conditions" void, supersede or amend the Agreement, the Definitions and the Conditions as the case may be, and shall form part of the *Contract Documents* as defined in the definitions.

**SC 2** Throughout the *Contract Documents* reference to the "General Conditions of the Contract" shall imply the inclusion of these "Supplementary Conditions."

**SC 3** Article A- 5: Section 5.3.3 Delete "as described in Schedule C" in the first and second line and replace it with the following:

"as described in Appendix A to the Supplementary Conditions"

**SC 4** Article A- 6: Delete Item 6.2 in its entirety and replace with the following:

"6.2 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or a court, interest shall also become due and payable on such unpaid amounts at 2% above the prime rate. If the payments are disputed as per Part 7 of the *Contract*, interest shall not be applied to the disputed amount until such time as the dispute is settled by mutual agreement. Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by Royal Bank of Canada for prime business loans as it may change from time to time."



**B. SCHEDULES**

**SC 5** Amend SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION as follows:

<b>1. PRECONSTRUCTION</b>		Performed by the Owner or Someone Other than Construction Manager	Performed by the Construction Manager (F1/F2/F3)	Not applicable
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.			
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.			
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.			
<b>1.1</b>	<b>General Services</b>			
	Add the following as paragraph 1.1.3:			
.3	Continuously assists the <i>Consultant</i> and <i>Owner</i> in refining <i>Project</i> scope, sequencing and general requirements.		F3	
<b>1.4</b>	<b>Design Development Phase</b>			
.1	<b>Constructability:</b>  Amend paragraph 1.4.1 (3) by adding the following to the end of the paragraph:  "Take diligent, commercially reasonable measures to identify defects or omissions in the <i>Construction Documents</i> and to promptly advise the <i>Owner</i> and the <i>Consultant</i> of the same."		F3	
.2	<b>Estimating and Cost Control:</b>  Amend paragraph 1.4.2 (3) by adding the following to the end of the paragraph:  "Update the cash flow forecast on a monthly basis throughout the entire duration of the Preconstruction and provide reports to the <i>Owner</i> in a mutually agreeable format."		F3	
Add the following as Article 1.4.4:			F3	
<b>".4</b>	<b>Systems Evaluation and Value Engineering:</b>			
.1	Conduct a continuing analysis and re-evaluation program to scrutinize each system included in the <i>Construction Documents</i> in order to provide the <i>Owner</i> and the <i>Consultant</i> with prompt feedback on the cost implications of each facet of the design of		F3	

<p>the <i>Project</i>.</p> <p>.2 Prepare comparative cost analyses, value engineering studies and suggest alternative products, methods and approaches to achieve the cost effectiveness of each component included in the <i>Construction Documents</i>, without assuming design responsibility."</p> <p>Add the following as Article 1.4.5:</p> <p><b>".5 Investigative Work and Testing:</b></p> <p>.1 Identify to the <i>Owner</i> all tests inspections, or investigative work which the <i>Construction Manager</i> recommends be completed during the preconstruction phase along with a proposal and estimate of the cost of such tests inspections, or investigative work. Upon the written approval of the <i>Owner</i>, the <i>Construction Manager</i> shall arrange for such tests or investigative work."</p>		F3	
<p><b>1.5 Construction Document Phase</b></p> <p><b>.1 Constructability:</b></p> <p>Amend paragraph 1.5.1 (2) by adding the following to the end of the paragraph:</p> <p>"Take diligent, commercially reasonable measures to identify defects, deviations from <i>Project</i> requirements or omissions in the <i>Construction Documents</i> and to promptly advise the <i>Owner</i> and the <i>Consultant</i> of the same."</p> <p><b>.2 Estimating and Cost Control:</b></p> <p>Add the following as paragraph 1.5.2 (5):</p> <p>"(5) Update the <i>Class A Construction Cost Estimate</i> at regular intervals as directed by the <i>Owner</i>. Review the <i>Class A Construction Cost Estimate</i> with the <i>Owner</i> and the <i>Consultant</i> to allow the <i>Owner</i> to establish the final value of each of the Class A Budgets."</p>		F3	
<p><b>1.5 Construction Document Phase</b></p> <p><b>.3 Scheduling:</b></p> <p>Add the following as paragraph 1.5.3 (3) to 1.5.3 (5):</p> <p>"(3) The <i>Project</i> schedule must be updated and monitored at least on a monthly basis and more frequently as required. Provide progress updates and confirm compliance with <i>Project</i> schedule to maintain all critical delivery dates.</p> <p>(4) Co-ordinate with the <i>Owner</i>, and the <i>Consultant</i> to</p>		F3	

(5)	<p>develop a detailed <i>Project</i> schedule, formatted in Primavera 6 and /or Microsoft Project 2007, within two (2) weeks of commencement of the <i>Services</i>. The <i>Project</i> schedule must be updated and monitored on a monthly basis, or more as required. Provide progress updates and confirm compliance with <i>Project</i> schedule to maintain all critical delivery dates throughout the phases of the <i>Project</i>.</p> <p>Upon the <i>Owner's</i> request make recommendations with reasonable supporting analysis and information to the <i>Owner</i> and the <i>Consultant</i> on the separation of the <i>Project</i> into the segments of the <i>Project</i> to allow for construction of the <i>Project</i> in phases or for accelerated construction of portions of the <i>Project</i> on a fast track basis. The <i>Owner</i> shall, in its sole discretion, approve the number of segments of the <i>Project</i>."</p>		F3	
<p>1.6</p> <p>.2</p>	<p><b>Construction Procurement Phase</b></p> <p><b>Contracting:</b></p> <p>Amend paragraph 1.6.2 (2) by adding the following to the end of the paragraph:</p> <p>"Pre-qualify bidders as may be required by the <i>Owner</i> for the trade packages based on an <i>Owner</i> approved bid list that encompasses all trade divisions. The <i>Construction Manager</i> shall submit the list of potential bidders to the <i>Owner</i> and the <i>Consultant</i> for review and approval. The bid list shall include <i>Trade Contractors</i> that are: known to the <i>Construction Manager</i>, known to the <i>Owner</i>, and known to have a reputation for performance of high quality work. The pre-qualification exercise shall assess the financial stability, the capacity to complete the <i>Work</i> and the resources of the <i>Trade Contractor</i> available to complete the <i>Work</i>. The pre-qualification exercise shall be carried out based on transparent and pre-determined evaluation criteria. "</p>		F3	
<p>1.6</p> <p>.2</p>	<p><b>Construction Procurement Phase</b></p> <p><b>Contracting:</b></p> <p>Add the following as paragraph 1.6.2 (4) to 1.6.2 (7):</p> <p>"(4) Obtain the approval of the <i>Owner</i> for the bid documents prior to the issuance of any bid package. Complete transparency in the bid process is required by the <i>Owner</i>.</p> <p>(5) Develop a contracting work plan in collaboration with the <i>Owner</i> and the <i>Consultant</i> and prepare bid</p>		F3  F3	

*1 Bloor Street West  
The One*

<p>packages accordingly.</p> <p>(6) Take diligent, commercially reasonable precautions to ensure that all required <i>Work</i> for the <i>Project</i> shall be included and co-ordinated in the various bid packages when considered as a whole, but without duplication of requirements.</p> <p>(7) Unless otherwise approved in writing by the <i>Owner</i>, in accordance with industry standard bidding practices, obtain at least two (2) independent written competitive bids for any subcontract valued less than \$25,000 and at least three (3) independent written competitive bids for any subcontract value equal to or in excess of \$25,000."</p>		F3	
<p><b>1.6 Construction Procurement Phase</b></p> <p>Delete paragraph 1.6.3 in its entirety and replace with the following:</p> <p>"3 Receive bids and conduct a bid opening in the presence of the <i>Owner</i> and the <i>Consultant</i>. Upon the completion of a bid opening, complete a bid review and assist in making a determination as to the successful bidder. Facilitate and prepare, on behalf of the <i>Owner</i>, the CCDC 17 2010, Stipulated Price Contract between <i>Owner</i> and <i>Trade Contractor</i> for Construction Management Projects, for award to the successful bidder. Should the <i>Owner</i>, in its sole and absolute discretion, choose to award the <i>Work</i> for Building B to a General Contractor managed by the <i>Construction Manager</i>, then the <i>Owner</i> shall conduct a separate tender for the Building B <i>Work</i> through the <i>Project Manager (PM)</i>. The <i>Owner</i> shall solicit and receive bids for the <i>Work</i>. Upon the completion of a bid opening, the <i>Construction Manager</i> shall complete a bid review and assist in making a determination as to the successful bidder. Facilitate and prepare, on behalf of the <i>Owner</i>, the CCDC 2, 2008, Stipulated Price Contract, for award to the successful bidder."</p> <p>Delete paragraph 1.6.4 in its entirety and replace with the following:</p> <p>"4 Prepare and submit for review by the <i>Owner</i> and the <i>Consultant</i> the Supplementary Conditions to the CCDC 17, 2010, Stipulated Price Contract between <i>Owner</i> and <i>Trade Contractor</i> for Construction Management Projects, which shall be the form of Contract used by the <i>Owner</i> to engage successful bidders in the various trade disciplines. Structure the Supplementary Conditions in a manner that effectively transfer the <i>Owner's</i> risks, wherever applicable, that are inherent in the <i>Project</i> to the <i>Trade Contractors</i>."</p> <p>Delete paragraph 1.6.5 in its entirety and replace with the following:</p> <p>"5 Update the construction cost control plan with actual budget allocations for all trade packages and general requirements and update the cash flow forecasts for the <i>Project</i>."</p>		F3	

SM





*1 Bloor Street West  
The One*

<p>"(2)</p> <p>Delete paragraph 2.6.1 (3) in its entirety and replace with the following:</p> <p>"(3)</p> <p>Delete paragraph 2.6.2 (1) in its entirety and replace with the following:</p> <p>"(1)</p>	<p>Collect from the <i>Trade Contractors</i> all documentation required to substantiate their claims (including a statutory declaration) in a manner acceptable to the <i>Owner</i>."</p> <p>Provide the <i>Payment Certifier</i> with all documentation necessary to allow him to certify each <i>Trade Contractor's</i> monthly payment applications and ensure that the <i>Payment Certifier</i> has sufficient access to the <i>Work</i> to allow him to certify each <i>Trade Contractor's</i> monthly payment application."</p> <p>In accordance with the <i>Standard of Care</i>, conduct a pre-review of the <i>Trade Contractors'</i> monthly payment applications to verify that the amount claimed reflects the amount of the <i>Trade Contractor's Work</i> that has been completed as of the date of the monthly payment application. Issue a document to the <i>Payment Certifier</i> that reflects the <i>Construction Manager's</i> review of the application from the <i>Trade Contractors</i>."</p>		<p>F3</p> <p>F3</p> <p>F3</p>
---	---	--	-------------------------------

<b>2. CONSTRUCTION</b>		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
<b>2.6</b>	<p><b>Payments to Trade Contractors and Suppliers</b></p> <p>Add the following as paragraph 2.6.2 (2) to 2.6.2 (3):</p> <p>"(2) Chair an onsite review, if so requested by the <i>Owner</i> and <i>Payment Certifier</i>, of the <i>Trade Contractors</i> applications for payment with <i>Owner</i>, and the <i>Payment Certifier</i> to facilitate timely and accurate approval of the <i>Trade Contractors'</i> monthly applications for payment.</p> <p>(3) Once each of the monthly progress draws has been certified, present to the <i>Owner</i> a package including all the required documentation, to allow the <i>Owner</i> to process payments for each of the <i>Trade Contractors</i>."</p>		<p>F3</p> <p>F3</p>
<b>2.7</b>	<b>Field Review</b>		

SM

<p>Add the following to the end of paragraph 2.7.1 (1):</p> <p>"The system for quality control and assurance shall include, without limitation, a process outlining, equipment integration, and maintenance/operation/use requirements for the <i>Owner's</i> operation team. Monitor, identify and have rectified all non-compliance items within the <i>Project</i> schedule."</p>	<p>F3</p>
<p>Add the following as paragraph 2.7.1 (3):</p> <p>"(3) Coordinate all testing and inspection procedures as required by the <i>Contract Documents</i>, the <i>Owner</i> and <i>Applicable Laws</i>. Keep accurate records of all tests, inspections, findings and reports. Services of independent testing agencies, professional engineers, and the <i>Consultant</i> shall be retained by the <i>Owner</i> through direct contract, unless otherwise noted in the <i>Contract Documents</i>."</p>	<p>F3</p>

