

**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**

REPLY MOTION RECORD OF THE RECEIVER

(Re: Motion for Payment)

February 28, 2025

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SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

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

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

February 28, 2025

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Appendix “4” - Email from J. Coco to S. Mizrahi dated November 15, 2022

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Appendix “6” - Excerpts from October 2023 Payment Listing (CM Fee Objections)

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Appendix “9” - Excerpts from October 2023 Payment Listing (Magix Objections)

Appendix “10” - Excerpts from October 2023 Payment Listing (Marketing Fee Objections)

Appendix “11” - MI Marketing Invoice C1407

1.0 INTRODUCTION

- 1.1 On October 18, 2023 (the “**Appointment Date**”), pursuant to an Order (Appointing Receiver) (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), Alvarez & Marsal Canada Inc. was appointed as receiver and manager (in such capacities, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP (the “**Beneficial Owner**”), Mizrahi Development Group (The One) Inc. (the “**Nominee**”) and Mizrahi Commercial (The One) GP Inc. (“**GP Inc.**” and, together with the Beneficial Owner and the Nominee, the “**Debtors**”) acquired for, or used in relation to, a business carried on by the Debtors, including, without limitation, in connection with the development of an 85-storey condominium, hotel and retail tower (the “**Project**”) located on the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario (“**One Bloor**”).
- 1.2 This report is a supplemental report to the Fifth Report (the “**Supplemental Fifth Report**”). It is served in reply to the evidence served by MI on January 22, 2025 (as described below). The purpose of this Supplemental Fifth Report is:
- (i) to provide the Court with further information and evidence regarding the relief sought in the MI Payment Motion, and to further set out the factual basis for the Receiver’s opposition thereto; and
 - (ii) to provide further 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.

- 1.3 This Supplemental Fifth Report should be read in conjunction with the Fifth Report and is subject to the restrictions and limitations described therein. Capitalized terms used and not defined in this Supplemental Fifth Report have the meanings given to them in the Fifth Report or the Receivership Order, as applicable.
- 1.4 The Receiver has reviewed the Affidavits of Sam Mizrahi, Mark Kilfoyle, Nemesio Pereira, Todd Hallam and Jeffrey Murva (the “**Mizrahi Affiants**”). It has addressed certain assertions made by the Mizrahi Affiants in this Supplemental Fifth Report. It has not addressed all of the statements made by the Mizrahi Affiants and the fact that the Receiver has not specifically addressed a statement is not an admission that the statement is true.

2.0 THE RECEIVER DID NOT MISLEAD MI

- 2.1 In the affidavit of Sam Mizrahi sworn January 22, 2025 (the “**Mizrahi Affidavit**”), Sam alleges that the Receiver’s interpretation of paragraph 17 of the Receivership Order (“**Paragraph 17**”) is somehow inconsistent with statements made by the Receiver to MI. Sam alleges that the Receiver misled him about its intentions. This did not occur.
- 2.2 Sam’s description of events is not accurate. Specifically, and as described in further detail below:
- (i) MI claimed that it was entitled to payments based on the MI Payment Practices, comprised of a 5% CM Fee on all of the Project’s hard costs and payments based on the Labour Rates (which included a substantial MI profit component). The Receiver made it clear, from the commencement of the Receivership Proceedings, that it would not make payments based on the MI Payment Practices. It did not, at

any time, make payments based on the MI Payment Practices or say that it would do so;

- (ii) MI never tried to stop providing services to the Project or communicated that it wished to do so. The Receiver never forced MI to continue to provide services by relying on Paragraph 17 or any other legal right. MI said, consistently and without exception, that it wanted (and expected) to remain as the General Contractor and complete the construction of the Project; and
- (iii) MI claimed for the first time on January 9, 2024 that Paragraph 17 required that the Receiver follow the MI Payment Practices, approximately three months after the Receivership Proceedings had commenced. The Receiver immediately told MI that its position was without merit.

- (i) ***The Receiver never told MI that it would be paid based on the MI Payment Practices prior to its appointment***

2.3 The Receiver understands that, in the period prior to commencement of the Receivership Proceedings, various stakeholders discussed the potential terms of the Receivership Order. Sam claims that he was given “assurances” that MI would be paid “in the normal course”. The Receiver did not give any assurances or participate in any discussions in which assurances were given to Sam that MI would be paid based on the MI Payment Practices. The Receiver has no knowledge of any assurances relating to the MI Payment Practices.

2.4 MI’s argument on this motion rests on Paragraph 17, which is based on the Model Receivership Order published by the Commercial List User’s Committee. The changes to Paragraph 17 are relatively minor, are focused on the fact that this is a receivership of a

real estate development project, and do not refer to either the MI Payment Practices or any contract between MI and the Debtors. The changes between Paragraph 17 and the equivalent section of the Model Order are shown in the blackline below:

THIS COURT ORDERS that all Persons having oral or written agreements with the ~~Debtor~~ 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 ~~Debtor~~ 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 ~~Debtor's~~ 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 ~~Debtor or~~ 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.

- 2.5 Sam states in the Mizrahi Affidavit that Paragraph 6 of the Receivership Order (“**Paragraph 6**”) was negotiated between the parties and that it authorizes certain payments to MI for services provided before the Receiver was appointed. The Receiver did not negotiate the amounts set out in Paragraph 6. The amounts were provided by MI as the amount of its pre-Receivership claim, and the parties agreed to those amounts in order to avoid opposition to the Receivership Order. The Receiver did not verify (and had no way to verify) the amounts claimed.
- 2.6 Paragraph 6 authorizes a payment to MI in the amount of \$783,305.03. Sam alleges that this amount was calculated based on the MI Payment Practices, and this appears to be accurate based on the underlying invoices prepared by MI.

- 2.7 The Receiver has reviewed Paragraph 6 in light of Sam’s allegations and does not believe that it supports MI’s position that it was to be paid according to the MI Payment Practices. Specifically, Paragraph 6 authorizes payments based on specific contracts between MI and the Debtors. It does not reference the MI Payment Practices or authorize payments to MI based on the MI Payment Practices. Paragraph 6 authorizes a particular pre-Receivership period payment amount invoiced and due:

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. **[emphasis added]**

- 2.8 Regardless of how the invoice amount was calculated, Paragraph 6 authorizes the Receiver to pay amounts owed pursuant to two agreements:
- (i) The Commercial Development Management Agreement made as of the 25th day of July, 2014 (defined in the Receivership Order as the “**Construction Management Agreement**”); and
 - (ii) The CCDC2 Stipulated Price Contract 2008 made on the 14th day of May, 2019, as amended on the 27th day of September, 2019 (defined in the Receivership Order as the “**GC Agreement**”).

- 2.9 The Receiver notes, parenthetically, that the Receivership Order does not reference the Unilateral Amendment to the GC Agreement that Sam executed on behalf of both MI and the Debtors on May 4, 2022.
- 2.10 The Construction Management Agreement does not authorize the MI Payment Practices. The Construction Management Agreement is attached as Exhibit A to the Affidavit of Mark Kilfoyle dated February 21, 2024. It is, primarily, an agreement relating to the development services that MI provided to the Project. By Agreement re Developer Agreements dated August 30, 2019, MI confirmed that it had received the full \$30 million payment owed to it under the Construction Management Agreement.
- 2.11 The terms of the GC Agreement are described in paragraphs 9.14 to 9.26 of the Fifth Report. The GC Agreement does not authorize the MI Payment Practices. It is a fixed price contract that contemplates payments to MI based on a percentage of construction progress achieved.
- 2.12 Accordingly, Paragraph 6 does not relate to the MI Payment Practices at all.
- (ii) ***The Receiver declined to make payments based on the MI Payment Practices on October 30, 2023***
- 2.13 The Receiver was appointed on October 18, 2023. Shortly after its appointment, the Receiver approached MI in order to understand and obtain additional supporting documentation for the amounts that it was charging the Debtors and the contractual basis for those amounts.

- 2.14 In its communications with the Receiver during this period, MI claimed that it was contractually entitled to the payments that it received. It provided a number of documents to the Receiver in an attempt to establish its entitlement.
- 2.15 On October 30, 2023, approximately 12 days after the Receiver was appointed, the Receiver wrote an e-mail to MI stating that it would pay certain costs claimed by MI but that it would not pay MI its claimed CM Fee or Labour Profits:
- 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.
- 2.16 The Receiver attached a document titled “September Payment Review” to its October 30, 2023 e-mail, which set out what costs the Receiver intended to pay.
- 2.17 As noted in the Fifth Report, MI charged certain labour and staffing costs (defined in the Fifth Report as the “**Labour Costs**”) together with substantial mark-ups on those costs (defined in the Fifth Report as the “**Labour Profits**”). The September Payment Review indicated that the Receiver would not pay the Labour Profits that MI claimed. The Labour Costs that the Receiver paid included a gross-up to reflect a 20% payroll burden in addition to the Labour Costs to cover vacation costs, employment insurance premiums, Canada Pension Plan premiums and similar obligations incurred by MI.
- 2.18 The Receiver’s October 30, 2023 e-mail is attached hereto as Appendix 1. In light of the Receiver’s e-mail, MI knew no later than October 30, 2023 that the Receiver would not make payments based on the MI Payment Practices unless and until it was satisfied that MI was contractually entitled to the amounts that it claimed.

(iii) *MI claimed to need additional payments to meet expenses*

- 2.19 The Receiver continued to review MI's claims after sending its October 30, 2023 e-mail. As part of this review, it analyzed the various agreements between MI and the Debtors. During this period, MI told the Receiver that the primary contract that governed its work as General Contractor of the Project was the GC Agreement.
- 2.20 On November 7, 2023, Sam met with Josh Nevsky and Fiona Mak of the Receiver. Sam said that he could not continue to operate based on the amounts the Receiver intended to pay because MI had other costs that it had to meet, including year-end bonuses, management costs and rent.
- 2.21 MI's inability to pay its operating costs could have disrupted its ability to provide services to the Project. The Receiver wanted to understand this risk, so MI and the Receiver agreed at the November 7 meeting that MI would prepare a summary of its overhead costs and present that summary to the Receiver.
- 2.22 MI prepared an analysis of the overhead costs that it had incurred and the income that it had received in its capacity as General Contractor on the Project in 2023. The Receiver reviewed that analysis and determined that: (i) MI omitted the 5% CM Fee that it received in 2023; and (ii) MI included a number of costs that were not related to the Project. Based on the Receiver's analysis, MI earned a cash profit of approximately \$9.5 million in 2023 alone for its work on the Project, even after allowing for substantial legal, advertising and travel costs that did not appear to have any connection to the Project. MI did not dispute this conclusion when it was communicated on November 26, 2023.

2.23 At paragraphs 12 to 18 of the Responding Affidavit of Mark Kilfoyle dated February 20, 2025, Mr. Kilfoyle asserts that the Receiver misled him about the purpose of the analysis appended. This is not correct. The Receiver was clear about the purpose of its analysis – to evaluate MI’s assertion that it could not afford to continue as General Contractor on the Project unless it received both the CM Fee and the Labour Profits.

2.24 Based on the Receiver’s analysis, MI’s claim was (and remains) not accurate. The Project was very profitable for MI, even after the Receiver ceased paying the Labour Profits.

(iv) ***The Receiver did not tell MI that it was obliged to provide services on the Project***

2.25 Sam alleges at paragraph 6 of the Mizrahi Affidavit that the Receiver told him that MI was required to continue to provide services to the Project under the terms of the Receivership Order. It did not.

2.26 Sam told the Receiver, consistently and without exception, that MI planned to complete the Project. He never threatened to withdraw MI’s services from the Project. The possibility of MI refusing to provide services was never discussed.

2.27 Sam purports to describe a “meeting” where the Receiver told him that MI could not withdraw services, and that the Receiver would not pay MI the Labour Profits in addition to the CM Fee. Sam states that this is the “same meeting” described in paragraph 7.15 of the Fifth Report.

2.28 Paragraph 7.15 of the Fifth Report does not refer to a meeting, rather, it refers to an email dated November 26, 2023 wherein the Receiver communicated its position on paying MI, which is attached as Appendix 3 of the Fifth Report.