Page 9 of 43



1 Bloor Street West  
The One

--	--	--

		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F3)
<b>2. CONSTRUCTION</b>			
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
<b>2.8</b>	<b>Health and Construction Safety</b>		
(4)	Prepare a program of supervision and initiate, maintain, and supervise safety precautions and programs to assure that the <i>Trade Contractors</i> and <i>Suppliers</i> comply with all legal requirements, all safety and insurance requirements and other standards and requirements applicable to construction of the <i>Project</i> .		F3
(5)	Provide site specific health and safety orientation to all parties.		F3
(6)	Communicate, monitor and enforce <i>Construction Managers' Safety Policy</i> with all <i>Trade Contractors</i> . If required in the application of the <i>Safety Policy</i> , remove from site any person who fails to comply with the policy.		F3
(7)	Prior to commencement of its services on this <i>Project</i> , the <i>Construction Manager</i> shall submit to the <i>Owner</i> : <ul style="list-style-type: none"> <li>.1 a current WSIB clearance certificate and confirmation of the <i>Construction Manager's</i> current WSIB CAD-7 performance rating;</li> <li>.2 copies of the <i>Construction Manager's</i> insurance coverage that has application to the <i>Project</i> if requested by <i>Owner</i>;</li> <li>.3 documentation of the <i>Construction Manager's</i> in-house safety-related programs; and</li> <li>.4 a copy of the <i>Notice of Project</i> filed with the Ministry of Labour naming itself as "constructor" under the applicable Health and Construction Safety legislation."</li> </ul>		F3

5/1

1 Bloor Street West  
The One

<b>2. CONSTRUCTION</b>		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
<b>2.9</b>	<b>Submittals</b> Add the following as paragraph 2.9.1 (7) to 2.9.1 (9):  <div style="margin-left: 20px;"> <p>"(7) Establish a co-ordinated shop drawing control system to expedite and track co-ordinated shop drawings. Maintain and update on a daily basis the co-ordinated shop drawing control system and provide reports to the <i>Owner</i> and the <i>Consultant</i> during the weekly meetings.</p> <p>(8) Receive and review, for compliance with the <i>Contract</i>, all <i>Trade Contractors</i> shop drawings, all other required information submitted by <i>Trade Contractors</i>. All submittals shall be reviewed and commented upon by the <i>Construction Manager</i> for <i>Contract</i> compliance prior to submittal to the <i>Consultant</i>. Maintain and manage a set of all <i>Trade Contractors</i> shop drawings and submittals at the <i>Place of the Project</i>.</p> <p>(9) Schedule, monitor and implement the flow of all documents and <i>Products</i> for the proper sequence of approvals by the <i>Consultant</i> so as to meet the <i>Project</i> schedule."</p> </div>		<p>F3</p> <p>F3</p> <p>F3</p>

<b>2. CONSTRUCTION</b>		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
<b>2.10</b>	<b>Reports and Project Site Documents</b> Add the following as paragraph 2.10.1 (4) to 2.10.1 (5):  <div style="margin-left: 20px;"> <p>"(4) Maintain a record-keeping database system which shall be backed up to a third party server (acceptable to the Owner, acting reasonably) on a weekly basis, to monitor and track the progress of the Work. Such records shall include, but not be limited to, correspondence, emails and other electronic communications, Trade Contracts, purchase orders, meeting minutes, daily reports, logs, progress schedules, jobsite manpower reports, material</p> </div>		F3

*1 Bloor Street West  
The One*

---

	delivery shipment tickets and co-ordinated shop drawings on site to comply with the Contract Documents. All records, information and data shall be instantly accessible the Owner directly and without restriction or permission from the Construction Manager for such period as the Owner determines, in its sole discretion.		
(5)	Prepare monthly cost reports and construction progress reports for the Owner's approval. The cost report shall record the current value of the Work performed by the <i>Trade Contractors</i> and track approved and pending change order costs to anticipate and estimate the final cost to complete the <i>Work</i> . The progress report shall specify among other things, an estimated percentage of completion, whether the <i>Project</i> is on schedule, and if not, the reasons therefore and the <i>Construction Manager's</i> recommendations for getting the <i>Project</i> back on schedule, as well as the number of man-days worked for each category of labour and the <i>Work</i> to be completed in the succeeding month. Accompanying the progress report shall be an updated current proposed <i>Construction Manager's</i> construction schedule submitted for the Owner's review, and a listing and the status of all change orders, bulletins and other relevant documents. The <i>Construction Manager</i> shall prepare such additional reports as the Owner, may reasonably request."		F3



1 Bloor Street West  
The One

<b>2. CONSTRUCTION</b>		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
Add the following as 2.15:			
<b>2.15 Coordination with Authority Having Jurisdiction</b>			
“.1	(1) Provide coordination, as required, with all government agencies including TSSA (Technical Standards and Safety Authority), to obtain approvals and permits required for the construction of the <i>Project</i> . Make diligent, commercially reasonable efforts to ensure all building and other required permits are obtained in a manner to meet all <i>Project</i> delivery milestones and other milestones in the <i>Project</i> schedule. Provide timely notice to the Owner if any required permit has not been obtained or is reasonably expected to be obtained, as and when required.		F3
Add the following as 2.16			
<b>2.16 Small Tool Log</b>			
“.1	(1) If the <i>Construction Manager</i> procures, on behalf of the <i>Project</i> , any small tools then the <i>Construction Manager</i> shall track his small tools on a small tool inventory. This inventory will show vendor, type of tool, serial number, model number, date received, and purchase cost. All small tools must be stamped with an identifying number.”		F2

<b>2. CONSTRUCTION</b>		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
Add the following as 2.17			
<b>2.17 Trade Contract Administration</b>			
“.1	(1) Manage all of the contracts for the <i>Trade Contractors</i> and <i>Suppliers</i> on behalf of the <i>Owner</i> as if the <i>Contracts</i> were held by the <i>Construction Manager</i> . Using its best discretion, the <i>Construction Manager</i> shall employ all reasonable measures to enforce the adherence of each of the <i>Trade Contractors</i> and		F3

SM

**1 Bloor Street West  
The One**

	Suppliers to the terms and conditions of their contracts. The Construction Manager shall report instances of Trade Contractor non-compliance, which it is unable to resolve satisfactorily, to the Owner.		F3
(2)	Collect and present to the Owner all Trade Contractors' current certificates of clearance from the WSIB.		F3
(3)	Verify that each Trade Contractor has obtained all permits required to execute its respective Scope of Work;		F3
(4)	Verify that all Trade Contractors have insurance coverage that is current and compliant with the requirements of their Trade Contracts;		F3
(5)	Verify that all Trade Contractors submit their monthly progress draws in a timely fashion."		F3
Add the following as 2.18			
<b>2.18</b>	<b>Insurance</b>		
(2)	1 (1) Take out and maintain in force throughout the duration of the Project at its cost its own policies for: Automobile Liability insurance, with coverage limits acceptable to the Owner.		F3
The Owner, the Consultant, and all other consultants retained by the Owner, and if requested by Owner, the Ontario Infrastructure Projects Corporation, the Province of Ontario (MOHLTC), and the City of Toronto, shall be named as additional insureds on all insurance policies required in relation to this Project and will provide true copies of certificates or other evidence of such insurance as may be reasonably requested from time to time by Owner. If the Construction Manager fails to provide or maintain insurance as required herein, the Owner shall have the right to obtain and maintain such insurance and give evidence thereof to the Construction Manager on demand and the Owner may deduct the costs thereof from monies which are due, or may become due, to the Construction Manager."			F3
			F3

1 Bloor Street West  
The One

<b>2. CONSTRUCTION</b>		Performed by the Owner or Someone Other than the Construction Manager	Performed by the Construction Manager (F1/F2/F3)
F1	Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.		
F2	Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.		
F3	Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.		
Add the following as 2.19			
<b>2.19</b>	<b>Defective Work</b>		
“.1	(1) The <i>Construction Manager</i> shall administer the removal and repair of defective <i>Work</i> by the <i>Trade Contractors</i> for a period of one (1) year from the <i>Project In-Use Date</i> .”		F3
Add the following as 2.20			
<b>2.20</b>	<b>Cutting and Patching</b>		
“.1	(1) The <i>Construction Manager</i> shall supervise and coordinate the <i>Work</i> of the <i>Trade Contractors</i> and make diligent, commercially reasonable efforts to minimize any requirement for cutting and patching of the <i>Work</i> .		F3
	(2) The <i>Construction Manager</i> shall supervise and coordinate the <i>Work</i> of any specialist contractors required to perform cutting and remedial work.		F3
	(3) The <i>Construction Manager</i> shall verify that the <i>Trade Contractor</i> does not perform any cutting through the existing structure without first having performed all required tests and inspections as may be required by the <i>Owner and Consultant</i> .”		F3
Add the following as 2.21			
<b>2.21</b>	<b>Cleanup</b>		
“.1	(1) The <i>Construction Manager</i> shall coordinate and supervise the cleaning of the <i>Place of the Project</i> by the <i>Trade Contractors</i> on an ongoing basis throughout the <i>Project</i> .		F3
	(2) The <i>Construction Manager</i> shall supervise the cleaning of the <i>Place of the Project</i> prior to the <i>Project In-Use Date</i> to allow for occupancy by the <i>Owner</i> .		F3
Add the following as 2.22			
<b>2.22</b>	<b>Detection and Avoidance of Errors</b>		
“.1	(1) Using the <i>Standard of Care</i> , the <i>Construction Manager</i> shall review information furnished to it by or on behalf of the <i>Owner</i>		

1 Bloor Street West  
The One

<p>and shall advise the <i>Owner</i> of any error omission or inconsistency in such that it discovers.</p> <p>(2) If the <i>Construction Manager</i> discovers any error, inconsistency, or omission in the drawings and specifications, the <i>Construction Manager</i> shall obtain clarification from the <i>Owner</i> and the <i>Consultant</i> before allowing the <i>Trade Contractors</i> to proceed with any <i>Work</i> that would be affected by the discovered omission or inconsistency."</p>		F3
<p>Add the following as 2.23</p> <p><b>2.23 Removal and Relocation of Utilities</b></p> <p>"1 (1) The <i>Construction Manager</i> shall coordinate and schedule the permanent relocation of utilities.</p>		F3

<p><b>3. POST-CONSTRUCTION</b></p> <p>F1 Included in the fixed amount described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES.</p> <p>F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 - COMPENSATION FOR SERVICES.</p> <p>F3 Fee to the Construction Manager based on time based rates as described in paragraph 5.2.3 of Article A-5 - COMPENSATION FOR SERVICES.</p>	<p>Performed by the Owner or Someone Other than the Construction Manager</p>	<p>Performed by the Construction Manager (F1/F2/F3)</p>
<p><b>3.2 Occupancy Review</b></p> <p>Add the following as paragraph 3.2.2 to 3.2.6:</p> <p>"2 Manage and coordinate the completion of the deficiencies in accordance with deficiency list prepared by the <i>Consultant</i> and in conjunction with the schedule for deficiency completion approved by the <i>Owner</i>.</p> <p>.3 Compile in an organized manner <i>Trade Contractor</i> and <i>Supplier</i> close-out documents, such as guarantees, warranties, operation manuals, testing reports, as-built drawings (in electronic and hard copy format) and submit to the <i>Consultant</i> for final review and approval prior to <i>Project</i> closeout.</p> <p>.4 Compile and deliver to <i>Owner</i> as-built documentation produced by <i>Trade Contractors</i> in AutoCAD format.</p> <p>.5 Make diligent, commercially reasonable efforts to ensure that deficiencies are cleared and arrange for twelve (12) month warranty inspection.</p> <p>.6 Assist in rectifying all outstanding construction issues, assist in obtaining occupancy permits and assist in <i>Owner</i> training."</p>		<p>F3</p> <p>F3</p> <p>F3</p> <p>F3</p> <p>F3</p>
<p><b>3.3 Warranties</b></p> <p>Add the following as paragraph 3.3.2:</p> <p>"2 During the one (1) year warranty period be solely responsible for</p>		

SM



1 Bloor Street West  
The One

---

administering the warranty work of all <i>Trade Contractors</i> , promptly and to the satisfaction of the <i>Owner</i> , have the <i>Trade Contractors</i> repair all <i>Products</i> and components thereof and any other element of the <i>Work</i> , which are found to be defective in materials and workmanship or are found not to conform to the requirements of their <i>Contract</i> . If other property of the <i>Owner</i> is damaged by a <i>Trade Contractor</i> during the completion of a warranty repair, make all reasonable efforts to ensure that the damage is corrected by the <i>Trade Contractor</i> to the satisfaction of the <i>Owner</i> ."		F3
--	--	----

**C. DEFINITIONS**

**SC 6** Amend the definition **Contract Time** by adding the following to the end of the paragraph:

"Time is of the essence for this *Contract*."