(v) *The Receiver told MI that its position on Paragraph 17 had no merit*

- 2.29 MI and the Receiver negotiated in the period after November 26, 2023 to explore the possibility of a commercial resolution that could have seen MI continuing in its capacity as General Contractor pending the completion of the SISP. At paragraph 7 of the Mizrahi Affidavit, Sam asserts that “MI agreed to continue to provide services while the parties attempted to negotiate a resolution, and, failing agreement, have the issue determined by the Court.” To be clear, the Receiver never reached any agreement with MI about whether it would continue to provide services while the parties discussed payment terms for MI. The issue was never discussed.
- 2.30 Sam asserts at paragraph 18 of the Mizrahi Affidavit that MI would not have performed services on the Project if the Receiver had shared its interpretation of Paragraph 17 with it at the time. This is not consistent with MI’s actions in the fall of 2023 and the winter of 2024. The Receiver explicitly communicated to Sam that it did not agree with the MI Payment Practice. MI did not withdraw or threaten to withdraw its services.
- 2.31 MI first claimed in early January 2024 that Paragraph 17 required that the Receiver continue the MI Payment Practices, even if they were not authorized by any contract between the parties. MI articulated this position in a detailed memorandum drafted by Glaholt LLP dated January 9, 2024.¹

¹ This memorandum is marked without prejudice. Although the Receiver does not believe that settlement privilege applies to the memorandum, it has not attached the memorandum out of an abundance of caution.

- 2.32 The Receiver, MI and their respective counsel met on January 10, 2024 to discuss MI's payment claim.
- 2.33 At the meeting, and following some discussion on this point, the parties agreed that the meeting would proceed on a without prejudice basis. Despite this agreement, Sam has provided a partial description of the meeting in the Mizrahi Affidavit. Without any further waiver of settlement privilege, the Receiver has provided an accurate summary of the meeting below.
- 2.34 Mr. O'Neill (in his capacity as legal counsel to the Receiver) told MI's counsel that MI's memorandum was a "mistake" and that MI's legal arguments were not valid and would not be discussed. Mr. O'Neill specifically stated that the Receiver had not raised issues with the amounts paid to MI before its appointment because it was focused on moving the Project forward but that it had not accepted that payments made to MI were appropriate.
- 2.35 Contrary to Sam's allegation, the Receiver did not say at the January 10, 2024 meeting that MI would be terminated if it tried to enforce any rights. What the Receiver did say at the January 10, 2024 meeting – and at other times – was that if MI insisted on pursuing its position that Paragraph 17 mandated adherence to the MI Payment Practices, as asserted by MI, then there would likely be no basis for a continuing working relationship between the Receiver and MI, as the Receiver did not support or agree with the MI Payment Practices.
- 2.36 At paragraph 18 of the Mizrahi Affidavit, Sam alleges that the Receiver had "complete knowledge" of the historical payment practices and underlying contractual documentation.

This is not accurate. It took the Receiver and its counsel considerable time to understand the history of the Project and the various contracts between the parties.

2.37 The parties continued their without prejudice discussions throughout January 2024. On January 28, 2024, Borden Ladner Gervais LLP (“**BLG**”) (then counsel to MI) wrote to Goodmans stating that MI had instructed it to bring an urgent motion in connection with “the matters that we have been engaging with the receiver and its counsel with for quite some time”.²

2.38 After BLG sent its e-mail, Sam specifically told the Receiver that he did not expect that his motion (which had not yet been served) would impact MI’s work on the Project. He did not say that the motion would seek leave for MI to discontinue services to the Project or that MI wanted to stop providing services to the Project.

2.39 Goodmans spoke with counsel (including Messrs. Bannon and Jaipargas) to MI on January 31, 2024. During this discussion, Goodmans conveyed that the Receiver did not believe that MI could bring the motion it had threatened without irrevocably harming its relationship with the Receiver, and that if MI brought the motion, it would no longer be the General Contractor on the Project.

2.40 As set out at paragraphs 12.1 to 12.4 of the Fifth Report, based on the foregoing events and the position being taken by MI and its counsel, the Receiver determined that it was necessary and prudent to explore the possibility of hiring a replacement General Contractor

² The Receiver notes that this e-mail was marked without prejudice, but it did not articulate any settlement proposal or advance any settlement discussions. Accordingly, the Receiver does not believe that settlement privilege applies to this e-mail.

in light of the difficulties it was having with MI. It ultimately determined that SKYGRiD was likely to provide superior construction management services at a lower cost compared to MI.

2.41 As set out in the Fifth Report, on February 26, 2024, the Receiver disclaimed the Development Management Agreement and the GC Agreement, with such disclaimer to be effective March 13, 2024. MI served the MI Payment Motion later on February 26, 2024.³ The Disclaimer Notice was served before the MI Payment Motion. Sam’s assertion at paragraph 16 of the Mizrahi Affidavit that the Disclaimer Notice was served in response to the MI Payment Motion is incorrect.

2.42 To be clear, none of the foregoing discussions involved any threat by MI to stop providing services to the Project. MI’s stated goal was to remain the General Contractor for the Project until it was complete. It never expressed any intention of, or desire to, demobilize from the Project. MI communicated to the Receiver that it wanted to continue working on the Project and to be paid using the MI Payment Practices.

(vi) ***The Receiver’s correspondence with contractors***

2.43 In the Mizrahi Affidavit, Sam refers to letters that the Receiver sent to contractors working on the Project. The Receiver sent a letter to contractors on October 20, 2023 (the “**October 2023 Letter**”) setting out the general terms of the Receivership Order. This letter stated that “all contractors and trades are required to continue providing goods and services, and

³ MI re-served the Motion on February 27 as the first Motion Record MI served contained confidential information. The updated Motion Record is dated February 27, 2024

will continue to be paid in the ordinary course.” The letter also explicitly states that the Receiver did not affirm any contract or accept any personal liability:

The Receiver is in the process of reviewing and considering all contracts relating to The One Project. Nothing in this letter shall be construed to constitute an affirmation of any contract by the Receiver, and the Receiver expressly disclaims any personal liability under or in connection with any such contract.

2.44 The October 2023 Letter was sent to subcontractors working on the Project in order to provide a basic overview of the Receivership Proceedings, and was part of a broader communication roll-out designed to stabilize the Project following the commencement of the Receivership Proceedings.

2.45 The letter was not a representation to MI that the Receiver would continue paying MI based on the MI Payment Practices even if they were not authorized by any contract or commercially reasonable. MI could not reasonably have relied on the October 2023 Letter or believed that it was such a representation, especially since very shortly after sending the letter, the Receiver refused to pay amounts claimed by MI.

(vii) ***The Receiver’s letter to subcontractors, trades and suppliers on February 26, 2024***

2.46 The Receiver sent a further letter to contractors, trades and suppliers working on the Project on February 26, 2024 (the “**February 2024 Letter**”), after MI was terminated. The February 2024 Letter provided general information with respect to how the Project would move forward after MI’s termination. The February 2024 Letter did not affect MI, since it had already been terminated.

3.0 THE MI PAYMENT PRACTICES

(i) *The Debtors did not explicitly agree to make payments based on the MI Payment Practices*

3.1 The Receiver has carefully considered MI's evidence about the MI Payment Practices. That evidence has not changed the Receiver's conclusion that MI was not entitled to payments based on the MI Payment Practices. In summary:

(i) at section 9 of the Fifth Report, the Receiver provided a detailed summary of the contracts between MI and the Debtors and the events relevant to MI's claim that it was entitled to payment based on the MI Payment Practices. In the Mizrahi Affidavit, Sam does not dispute most of the facts in section 9 of the Fifth Report; and

(ii) the Receiver concluded that no contract between MI and the Debtors authorized the MI Payment Practices. Sam does not allege that the Debtors entered into an actual contract (orally or in writing) to pay MI based on the MI Payment Practices.

3.2 The core argument in the Mizrahi Affidavit is that because MI *received* payments based on the MI Payment Practices in the past, MI must have been *entitled* to those payments. Sam asserts that since the Senior Secured Lenders, Altus and Coco all knew about the MI Payment Practices, they must have been authorized.

3.3 The Receiver does not agree with this assertion. As noted in the Fifth Report, Coco objected explicitly and repeatedly to the MI Payment Practices. Coco did not agree (explicitly or implicitly) that MI was entitled to payments based on the MI Payment Practices.

- 3.4 Sam repeatedly references approval by the Senior Secured Lenders and Altus in the Mizrahi Affidavit, but the relevance of this alleged approval is unclear. MI was entitled (or not entitled) to payments based on its contracts with the Debtors. The Senior Secured Lenders' funding decisions, and the reporting prepared by Altus in connection with those decisions, did not alter the contractual agreements between the Debtors and MI.
- 3.5 Specifically, Article 3 of the Credit Agreement lists certain conditions precedent to the Senior Secured Lenders advancing funds to the Debtors. The conditions precedent existed for the sole benefit of the Senior Secured Lenders, and the Senior Secured Lenders could waive those conditions. The payment application process was intended to facilitate the Senior Secured Lenders' decision to advance (or not advance) funds to the Debtors.
- 3.6 The terms of Altus' engagement are set out in an engagement letter executed by the Senior Secured Lenders on August 29, 2019, a copy of which is attached hereto as Appendix 2. Altus was engaged by the Senior Secured Lenders as part of the payment application process to provide the information required to decide whether to advance (or not advance) funds under the terms of the Credit Agreement.
- 3.7 Neither Altus nor the Senior Secured Lenders were agents for the Debtors. Neither Altus nor the Senior Secured Lenders could create or change the contractual agreements between MI and the Debtors.
- 3.8 In any event, and as noted at paragraph 9.56 of the Fifth Report, the Receiver has not been able to locate any specific evidence that Altus or the Senior Secured Lenders explicitly approved the MI Payment Practices, as opposed to approving individual Payment Listings, and no evidence of any such approval is included in the Mizrahi Affidavit.

(ii) *Coco's alleged agreement to MI Payment Practices*

- 3.9 Sam asserts at paragraphs 23, 24, 27, 120, 123 and 150 of the Mizrahi Affidavit that various parties (including Coco) agreed to the MI Payment Practices. In each case, however, Sam does not specify when or how the agreement is alleged to have been reached. Sam does not provide any written confirmation by Coco (apart from the Payment Listings, that are described below) that Coco accepted or agreed to the MI Payment Practices. He also does not claim that Coco explicitly agreed to the MI Payment Practices orally.
- 3.10 MI seems to claim that Jenny's execution of certain Payment Listings that included payments to MI based on the MI Payment Practices (which Payment Listings are described at paragraphs 9.56 and 9.58 of the Fifth Report) constituted an "acknowledgment" that MI was "entitled" to payments based on the MI Payment Practices.
- 3.11 Specifically, Sam asserts at paragraph 83 of the Mizrahi Affidavit that it "defies credulity" that Coco did not "acknowledge MI's entitlement to [the MI Payment Practices]" because it had "full and complete real time access to all books and records including the general ledger and bank accounts."
- 3.12 The Receiver does not agree. As noted in the Fifth Report:
- (i) Coco objected to the MI Payment Practices in November 2020, and commenced an arbitration relating to, among other things, the termination of CCM as the Construction Manager of the Project and the additional payments to MI that followed; and

(ii) for a period of time from November 2020 to the execution of the Control Agreement in May 2021, Jenny signed Payment Listings that included payments to MI without explicit objection, however, Coco has advised that this was because the parties were negotiating a buy-out of Coco's equity interests in the Project.

(iii) *The MI Payment Practices were not negotiated at arm's length, or at all*

- 3.13 At paragraph 53 of the Mizrahi Affidavit, Sam asserts that the MI Payment Practices were “not a ‘non-arm's length agreement’”. The Receiver does not agree that there was any agreement (arm's length or otherwise) between the Debtors and MI that authorized the MI Payment Practices.
- 3.14 Moreover, the Receiver is not aware of any evidence that MI negotiated the MI Payment Practices except for the CM Fee, which was addressed in the Mediator's Proposal and Control Agreement with Coco, or any other party.
- 3.15 MI and the Debtors were related parties. Sam controlled both entities. Although Sam did not have the legal right to unilaterally control the Debtors (apart from during the Control Period), he exercised *de facto* control over the Debtors' actions. Sam also made the decisions relating to the MI Payment Practices. The MI Payment Practices continued even when Coco specifically objected to them.
- 3.16 Similarly, Sam decided that MI should charge a 5% CM Fee and the Labour Rates after the Control Agreement expired. Coco consistently objected to the MI Payment Practices after the Control Agreement terminated in August 2022, but those objections did not stop payments to MI based on the MI Payment Practices.

3.17 The fact that the MI Payment Practices continued over Coco's objection is, in the Receiver's view, strong evidence that Sam was ultimately in control of how much MI was paid and that the MI Payment Practices were not authorized by any arm's length agreement.

(ii) ***Coco immediately objected to the MI Payment Practices after CCM was terminated***

3.18 Sam appends an e-mail exchange with Ms. Rico, an accountant appointed to oversee the Project's finances pursuant to the Mediator's Proposal, on November 18, 2020 as Exhibit I to the Mizrahi Affidavit to support his assertion that Coco agreed to the MI Payment Practices. But Ms. Rico explicitly objected to the MI Payment Practices in the relevant e-mail:

Your request for reimbursement of Mizrahi Inc. employee costs is denied as the expenditure is not in compliance with either the:

1. Arbitration Settlement ("Settlement") that you agreed to in September 2019
2. Resolutions of the Directors of Mizrahi Development Group (The One) Inc. dated November 22, 2016 ("Resolutions")
 - o Executed by you and Jenny
 - o Attached for your information

3.19 In this e-mail, Ms. Rico also communicated Coco's position that "a GC with equivalent expertise [to CCM]" must be put in place immediately. In other words, Ms. Rico did not agree that MI could replace CCM or be paid the amounts previously paid to CCM.

3.20 Ms. Rico's e-mail was apparently copied to representatives of the Senior Secured Lenders, and Sam responded to set out MI's position on payment. Sam indicates at paragraph 47 of the Mizrahi Affidavit that he does not "have a record of receiving a substantive response to this position." The Receiver notes that, during the same period, Coco commenced (although did not ultimately pursue) an arbitration to address the termination of CCM and

additional responsibilities assumed by MI. This is described at paragraph 9.49 of the Fifth Report.

(ii) *The relationship between Sam and Jenny undermines Sam’s assertion that Coco implicitly agreed to the MI Payment Practices*


- 3.21 The relationship between Sam and Jenny provides important context for Sam’s assertion that there was an implied agreement or “acknowledgement” permitting the MI Payment Practices. As set out in the Fifth Report, and in paragraph 22 of the Mizrahi Affidavit, the relationship between Sam and Jenny was fraught with conflict. Jenny swore in an affidavit dated June 4, 2020 and that she did not trust Sam to “do the right thing”. She deposed that the “Project is now in a position where it may fail because of Sam’s financial and operational practices...”
- 3.22 One of Sam’s core complaints about Jenny was that she refused to agree to steps that were (in Sam’s view) needed to move the Project forward. By way of example, an affidavit sworn by Sam on June 2, 2020, alleged that Jenny had delayed payments and taken a litany of other steps that were damaging to the Project. Sam swore an affidavit dated March 3, 2023, asserting that Jenny “tends to create, rather than solve, problems”.
- 3.23 Given the lack of trust between the parties, and Coco’s explicit objection to the MI Payment Practices, the Receiver does not consider it credible that MI assumed (or could reasonably have assumed) that Coco “acknowledged” MI’s “entitlement” by executing certain Payment Listings without explicit objection during the period between MI’s termination of CCM and the parties’ execution of the Control Agreement.

(iii) *Coco objected to the MI Payment Practices consistently and repeatedly after the Control Agreement expired*

- 3.24 As noted in paragraph 9.51 of the Fifth Report, Coco advised the Receiver that it did not pursue its arbitration in the fall of 2020 because it engaged in negotiations relating to the sale of its equity interest in the Project to Sam. Sam does not dispute this, but claims at paragraph 49 of the Mizrahi Affidavit that “Coco never revived her complaints about the payment of fees to MI or the termination of CCM.”
- 3.25 Sam’s statement is not accurate. Coco objected to the MI Payment Practices after the Control Agreement expired. She repeated those complaints every month between the expiration of the Control Agreement in August 2022 and the appointment of the Receiver in October 2023. Sam caused the Debtors to make payments to MI based on the MI Payment Practices despite these objections.
- 3.26 Sam was able to cause the Debtors to make these payments because he claimed that he still had complete control over the Debtors despite the expiry of the Control Agreement. As noted at paragraph 9.70 of the Fifth Report, Sam executed the Control Resolution dated August 6, 2022 purporting to extend his control over the Project indefinitely. During the period between August 6, 2022 and June 2023 (when the Control Resolution was held to be void *ab initio*), Sam took the position that Jenny’s approval of Payment Listings was not required. During this period, Jenny did not sign the Payment Listings. The signature block for the January 2023 Payment Listing is reproduced below, as an example:

Note: Wire amounts noted in USDs, GBPs, KRWs may differ from the actual depending on FX at time of transfer

Authorized Signatures:



Sam Mizrahi
I have the authority to bind the corporation

Signature not required as per resolutions

Jenny Coco
I have the authority to bind the corporation

- 3.27 In the first Payment Listing submitted by MI after the Control Agreement expired, Coco specifically noted that it objected to MI's fees but would not stop payments to sub-trades:

As stated in our prior comments, **Coco shall not withhold payments to sub-trades but reserve the right to dispute Mizrahi Inc fees, as well as dispute the application of management fees** on material supplied, as the methodology [*sic*] imposed is inconsistent. **Further we do not support the excessive personnel Mizrahi Inc has on site** and the assessment of management fees on traffic control and health and safety (all third party). **As MI is aware, we have had payments under protest since 2019, by M. Rico.**

- 3.28 Coco's objections are set out in the document included as Appendix 3. The fees claimed by MI were paid over Coco's objection.
- 3.29 At paragraphs 138 to 140 of the Mizrahi Affidavit, Sam refers to the Payment Listings for August and September 2022 where Coco did not object to the Labour Rates charged for crane operators. But Coco objected to the rates charged for crane operators – and all of the other Labour Rates – in October 2022 and in each subsequent month. The objection for October 2022 is reproduced below:

3 Crane Operators: Mizrahi has invoiced hourly at a rate of \$103.21 to \$203/hour (and many Overtime above the subject rates). These rates exceed industry standard. Coco protests the same, and is requesting a copy of certified payroll, to be audited by a third party consultant for confirmaiton [*sic*] of personnel rates and confirmation

of their on site attendance. **The rates are excessively higher than industry standard, and a comprehensive review should be implemented from the date of the Control Agreement until today's date,** by a third party consultant approved by Coco. [emphasis added]

- 3.30 In November 2022, after Coco had commenced proceedings to set aside the Control Resolution (which were ultimately successful), Jenny advised that she would no longer execute payment documents or cheques for the Project by e-mail, which is attached hereto as Appendix 4. Jenny wrote the following regarding Sam's actions:

This has made it impossible for me to continue to provide meaningful ongoing review and authorization in a timely manner. As a result, until the validity of the Resolution is decided either by arbitration or the court (and I expect the Resolution will be declared invalid and unlawful), I will not be signing any more cheques. It is inconsistent with the position that you have taken to date and this inconsistency cannot continue. **You cannot concurrently insist that I have no authority in respect of the Project and yet appeal each month for my signature authorizing the payment of itemized Project payables.** Likewise, you cannot assert that I am jeopardizing the Project in withholding a signature that you insist is not required. **You are well aware of the concerns about the Project that I have raised time and time again and you have ignored them. I am not, and will not be, responsible for steps that you take while I have been excluded from decision-making and transparency into the Project.** The lead lender is copied on this email, and will have to make its own determination as to the validity of the Resolution, and your proceeding without my signature or consent to Project payables. **Decisions that you purport to make under the Resolution are yours and yours alone.**

- 3.31 Coco continued to object to the MI Payment Practices (including the 5% CM Fee) after the Control Agreement expired. Specifically, Coco asked for a reconciliation of all fees paid to MI after the Control Agreement expired:

As previously requested, Coco is entitled to a full analysis of all subtrades, work completed, change orders etc..... **Also, the CM fee**

should be amended to reflect the Arbitration award at 2.5% due to Mizrahi. In addition, Mizrahi is not entitled to paymet [*sic*] for material suppliers as subcontractors. All payments due to Mizrahi should be placed in escrow until a reconciliation is completed for extraneous and unapproved costs for which MI received a CM Fee, or overcharged. [emphasis added]

- 3.32 Coco also specifically objected to MI's failure to complete the Project in accordance with the Contract Schedule and took the position on the April 2023 Payment Listing that:

Mizrahi should be responsible for all costs, as he is in default of the Credit Agreement, exceeding the completion date as notified by the lender on 4th January 2023. **This is a contractor's lack of proper & efficient management, not to mention the lack of execution capability on to deliver the Project within the budget and on time.**

- 3.33 Coco objected to various aspects of the Payment Listings in each month after the expiry of the Control Agreement. These objections are reflected in the October 2023 Payment Listing, which is attached hereto as Appendix 5.⁴

- 3.34 Specifically, Coco objected to the MI Payment Practices in each month after the expiry of the Control Agreement. These objections are attached hereto as Appendix 6.

(iii) ***The Senior Secured Lenders' alleged agreement to the MI Payment Practices***

- 3.35 Sam asserts that the Senior Secured Lenders knew about and approved the MI Payment Practices. As set out below, the Receiver does not believe that the Senior Secured Lenders'

⁴ For ease of reference, the Receiver has included only the October 2023 Payment Listing as Appendix 5, since this document includes all objections made by Coco in the August 2022 – October 2023 period. Coco's Payment Listing documents were cumulative, such that each month included all of the comments and objections from prior months. The Payment Listing for October 5, 2023 is being appended to this Supplemental Report in its native excel format for ease of review.

alleged approval is relevant to MI's entitlement to be paid funds by the Debtors. In addition, MI has failed to tender any evidence that the Senior Secured Lenders explicitly approved the MI Payment Practices.

- 3.36 The evidence appended to the Mizrahi Affidavit does not support Sam's claims. At paragraphs 42 and 43 of the Mizrahi Affidavit, Sam alleges that an e-mail sent by the Senior Secured Lenders on November 16, 2020 supports his position that the Senior Secured Lenders reviewed and approved the MI Payment Practices. The e-mail, which is appended as Exhibit H to the Mizrahi Affidavit, is an exchange between the Senior Secured Lenders and their counsel at Osler that was apparently forwarded to Sam. In the e-mail, Osler advised the Senior Secured Lenders that MI was working on a fixed price contract. The relevant excerpt is set out below:

- a. The construction contract with Mizrahi Inc. is a fixed price contract and it provides for payments to Mizrahi Inc. on the basis of the portion of the project that has been completed. In determining payments owing to Mizrahi Inc., it is not relevant whether a subcontractor completed that work or whether Mizrahi Inc. completed the work with its own employees. Similarly, absent a change order changing the contract price, the fact that Mizrahi Inc. has incurred increased costs to complete the Projects is not relevant to what is owing to Mizrahi Inc. at any given time as the payments owed to Mizrahi Inc. are based on progress on the Projects. Altus should be certifying what is payable to Mizrahi inc. on that basis and we do not know why Coco would dispute amounts so certified.

- 3.37 Based on this correspondence, and contrary to Sam's assertion, the Senior Secured Lenders seemed to believe in November 2020 that the parties were following the payment terms in the GC Agreement.

- (iv) ***The Receiver does not seek damages for failure to complete the Project for the Contract Price by the Completion Date***

- 3.38 At paragraphs 76 to 118 of the Mizrahi Affidavit, Sam describes the substantial budget increases and schedule delays that occurred on the Project while MI was the General Contractor. As described in the Fifth Report, the budget for the Project increased

substantially and the scheduled completion date for the Project was significantly delayed while MI was the General Contractor on the Project.

3.39 Sam asserts that if any party had insisted “as the Receiver does now” that MI complete the Project for the Contract Price and the Contract Schedule, MI would have “terminated its work on the Project”.

3.40 First, the Receiver is not seeking damages from MI for breaching the GC Agreement by failing to complete the Project for the Contract Price and by the Contract Schedule. The suggestion that the Receiver is “insisting” that MI complete the Project in accordance with the terms of the GC Agreement is not correct.

3.41 Second, MI was not entitled to terminate its work on the Project because it could not complete the Project for the Contract Price or in accordance with the Contract Schedule.