**SC 7** Amend the definition **Owner** by adding the following to the end of the paragraph:

"The term *Owner* means the *Owner* or the *Owner's* authorized agent or representative as designated to the *Construction Manager* in writing, but does not include the *Consultant*."

**SC 8** Amend the definition of **Payment Certifier** by deleting the words, "either the *Construction Manager* or," in the first sentence.

**SC 9** Add the following Definition:

**"Applicable Environmental Law**

*Applicable Environmental Law* means all applicable federal, provincial, municipal and other laws, statutes, regulations, by-laws and codes, now or hereafter in existence having the force of law, intended to protect the environment or relating to "Hazardous Material" (as hereafter defined), including, without limitation, the Environmental Protection Act (Ontario) (the "EPA"), and the Canadian Environmental Protection Act (the "CEPA")."

**SC 10** Add the following Definition:

**"Applicable Laws**

*Applicable Laws* means all applicable relevant laws, statutes, by-laws, codes, ordinances regulations, guidelines, development and site plan agreements, building codes, orders and restrictive covenants, and such permissions and consents of which the *Construction Manager* is made aware or should be aware, and includes, without limitation, *Applicable Environmental Law*, zoning by-laws, design and building codes, and permits, decrees, writs, injunctions, orders guidelines, policies, and official plans of any governmental authority."

**SC 11** Add the following Definition:

**"Construction Management Staff**

The members of the *Construction Manager's Project* team are the persons identified in the Proposal. The persons designated in the *Proposal* as key members of the *Construction Management Staff* will not be changed without the prior approval of the *Owner*."

**SC12** Add the following Definition:

**"Certificate of Total Performance of the Work**

*Certificate of Total Performance of the Work* means a certificate of completion of the *Contract* issued by the *Consultant* and or the *Authorized Agent* (subject to project or program type) in accordance with the provision of the *Contract Documents* and applicable provisions of the *Lien Act*."

**SC 13** Add the following Definition:

**"Hazardous Material**

*Hazardous Material* means, collectively, any contaminant, waste or subject waste (as defined in the EPA and regulations there under), toxic substance (as defined in the CEPA), dangerous goods (as defined in the Transportation of Dangerous Goods Act (Canada)) or pollutant (as defined in the EPA), or any other substance which when released to the natural environment is likely to cause in some immediate or foreseeable future time, material harm or degradation to the natural environment or material risk or harm to human health."

**SC 16** Add the following Definition:

**"Standard of Care**

*Standard of Care* means the degree of care, skill and diligence of a prudent, knowledgeable and experienced *Construction Manager* for a project which is similar in size, magnitude and complexity to the *Project*."

**SC 17** Add the following Definition:

**"OHSA**

'OHSA' means the Occupational Health and Safety in the Province of Ontario.

**SC18** Add the following Definition:

**"Lien Act**

*Lien Act* means the Construction Lien Act (Ontario)."

**SC 19** Add the following Definition:

**"Project Manager**

*Project Manager* means [Note to draft: Insert the name of the Project Manager] (herein referred to as PM) or such other person, firm or corporation identified by written notice by the Owner to the *Construction Manager*, engaged by the Owner on behalf of the Owner to act for and represent the Owner in respect of the *Project*. Wherever appropriate in the context, the expression "Owner" as used in the *Contract Documents* shall be deemed to include and be a reference to the *Project Manager*."

**D. GENERAL CONDITIONS**

**SC 21** Delete GC 1.1.1.1 in its entirety and replace with the following:

**"1.1.1.1** The order of priority of documents from highest to lowest, shall be:

- The Agreement between Owner and Construction Manager (including the Schedules to the Agreement);
- The Supplementary Conditions to CCDC 5A, 2010, Construction Management Contracts – for Services;
- The Definitions;

*1 Bloor Street West  
The One*

---

- The General Conditions

**SC 22** Add the following as GC 1.1.1.3 to GC 1.1.1.11:

- 1.1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.1.5 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.1.6 The specifications are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, and the services necessary for the performance of the *Work*.
- 1.1.1.7 The drawings are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location, and dimensions of the *Work*, generally including plans, elevations, sections, details, schedules, and diagrams.
- 1.1.1.8 *Construction Manager* will comply with all specifications pertaining to the *Work* and will supervise the *Work* of all *Trade Contractors* and *Suppliers* to ensure compliance with all specifications pertaining to the *Work*.
- 1.1.1.9 All issued drawings and as-built drawings, are to be returned at the end of the *Project* to *Owner*, including *Contract* sets, issued for construction sets and progress drawings issued by the *Consultants*. Should the *Construction Manager* require retention of drawings or information during the one (1) year warranty period, the *Construction Manager* shall return drawings to the *Owner* upon completion of the one (1) year warranty period.
- 1.1.1.10 *Construction Manager* is expected to treat all documents issued by *Owner* and its *Consultant* as confidential and not for use or viewing by parties not involved in the project. The *Construction Manager* will keep the Information safe and secure and ensure that the information cannot be viewed or distributed by or to anyone other than persons authorized in accordance with this *Contract*. The *Construction Manager* is not to have project documents open for public viewing.
- 1.1.1.11 Drawings, specifications, models, plans, information and data relating to the *Project* and copies thereof furnished by the *Consultant*, or the *Owner* ("*Information*") are and shall remain the property of the *Owner*. Such *Information* is to be used by the *Construction Manager* only with respect to the *Work* and is not to be used on any other work. The *Construction Manager* shall use reasonable best efforts to maintain the confidentiality of the *Information*, except to the extent required by *Applicable Laws*."

**SC 23** Delete GC 1.2 in its entirety and replace with new GC 1.2.1 to GC 1.2.7 as follows:

- "1.2.1           The *Construction Manager* shall at all times comply with all *Applicable Laws* in the performance of its obligations hereunder.
- 1.2.2           This *Contract* shall in all respects be governed by, and construed and enforced in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties do hereby irrevocably and unconditionally submit and attorn to the jurisdiction of the courts of the Province of Ontario in connection with any disputes or other matters arising out of or in connection with this *Contract*.
- 1.2.3           The *Construction Manager* shall at all times comply with all *Owner* issued policies with respect to the Project in respect of which *Owner* has provided copies to the *Construction Manager*.

**SC 24** Add the following as GC 2.1.6 to GC 2.1.15:

- "2.1.6           The *Construction Manager* agrees that, notwithstanding anything to the contrary contained in the *Contract*, it shall fully comply with policies or procedures, as issued by *Owner* to *Construction Manager*, which are relevant to any activity of the *Construction Manager* to be performed under the *Contract*. The *Construction Manager* further agrees that it will use reasonable efforts to inquire from the *Owner* if such policies or procedures exist for any activity of the *Construction Manager* to be performed under the *Contract*. The *Owner* agrees it will use reasonable efforts to communicate to the *Construction Manager* policies or procedures it may have, relevant to any such activity.
- 2.1.7           The *Construction Manager* shall make diligent, commercially reasonable efforts to ensure that the *Work* and the *Owner's* property and property adjacent to and in the vicinity or proximate to the *Place of the Project* are protected from damage which may arise as the result of the *Trade Contractor's* operations under the *Contract* (including without limitation any operations relating to mould or asbestos-containing, mercury containing or PCB containing *Products* and other toxic or *Hazardous Materials*).
- 2.1.8           The *Construction Manager* shall coordinate and supervise the efforts of all *Trade Contractors* and *Suppliers*, make diligent, commercially reasonable effort to ensure that the *Project* is on schedule and constructed in accordance with the approved and current *Contract Documents*.
- 2.1.9           The *Construction Manager* shall maintain the good order and discipline of its employees and other persons under its direction and control or present at the *Place of the Project* in connection with the *Work*, and shall adopt and enforce regulations with respect to safety, fire prevention, smoking, the use of alcoholic beverages, illegal drugs and other controlled substances and other activities that will or may constitute a danger to life, health or property and shall not employ on the *Work* anyone not skilled in the tasks assigned.

- 2.1.10 The *Construction Manager* shall ensure that the proposed *Construction Manager* project management and *Construction Manager* construction staff is assigned to ensure proper coordination and supervision of the *Work*.
- 2.1.11 The *Construction Manager* shall maintain the good order and discipline of its employees and other persons under its direction and control or present at the *Place of the Project* in connection with the *Work*, and shall adopt and enforce regulations with respect to safety, fire prevention, smoking, the use of alcoholic beverages, illegal drugs and other controlled substances and other activities that will or may constitute a danger to life, health or property and shall not employ on the *Work* anyone not skilled in the tasks assigned.
- 2.1.12 The *Construction Manager* shall not employ any person for the *Project* whose labour affiliation (or lack thereof) is incompatible with other labour employed in connection with the *Project*.
- 2.1.13 At the *Owner's* instruction, the *Construction Manager* shall promptly remove from the *Place of the Project* any employee or other person who in the *Owner's* reasonable opinion represents a threat to the safety or progress of the *Project* or persons on the *Place of the Project*.
- 2.1.14 The *Construction Manager* shall make diligent, commercially reasonable efforts to ensure that the *Trade Contractors* perform the *Work* in accordance with the *Contract Documents* and that they employ only *Products* and workmanship and materials which comply with the specific requirements of the *Contract Documents*. Notwithstanding prior review and action by the *Consultant*, only *Products* and *Owner* supplied equipment conforming to the requirements of the *Contract Documents* shall be incorporated into the *Work*. The *Construction Manager* shall make diligent, commercially reasonable efforts to ensure that all *Products* and *Owner* supplied equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable manufacturer, fabricator, supplier or distributor, except as otherwise provided in the *Contract Documents*. In the absence of other standards being required by the *Contract Documents*, the *Work* shall conform to, or exceed, the minimum standards of the Electrical Safety Authority, Canadian General Standards Board, the Canadian Standard Association, the National Building Code of Canada (latest edition with all current addenda), or the Ontario Building Code, whichever is applicable.
- 2.1.15 The *Construction Manager*, shall accurately and continuously note, on the *Contract Documents* kept by the *Construction Manager* at the *Place of the Project*, (1) all approved changes and deviations made during the *Work* which differ from that shown or specified in the *Contract Documents* and approved shop drawings indicating, in a neat, accurate and legible manner the *Work* as actually installed; (2) the exact location and detail of buried, embedded or concealed as-built conditions and all other as-built conditions of the *Work* (including the location of all asbestos abatement work dealing with such matters as floor tiles and pipe insulation); and (3) the exact location and detail of *Work* installed on a "field run" basis (collectively, the "Record Drawings"). If any *Work* is performed otherwise than as shown in the *Contract Documents* the *Construction Manager* shall have noted on such Record Drawings the *Work* as installed. Without limiting the generality of the foregoing, with respect to the mechanical, electrical and fire protection work, the *Construction Manager* shall

have recorded, accurately, the exact location and detail of all "field run" services. The Record Drawings shall be made available for review by the *Owner* and the *Consultant* at all times. The Construction Manager shall have two (2) complete sets of good quality mylar reproducible final Record Drawings and two (2) computer disks containing the final Record Drawings, arranged in proper order in accordance with the various divisions of the *Work*; indexed and endorsed, delivered to the *Consultant* following final review of the *Work* by the *Consultant* but prior to application for final payment.