(v) ***Sam appears to misunderstand the Altus Report cited in the Mizrahi Affidavit***

3.42 Sam also states that the Altus Report dated August 28, 2019 is evidence that Altus knew that construction of the Project would cost much more than the Contract Price. Sam states that there was an “agreed project budget” of \$1.39 billion in the August 2019 Altus Report and so “the parties knew and agreed that the budget for the Project was not \$583.2 million” as stated in the GC Agreement.

3.43 This assertion appears to rest on a misreading of the Altus report, which is attached as Exhibit K to the Mizrahi Affidavit. The figure cited by Sam, \$1.39 billion, is the budget for the *entire* Project (including, for example, land acquisition costs and financing costs). The Contract Price was for *construction* of the Project.

- 3.44 The Altus Report specifically referenced the GC Agreement and the Contract Price. The overall construction budget reported in the August 2019 Altus Report is approximately \$588 million, which is comprised of a general contract budget of approximately \$583 million (which the Contract Price is based on) and other construction related budget items of approximately \$5 million.
- 3.45 In any event, as set out in the Fifth Report, the Receiver does not believe that the Altus Reports created (or could create) any entitlement for MI to be paid by the Debtors.
- (vi) *MI's assertion that Coco had "complete transparency" into the Project's finances was heavily disputed*
- 3.46 At paragraphs 82 to 110 of the Mizrahi Affidavit, Sam asserts that Coco and Maria Rico, had "complete transparency" into the Project's finances.
- 3.47 Both Jenny and Ms. Rico vehemently denied that MI had complied with the terms of the Mediator's Proposal with respect to the management of the Project. The parties exchanged lengthy affidavits setting out their position on what information had (or had not) been provided to Coco and Ms. Rico.
- 3.48 This dispute was one of the issues that gave rise to the 2020 Arbitration and was addressed in the 2020 Award. The Panel found that Ms. Rico was entitled to complete transparency. It did not make a finding with respect to the parties' dispute about whether Ms. Rico and Coco had received all of the information they were entitled to under the terms of the 2020 Agreement.

- 3.49 A detailed examination of the transparency provided (or not provided) to Coco and Ms. Rico is not necessary in the context of this motion. The Receiver noted the information provided to Coco about the MI Payment Practices at paragraph 9.56 of the Fifth Report, and Sam does not appear to dispute this summary or assert that more information was provided.

4.0 SKYGRID CHARGED LESS THAN MI FOR THE SAME WORK

- 4.1 As noted at paragraphs 12.2 and 12.3 of the Fifth Report, the Receiver reported that SKYGRiD has charged significantly less for its work on the Project than MI. Sam asserts at paragraph 148 of the Mizrahi Affidavit that SKYGRiD's responsibilities to the Project "were much less than [*sic.*] the responsibilities of MI." At paragraphs 147 to 148 of the Mizrahi Affidavit, Sam lists a number of steps taken by MI, including relating to the acquisition of the land required to build the Project (the "**Property**"), securing the municipal permits required to begin construction of the Project and selling units in the Project. Sam says that SKYGRiD's mandate does not include these steps.
- 4.2 The Receiver notes that the steps listed by Sam have no relevance to MI's role as General Contractor for the Project, and MI has already been paid substantial amounts with respect to each step listed. Specifically, MI was paid \$30 million of development fees for, among other steps, assembling the Property and securing the municipal permits required for the Project. It also earned commissions and the Residential Management Fee on the sale of condominium units.

5.0 THE RECEIVER'S ACTIONS HAVE NOT CAUSED DELAY

- 5.1 At paragraph 187 of the Mizrahi Affidavit, Sam asserts that the Receiver's decision to focus on building the tower over the interior would cause "extraordinary delay in the completion of the Project". The Receiver disagrees.
- 5.2 As a preliminary matter, Sam's criticism of the Receiver's focus of construction is not related to the claims asserted by MI or the Receiver on this motion. Without admitting that Sam's allegations are relevant, the Receiver has responded briefly below.
- 5.3 MI made similar claims while it was the General Contractor on the Project after the Receiver was appointed. MI was never able to substantiate its allegations, largely because MI was unwilling or unable to produce a credible schedule outlining when various construction steps would be completed if the Receiver agreed to its suggested course of action.
- 5.4 The Receiver conducted a sale and investment solicitation process ("SISP") to identify either a party willing to purchase the Project or a new developer to manage the Project to completion. Based on the Receiver's own experience and advice from KDC and Jones Lang LaSalle Real Estate Services, Inc. (the broker hired by the Receiver to assist with the SISP), a potential developer or purchaser might have value maximization proposals that would require flexibility with respect to how the Project was built.
- 5.5 The Receiver worked to balance the need to proceed with construction against the need to maintain flexibility in order to make the Project appealing to potential purchasers and developers. The Receiver determined, after consultation with its professional advisors, that it was necessary and appropriate to defer certain interior design and construction decisions

until there was further clarity with respect to the outcome of the SISP and any future owner or developer's decisions with respect to how the Project would be developed.

- 5.6 Sam claims at paragraph 187 of the Mizrahi Affidavit (without further explanation) that deferring these decisions will cost the Project “hundreds of millions of dollars in additional costs”. The Receiver does not agree that deferring the construction of certain interior elements in the Project will have this impact on the ultimate cost of or completion date for the Project.
- 5.7 In addition, the Receiver has reviewed the affidavit of Todd Hallam sworn January 21, 2025 (the “**Hallam Affidavit**”). The Receiver does not agree that he has identified any legitimate issues with SKYGRiD's performance as the construction manager of the Project.
- 5.8 Mr. Hallam managed the construction of the curtain wall on the Project. He briefly worked for SKYGRiD in the same capacity after MI was terminated. The Receiver does not agree with Mr. Hallam's description of events relating to the curtain wall in a number of important respects.
- 5.9 Mr. Hallam states at paragraph 16 of the Hallam Affidavit that construction of the Project slowed “as some suppliers were not paid on schedule, such as the glass supplier who required upfront payment for the provision of materials.” In April 2024, Mr. Hallam promised the supplier in question early payment (i.e., payment outside of the Receiver's regular payment cycle) without the Receiver's knowledge or approval. The Receiver advised Mr. Hallam that the Receiver's approval is required prior to promising early payment to suppliers, and paid the supplier in the ordinary course. The Receiver is not

aware of any delay relating to this issue. Correspondence with Mr. Hallam relating to this issue is attached hereto as Appendix 7.

5.10 Mr. Hallam resigned because the Receiver did not agree to fund his proposed travel plans. On May 1, 2024, Mr. Hallam proposed travel plans reflecting multiple visits to China, Singapore and Vietnam and provided a rough budget of \$100,000 for his travel. He threatened to resign unless his travel plans were approved by May 3, 2024. SKYGRiD responded that this threat was inappropriate and, in response, Mr. Hallam resigned. This correspondence is attached hereto as Appendix 8.

5.11 At paragraph 14 of the Hallam Affidavit, Mr. Hallam makes various claims about the interior construction of the Project. The Receiver notes that Mr. Hallam did not work on the interior construction, and only worked for SKYGRiD for a relatively short time.

6.0 THE DEBTORS' CLAIMS AGAINST MI

6.1 In Section 13 of the Fifth Report, the Receiver summarized certain claims by the Debtors against MI. It has addressed MI's response to the claims in the following paragraphs.

6.2 At paragraphs 13.7 to 13.26 of the Fifth Report, the Receiver set out the basis for its conclusion that MI is liable for breach of contract because it failed to return commissions totaling approximately \$1.8 million after the underlying purchase agreements were terminated because the purchasers did not pay the requisite deposits (or, in some cases, any deposits).

(ii) *Amounts paid to outside brokers*

- 6.3 In paragraphs 13.27 to 13.34 of the Fifth Report, the Receiver set out the facts supporting the Debtors' claim that MI is liable for fees in the amount of \$892,000 paid to third party real estate brokers in addition to commissions paid to MI for the same units.
- 6.4 As noted by Sam at paragraph 198 of the Mizrahi Affidavit, the Receiver inadvertently cited the incorrect provision of the ELA at paragraph 13.34 of the Fifth Report. The Receiver intended to cite section 7 of the ELA which states, "The Agent will be responsible for the cost and provision of all of his or her own advertising and sales promotion, qualified sales people and support staff approved by the Vendor".
- 6.5 The ELA defines the "Vendor" as the Project and the "Agent" as MI. The ELA therefore required that the Debtors fund certain advertising and marketing costs but required that MI provide its "own advertising and sales promotion" and "sales people" to complete sales.
- 6.6 At paragraph 202 of the Mizrahi Affidavit, Sam argues that MI was entitled to retain "third party consultants to assist in the sale of Project units." Royal Lepage and Magix were not "consultants". They were real estate agents who provided the services that MI agreed to provide, namely their "own advertising and sales promotion" and "qualified sales people". More broadly, the Royal Lepage and Magix retainers were fundamentally inconsistent with the structure of the ELA, which was an "exclusive" listing agreement. Pursuant to the ELA, MI was to be the only real estate broker engaged to sell units in the Project.

6.7 Finally, the Receiver notes that Magix and Royal LePage were retained during the Control Period, but Coco specifically objected to the fees paid to Magix and Royal LePage as soon as the Control Agreement expired. Those objections are included as Appendix 9.⁵

(iii) *The Reserve*

6.8 As set out in the Fifth Report at paragraphs 13.35 to 13.37, the Mediator’s Proposal indicated that MI was holding the Reserve of \$1.2 million against a potential liability. MI agreed, as part of the Mediator’s Proposal, to transfer the Reserve into a joint trust account or use it to purchase a GIC. This did not occur.

6.9 The Mediator’s Proposal also permitted each of Coco and Mizrahi to reserve one unit in the Project:

7) Each party will be entitled to reserve one unit of their choice with the benefit of a reduced deposit equal to 50% of the deposit payable by arm's-length parties. All other units reserved must be on the standard terms and conditions regarding price and deposits.

6.10 Sam and members of his immediate family entered into agreements to purchase five units in the Project before Mizrahi agreed to the Mediator’s Proposal (the “**Mizrahi Units**”). The purchaser of each Mizrahi Unit paid a nominal deposit. The Mediator’s Proposal required that the Mizrahi Units be purchased “on the standard terms and conditions regarding price and deposits.” As a result, the purchasers of the Mizrahi Units owed deposits totaling \$2,704,640 (the “**Outstanding Deposits**”).⁶

⁵ Excerpted from the October 2023 Payment Listing at Appendix 5.

⁶ The Receiver has disclaimed the Agreement of Purchase and Sale with respect to one of the Mizrahi Units.

- 6.11 Sam claims that the Outstanding Deposits were set off against “other fees and commissions owing to MI” and the Reserve. In simple terms, Sam claims that MI *reduced* the amount owed by the purchasers of the Mizrahi Units on the Outstanding Deposits by the amount of the Reserve.
- 6.12 The Receiver does not accept this explanation.
- 6.13 Pursuant to the Mediator’s Proposal, MI agreed to transfer the Reserve from its accounts into a separate trust account. It did not.
- 6.14 The Reserve was held to pay a specific liability if it arose. That liability did not arise and so the Reserve ought to have been available for use on the Project. In effect, MI *owed* the Debtors \$1.2 million because the Reserve was not transferred to a trust account as the Mediator’s Proposal required.
- 6.15 MI’s proposed approach as set out in section 6 of the Mizrahi Affidavit treats the Reserve as an amount that the Debtors would have owed to MI in the event the contemplated liability had arisen. MI sought to reduce the Outstanding Deposits that is owed to the Debtors by effectively waiving its entitlement to the Reserve. But MI was not entitled to the Reserve.
- 6.16 The Receiver has reviewed the documents referenced in the Mizrahi Affidavit and appended as Exhibits Z to CC. The Receiver has concluded that these documents do not support MI’s position on the Reserve. The parties appear to have entered into Terms of Resolution dated June 17, 2020 (the “**Terms of Resolution**”) that included the following term relating to the Reserve:

9. Sam will deliver the formal commercial documents by June 30 reflecting the set-off in the non-arm's length agreements of Purchase and Sale and HST tax reserve. These are being prepared by the real estate lawyers.