**SC 25** Delete GC 3.1.1.14 in its entirety.

**SC 25A** Add new GC 3.1.3:

- (a) *Owner* represents and warrants that, prior to or upon execution of this *Contract*, *Owner* has secured sufficient financing arrangements or otherwise has sufficient funds available to it to meet its payment obligations to *Construction Manager* under the *Contract*.
- (b) *Owner* shall forthwith provide written notice to *Construction Manager* upon the occurrence of any of the following events:
  - a. *Owner* receives written notice from any lender that *Owner* is in default of a material term of any lending agreement that might reasonably result in *Owner* having insufficient funds to meet its payment obligations to *Construction Manager* under the *Contract*;
  - b. *Owner* reasonably believes that it will not have sufficient funds to meet its payment obligations to *Construction Manager* under the *Contract*; or
  - c. the representation in GC 3.1.3(a) above ceases to be true for any reason.
- (c) Upon receipt of a notice provided pursuant to section (b) above, *Construction Manager* shall be entitled, upon notice in writing to *Owner*, to suspend its *Services* pending delivery by *Owner* to *Construction Manager* of reasonable evidence that the condition for which notice was provided has been cured or other reasonable measures have been take to provide for sufficient funds for *Owner* to meet its payment obligations to *Construction Manager* under the *Contract*.
- (d) If *Owner* receives written notice from any party to whom *Owner* has conditionally assigned its rights to the *Contract* that such party intends to invoke such assignment, *Owner* will forthwith provide written notice thereof to *Construction Manager* and, if as a result of such assignment, *Construction Manager* determines, acting reasonably, that the assignee does not have sufficient funds to meet the payment obligations to *Construction Manager* under the *Contract*, *Construction Manager* shall be entitled, upon notice in writing to the assignee, to suspend its *Services* pending delivery by the assignee to *Construction Manager* of reasonable evidence that the condition for which notice was provided has been cured or other reasonable measures have been take to provide for sufficient funds for the assignee to meet its payment obligations to *Construction Manager* under the *Contract*.

**SC 26** Add the following as GC 4.1.3 and GC 4.1.4:

- "4.1.3 The *Construction Manager* shall include, as part of *Construction Manager's* monthly applications for payment, all information and supporting documentation required by the *Owner* or the *Consultant* to substantiate the *Construction Manager's* claim.
- 4.1.4 Prior to the submission of the *Construction Manager's* first monthly application for payment the *Construction Manager* shall provide to the *Owner* proof of Registration with Canada Revenue Agency (CRA) for Harmonized Sales Tax purposes.
- 4.1.5 For each application for payment following its first application to the *Owner*, the *Construction Manager* shall submit to the *Owner* a statutory declaration using the standard form document, CCDC 9A, 2001, Statutory Declaration of Progress Payment Distribution by Contractor. The *Construction Manager's* application for payment shall not be processed by the *Owner* unless the *Construction Manager* has submitted a statutory declaration."
- 4.1.6 If the *Construction Cost* exceeds \$35 million dollars, the fixed fee (B) for profit and OH identified in Article 5.2.1 will be replaced by a percentage fee (2%) identified in Article 5.2.2.
- SC 27** Amend GC 4.2.1 by substituting the number "25" for the number "20" following the word "than" in the first sentence.
- SC 28** Amend GC 5.1.2 by adding the following to the end of the paragraph:
- "In the event that a contemplated change is expected by the *Construction Manager* to extend the *Project In-Use Date*, the *Construction Manager* shall provide the *Owner* with a mitigation strategy to minimize the impact of the proposed change. For all proposed changes that affect the *Construction Manager's* compensation or the *Project In-Use Date*, the *Construction Manager* shall provide the *Owner* with and a detailed breakdown of the nature and magnitude of the proposed change to the *Construction Manager's* compensation."
- SC 29** Amend GC 5.1.3 by adding the following to the end of the paragraph:
- "There shall be no adjustment in the *Construction Manager's* compensation or the *Contract Time* without the prior written consent of the *Owner*, which shall not be unreasonably withheld.
- SC 30** Add the following as GC 6.1.9 and GC 6.1.10:
- "6.1.9 The *Owner* reserves the right to terminate the *Contract* for convenience during the Preconstruction period, upon 30 days written notice. For greater certainty, the Preconstruction period will continue through completion of the construction procurement phase until the *Owner* has confirmed in writing that it is satisfied with the tender process and the bids, the proposed contracts with all *Trade Contractors* and *Suppliers*, and that the *Project* will be completed within its \$35 million budget. If the *Owner* exercises its right



pursuant to this GC 6.1.9 to terminate the *Contract*, 50% of the *Construction Manager's* fee (i.e. \$340,000, being 50% of \$680,000) will be paid to the *Construction Manager* within 30 days of the notice of such termination. The *Construction Manager* shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by the *Owner* under the provisions of this GC 6.1.9.

- 6.1.10 After the Preconstruction period the *Owner* may at any time and in its sole discretion, by giving written notice to the *Construction Manager*, terminate or suspend the *Contract* or the *Work*, or any portion thereof upon written notice and, upon receipt of written notice the *Construction Manager* will make diligent, commercially reasonable efforts to redeploy its project staff, minimize or reduce costs for which the *Construction Manager* may seek reimbursement under the *Contract* and demobilize as soon as possible. If the *Contract* is terminated by the *Owner* pursuant to this GC 6.1.10 in the period after the Preconstruction period and before completion of the Project, the *Owner* will pay to the *Construction Manager* the balance of its fee adjusted as follows: (i) through to and including April 30, 2012, the *Owner* will pay to the *Construction Manager* an amount equal to 50% of the *Construction Manager's* fee (i.e. \$340,000, being 50% of \$680,000) plus a *per diem* in the amount of \$2,615.38 for each day during that period up to the effective date of such termination, and (ii) after April 30, 2012 through to the completion of the *Project* the unpaid balance of the *Construction Manager's* fee (as applicable, the "Termination Fee"). The Termination Fee will be paid within 30 days of the effective date of the termination. In addition to the Termination Fee, if the *Contract* is terminated by the *Owner* pursuant to this GC 6.1.10, the *Owner* will continue for a period of up to 120 days from the date of notice of such termination (the "Demobilization Period") to pay to the *Construction Manager* the costs for which the *Construction Manager* is entitled to seek reimbursement under the *Contract* to the extent the *Construction Manager* has not been able to avoid using diligent, commercially reasonable efforts. During the Demobilization Period, to the extent any of its staff or equipment dedicated to the *Project*, have not been redeployed, the *Construction Manager* will make reasonable efforts using the services of such staff to complete components as may be reasonably requested by the *Owner* and to effect an orderly demobilization of the *Project*. Except for the Termination Fee and for reimbursable expenses as expressly provided in this GC 6.1.10, the *Owner* shall have no other financial obligation or liability to the *Construction Manager*, if this *Contract* is terminated pursuant to this GC 6.1.10 and the *Construction Manager* shall have no claim for damages, compensation, loss of profit, allowance or otherwise by reason of or directly or indirectly arising out of any action taken or notice given by the *Owner* under the provisions of this GC 6.1.10.
- SC 31 Amend GC 6.2.1 by substituting the number "10" for the number "5" following the word "the" in the last sentence of the paragraph.
- SC 31 Amend GC 6.2.3.1 by substituting the number "45" for the number "30" in the first sentence of the paragraph.
- SC 32 [Intentionally left blank]
- SC 33 [Intentionally left blank]
- SC 34 Amend GC 8.1.3 as follows. At the beginning of the first sentence of the paragraph, following the word "The," delete the word, "*Owner*" and replace it with the word, "*Construction Manager*."
- SC 35 [Intentionally left blank]

**SC 36** [Intentionally left blank]

**SC 37** Delete GC 9.1.1 to 9.1.4 in their entirety and replace with the following:

"9.1.1 *Construction Manager* shall defend, indemnify and hold harmless *Owner* and *Consultant* and their respective parents, subsidiaries, affiliates, partners, officers, directors, agents and employees from and against any and all third party claims, costs, losses, expenses, liens, demands, damages, actions, suits, orders (whether administrative or otherwise), proceedings, liabilities and causes of action of whatsoever kind or nature (including all legal fees and disbursements and the amount of any judgment, penalty, interest charge, and fee) (collectively, the "*Claims*"), directly or indirectly, arising out of any breach of this *Contract* by *Construction Manager* or any negligent act, error or omission of *Construction Manager* or its respective agents and employees, directors, partners and officers and any other persons for whom it is law responsible (including any patent or copyright infringement and bodily injury, death or property damage). *Owner* shall defend, indemnify and hold harmless *Construction Manager* and its parent, subsidiaries, affiliates, partners, officers, directors, agents and employees from and against any and all *Claims*, directly or indirectly, arising out of any breach of this *Contract* by *Owner* or any negligent act, error or omission of the *Owner* or its respective agents and employees, directors, partners and officers and any other persons for whom it is law responsible (including any patent or copyright infringement and bodily injury, death or property damage)."

**SC 38** Add the following as new GC 10:

"10.1 REVIEW AND INSPECTION OF THE WORK

10.1.1 The *Owner* and the *Consultant* shall have access to the *Work* at all times. The *Construction Manager* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Project*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.

10.1.2 If work is designated for tests, inspections, or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or the laws or ordinances of the *Place of the Project*, the *Construction Manager* shall give the *Consultant* reasonable notice of when the *Work* will be ready for review and inspection. The *Construction Manager* shall arrange for and shall give the *Consultant* reasonable notice of the date and time of inspections by other authorities.

10.1.3 The *Construction Manager* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.

10.1.4 If the *Construction Manager* permits to be covered, *Work* that has been designated for special tests, inspections, or approvals before such special tests, inspections, or approvals are made, given or completed, the *Construction Manager* shall, if so directed, uncover such *Work*, have the

inspections or tests satisfactorily completed, and make good covering work at the *Construction Manager's* expense.

- 10.1.5 The *Construction Manager* shall arrange for *Trade Contractors* to furnish samples of all materials and component parts of the *Work* required as test specimens in connection with the tests and inspections and shall furnish labour and facilities at the *Place of the Project* as deemed necessary by the *Consultant* or the testing and inspection agencies for the testing and inspection of the *Work*. All inspection or testing shall be done in a timely manner so as to avoid unnecessary delay in the completion of the *Work*.

**SC 38** Add the following as new GC 13:

"13.1 USE OF THE WORK

- 13.1.1 The *Construction Manager* shall confine construction machinery and equipment, storage of *Products*, and operations of employees to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Work*. All *Owner* supplied equipment shall be stored under suitable conditions to prevent damage, deterioration and contamination. No *Owner* supplied equipment shall be temporarily used or installed as a facility for construction purposes except with the prior written approval of the *Owner*.
- 13.1.2 The *Owner* shall have the right to enter and occupy the *Place of the Project* in whole or in part for the purpose of placing equipment, or for any other use before completion of the *Contract* if, in the reasonable opinion of the *Construction Manager*, such entry and occupation does not prevent or interfere with the *Construction Manager* in achieving the *Project In-Use Date* within the *Contract Time* stipulated in the *Contract*. Such entry or occupation shall neither constitute nor be considered as acceptance of the *Work*, or in any way relieve the *Construction Manager* of its responsibility to complete the *Work*.
- 13.1.3 Whether the *Project* contemplates work by way of renovations in (a) building(s) which will be in use or be occupied during the course of the *Work* or where the *Project* involves *Work* that is adjacent to a structure which is in use or is occupied, the *Construction Manager*, without in any way limiting its responsibilities under this contract, shall take diligent, commercially reasonable steps to manage and maintain fire exits, building access and egress, continuity of electric power and all other utilities, suppression of dust and noise and all other steps reasonably necessary to promote and maintain the safety and comfort of the users and occupants of such structures or adjacent structures.
- 13.1.4 The *Owner* shall have the right at any time or times to take possession of or use any completed or partially completed parts of the *Work*. Such possession or use will not be deemed an acceptance of *Work* not completed in accordance with the *Contract* nor relieve the *Construction Manager* from any other obligation or responsibility under the *Contract* (including, without limitation, the *Construction Manager's* warranty administration obligations). While the *Owner* is in such possession, the *Construction Manager* will be relieved of the responsibility for loss or damage to such completed or partially completed parts of the *Work* while they are in the possession or use of the *Owner* other than that resulting from the *Construction Manager's* negligence.

**SC 39** Add the following as GC 14:

"14.1 SECURITY REGULATIONS

- 14.1.1 The *Construction Manager* agrees that its employees, when using the *Place of the Project*, shall comply with all security rules and regulations of the *Owner* in effect throughout the *Project*. In the event that any servant, agent, employee, invitee or representative of the *Construction Manager* shall wilfully fail or refuse to abide by such rules and regulations, they shall be removed from the *Place of the Project* by the *Construction Manager* and prevented from performing any part of the *Services*. The *Owner* shall provide the *Construction Manager* with a copy of the rules and regulations referred to in this paragraph.
- 14.1.2 The *Construction Manager* shall conduct security checks with respect to such of its servants, agents, employees and invitees having access to the *Place of the Project* or to any confidential information of *Owner* as the *Owner* may reasonably request and provide authorization in writing, when so requested by the *Owner* in writing, for the *Owner* to undertake a security check for a servant, agent, employee, invitee or representative of the *Construction Manager* to be provided access to the *Place of the Project*.
- 14.1.3 All costs incurred by the *Construction Manager* in complying with this GC 14.1 – SECURITY REGULATIONS shall be borne by the *Owner*.

**SC 40** Add the following as GC 15:

"15.1 STANDARD OF CARE

- 15.1.1 In performing its services and obligations under the *Contract*, the *Construction Manager* shall exercise a standard of care, skill and diligence that would normally be provided by an experienced and prudent *Construction Manager* supplying similar service for similar projects. The *Construction Manager* acknowledges and agrees that throughout the *Contract*, the *Construction Manager's* obligations, duties and responsibilities shall be interpreted in accordance with this standard. The *Construction Manager* shall exercise the same standard of due care and diligence in respect of any personnel, or procedures which it may recommend to the *Owner*.
- 15.1.2 The *Construction Manager* further represents covenants and warrants to the *Owner* that:
- .1 the personnel it assigns to the *Project* are and will be appropriately experienced;
  - .2 as of the date hereof it has a sufficient staff of qualified and competent personnel to replace its designated supervisor and project manager, subject to the *Owner's* approval, in the event of death, incapacity, removal or resignation; and
  - .3 there are no pending, threatened or anticipated claims that would have a material effect on the financial ability of the *Construction Manager* to perform its *Work* under the *Contract*."

15.1.3 If *Construction Manger's* designated supervisor or project manager is for any reason unable or unwilling to serve in the capacity, *Construction Manager* will

promptly supply a qualified and competent replacement satisfactory to *Owner*, acting reasonably.

**SC 41** Add the following as GC 16:

"16.1 OWNERSHIP & CONFIDENTIALITY:

16.1.1 The *Owner* will have at all times all ownership rights, including where applicable copyright, in:

- .1 any items which the *Owner* and *Consultant* supplies to the *Construction Manager* or the *Construction Manager's Staff* for the performance of the *Work*; and
- .2 any items the *Construction Manager* buys under the *Contract* for the *Owner* or for which the *Owner* pays or reimburses the *Construction Manager*.

The *Construction Manager* will create and keep up-to-date an inventory of the items in 16.1.1.1 and 16.1.1.2 above and provide a copy of it to the *Owner* upon request and the *Construction Manager* will clearly identify these items as belonging to the *Owner* under the *Contract* on the *Construction Manager's* premises or at the *Place of the Project* as being property of the *Owner*.

16.1.2 Each of the parties will take reasonable precautions to protect the confidential information of the other, and will not disclose the confidential information of the other to any third party except for employees, *Suppliers* and *Trade Contractors* with a need to know. For the purposes of the *Contract*, "confidential information" shall mean any business or financial information about either party, including but not limited to information about their customers, suppliers or finances, but shall exclude any information in the public domain without a breach of this *Contract* or information a party gets from a source other than the other party without a breach of this *Contract*. Before granting access to any confidential information of the other to any third party other than an employee, a party will undertake to have such third party sign an agreement causing them to be bound by terms substantially the same as those in this present paragraph. In addition to the foregoing, the *Construction Manager* agrees, when dealing with confidential information of the *Owner*, to comply with any applicable policies of the *Owner* upon reasonable request by the *Owner*. At either party's request, the other will immediately return to that party any confidential information of that party then in its possession or under its control, except for information necessary to perform duties under the *Contract*.

16.1.3 If any unauthorized disclosure of, loss of, or inability to account for, confidential information of a party occurs while it is in the possession of the other, the other will notify the party in writing immediately.

16.1.4 If any confidential information contains information received under confidence from any third party, the party receiving that information will on request enter into any non-disclosure agreement that third party may reasonably require that creates similar obligations of confidentiality as those in the *Contract*."

**SC 42** Add the following as GC 17:

"17.1. RECORDS AND AUDIT

- 17.1.1 The *Owner* may inspect such *Project* records of the *Construction Manager*, which relate to the *Project* at any time as reasonably required by the *Owner* prior to date of the final certificate for payment and thereafter for a period of seven (7) years for the purpose of verifying the *Construction Manager's* estimates and valuation of changes in the *Work* and claims, and the *Construction Manager* shall supply certified copies of such records to the *Owner* when so requested in writing.

SC 43 Add the following as GC 19:

"19. 1. DESTRUCTION OF PROJECT.

- 19.1.1 If the *Project* is totally or partially destroyed and the *Owner* elects to rebuild, at the discretion of the *Owner*, the *Construction Manager* shall continue its services during the reconstruction and if such destruction is the result of an act or omission by the *Owner* the *Construction Manager* shall be entitled to the reimbursement for costs as provided for in the *Contract*."

SC 44 Add the following as GC 20:

"20.1 TOXIC AND HAZARDOUS SUBSTANCES AND MATERIALS

- 20.1.1 If the *Construction Manager*  
.1 encounters *Hazardous Material* at the *Place of the Project*, or  
.2 has reasonable grounds to believe that *Hazardous Material* is present at the *Place of the Project*, the *Construction Manager* shall:  
.1 take all reasonable steps, including stopping the *Work*, and endeavouring to direct that *Trade Contractors*, *Suppliers* or others take reasonable steps to ensure that no person suffers injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the *Hazardous Materials*,  
.2 immediately report the circumstances to the *Consultant* and the *Owner* in writing, and  
.3 cooperate reasonably with *Owner* and *Consultant* to implement such steps as are required to properly store, manage, handle, clean up or dispose of any *Hazardous Material*.

20.1.2 If the *Construction Manager* introduces any materials to the *Project* site, the *Construction Manager* must ensure that such materials are labelled and handled in accordance with the "Workplace Hazardous Materials Information System" ("WHMIS"). If requested by the *Owner*, as an *Additional Service*, *Construction Manager* will develop and follow procedures for the storage, use and disposal of *Hazardous Material* sufficient to satisfy the requirements of all *Applicable Environmental Law* including, without limitation, the provisions of the and the *Ontario Occupational Health and Safety Act* (collectively, "*Environmental Protocols*"). The *Construction Manager* will ensure that all *Trade Contractors* and *Suppliers* are aware of those *Environmental Protocols*. The *Construction Manager* will provide timely notice in writing to *Owner* if it learns that any *Trade Contractor* or *Supplier* fails to comply with those *Environmental Protocols* and will cooperate reasonably with *Owner* to implement steps to ensure full compliance with those *Environmental Protocols*.

20.1.3 The *Construction Manager* will immediately notify the *Owner* of any notice it receives from any governmental authority of any actual or potential violation of any *Applicable Environmental Law* and will cooperate with the *Owner* in dealing with that notice and in correcting or contesting that violation.

SC 45 Add the following as GC 20.2:

"20.2 ARCHAEOLOGICAL MATERIALS

20.2.1 If the *Construction Manager* encounters fossils, artifacts and other objects having artistic, historic, archaeological or monetary value, including human remains and burial sites on the *Project* site, the *Construction Manager* will

- 20.2.1.1 immediately inform the *Owner* of such discovery;
- 20.2.1.2 take, and ensure that all *Trade Contractors* and *Suppliers* take, all steps not to disturb the item and, if necessary, cease any *Work* in so far as performing such *Work* would endanger the item or prevent or impede its excavation;
- 20.2.1.3 take all necessary steps to preserve and ensure the preservation of the item in the same position and condition in which it was found;
- 20.2.1.4 comply, and ensure compliance by all *Trade Contractors* and *Suppliers* with all Applicable Laws and all requirements of the *Owner* with respect to such discovery; and
- 20.2.1.5 if requested by the *Owner*, as an *Additional Service*, develop and follow procedures for its preservation and evacuation.

1 Bloor Street West  
The One

Appendix A  
Time Base Rates

STAFF RATES	15Sept2016 - 30Aug2017	15Sept2017 - 30Aug2018	15Sept2018 - 30Aug2019	15Sept2019 - 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
Mike Clark	\$ 250.00	\$ 257.50	\$ 265.23	\$ 273.19	281.39	289.83
Field Operations Manager	\$ 226.29	\$ 233.08	\$ 240.07	\$ 247.27	254.68	262.32
Construction Manager 1	\$ 147.22	\$ 151.64	\$ 156.19	\$ 160.87	165.7	170.67
Senior Project Manager	\$ 131.62	\$ 135.57	\$ 139.64	\$ 143.83	148.15	152.59
BIM Scheduling Manager	\$ 125.00	\$ 128.75	\$ 132.61	\$ 136.59	140.69	144.91
Timekeeper	\$ 72.73	\$ 74.92	\$ 77.16	\$ 79.48	81.86	84.32
Project Manager 1	\$ 116.79	\$ 120.29	\$ 123.90	\$ 127.62	131.45	135.39
Coordinator 1	\$ 69.84	\$ 71.94	\$ 74.10	\$ 76.32	78.61	80.97
Materials Coordinator	\$ 62.33	\$ 64.20	\$ 66.13	\$ 68.11	70.15	72.26
Overall Project Superintendent	\$ 200.85	\$ 206.88	\$ 213.08	\$ 219.47	226.05	232.84
Superintendent 1	\$ 131.45	\$ 135.39	\$ 139.45	\$ 143.64	147.95	152.39
Assistant Superintendent	\$ 72.73	\$ 74.92	\$ 77.16	\$ 79.48	81.86	84.32
Field Engineer	\$ 64.62	\$ 66.56	\$ 68.56	\$ 70.61	72.73	74.91
Accountant 2	\$ 60.47	\$ 62.28	\$ 64.15	\$ 66.08	68.06	70.1

2m



1 Bloor Street West  
The One

Admin Assistant 1	\$ 60.71	\$ 62.53	\$ 64.41	\$ 66.34	\$ 68.33	\$ 70.38
-------------------	----------	----------	----------	----------	----------	----------

Monthly Rates	Monthly Rates	Monthly Rates	Monthly Rates	Monthly Rates	Monthly Rates	Monthly Rates
Mike Clark	43333.33	44633.33	45972.33	47351.5	48772.05	50235.21
Field Operations Manager	39223.6	40400.31	41612.32	42860.69	44146.51	45470.91
Construction Manager 1	25518.13	26283.67	27072.18	27884.35	28720.88	29582.51
Senior Project Manager	22814.13	23498.55	24203.51	24929.62	25677.51	26447.84
BIM Scheduling Manager	21666.67	22316.67	22986.17	23675.76	24386.03	25117.61
Timekeeper	12606.53	12984.73	13374.27	13775.5	14188.76	14614.42
Project Manager 1	20243.6	20850.91	21476.44	22120.73	22784.35	23467.88
Coordinator 1	12105.6	12468.77	12842.83	13228.11	13624.95	14033.7
Materials Coordinator	10803.87	11127.99	11461.83	11805.68	12159.85	12524.65
Overall Project Superintendent	34814	35858.42	36934.17	38042.2	39183.47	40358.97
Superintendent 1	22784.67	23468.21	24172.26	24897.43	25644.35	26413.68
Assistant Superintendent	12606.53	12984.73	13374.27	13775.5	14188.76	14614.42
Field Engineer	11200.8	11536.82	11882.92	12239.41	12606.59	12984.79
Accountant 2	10481.47	10795.91	11119.79	11453.38	11796.98	12150.89
Admin Assistant 1	10523.07	10838.76	11163.93	11498.85	11843.82	12199.13

1 Bloor Street West  
The One

LABOUR RATES	1Sept2016 - 30Aug2017	1Sept2017 - 30Aug2018	1Sept2018 - 30Aug2019	1Sept2019 - 30Aug2020	Sept 1 2020- Aug 30 2021	Sept 1 2021- Aug 30 2022
	E Rate	F Rate	G Rate	H Rate	I Rate	J 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

SM

Appendix B  
Cost of Work Definition



Clark Construction Management INC  
COST OF WORK DEFINITION

The Cost of the Work shall include:

- (a) Wages and benefits paid for field hourly staff in the direct employ of the Contractor in the performance of the Work as pre-approved by owner.
- (b) Salaries, wages, assessments and benefits for the Contractor's personnel when stationed at any field office, in whatever capacity employed for actual hours spent on the work will be charged in accordance with the rates listed in Schedule "C"; salaries, wages, assessments and benefits of personnel engaged at shops, or on the road, in expediting the production or transportation of materials or equipment for actual hours spent on the work will be charged in accordance with the rates listed in Schedule "C"; salaries wages, assessments and benefits of other personnel for actual hours spent on the work will be charged in accordance with the rates listed in Schedule "C";
- (c) Contributions, assessments and taxes incurred for such items as employment insurance, provincial or territorial health insurance, worker's compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the Contractor and included in the Cost of Work as provided in paragraphs (a) and (b) above;
- (d) The portion of travel and subsistence expenses of the officers or employees of the Contractor incurred while traveling outside of the GTA in discharge of duties connected with the work as pre-approved by owner;
- (e) The cost of all materials, products, supplies and equipment incorporated into the work, including costs of transportation thereof as pre-approved by owner;
- (f) The costs of materials, products, supplies, equipment, temporary services and facilities, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the work, and cost less salvage value on such items used, but not consumed, which remain the property of the Contractor as pre-approved by owner;
- (g) The rental costs of all tools, machinery, and equipment and facilities exclusive of hand tools, used in the performance of the Work, whether rented from or provided by the Contractor or others, including installation, insurance, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof, rental of "small tools" as defined in the Contractor's equipment manual, having a replacement value of less than five hundred dollars, shall be charged at an assessment rate of five percent of costs in paragraphs (a), (b), and (c) above;
- (h) The cost of quality assurance such as independent inspection and testing services as pre-approved by owner;
- (i) Charges levied by authorities having jurisdiction over the work;
- (j) Royalties, patent license fees and damages for infringement of patents and the costs of defending suits thereof;



## Clark Construction Management INC

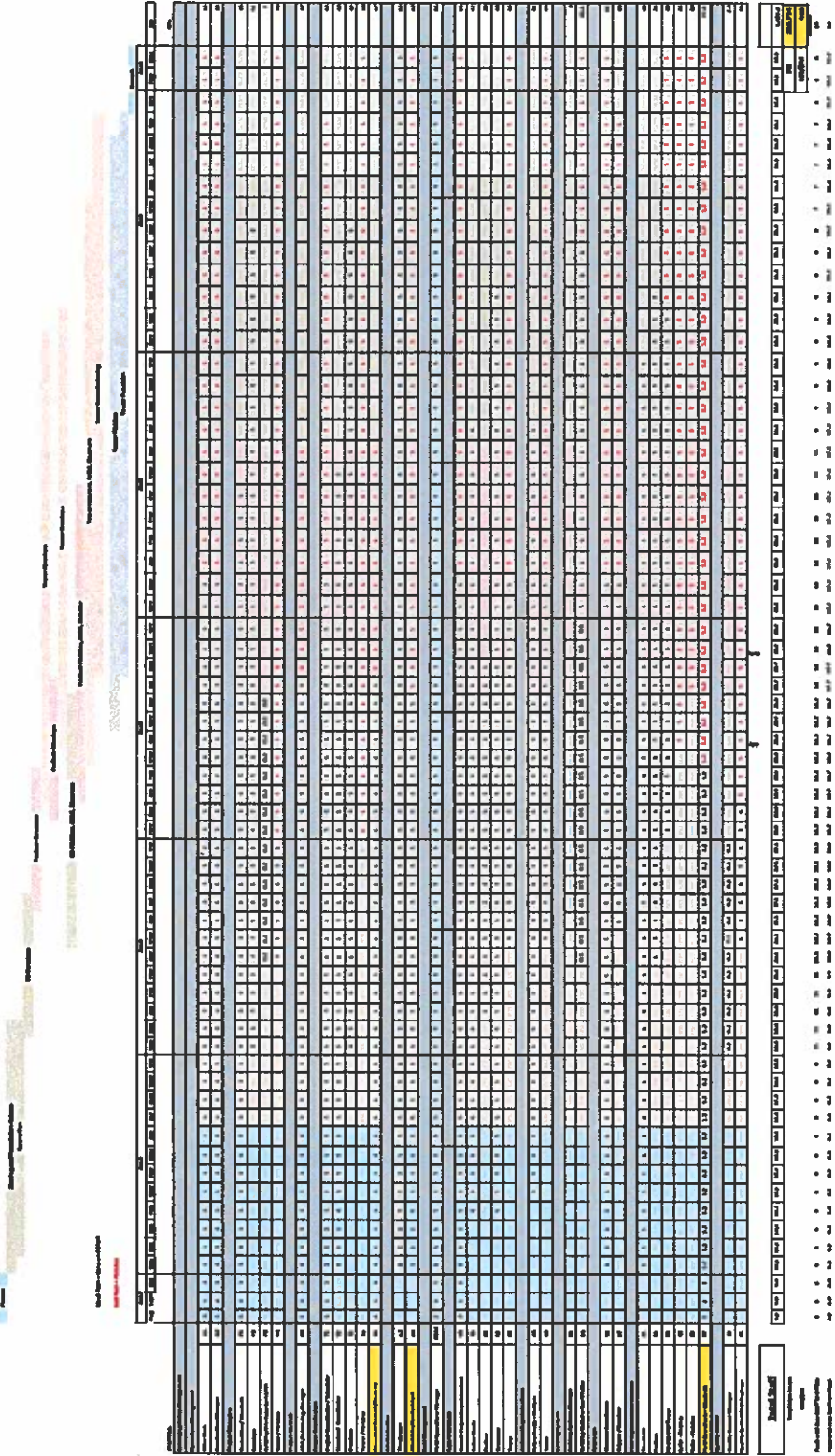
- (k) Premiums and assessments for all applicable bonds and insurance, including subcontractor default insurance, and related adjuster costs;
  - (l) Value-added taxes (GST), sales taxes and duties related to the work and for which the Contractor is liable;
  - (m) Charges for telegrams, faxes, telephones, photocopiers, courier services, expressage, and petty cash items incurred in connection with the work;
  - (n) The cost of Site Pickup Truck and associated FOG cost as pre-approved by owner;
  - (o) Costs incurred due to emergencies affecting the safety of persons or property;
  - (p) The cost associated with the *Construction Manager's* safety orientation programs, to a maximum of fifteen hundred dollars per session.
  - (q) The cost of computer equipment;
  - (r) The cost associated with the Contractor's safety and training and recruiting programs;
  - (s) Insurance costs associated with the project insurance coverage's to be placed by the Contractor as follows:
    - 1. General Liability insurance (including the Contractor's equipment, owned/non-owned auto and pollution exposure) shall be provided by the Contractor and included at the rate of seven dollars per thousand dollars of the Building Contract Price; and
    - 2. Builder's risk (Course of Construction) insurance, if provided by the Contractor, shall be included at the rates available at the time of construction;
- The rates for insurance described above are 2015 rates based on a deductible of twenty-five thousand dollars per claim and are subject to escalation to reflect increases in rates as charged under the Contractor's corporate risk program from time to time.
- (t) Project management and administration staff, who are stationed in our office will only be charged as a cost of the work for that portion of their time relating to this Project in accordance with (c) and (d) above;
  - (u) The cost of duplication or reproduction of any plans and drawings;

The Cost of the Work shall cover and include all other costs reasonably incurred by the Contractor in performing work and services in accordance with the Agreement from time to time, or as otherwise approved in writing by the Owner, and at rates prevailing in the locality of the place of the Project.

1 Bloor Street West  
The One

Appendix C  
Staff Plan Histogram

The ONE Retail and Residence - Staff Plan for Core, Shell & Finishes



in



**1 Bloor Street West**  
***The One***

[illegible]

5m

**1 Bloor Street West**  
***The One***

[illegible]

1 Bloor Street West  
The One

**Appendix D  
Master Schedule**



1 Bloor West Master  
Schedule R13 - 20171



# 1 Bloor Street West The One

## Appendix E Altus Estimate

Job No: 166075  
22 Sep-17

AltusGroup

One Bloor West - Hotel Option  
Construction Cost Estimate  
Toronto, Ontario  
September 2017

Job No: 166075  
22 Sep-17

DRAFT FOR DISCUSSION PURPOSES ONLY

Job No: 166075  
22 Sep-17

AltusGroup

One Bloor West - Hotel Option  
Construction Cost Estimate  
Toronto, Ontario  
September 2017

Job No: 166075  
22 Sep-17

DRAFT FOR DISCUSSION PURPOSES ONLY

EXCLUSIVE SUMMARY  
The 1400 Construction Cost Estimate can be summarized as follows:

Component	Quantity	Unit Price	Excluded	Included	Total	Unit Price	Total
1400 Parking (Concrete + 4 levels below grade) - PAVI estimation of Concrete EXCLUDED	15,715	115.257	8994		866,597,605	291	825,600
Hotel (Concrete + 3 levels above grade)	5,668	62,802	9538		89,654,127		
Hotel (4 levels above grade)	13,881	129,181	8444		848,864,648	139	832,900
Hotel (4 levels above grade) - 2nd floor	13,881	129,181	8107		813,624,305	139	991,369
Temple (64 levels above grade - TMD Room)	27,860	72,126	5397		2,064,424,643	416	644,500
Site Development (Building limited landscaping with trees)	2,520	27,225	881		52,197,140	546	52,700
Sub Total - 1400 Construction Summary	44,564	91,199	9334		9,048,693,205		
Design & Pricing Contingency	7.2%	64,909	913,099	538	824,539,605		
Sub Total - 1400 Construction Summary	44,564	91,199	9334		9,873,232,810		
Contingency							
Construction Contingency - EXCLUDED	0%	64,909	913,099	8	90		
Per Contingency	5%	64,909	913,099	827	524,499,648		
TOTAL CONSTRUCTION COST (Building Only)	44,564	91,199	9334	835	10,397,732,458		
Non-Construction Costs	94,909	913,099	80		EXCLUDED		
TOTAL CONSTRUCTION COST (Building Only)	94,909	913,099	800		9,668,773,008		