6.17 The Terms of Resolution appear to establish that there would be a set-off relating to the Reserve. But the Terms of Resolution do not specify that the Reserve will be treated as an asset of MI in the set-off calculation. MI prepared a Draft Set-Off Agreement that is consistent with its preferred approach to the Reserve, but the Draft Set-Off Agreement was never signed.

6.18 In light of the foregoing, the Receiver has concluded that MI is liable for the \$1.2 million Reserve.

(iv) *Marketing Fee*

6.19 In paragraphs 13.38 to 13.40 of the Fifth Report, the Receiver described the monthly marketing fee in the amount of \$100,000 plus HST that MI had charged the Debtors every month from July 2021 to August 2023. These fees, which totaled \$2.7 million, were not authorized by any agreement and were prohibited by the Mediator's Proposal. Coco objected to these payments consistently after the Control Agreement expired, but they were paid to MI over Coco's objection. These objections are included in Appendix 10.⁷

6.20 In the Mizrahi Affidavit, Sam claims that "all parties knew and agreed to the payment of the \$100,000". Sam does not offer any evidence that Coco agreed to the fee, and the Receiver is not aware of any such evidence.

⁷ Excerpted from the October 2023 Payment Listing at Appendix 5.

6.21 Sam also claims that the marketing fees were “properly attributed” to the “Residential Marketing Fee”. This is, presumably, a reference to the Residential Management Fee referenced in the Mediator’s Proposal. However, MI sent monthly invoices for the Marketing Fee that did not include any reference to the Residential Management Fee. An example of one such invoice is attached hereto as Appendix 11.

6.22 In addition, the Receiver notes that MI claimed to be owed a Residential Management Fee of \$20.4 million by letter dated May 29, 2024 (which is attached as Appendix 52 to the Fifth Report). MI’s Residential Management Fee calculation did not include any reference to the Marketing Fees.

6.23 In light of the foregoing, the Receiver does not accept that Marketing Fees were charged as part of the Residential Management Fee. MI appeared to charge the Marketing Fees as a separate cost to the Debtors. It has not provided any legal basis for these payments.

(v) ***Residential Management Fees***

6.24 The Receiver described MI’s claim for a Residential Management Fee in the amount of \$20,460,905.32 at section 15 of the Fifth Report. The Receiver concluded that MI had significantly overstated the amount that might be owed to it.

6.25 Sam has set out MI’s calculation of the Residential Management Fee at paragraphs 188 to 190 of the Mizrahi Affidavit. MI now claims that it is owed \$2,794,308.20.

6.26 The Receiver does not agree with MI’s calculation for the following reasons:

- (i) MI claims a Residential Management Fee on every sale of a residential unit on the Project. The Mediator’s Proposal requires that “the appropriate deposit” on a unit

be paid before any Residential Management Fee is due in respect of that unit. MI has not adjusted the Residential Management Fee to account for units without the required deposit. As set out at paragraph 15.4 of the Fifth Report, the Receiver calculated a \$4,824,666.90 Residential Management Fee based only on Qualifying Sales;

- (ii) MI claims that no adjustment to the Residential Management Fee is required in respect of the Outstanding Deposits because the parties agreed to set-off the Outstanding Deposits against outstanding fees owed to MI. But MI has not provided any evidence that any fees were actually reduced to account for the Outstanding Deposits; and
- (iii) in a letter dated January 10, 2020, and attached as Exhibit W to the Mizrahi Affidavit, MI's counsel admitted that MI owed the Debtors \$1,091,085.79 in overhead costs. Pursuant to Section 9 of the Mediator's Proposal, MI was allowed to recover \$2,000,000 of overhead and administration expenses and was required to refund the remaining balance of overhead expenses it had charged to the Debtors. The Receiver was not previously aware of this debt and MI has not accounted for it in its own calculation.

6.27 Based on the foregoing adjustments, the Receiver has concluded that if a Residential Management Fee is owed to MI (which the Receiver does not accept), the value of that Residential Management Fee is \$309,819.62 (\$1,400,905.41 calculated at section 15.6 of the Fifth Report, less the \$1,091,085.79 owed by MI in respect of overhead expense overpayment).

7.0 CONCLUSION AND RECOMMENDATION

- 7.1 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 facts and 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.**

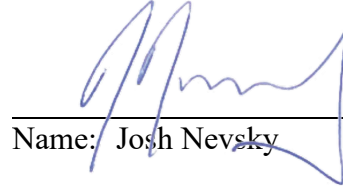
Per:



Name: Stephen Ferguson

Title: Senior Vice-President

Per:



Name: Josh Nevsky

Title: Senior Vice-President

**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

**SUPPLEMENTAL FIFTH REPORT OF THE
RECEIVER
ALVAREZ & MARSAL CANADA INC.
FEBRUARY 28, 2025**

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

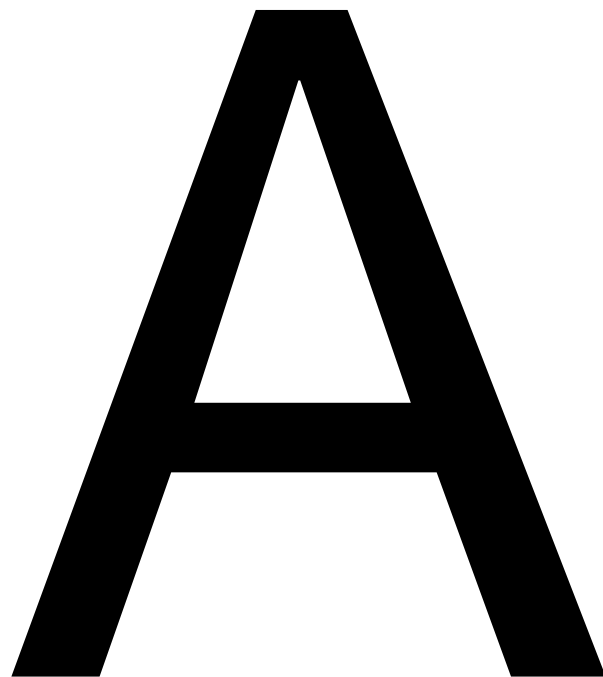
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Tel: (416) 979-2211 / Fax: (416) 979-1234
Lawyers for the Receiver



**APPENDIX “1”
EMAIL FROM J. NEVSKY TO S. MIZRAHI DATED OCTOBER 30, 2023**

From: Nevsky, Joshua[jnevsky@alvarezandmarsal.com]
Sent: Mon 10/30/2023 12:02:30 PM (UTC-04:00)
To: sam@mizrahidevelopments.ca[sam@mizrahidevelopments.ca]
Cc: Ferguson, Stephen[sferguson@alvarezandmarsal.com]; Sterling, Andrew[asterling@alvarezandmarsal.com]
Subject: September Cost Review
Attachment: A&M re Mizrahi Inc (0222410) re Sept Mizrahi Inc Costs - Oct 30 2023.pdf
Attachment: GC Cost Review (10.30).xlsx
Attachment: 2023-10-12 - Crane Labour - C1410.pdf
Attachment: 2023-10-12 - Equipment - C1408.pdf
Attachment: 2023-10-12 - Recoverables - C1415 (Header).pdf
Attachment: 2023-10-12 - Site Labour - C1409 (Header).pdf
Attachment: 2023-10-12 - Staff - C1406.pdf

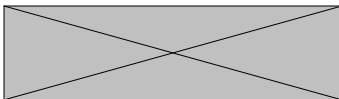
Sam,

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



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

free.



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: _____

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)



A T- T T MAT A A									
PCSD									
Item	Y	%	T	T	Y	%	T	T	Y
	2018	M	2018	2018	2018	M	2018	2018	2018
CM - 60	3 2 000 00		40 572 88	2 7 89	3 2 000 00		40 572 88	2 7 89	
Equipment Cost	0 520 24	520 0	430 0	2 4 2 2	0 520 24	520 0	430 0	2 4 2 2	
Remove white Coat	083 866 32	54 93 32	47 947 70	2 7 42	083 866 32	54 93 32	47 947 70	2 7 42	
Control and on Day Coat	833 698 78	3 674 94	86 472 05	7 4	370 868	8 533 3	50 595 52	4 9 79	13 850 94
Control - white	7 348 80	9 867 45	6 0 0 0	9 2 4	88 648 00	4 432 00	2 099 36	7	34 063 44
White - white	66 536 27	58 270 76	59 000 01	2 9 7	583 342 0	28 62	76 882 06	2	17 4 620 86
White - white	89 000 00		3 650 00						1 0 000 00
Total	422 2	4 4 4 42 9	4 7 9		2 429	4 7 29 4	2 4 4		7 4 9

GC Crane Cost September Invoice

SCAD

DRAFT SUBJECT TO MATERIAL CHANGE

PRIVATE & CONFIDENTIAL

GC Crane Cost	September Invoice	Hours	3rd Party Invoice Rate	Cost	Mizrahi Invoice Rate	Cost	Mark up (\$)	% Mark up
Labour								
	Regular Hours	144.0	\$135.00/hr	\$19,440.00	\$196.57/hr	\$28,305.39	\$8,865.39	46%
	Overtime Hours	83.5	\$265.00/hr	22,127.50	\$294.85/hr	24,619.59	2,492.09	11%
	Travel Time	23.0	\$160.00/hr	3,680.00	\$294.85/hr	6,781.44	3,101.44	84%
	Regular Hours	144.0	\$135.00/hr	19,440.00	\$196.57/hr	28,305.39	8,865.39	46%
	Overtime Hours	76.5	\$265.00/hr	20,272.50	\$294.85/hr	22,555.67	2,283.17	11%
	Travel Time	23.0	\$160.00/hr	3,680.00	\$294.85/hr	6,781.44	3,101.44	84%
Total		494.0	\$179.43/hr	\$88,640.00	\$237.55/hr	\$117,348.92	\$28,708.92	32%
						CM Fee	\$5,867.45	\$1,435.45
						HST	\$16,018.13	\$3,918.77
						Total	\$139,234.50	\$34,063.14
						Invoice Check	-	

GC Labour Cost - September Invoice
\$CAD

DRAFT - SUBJECT TO MATERIAL CHANGE
PRIVATE & CONFIDENTIAL

GC Labour Cost - September Invoice			3rd Party Invoice		Mizrahi Invoice		Mark-up (\$)	% Mark-up
		Hours	Rate	Cost	Rate	Cost		
Labour								
General Labour	Regular Hours	3 544.5	\$60.41/hr	\$214 113.75	\$106.29/hr	\$376,734.81	\$162 621.06	76%
General Labour	Overtime Hours	1,072.0	\$88.44/hr	94,805.63	\$159.47/hr	170,946.52	76,140.90	80%
General Labour Supervisor	Regular Hours	214.0	\$65 00/hr	13,910.00	\$112.29/hr	24,030.06	10,120.06	73%
General Labour Supervisor	Overtime Hours	108.5	\$97 50/hr	10 578.75	\$168.44/hr	18,275.20	7 696.45	73%
Security								
Security	Regular Hours	2,723.0	\$37 69/hr	102,623.00	\$99 56/hr	271,101.88	168,478.88	164%
Security	Overtime Hours	174.0	\$55 50/hr	9,657.00	\$149.34/hr	25,985.16	16,328.16	169%
Security	Double Overtime Hours	48.0	\$74 00/hr	3 552.00	\$199.12/hr	9,557.76	6 005.76	169%
Security Supervisor	Regular Hours	831.0	\$49 00/hr	40,719.00	\$103.60/hr	86,095.08	45,376.08	111%
Security Supervisor	Overtime Hours	82.0	\$73 50/hr	6,027.00	\$164.71/hr	13,506.15	7,479.15	124%
Security Supervisor	Double Overtime Hours	24.0	\$110 25/hr	2 646.00	\$211.85/hr	5,084.40	2 438.40	92%
Traffic								
Traffic	Regular Hours	1,095.0	\$37 00/hr	40,515.00	\$99 60/hr	109,062.08	68,547.08	169%
Traffic	Overtime Hours	153.5	\$55 50/hr	8,519.25	\$149.34/hr	22,923.69	14,404.44	169%
Traffic	Double Overtime Hours	12.0	\$74 00/hr	888.00	\$199.12/hr	2,389.44	1 501.44	169%
Traffic Supervisor	Regular Hours	242.0	\$49 00/hr	11,858.00	\$99 56/hr	24,093.52	12,235.52	103%
Traffic Supervisor	Overtime Hours	38.5	\$73 50/hr	2,829.75	\$149.34/hr	5,749.59	2,919.84	103%
Total		10,362.0	\$54.36/hr	\$563,242.13	\$112.48/hr	\$1,165,535.34	\$602,293.22	107%
						CM Fee	\$58,276.77	
						HST	\$159,095.57	
						Total	\$1,382,907.68	
						Invoice Check	-	