1. See One Bloor Summary for breakdown of estimated costs by component.
2. NOT included.
3. Removal of any construction materials, structural steel materials including wall columns, wall and gas management/ventilating, building or construction water are included.
4. Any construction cost fluctuations beyond September 2017 has been included.
5. Design & Pricing Contingency & Per Contingency (Contingency) has been included.
6. Provisions for Permit and Insurance are included.
7. Design & Pricing Contingency & Per Contingency (Contingency) has been included.
8. Building/structure/infrastructure equipment are included.
9. Soft Costs are included.
10. Demolition system (allowance for wall panel system) is included.
11. Demolition of existing structure (included in program).
12. Average contractor grade parking and ground - 204.27/ha (included parking included).
13. Average contractor grade parking and ground - 204.27/ha (included parking included).
14. Average contractor grade parking and ground - 204.27/ha (included parking included).
15. Average contractor grade parking and ground - 204.27/ha (included parking included).
16. Average contractor grade parking and ground - 204.27/ha (included parking included).
17. Average contractor grade parking and ground - 204.27/ha (included parking included).
18. Average contractor grade parking and ground - 204.27/ha (included parking included).
19. Average contractor grade parking and ground - 204.27/ha (included parking included).
20. Average contractor grade parking and ground - 204.27/ha (included parking included).
21. Average contractor grade parking and ground - 204.27/ha (included parking included).
22. Average contractor grade parking and ground - 204.27/ha (included parking included).
23. Average contractor grade parking and ground - 204.27/ha (included parking included).
24. Average contractor grade parking and ground - 204.27/ha (included parking included).
25. Average contractor grade parking and ground - 204.27/ha (included parking included).
26. Average contractor grade parking and ground - 204.27/ha (included parking included).
27. Average contractor grade parking and ground - 204.27/ha (included parking included).
28. Average contractor grade parking and ground - 204.27/ha (included parking included).
29. Average contractor grade parking and ground - 204.27/ha (included parking included).
30. Average contractor grade parking and ground - 204.27/ha (included parking included).
31. Average contractor grade parking and ground - 204.27/ha (included parking included).
32. Average contractor grade parking and ground - 204.27/ha (included parking included).
33. Average contractor grade parking and ground - 204.27/ha (included parking included).
34. Average contractor grade parking and ground - 204.27/ha (included parking included).
35. Average contractor grade parking and ground - 204.27/ha (included parking included).
36. Average contractor grade parking and ground - 204.27/ha (included parking included).
37. Average contractor grade parking and ground - 204.27/ha (included parking included).
38. Average contractor grade parking and ground - 204.27/ha (included parking included).
39. Average contractor grade parking and ground - 204.27/ha (included parking included).
40. Average contractor grade parking and ground - 204.27/ha (included parking included).
41. Average contractor grade parking and ground - 204.27/ha (included parking included).
42. Average contractor grade parking and ground - 204.27/ha (included parking included).
43. Average contractor grade parking and ground - 204.27/ha (included parking included).
44. Average contractor grade parking and ground - 204.27/ha (included parking included).
45. Average contractor grade parking and ground - 204.27/ha (included parking included).
46. Average contractor grade parking and ground - 204.27/ha (included parking included).
47. Average contractor grade parking and ground - 204.27/ha (included parking included).
48. Average contractor grade parking and ground - 204.27/ha (included parking included).
49. Average contractor grade parking and ground - 204.27/ha (included parking included).
50. Average contractor grade parking and ground - 204.27/ha (included parking included).
51. Average contractor grade parking and ground - 204.27/ha (included parking included).
52. Average contractor grade parking and ground - 204.27/ha (included parking included).
53. Average contractor grade parking and ground - 204.27/ha (included parking included).
54. Average contractor grade parking and ground - 204.27/ha (included parking included).
55. Average contractor grade parking and ground - 204.27/ha (included parking included).
56. Average contractor grade parking and ground - 204.27/ha (included parking included).
57. Average contractor grade parking and ground - 204.27/ha (included parking included).
58. Average contractor grade parking and ground - 204.27/ha (included parking included).
59. Average contractor grade parking and ground - 204.27/ha (included parking included).
60. Average contractor grade parking and ground - 204.27/ha (included parking included).
61. Average contractor grade parking and ground - 204.27/ha (included parking included).
62. Average contractor grade parking and ground - 204.27/ha (included parking included).
63. Average contractor grade parking and ground - 204.27/ha (included parking included).
64. Average contractor grade parking and ground - 204.27/ha (included parking included).
65. Average contractor grade parking and ground - 204.27/ha (included parking included).
66. Average contractor grade parking and ground - 204.27/ha (included parking included).
67. Average contractor grade parking and ground - 204.27/ha (included parking included).
68. Average contractor grade parking and ground - 204.27/ha (included parking included).
69. Average contractor grade parking and ground - 204.27/ha (included parking included).
70. Average contractor grade parking and ground - 204.27/ha (included parking included).
71. Average contractor grade parking and ground - 204.27/ha (included parking included).
72. Average contractor grade parking and ground - 204.27/ha (included parking included).
73. Average contractor grade parking and ground - 204.27/ha (included parking included).
74. Average contractor grade parking and ground - 204.27/ha (included parking included).
75. Average contractor grade parking and ground - 204.27/ha (included parking included).
76. Average contractor grade parking and ground - 204.27/ha (included parking included).
77. Average contractor grade parking and ground - 204.27/ha (included parking included).
78. Average contractor grade parking and ground - 204.27/ha (included parking included).
79. Average contractor grade parking and ground - 204.27/ha (included parking included).
80. Average contractor grade parking and ground - 204.27/ha (included parking included).
81. Average contractor grade parking and ground - 204.27/ha (included parking included).
82. Average contractor grade parking and ground - 204.27/ha (included parking included).
83. Average contractor grade parking and ground - 204.27/ha (included parking included).
84. Average contractor grade parking and ground - 204.27/ha (included parking included).
85. Average contractor grade parking and ground - 204.27/ha (included parking included).
86. Average contractor grade parking and ground - 204.27/ha (included parking included).
87. Average contractor grade parking and ground - 204.27/ha (included parking included).
88. Average contractor grade parking and ground - 204.27/ha (included parking included).
89. Average contractor grade parking and ground - 204.27/ha (included parking included).
90. Average contractor grade parking and ground - 204.27/ha (included parking included).
91. Average contractor grade parking and ground - 204.27/ha (included parking included).
92. Average contractor grade parking and ground - 204.27/ha (included parking included).
93. Average contractor grade parking and ground - 204.27/ha (included parking included).
94. Average contractor grade parking and ground - 204.27/ha (included parking included).
95. Average contractor grade parking and ground - 204.27/ha (included parking included).
96. Average contractor grade parking and ground - 204.27/ha (included parking included).
97. Average contractor grade parking and ground - 204.27/ha (included parking included).
98. Average contractor grade parking and ground - 204.27/ha (included parking included).
99. Average contractor grade parking and ground - 204.27/ha (included parking included).
100. Average contractor grade parking and ground - 204.27/ha (included parking included).

**END OF SUPPLEMENTARY CONDITIONS**

SM

**APPENDIX “8”**  
**E-MAIL SENT BY MARK KILFOYLE (MI’S CFO) TO JENNY COCO**  
**ON NOVEMBER 9, 2017 AND JENNY COCO’S RESPONDING E-MAIL**  
**SENT TO MARK KILFOYLE**

---

**From:** Richard Yu[Richard.yu@raymondjames.ca]  
**Sent:** Thur 11/9/2017 7:24:59 PM (UTC-05:00)  
**To:** Jenny Coco[JCoco@cocogroup.com]; Mark Kilfoyle[mark@mizrahidevelopments.ca]  
**Cc:** sam@mizrahidevelopments.ca[sam@mizrahidevelopments.ca]; Roy Booth[RBooth@cocogroup.com]; Elliott Kobulnik[EKobulnik@cocogroup.com]; Natasha Sharpe[NSharpe@bridgingfinance.ca]; Josh Lax (josh@mizrahidevelopments.ca)[josh@mizrahidevelopments.ca]; bosco.chan@livesolar.ca[bosco.chan@livesolar.ca]; yithaifood@hotmail.com[yithaifood@hotmail.com]  
**Subject:** RE: 3 month cash flow queries

Jenny,

I'm just reading your email again and I think you may be confusing the word GC with general contractor. What Mark is referring to below is actually General Conditions. The General Condition costs are always project costs and goes directly to pay site labour (there is no profit to Mizrahi Inc here). The General Contractor/Construction Management fee, in this case referred as the CM fee of 5%, is a profit for the management of construction site. That's a reasonable margin for any company to tackle a project of this scale.

I also checked with a few industry people on this and they all agreed the above is normal course and in line with market for a project like this. I'm sure Mark would be happy to clarify and discuss your concerns at the board meeting tomorrow.

Best regards,

Richard

---

**From:** Jenny Coco [mailto:JCoco@cocogroup.com]  
**Sent:** Thursday, November 09, 2017 4:30 PM  
**To:** Mark Kilfoyle  
**Cc:** sam@mizrahidevelopments.ca; Roy Booth; Elliott Kobulnik; Natasha Sharpe; Josh Lax (josh@mizrahidevelopments.ca); Richard Yu; bosco.chan@livesolar.ca; yithaifood@hotmail.com  
**Subject:** FW: 3 month cash flow queries  
**Importance:** High

Mark

Thanks for your responses.

See my comments below.

Thanks!  
Jenny

---

**From:** Mark Kilfoyle [mailto:mark@mizrahidevelopments.ca]

---

**Sent:** Thursday, November 9, 2017 3:41 PM

**To:** Jenny Coco <[JCoco@cocogroup.com](mailto:JCoco@cocogroup.com)>

**Cc:** Sam Mizrahi <[sam@mizrahidevelopments.ca](mailto:sam@mizrahidevelopments.ca)>; Josh Lax <[josh@mizrahidevelopments.ca](mailto:josh@mizrahidevelopments.ca)>; Roy Booth <[RBooth@cocogroup.com](mailto:RBooth@cocogroup.com)>; Elliott Kobulnik <[EKobulnik@cocogroup.com](mailto:EKobulnik@cocogroup.com)>

**Subject:** 3 month cash flow queries

Hi Jenny,

Before I answer your questions, I will start off with the process on how the approved list of cheques ("List") was created:

- Sam negotiated the funding from CERIECO and its timing of receipt. This was the \$8 million in October, \$8 million in November and \$8 million in December and \$1 million in January until we can start drawing on deposits and further CERIECO funding will be received.

I HAVE COPIED RICHARD, KEVIN AND BOSCO TO REQUEST CLARIFICATION AND WHY COCO WAS NOT INVOLVED IN THE DISCUSSION? WE HAVE NO AGREEMENTS ON FILE TO REFLECT THE SAME AND COCO APPROVAL IS ALSO REQUIRED.

- I was required to provide a List of what and who would be paid from those funds and in which periods. China would not fund without this list and it was certified in a letter by Sam and myself that this is where the funds would be directed. The List was presented to you, Roy and Elliott.

AS A SHAREHOLDER WITH THE ONLY CASH EQUITY INJECTION TO DATE, COCO IS REQUIRED TO PRE-APPROVE ALSO, GIVEN WE ARE THE GUARANTORS ALSO.

- The List had two components, the first was a payments of accounts payable which the amounts outstanding to you and Sam for your Advisory Fee (\$7.5 million) and my Development Fee (\$20 million) were part of. The second part was the ongoing costs which are comprised of payments that will need to be made to vendors to keep the project going forward. These ongoing costs were only estimates at the time and all of which were in the Altus Budget. For example, we had to pay for the renting of Roy Thompson Hall or we would not had the event.

FURTHER DISCUSSION WARRANTED.

- With respect to the payment of outstanding payables, we broke them down into three categories: (1) those that needed to be paid immediately, (2) those that would accept instalments and (3) those we could hold off until we get the deposits and CERIECO draws in January/February. For example, the smaller trades need to be paid out immediately and those will be paid immediately. Next, those vendors like Fosters are accepting partial payments. Lastly, vendors like Altus have accepted no payment until we get to the first Deposit draw.

THIS SHOULD BE DISCUSSED COLLECTIVELY AS WE ALSO HAVE RELATIONSHIPS WITH VENDORS ON THE LIST AND SUGGEST THEY BE PAID.

Now for your specific questions. The first two items below are within the Scope of the Subcontract Agreements and budgeted in the Altus budget. These specific costs have their own lines, and are not buried within any number in any of the reports issued by Altus.

(1) The Mizrahi GC Fees are the monthly costs of keeping the construction office running for Mike Clark and his team plus any costs by the Mizrahi Construction team. These are in the Altus budget and payments are in accordance with Altus's report. These costs are at market and are cost plus Mike Clark's Fee. This is not a profit centre for Mizrahi Inc. and are in accordance with the Subcontract.

WE HAVE YET TO SEE AND APPROVE THE ALTUS BUDGET. THIS WARRANTS DISCUSSION AND

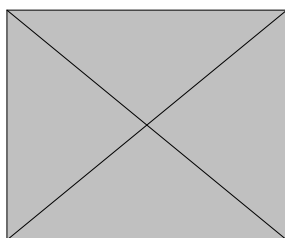
WE HAVE NOT BEEN A PARTY TO SEVERAL NEGOTIATIONS AND COCO IS ONLY COMMITTING TO THE AGREEMENTS WE EXECUTED! IT'S TIME FOR CHINA, COCO AND MIZRAHI TO DISCUSS THIS PROJECT PRIOR TO US TAKING ALTERNATIVE ACTIONS.

(2) The Mizrahi CM Fee is the 5% fee on construction costs as per the Subcontract Agreement. The amounts on the List were based on the budgeted costs, and were as per the Altus Budget. The amounts actually paid will be based on the actual Construction spends times the 5% fee. Therefore it is unlikely the amount will be the same as the number in the estimate, it maybe higher or lower depending on spends. In the future the actual amount will move up and down depending on the construction spends in that given month.

(3) With respect to the Development and Advisory fees these are both due and outstanding and part of the Payables and are both long overdue. They were lumped into Vendors that will accept partial payments. The amount payable was calculated after determining the available funds after payments required to pay both the determined Accounts Payable balances and ongoing costs. They will only be paid if we achieve the spends we have estimated or if additional funds are received, such as HST. If we are able to get through spending less on the ongoing costs than these fees will go up and if the spends are higher then these fees will decrease. As a note the Development and Advisory fees are on a prorate basis of each other. Based on the current cash flow, we are aiming to release the condo deposits in January/February and as such the outstanding balance will be paid at that point.

If you have any questions happy to discuss them with you.

Best regards,  
Mark



---

**Mark Kilfoyle**

*CFO and COO*

125 Hazelton Avenue

Toronto, Ontario M5R 2E4

T. 416.922.4200 ext. 4220

F. 1.866.300.0219

**Mark@MizrahiDevelopments.ca**

**www.MizrahiDevelopments.ca**

**CONFIDENTIALITY NOTICE:** All information contained herein is for the exclusive confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this message in error, please notify the sender immediately and promptly delete this message and all its attachments from your computer system.

---

This email, and any files transmitted, is confidential and may contain privileged information. Any unauthorized dissemination or copying is strictly prohibited. If you have received this email in error, please delete it and notify the sender immediately. We may monitor and review the content of all email communications. Trade instructions by email or voicemail will not be accepted or acted upon. Please contact us directly by telephone to place trades. Unless otherwise stated, opinions expressed in this email are those of the author and are not endorsed by Raymond James. Raymond James accepts no liability for any errors, omissions, loss or damage arising from the content, transmission or receipt of this email. Raymond James Ltd. is a member of the Canadian Investor Protection Fund.

Le présent courriel, de même que tout fichier transmis en pièce jointe, est de nature confidentielle et peut contenir des renseignements privilégiés. Toute diffusion ou reproduction en est strictement interdite. Si vous avez reçu ce courriel par erreur, veuillez le supprimer et en informer immédiatement l'expéditeur. Nous pouvons surveiller et examiner le contenu de toutes les communications électroniques. Les instructions portant sur des

opérations, données par courriel ou dans une boîte vocale, ne seront pas acceptées ni exécutées. Veuillez communiquer avec nous directement par téléphone pour donner des ordres en bourse. Sauf indication contraire, les avis exprimés dans le présent courriel sont ceux de l'auteur et ne sont pas avalisés par Raymond James. Raymond James décline toute responsabilité en cas d'erreurs, d'omissions, de pertes ou de dommages découlant du contenu, de la transmission ou de la réception du présent courriel. Raymond James Ltd. est membre du Fonds canadien de protection des épargnants.

---

To unsubscribe and no longer receive any email communications from this sender, including information about your account, please either click [here](#) or send a reply email to the sender with [UNSUBSCRIBE] in the subject line.

Pour vous désabonner de cet expéditeur soit cliquer [ici](#) ou envoyer un e-mail de réponse à l'expéditeur avec [UNSUBSCRIBE] dans la ligne d'objet.

**APPENDIX “9”**  
**GC AGREEMENT DATED MAY 14, 2019**



CCDC 2

## stipulated price contract

2 0 0 8

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

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

## TABLE OF CONTENTS

### AGREEMENT BETWEEN OWNER AND CONTRACTOR

- A-1 The Work
- A-2 Agreements and Amendments
- A-3 Contract Documents
- A-4 Contract Price
- A-5 Payment
- A-6 Receipt of and Addresses for Notices in Writing
- A-7 Language of the Contract
- A-8 Succession

### DEFINITIONS

- 1. Change Directive
- 2. Change Order
- 3. Construction Equipment
- 4. Consultant
- 5. Contract
- 6. Contract Documents
- 7. Contract Price
- 8. Contract Time
- 9. Contractor
- 10. Drawings
- 11. Notice in Writing
- 12. Owner
- 13. Place of the Work
- 14. Product
- 15. Project
- 16. Provide
- 17. Shop Drawings
- 18. Specifications
- 19. Subcontractor
- 20. Substantial Performance of the Work
- 21. Supplemental Instruction
- 22. Supplier
- 23. Temporary Work
- 24. Value Added Taxes
- 25. Work
- 26. Working Day

### GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

#### PART 1 GENERAL PROVISIONS

- GC 1.1 Contract Documents
- GC 1.2 Law of the Contract
- GC 1.3 Rights and Remedies
- GC 1.4 Assignment

#### PART 2 ADMINISTRATION OF THE CONTRACT

- GC 2.1 Authority of the Consultant
- GC 2.2 Role of the Consultant
- GC 2.3 Review and Inspection of the Work
- GC 2.4 Defective Work

#### PART 3 EXECUTION OF THE WORK

- GC 3.1 Control of the Work
- GC 3.2 Construction by Owner or Other Contractors
- GC 3.3 Temporary Work
- GC 3.4 Document Review
- GC 3.5 Construction Schedule
- GC 3.6 Supervision
- GC 3.7 Subcontractors and Suppliers
- GC 3.8 Labour and Products
- GC 3.9 Documents at the Site
- GC 3.10 Shop Drawings
- GC 3.11 Use of the Work
- GC 3.12 Cutting and Remedial Work
- GC 3.13 Cleanup

#### PART 4 ALLOWANCES

- GC 4.1 Cash Allowances
- GC 4.2 Contingency Allowance

#### PART 5 PAYMENT

- GC 5.1 Financing Information Required of the Owner
- GC 5.2 Applications for Progress Payment
- GC 5.3 Progress Payment
- GC 5.4 Substantial Performance of the Work
- GC 5.5 Payment of Holdback upon Substantial Performance of the Work
- GC 5.6 Progressive Release of Holdback
- GC 5.7 Final Payment
- GC 5.8 Withholding of Payment
- GC 5.9 Non-conforming Work

#### PART 6 CHANGES IN THE WORK

- GC 6.1 Owner's Right to Make Changes
- GC 6.2 Change Order
- GC 6.3 Change Directive
- GC 6.4 Concealed or Unknown Conditions
- GC 6.5 Delays
- GC 6.6 Claims for a Change in Contract Price

#### PART 7 DEFAULT NOTICE

- GC 7.1 Owner's Right to Perform the Work, Terminate the Contractor's Right to Continue with the Work or Terminate the Contract
- GC 7.2 Contractor's Right to Suspend the Work or Terminate the Contract

#### PART 8 DISPUTE RESOLUTION

- GC 8.1 Authority of the Consultant
- GC 8.2 Negotiation, Mediation and Arbitration
- GC 8.3 Retention of Rights

#### PART 9 PROTECTION OF PERSONS AND PROPERTY

- GC 9.1 Protection of Work and Property
- GC 9.2 Toxic and Hazardous Substances
- GC 9.3 Artifacts and Fossils
- GC 9.4 Construction Safety
- GC 9.5 Mould

#### PART 10 GOVERNING REGULATIONS

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

#### PART 11 INSURANCE AND CONTRACT SECURITY

- GC 11.1 Insurance
- GC 11.2 Contract Security

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

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

The Canadian Construction Documents Committee (CCDC) is a national joint committee responsible for the development, production and review of standard Canadian construction contracts, forms and guides. Formed in 1974 the CCDC is made up of volunteer representatives from:

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

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

CCDC 2 is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 2 can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 2.

#### CCDC Copyright 2008

Must not be copied in whole or in part without the written permission of the CCDC.

**AGREEMENT BETWEEN OWNER AND CONTRACTOR**

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

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

**by and between the parties**

hereinafter called the "*Owner*"

**and**

hereinafter called the "*Contractor*"

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

**ARTICLE A-1 THE WORK**

The *Contractor* shall:

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

located at

*insert above the name of the Work*

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

*insert above the Place of the Work*

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

*insert above the name of the Consultant*

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

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

**ARTICLE A-2 AGREEMENTS AND AMENDMENTS**

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

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

## ARTICLE A-3 CONTRACT DOCUMENTS

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

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

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

## ARTICLE A-4 CONTRACT PRICE

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

/100 dollars \$

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

/100 dollars \$

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

/100 dollars \$

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

4.5 All amounts are in Canadian funds.

## ARTICLE A-5 PAYMENT

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

percent ( %), the *Owner* shall:

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

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

5.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
  - (1) 2% per annum above the prime rate for the first 60 days.
  - (2) 4% per annum above the prime rate after the first 60 days.Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

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

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

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

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

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

### Owner

*name of Owner\**

*address*

*facsimile number*

*email address*

### Contractor

*name of Contractor\**

*address*

*facsimile number*

*email address*

### Consultant

*name of Consultant\**

*address*

*facsimile number*

*email address*

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

## ARTICLE A-7 LANGUAGE OF THE CONTRACT

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

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

## ARTICLE A-8 SUCCESSION

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

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

SIGNED AND DELIVERED  
in the presence of:

**WITNESS**

**OWNER**

  
signature

name of person signing

signature

name of person signing

name of owner  
  
signature

name and title of person signing

signature

name and title of person signing

**WITNESS**

**CONTRACTOR**

  
signature

name of person signing

signature

name of person signing

name of Contractor  
  
signature

name and title of person signing

signature

name and title of person signing

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

## DEFINITIONS

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

**1. Change Directive**

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

**2. Change Order**

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

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

**3. Construction Equipment**

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

**4. Consultant**

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

**5. Contract**

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

**6. Contract Documents**

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

**7. Contract Price**

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

**8. Contract Time**

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

**9. Contractor**

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

**10. Drawings**

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

**11. Notice in Writing**

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

**12. Owner**

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

**13. Place of the Work**

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

**14. Product**

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



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

## GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT

### PART 1 GENERAL PROVISIONS

#### GC 1.1 CONTRACT DOCUMENTS

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

#### GC 1.2 LAW OF THE CONTRACT

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

#### GC 1.3 RIGHTS AND REMEDIES

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

## GC 1.4 ASSIGNMENT

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

## PART 2 ADMINISTRATION OF THE CONTRACT

### GC 2.1 AUTHORITY OF THE CONSULTANT

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

### GC 2.2 ROLE OF THE CONSULTANT

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

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

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

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

### **GC 2.4 DEFECTIVE WORK**

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

## PART 3 EXECUTION OF THE WORK

### GC 3.1 CONTROL OF THE WORK

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

### GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

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

### GC 3.3 TEMPORARY WORK

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

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

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

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

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

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

#### **GC 3.6 SUPERVISION**

- 3.6.1 The *Contractor* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representative shall not be changed except for valid reason.
- 3.6.2 The appointed representative shall represent the *Contractor* at the *Place of the Work*. Information and instructions provided by the *Consultant* to the *Contractor's* appointed representative shall be deemed to have been received by the *Contractor*, except with respect to Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

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

- 3.7.1 The *Contractor* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:
- .1 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
  - .2 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
  - .3 be as fully responsible to the *Owner* for acts and omissions of *Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Contractor*.
- 3.7.2 The *Contractor* shall indicate in writing, if requested by the *Owner*, those *Subcontractors* or *Suppliers* whose bids have been received by the *Contractor* which the *Contractor* would be prepared to accept for the performance of a portion of the *Work*. Should the *Owner* not object before signing the *Contract*, the *Contractor* shall employ those *Subcontractors* or *Suppliers* so identified by the *Contractor* in writing for the performance of that portion of the *Work* to which their bid applies.
- 3.7.3 The *Owner* may, for reasonable cause, at any time before the *Owner* has signed the *Contract*, object to the use of a proposed *Subcontractor* or *Supplier* and require the *Contractor* to employ one of the other subcontract bidders.
- 3.7.4 If the *Owner* requires the *Contractor* to change a proposed *Subcontractor* or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the differences occasioned by such required change.

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

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

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

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

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

### **GC 3.10 SHOP DRAWINGS**

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

### GC 3.11 USE OF THE WORK

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

### GC 3.12 CUTTING AND REMEDIAL WORK

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

### GC 3.13 CLEANUP

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

## PART 4 ALLOWANCES

### GC 4.1 CASH ALLOWANCES

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



## **GC 4.2 CONTINGENCY ALLOWANCE**

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

## **PART 5 PAYMENT**

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

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

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

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

### **GC 5.3 PROGRESS PAYMENT**

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

#### GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

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

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

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

#### GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

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

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

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

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

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

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

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

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

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

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

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

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

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

### GC 6.3 CHANGE DIRECTIVE

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

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

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

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

#### **GC 6.5 DELAYS**

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

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

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

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

## **PART 7 DEFAULT NOTICE**

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

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

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

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

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

## PART 8 DISPUTE RESOLUTION

### GC 8.1 AUTHORITY OF THE CONSULTANT

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

### GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

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



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

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

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

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

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

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

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

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

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

### GC 9.3 ARTIFACTS AND FOSSILS

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

### GC 9.4 CONSTRUCTION SAFETY

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

## GC 9.5 MOULD

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

## PART 10 GOVERNING REGULATIONS

### GC 10.1 TAXES AND DUTIES

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

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

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

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

### **GC 10.3 PATENT FEES**

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

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

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

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

### **GC 11.1 INSURANCE**

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

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

## GC 11.2 CONTRACT SECURITY

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

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

## PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

### GC 12.1 INDEMNIFICATION

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

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

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

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

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

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

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

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

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

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

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

## GC 12.2 WAIVER OF CLAIMS

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

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

### **GC 12.3 WARRANTY**

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



**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

**MOTION RECORD OF THE RECEIVER  
VOLUME 1 OF 4**  
*(Re: Motion for Payment)*

**GOODMANS LLP**  
Barristers & Solicitors  
Bay Adelaide Centre  
333 Bay Street, Suite 3400  
Toronto, Canada M5H 2S7

**Brendan O’Neill** LSO# 43331J  
boneill@goodmans.ca

**Christopher Armstrong** LSO# 55148B  
carmstrong@goodmans.ca

**Mark Dunn** LSO# 55510L  
mdunn@goodmans.ca

**Jennifer Linde** LSO# 86996A  
jlinde@goodmans.ca

Tel: 416.979.2211  
Lawyers for the Receiver