GC Staff Cost - September Invoice
\$CAD

DRAFT - SUBJECT TO MATERIAL CHANGE
PRIVATE & CONFIDENTIAL

GC Staff Cost - September Invoice		Salary / Cost	Illustrative Burden	Billed	Mark-up	% Mark-up
Contract Employees						
	Project Director	\$36,000.00	-	\$53,294.54	\$17,294.54	48%
	VP Construction	29,750.00	-	41,004.07	11,254.07	38%
	Structural Site Super	22,916.66	-	42,816.84	19,900.18	87%
	Director Construction PM	24,291.00	-	31,384.08	7,093.08	29%
Salaried Employees						
		Burden Rate:	20%			
	Site Super - Envelope/Elevators	\$17,000.00	\$3,400.00	\$28,022.27	\$7,622.27	37%
	BIM Scheduler	9,333.34	1,866.67	26,647.27	15,447.26	138%
	PM Envelope	17,395.84	3,479.17	24,897.07	4,022.06	19%
	PM M&E - Mechanical/Electrical	7,916.66	1,583.33	24,897.07	15,397.08	162%
	PM Structure	11,583.34	2,316.67	24,897.07	10,997.06	79%
	Super - Commercial Fit Out	11,583.34	2,316.67	28,022.27	14,122.26	102%
	APM Envelop	8,333.34	1,666.67	20,488.63	10,488.62	105%
	PM	8,333.34	1,666.67	24,897.07	14,897.06	149%
	Senior Estimator	8,666.66	1,733.33	24,897.07	14,497.08	139%
	Coordinator - Structure	8,333.34	1,666.67	14,888.35	4,888.34	49%
	Coordinator - Structure	3,500.00	700.00	14,888.35	10,688.35	254%
	Materials Coordinator	6,250.00	1,250.00	13,287.40	5,787.40	77%
	Accountant	6,250.00	1,250.00	12,890.88	5,390.88	72%
	Coordinator	6,527.80	1,305.56	14,888.35	7,054.99	90%
	APM M&E	8,333.34	1,666.67	20,488.63	10,488.62	105%
	Coordinator	7,083.34	1,416.67	14,888.35	6,388.34	75%
	General Site Super	27,083.34	5,416.67	42,816.83	10,316.82	32%
	Logistic Manager	6,666.68	1,333.34	14,888.35	6,888.33	86%
	PM Commercial & Residential Interiors	11,250.00	2,250.00	24,897.07	11,397.07	84%
	APM	9,583.34	1,916.67	20,488.63	8,988.62	78%
	Façade Site Superintendent	13,750.00	2,750.00	28,022.27	11,522.27	70%
Sub-Total		\$327,714.70	\$42,951.41	\$633,498.78	\$262,832.67	71%
			CM Fee	\$31,674.94		
			HST	\$86,472.58		
			Total	\$751,646.30		
			Invoice Check	-		

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

Invoice

BILL TO

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

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
C1408	10/12/2023	\$12,482.26	10/12/2023	Due on receipt	

DATE	DESCRIPTION	TAX	QTY	RATE	AMOUNT
	Container Rentals - per attached listing	H	1	2,400.00	2,400.00
	Equipment - Cellular	H	24.90	100.00	2,490.00
	Equipment - Computers	H	24.90	165.07	4,110.24
	License Fee - Primavera Software	H	2	377.00	754.00
	License Fee - Blue Beam Software	H	8	42.00	336.00
	Construction Management Fee	H			526.01
	License Fee - AutoCAD	H	2	215.00	430.00

SUBTOTAL	11,046.25
HST @ 13%	1,436.01
TOTAL	12,482.26
BALANCE DUE	\$12,482.26

TAX SUMMARY

RATE	TAX	NET
HST @ 13%	1,436.01	11,046.25

Containers
1 Bloor West

Description	S/N	Rental Rate	
40' Office Container	CPIU 998885-1	\$	1,600.00
10' Container	FBXU 820769-5	\$	800.00
		\$	2,400.00

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

Invoice

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

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
C1410	10/12/2023	\$139,234.50	10/12/2023	Due on receipt	

DATE	DESCRIPTION	TAX	QTY	RATE	AMOUNT
	Crane Labour - Per Attached Summary	H		117,348.92	117,348.92
	Construction Management Fee	H	1	5,867.446	5,867.45

SUBTOTAL	123,216.37
HST @ 13%	16,018.13
TOTAL	139,234.50
BALANCE DUE	\$139,234.50

TAX SUMMARY

RATE	TAX	NET
HST @ 13%	16,018.13	123,216.37

Timesheet Summary

Mizrahi Inc.

Project: 1 Bloor

Crane Labour

For the period from

09-Sep-23 To:

14-Oct-23

*cut off on Saturdays

		Total Period SUM		
Employee Name	Type	Hours	Rate	Amount
	Total Reg Hrs	144.00	196.57	28,305.39
	Total OT Hrs	106.50	294.85	31,401.03
	SUM	250.50		59,706.42
	Total Reg Hrs	144.00	196.57	28,305.39
	Total OT Hrs	99.50	294.85	29,337.11
	SUM	243.50		57,642.50

	Hours	Amount
Total Reg	288.00	56,610.78
Total OT	206.00	60,738.14
Total Stat		
SUM	494.00	117,348.92

5% 5,867.45

Timesheet Summary

Mizrahi Inc.

Project: 1 Bloor

Crane Labour

For the period from: 09-Sep-23 To: 14-Oct-23

			2023-09-09	2023-09-09		2023-09-16	2023-09-16		2023-09-23	2023-09-30	2023-10-07	2023-10-14	Total Period SUM		
Employee Name	Occupation	Type	Estimate	Actual	Variance	Estimate	Actual	Variance	Actual	Estimate	Estimate	Estimate	Hours	Rate	Amount
	Crane Operator	Total Reg Hrs	40.00	32.00	- 8.00	40.00	40.00	-	40.00	40.00	40.00	32.00	144.00	196.57	28,305.39
	Crane Operator	Total OT Hrs	17.00	16.50	- 0.50	18.00	26.00	8.00	25.00	25.00	25.00	24.00	106.50	294.85	31,401.03
		SUM	57	48.5	-8.5	58	66	8	65	65	65.00	56.00	250.50		59,706.42
	Crane Operator	Total Reg Hrs	40.00	32.00	- 8.00	40.00	40.00	-	40.00	40.00	40.00	32.00	144.00	196.57	28,305.39
	Crane Operator	Total OT Hrs	20.00	18.50	- 1.50	20.00	23.50	3.50	25.00	24.00	24.50	24.00	99.50	294.85	29,337.11
		SUM	60	50.5	-9.5	60	63.5	3.5	65	64	64.50	56.00	243.50		57,642.50
Total Reg			80.00	64.00	-16.00	80.00	80.00	0.00	80.00	80.00	80.00	64.00	288.00		56,610.78
Total OT			37.00	35.00	-2.00	38.00	49.50	11.50	50.00	49.00	49.50	48.00	206.00		60,738.14
Total Stat											0.00				
Total			117.00	99.00	-18.00	118.00	129.50	11.50	130.00	129.00	129.50	112.00	494.00		117,348.92
			117.00	99.00	- 18.00	118.00	129.50	11.50	130.00	129.00	129.50	112.00	494.00		

Timesheet

Mizrahi Inc.

Project: 1 Bloor

Crane Labour

For the Week ending: 2023-09-09

Estimate

Date			03-Sep	04-Sep	05-Sep	06-Sep	07-Sep	08-Sep	09-Sep	
Employee Name	Occupation	Hour Type	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hrs
			-	12.00	12.00	12.00	12.00	9.00	-	57.00
	Crane Operator R			8.00	8.00	8.00	8.00	8.00		40.00
	Crane Operator O			4.00	4.00	4.00	4.00	1.00		17.00
			-	11.00	12.00	12.00	15.00	10.00	-	60.00
	Crane Operator R			8.00	8.00	8.00	8.00	8.00		40.00
	Crane Operator O			3.00	4.00	4.00	7.00	2.00		20.00
			-	23.00	24.00	24.00	27.00	19.00	-	117.00

Timesheet

Mizrahi Inc.

Project: 1 Bloor

Crane Labour

For the Week ending: 2023-09-09

Actual

Date			03-Sep	04-Sep	05-Sep	06-Sep	07-Sep	08-Sep	09-Sep	
Employee Name	Occupation	Hour Type	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hrs
			-	-	9.50	9.00	9.00	12.00	9.00	48.50
	Crane Operator R				8.00	8.00	8.00	8.00		32.00
	Crane Operator O				1.50	1.00	1.00	4.00	9.00	16.50
			-	-	9.00	9.00	14.50	9.00	9.00	50.50
	Crane Operator R				8.00	8.00	8.00	8.00		32.00
	Crane Operator O				1.00	1.00	6.50	1.00	9.00	18.50
			-	-	18.50	18.00	23.50	21.00	18.00	99.00

Timesheet

Mizrahi Inc.

Project: 1 Bloor

Crane Labour

For the Week ending: 2023-09-16

Estimate

Date			10-Sep	11-Sep	12-Sep	13-Sep	14-Sep	15-Sep	16-Sep	
Employee Name	Occupation	Hour Type	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hrs
			-	12.00	12.00	12.00	12.00	10.00	-	58.00
	Crane Operator R			8.00	8.00	8.00	8.00	8.00		40.00
	Crane Operator O			4.00	4.00	4.00	4.00	2.00		18.00
			-	11.00	12.00	12.00	15.00	10.00	-	60.00
	Crane Operator R			8.00	8.00	8.00	8.00	8.00		40.00
	Crane Operator O			3.00	4.00	4.00	7.00	2.00		20.00
			-	23.00	24.00	24.00	27.00	20.00	-	118.00

Timesheet
Mizrahi Inc.
Project: 1 Bloor
Crane Labour

For the Week ending: **2023-09-16** **Actual**

Date			10-Sep	11-Sep	12-Sep	13-Sep	14-Sep	15-Sep	16-Sep	
Employee Name	Occupation	Hour Type	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hrs
			-	12.00	9.00	12.00	12.00	12.00	9.00	66.00
	Crane Operator R			8.00	8.00	8.00	8.00	8.00		40.00
	Crane Operator O			4.00	1.00	4.00	4.00	4.00	9.00	26.00
			-	11.00	9.50	10.00	13.00	11.00	9.00	63.50
	Crane Operator R			8.00	8.00	8.00	8.00	8.00		40.00
	Crane Operator O			3.00	1.50	2.00	5.00	3.00	9.00	23.50
			-	23.00	18.50	22.00	25.00	23.00	18.00	129.50

Timesheet

Mizrahi Inc.

Project: 1 Bloor

Crane Labour

For the Week ending: **2023-09-23** **Actual**

Date			17-Sep	18-Sep	19-Sep	20-Sep	21-Sep	22-Sep	23-Sep	
Employee Name	Occupation	Hour Type	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hrs
			-	9.00	12.00	11.00	12.00	12.00	9.00	65.00
	Crane Operator R			8.00	8.00	8.00	8.00	8.00		40.00
	Crane Operator O			1.00	4.00	3.00	4.00	4.00	9.00	25.00
			-	9.00	12.00	13.00	11.00	11.00	9.00	65.00
	Crane Operator R			8.00	8.00	8.00	8.00	8.00		40.00
	Crane Operator O			1.00	4.00	5.00	3.00	3.00	9.00	25.00
			-	18.00	24.00	24.00	23.00	23.00	18.00	130.00

Timesheet

Mizrahi Inc.

Project: 1 Bloor

Crane Labour

For the Week ending: 2023-09-30

Estimate

Date			24-Sep	25-Sep	26-Sep	27-Sep	28-Sep	29-Sep	30-Sep	
Employee Name	Occupation	Hour Type	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hrs
			-	9.00	12.00	11.00	12.00	12.00	9.00	65.00
	Crane Operator R			8.00	8.00	8.00	8.00	8.00		40.00
	Crane Operator O			1.00	4.00	3.00	4.00	4.00	9.00	25.00
			-	9.00	12.00	12.00	11.00	11.00	9.00	64.00
	Crane Operator R			8.00	8.00	8.00	8.00	8.00		40.00
	Crane Operator O			1.00	4.00	4.00	3.00	3.00	9.00	24.00
			-	18.00	24.00	23.00	23.00	23.00	18.00	129.00

Timesheet

Mizrahi Inc.

Project: 1 Bloor

Crane Labour

For the Week ending: 2023-10-07

Estimate

Date			01-Oct	02-Oct	03-Oct	04-Oct	05-Oct	06-Oct	07-Oct	
Employee Name	Occupation	Hour Type	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hrs
			-	9.00	12.00	11.00	12.00	12.00	9.00	65.00
	Crane Operator R			8.00	8.00	8.00	8.00	8.00		40.00
	Crane Operator O			1.00	4.00	3.00	4.00	4.00	9.00	25.00
			-	9.00	12.00	12.50	11.00	11.00	9.00	64.50
	Crane Operator R			8.00	8.00	8.00	8.00	8.00		40.00
	Crane Operator O			1.00	4.00	4.50	3.00	3.00	9.00	24.50
			-	18.00	24.00	23.50	23.00	23.00	18.00	129.50

Timesheet

Mizrahi Inc.

Project: 1 Bloor

Crane Labour

For the Week ending: **2023-10-14** **Estimate**

Date			08-Oct	09-Oct	10-Oct	11-Oct	12-Oct	13-Oct	14-Oct	
Employee Name	Occupation	Hour Type	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Total Hrs
			-	-	12.00	11.00	12.00	12.00	9.00	56.00
	Crane Operator R				8.00	8.00	8.00	8.00		32.00
	Crane Operator O				4.00	3.00	4.00	4.00	9.00	24.00
			-	-	12.00	13.00	11.00	11.00	9.00	56.00
	Crane Operator R				8.00	8.00	8.00	8.00		32.00
	Crane Operator O				4.00	5.00	3.00	3.00	9.00	24.00
			-	-	24.00	24.00	23.00	23.00	18.00	112.00

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

Invoice

BILL TO

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

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
C1415	10/12/2023	\$1,286,007.42	10/12/2023	Due on receipt	

DATE	DESCRIPTION	TAX	QTY	RATE	AMOUNT
05/31/2023	Safety First Consulting: #36449	H			185.00
05/31/2023	Safety First Consulting: #36448	H			45.00
07/20/2023	Brandon Jones: #234	H			700.00
07/31/2023	Skyway Canada Limited: #007887	H			2,947.51
08/03/2023	Stephenson's: #1081093044- 0014	H			5,749.29
08/03/2023	Stephenson's: #1081099398- 0006	H			13.69
08/03/2023	Stephenson's: #1081100802- 0004	H			148.52
08/03/2023	Stephenson's: #1081102894- 0001	H			71.30
08/04/2023	Stephenson's: #1081094938- 0011	H			25.36
08/04/2023	Stephenson's: #1081096068- 0010	H			281.75
08/04/2023	Stephenson's: #1081097896- 0008	H			448.16
08/04/2023	Stephenson's: #1081101343- 0003	H			149.38
08/14/2023	Brandon Jones: #235	H			700.00
08/28/2023	Brandon Jones: #236	H			780.00
08/31/2023	Dell-Core Edge Protection Ltd.: #Invoice #Q023054	H			22,736.79
08/31/2023	Dell-Core Edge Protection Ltd.: #Invoice #Q023095	H			11,952.19

DATE	DESCRIPTION	TAX	QTY	RATE	AMOUNT
08/31/2023	Dell-Core Equipment Ltd.: - # D017411	H			547.29
08/31/2023	Amherst Concrete Pumping Ltd. - #200906	H			106,133.01
08/31/2023	Astley Gilbert : #2462008	H			409.21
08/31/2023	Safety First Consulting: #37265	H			27,343.75
08/31/2023	Super Save Toilet Rentals Inc.: #1403917	H			5,746.19
09/01/2023	Super Save Fence Rentals Inc.: #1250088	H			31.85
09/05/2023	Stephenson's: #1081099305-0007	H			891.26
09/05/2023	Canadian Springs #21019085 090523	H			27.28
09/06/2023	Stephenson's: #1081099162-0007	H			95.80
09/07/2023	SKYRERACH: #48609	H			7,850.00
09/07/2023	Stephenson's: #1081100672-0005	H			2,086.05
09/08/2023	Stephenson's: #1081102894-0003	H			806.20
09/08/2023	Proline Hardware Ltd. - Invoice #112557	H			1,547.15
09/10/2023	Stephenson's: #1081102961-0003	H			201.55
09/10/2023	Brickeye: #1535	H			1,170.00
09/11/2023	Stephenson's: #1081101419-0004	H			2,027.34
09/12/2023	Imperial Parking Corp.: #438804-Aug2023.	H			2,874.08
09/12/2023	Proline Hardware Ltd. - Invoice #112576	H			432.75
09/13/2023	Taline: Noise exemption Permit INV#September 13, 2023	H			100.00
09/13/2023	TPS - Sept 8	H			931.50
09/14/2023	TPS - Sept 11	H			1,035.00
09/14/2023	Staples - 20083290	H			237.14
09/14/2023	Stephenson's: #1081097291-0010	H			733.96
09/14/2023	Stephenson's: #1081096400-0011	H			557.87
09/14/2023	Proline Hardware Ltd. - Invoice #112588	H			3,274.40
09/15/2023	Stephenson's: #1081101661-0005	H			224.78

DATE	DESCRIPTION	TAX	QTY	RATE	AMOUNT
09/15/2023	Stephenson's: #1081102267-0004	H			233.86
09/15/2023	Stephenson's: #1081101419-0005	H			20.00
09/15/2023	Stephenson's: #1081103283-0003	H			101.72
09/15/2023	City Disposal Group 2015 Inc.: #3385	H			14,060.50
09/15/2023	Proline Hardware Ltd. - Invoice #112620	H			554.79
09/15/2023	TPS - Sep 12	H			517.50
09/17/2023	Preston Equipment Rentals Ltd.: #33433	H			5,380.00
09/17/2023	Stephenson's: #1081101781-0004	H			298.78
09/17/2023	Stephenson's: #1081103104-0002	H			2,015.50
09/18/2023	CanAm Waste Products Inc.: #205111	H			475.00
09/18/2023	Proline Hardware Ltd. - Invoice #112631	H			1,245.80
09/18/2023	Proline Hardware Ltd. - Invoice #112632	H			1,642.98
09/18/2023	Proline Hardware Ltd. - Invoice #112633	H			2,043.35
09/18/2023	Jordahl Canada Inc.: #305085	H			3,914.60
09/18/2023	Jordahl Canada Inc.: #305086	H			2,292.40
09/18/2023	Jordahl Canada Inc.: #305087	H			3,219.60
09/18/2023	Jordahl Canada Inc.: #305088	H			1,113.60
09/18/2023	TPS - Sep 13	H			1,035.00
09/19/2023	SCAF-TECH INC.: #2023-551	H			1,000.00
09/19/2023	Live Patrol Inc.: #Invoice #20341	H			6,550.00
09/19/2023	Monster Plowing: #2023-16226	H			2,402.40
09/19/2023	Toronto Hydro -Meter Reading Period: July 31, 2023 - Aug 31, 2023	H			43.72
09/19/2023	TPS - Sep 14	H			1,242.00
09/20/2023	AlumaSafway Inc.: PC#24-20252A	H			21,000.00
09/20/2023	Herc Rentals Inc.: #58032-0020	H			262.50
09/20/2023	Herc Rentals Inc.: #59711-0012	H			414.00
09/20/2023	Stephenson's: #1081104001-0001	H			10,330.40

DATE	DESCRIPTION	TAX	QTY	RATE	AMOUNT
09/21/2023	Central Fairbank Lumber: #826103	H			2,399.20
09/21/2023	TPS - Sep 18	H			1,035.00
09/22/2023	City Of Toronto - Water obtained from a private sources and discharged into the City of Toronto Sewer System for Treatment.	H			4,338.99
09/23/2023	Herc Rentals Inc.: #119000534-0025	H			4,329.50
09/24/2023	Stephenson's: #1081098336- 0009	H			302.92
09/24/2023	Preston Equipment Rentals Ltd.: #33456	H			2,467.00
09/25/2023	AlumaSafway Inc.: PC#21	H			56,110.00
09/25/2023	Stephenson's: #1081093460- 0015	H			2,057.00
09/25/2023	SCAF-TECH INC.: #2023-574	H			23,660.00
09/25/2023	TPS - Sep 15/19	H			1,966.50
09/25/2023	TPS - Sep 20/22	H			1,759.50
09/26/2023	Skyway Canada Limited: #010245	H			680.00
09/26/2023	MY CONSTRUCTION SUPPLY CORP.: #177997	H			9,184.60
09/26/2023	Stephenson's: #1081104162- 0001	H			36,350.00
09/26/2023	TPS - Sep 21	H			1,035.00
09/26/2023	Proline Hardware Ltd. - Invoice #112718	H			209.60
09/27/2023	The Fence People Ltd.: - #FP77043	H			195.00
09/27/2023	The Fence People Ltd.: - #FP77044	H			674.00
09/27/2023	The Fence People Ltd.: - #FP77045	H			266.00
09/27/2023	The Fence People Ltd.: - #FP77046	H			6.00
09/27/2023	SCAF-TECH INC.: #2023-577	H			4,017.14
09/27/2023	Staples - 20169738	H			1,120.54
09/28/2023	Skyway Canada Limited: #I- 0025798	H			390.00
09/28/2023	Skyway Canada Limited: #I- 0025800	H			400.00
09/28/2023	Uline Canada Corp.: #12984997	H			275.00
09/28/2023	Astley Gilbert : #2467538	H			200.00

DATE	DESCRIPTION	TAX	QTY	RATE	AMOUNT
09/28/2023	Stephenson's: #1081093044-0016	H			2,679.50
09/28/2023	Stephenson's: #1081099398-0008	H			13.69
09/28/2023	Stephenson's: #1081100802-0007	H			66.01
09/28/2023	TPS - Sep 25	H			1,035.00
09/28/2023	Proline Hardware Ltd. - Invoice #112742	H			4,032.60
09/29/2023	Morrow Equipment: #R18101333	H			138,710.00
09/29/2023	Stephenson's: #1081094938-0013	H			25.36
09/29/2023	Stephenson's: #1081096068-0012	H			281.75
09/29/2023	Stephenson's: #1081097896-0010	H			448.16
09/29/2023	SCAF-TECH INC.: #2023-584	H			2,285.00
09/29/2023	SCAF-TECH INC.: #2023-582	H			1,000.00
09/29/2023	Skyway Canada Limited: #I-0026374	H			250.00
09/29/2023	TPS - Sep 26	H			1,035.00
09/30/2023	Super Save Toilet Rentals Inc.: #1413005	H			5,771.19
09/30/2023	E.S. FOX : #B0315999	H			285,502.48
09/30/2023	Dell-Core Edge Protection Ltd.: #Invoice #Q023333	H			12,172.86
09/30/2023	Stephenson's: #1081103283-0004	H			339.71
10/01/2023	Stephenson's: #1081104249-0001	H			217.10
10/02/2023	Monster Plowing: #2023-16227	H			2,402.40
10/02/2023	FedEx: #2-595-96910	H			151.47
10/02/2023	MultiTech Trades Corp.: #J003191 - Oct 2023 Rent	H			1,500.00
10/02/2023	Brandon Jones: #237	H			780.00
10/02/2023	Proline Hardware Ltd. - Invoice #112759	H			214.95
10/02/2023	TPS - Sep 27	H			1,035.00
10/03/2023	Stephenson's: #1081099305-0008	H			891.26
10/03/2023	Proline Hardware Ltd. - Invoice #112774	H			2,470.15
10/03/2023	TPS - Sep 28/29	H			2,070.00
10/04/2023	Stephenson's: #1081099162-0008	H			95.80

DATE	DESCRIPTION	TAX	QTY	RATE	AMOUNT
10/04/2023	Toronto Hydro -Meter Reading Period: Aug 31, 2023 -Sep30, 2023	H			42.31
10/05/2023	Stephenson's: #1081100672- 0006	H			2,086.05
10/05/2023	TPS - Oct 2	H			1,035.00
10/06/2023	Triovest - 2 Bloor Inc. - Site Office Rent - Oct 2023	H			38,659.30
10/06/2023	Stephenson's: #1081102894- 0004	H			806.20
10/06/2023	Stephenson's: #1081104338- 0001	H			292.10
10/06/2023	Treasurer, City of Toronto: ICI Municipal Site - 1 Bloor Street West	H			76,759.23
10/06/2023	TPS - Oct 3	H			1,035.00
10/08/2023	Stephenson's: #1081102961- 0004	H			201.55
10/10/2023	TPS - Oct 2/3	H			3,726.00
	Construction Management Fee	H			54,193.32
11/01/2023	Triovest - 2 Bloor Inc. - Site Office Rent - Nov 2023	H			38,659.30

SUBTOTAL	1,138,059.64
HST @ 13%	147,947.78
TOTAL	1,286,007.42
BALANCE DUE	\$1,286,007.42

TAX SUMMARY

RATE	TAX	NET
HST @ 13%	147,947.78	1,138,059.64

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

Invoice

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

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
C1409	10/12/2023	\$1,382,907.60	10/12/2023	Due on receipt	

DATE	DESCRIPTION	TAX	QTY	RATE	AMOUNT
	Site Labour - per attached summary	H	1	1,165,535.27	1,165,535.27
	Construction Management Fee	H	1	58,276.76	58,276.76

SUBTOTAL	1,223,812.03
HST @ 13%	159,095.57
TOTAL	1,382,907.60
BALANCE DUE	\$1,382,907.60

TAX SUMMARY

RATE	TAX	NET
HST @ 13%	159,095.57	1,223,812.03

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

Invoice

BILL TO

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

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
C1406	10/12/2023	\$751,646.30	10/12/2023	Due on receipt	

DATE	DESCRIPTION	TAX	QTY	RATE	AMOUNT
	Construction - Staff	H	1	633,498.78	633,498.78
	Construction Management Fee	H	1	31,674.939	31,674.94

SUBTOTAL 665,173.72

HST @ 13% 86,472.58

TOTAL 751,646.30

BALANCE DUE **\$751,646.30**

TAX SUMMARY

RATE	TAX	NET
HST @ 13%	86,472.58	665,173.72

1 Bloor

Oct 2023 - Staff Costs

	Project Director	\$53,294.54	100%	\$53,294.54
	VP Construction	\$48,240.08	85%	\$41,004.07
	Structural Site Super	\$42,816.84	100%	\$42,816.84
	Director Construction PM	\$31,384.08	100%	\$31,384.08
	Site Super - Envelope/Elevators	\$28,022.27	100%	\$28,022.27
	BIM Scheduler	\$26,647.27	100%	\$26,647.27
	PM Envelope	\$24,897.07	100%	\$24,897.07
	PM M&E - Mechanical/Electrical	\$24,897.07	100%	\$24,897.07
	PM Structure	\$24,897.07	100%	\$24,897.07
	Super - Commercial Fit Out	\$28,022.27	100%	\$28,022.27
	APM Envelop	\$20,488.63	100%	\$20,488.63
	PM	\$24,897.07	100%	\$24,897.07
	Senior Estimator	\$24,897.07	100%	\$24,897.07
	Coordinator - Structure	\$14,888.35	100%	\$14,888.35
	Coordinator - Structure	\$14,888.35	100%	\$14,888.35
	Materials Coordinator	\$13,287.40	100%	\$13,287.40
	Accountant	\$12,890.88	100%	\$12,890.88
	Coordinator	\$14,888.35	100%	\$14,888.35
	APM M&E	\$20,488.63	100%	\$20,488.63
	Coordinator	\$14,888.35	100%	\$14,888.35
	General Site Super	\$42,816.83	100%	\$42,816.83
	Logistic Manager	\$14,888.35	100%	\$14,888.35
	PM Commercial & Residential Interiors	\$24,897.07	100%	\$24,897.07
	APM	\$20,488.63	100%	\$20,488.63
	Façade Site Superintendent	\$28,022.27	100%	\$28,022.27

24.9% \$633,498.78

5% \$31,674.94

B

**APPENDIX “2”
ALTUS ENGAGEMENT LETTER DATED AUGUST 29, 2019**

IGIS Asset Management Co. Ltd.
 14 Floor, Sewoo Building, 115 Yeouigongwon-ro
 Yeongdeungpo-gu, Seoul, Korea

Attention: Mr. Kyu Sung Lee, Co-CEO & President

Dear Sir,

The One, Toronto, Ontario

Altus Group Limited has been engaged by the Lender, IGIS Asset Management Co. Ltd. to provide project monitoring services throughout the course of the project known as "The One".

The Project Monitor agrees to undertake and complete the following as part of the on-going monitoring mandate on behalf of the Lender:

- (11) The Lenders will have received and be satisfied with a report addressed to the Agent from the Independent Cost Consultant (with appropriate backup certificates and reports from other consultants as required):
- (a) confirming that it has reviewed and is satisfied with the Project budgets, the plans and specifications and that the Project is feasible and can be completed in accordance with same;
 - (b) containing a projected cash flow estimate for construction;
 - (c) verifying the reputation, qualification and capabilities of all major trades and containing its recommendation with respect to the requirement for any performance and payment bonds for major trades and suppliers (and where same have been required by the Lenders, confirming same and are in form and content acceptable to the Independent Cost Consultant);
 - (d) confirming, based on the reports of the architect, Borrower's planning counsel, the mechanical and electrical consultant or other applicable consultants, that all necessary zoning and development approvals, including all necessary permits, have been obtained or will be issued as required pertaining to each stage of the construction;
 - (e) certifying the amount of hard costs and soft costs incurred on the Project to date on a line by line basis and identifying whether such costs have been incurred in accordance with the Project budgets or are cost overruns;
 - (f) estimating the cost to complete the condominium component of the Project and the commercial component of the Project on a line by line basis, which estimate shall not exceed \$1,390,000,000.00
 - (g) confirming that the Borrower has made all required holdbacks with respect to the construction completed to date and confirming the amount of such holdbacks;

- (h) confirming that all construction to date has been completed in all material respects in accordance with the plans and specifications and complies with applicable laws;
- (i) confirming the standard form residential sales agreement;
- (j) confirming the Tarion Bond with respect to purchaser deposits (which bond shall act as confirmation that the Project is registered and in good standing with the Tarion Home Warranty Program);
- (k) confirming that it has received and satisfactorily reviewed copies of all existing condominium sales agreements and including a schedule of presales, including purchaser, name and address, unit number of the unit being acquired, HST payable on such unit, unit model, square footage, asking price, sale price, purchaser deposit status (including location of purchaser deposit with the deposit trust insurer's trust account holder, amount paid to date, amount and timing of purchaser deposit yet to be paid, purchaser deposits released to the Borrower in respect of the construction, and portion of purchaser deposit relating to purchaser upgrades), mortgage financing, CMHC insurance (if applicable), closing date and any special conditions;
- (l) confirming that the aggregate of the projected gross sales proceeds under the then existing condominium sales agreements that constitute qualified residential presales is not less than \$522,965,855 (excluding charges for unit upgrades, alterations, and recoveries of development charges);
- (m) confirming that purchaser deposits in an aggregate amount of not less than \$103,939,971 have been contracted for under condominium sales agreements which constitute qualified residential presales; and
- (n) confirming that not less than \$86,469,560 of purchaser deposits have been received by the Borrower and deposited to the trust account of the deposit insurer.

Yours truly,

ALTUS GROUP LIMITED

Per: Andrew Driver
Associate Director

Per: Marlon Bray
Senior Director

We acknowledge and accept the terms and conditions contained within this agreement

As of Aug 29, 2019

IGIS Asset Management Co., Ltd.,

By: 

Name: Kyn Sung Lee

Title: Co-CEO & President

Reporting Qualifications

- The Borrower will be invoiced directly by Altus Group.
- The Project Monitor is not qualified to confirm that construction work has been completed in accordance with approved plans and specifications. To meet this Lender requirement, we will forward certificates provided by the Borrower's design consultants to confirm that the project is being constructed in accordance with the approved plans and specifications, and the applicable provincial building code.
- Altus Group will not be liable for any amount whether arising in negligence, tort, contractually or any other legal theory (a) in excess of the total fees paid under this agreement, and (b) for any lost profits, lost revenues, lost contracts, lost business, failure to realize expected savings or any other economic loss of any kind or any special, indirect, consequential or punitive damages arising out of, or in connection with, this agreement whether or not Altus Group was advised or aware of such potential loss.

Altus Group denies any liability related to matters not set out in our scope of work set out herein including, but not limited to, architectural and engineering deficiencies, environmental, soil, insurance, trade credit check for bonding purposes, sales values and legal matters. If you or any of your agents request commencement of Altus Group's services, this agreement and its terms and conditions will be deemed accepted by you and enforceable. This Agreement shall prevail over any other agreement or document between the parties in the event of any conflict.

C

**APPENDIX “3”
EXCERPT FROM AUGUST 2022 PAYMENT LISTING**

B	C	D	E	L	M	R	S
Name	Date			COCO APPROVED OR NOT APPROVED (N.A.)	JC COMMENTS		
Total Magix Technologies LLC.							
Marshall Haber Creative Group Inc.							
	08/01/2022						
	08/01/2022						
Total Marshall Haber Creative Group Inc.				Not Approved	David Levangie (Foglers) provided written reasons to Rod Davidge (Oslers) on 9.19.22 in an email.		Coco continues to dispute. Once again, marketing budget not approved as per prior comments on "cheques tab"
Mizrahi - HC				Coco is unable to confirm any and all sub-contract values as there has been inadequate information from GC as well as ALTUS regarding all Sub-Contract Agreements. Coco shall continue to remit payment in accordance with Altus, but several questions remain outstanding including value of original contract, explanation of increased contract values, including extras, change orders, Covid-19 Claims; disputes; other... Secondly, the certification of "off site" materials remains a critical issue, as payment is approved to the sub's. Our approval is to allow the Project to continue and not create any trade disruptions. Secondly, please provide copies of the invoices received from the Sub's / Vendors			***Please be advised Coco has only the principal sub-contract agreements, not the amendments, change orders or extra explanations; or, in several instances the purpose / justification for the release of holdbacks. It would be appreciated if we may secure a copy of all current documentation, as it is not in our files, nor have we been afforded access to this information or negotiation of these matters. In an effort to exemplify cooperation, I trust Mizrahi would support allowing their JV Partner access to this information. As stated in our prior comments, Coco shall not withhold payments to sub-trades but reserve the right to dispute Mizrahi Inc fees, as well as dispute the application of management fees on material supplied, as the methodology imposed is inconsistent. Further we do not support the excessive personnel Mizrahi Inc has on site and the assessment of management fees on traffic control and health and safety (all third party). As MI is aware, we have had payments under protest since 2019, by M. Rico.

D

APPENDIX “4”

EMAIL FROM J. COCO TO S. MIZRAHI DATED NOVEMBER 15, 2022

From: Sam Mizrahi[sam@mizrahidevelopments.ca]
Sent: Tue 11/15/2022 9:14:48 AM (UTC-05:00)
To: Remy Bel[Remy@mizrahidevelopments.ca]; Jonny Cracower[jonny@mizrahidevelopments.ca]; Amanda Brown[amanda@mizrahidevelopments.ca]; Micki Mizrahi[micki@mizrahidevelopments.ca]
Subject: Fwd: Monthly Payments - October 2022

FYI :)

Sam Mizrahi
 President
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
 T. [416.922.4200](tel:416.922.4200) ext.4210
 C. [416.818.5288](tel:416.818.5288)
 F. [1.866.300.0219](tel:1.866.300.0219)
 E. Sam@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

Begin forwarded message:

From: Jenny Coco <jcoco@cocogroup.com>
Date: November 15, 2022 at 8:13:54 AM EST
To: sam@mizrahidevelopments.ca
Cc: Mark Kilfoyle <Mark@mizrahidevelopments.ca>, "윤주성 Yoon, Joosung" <joosung.yoon@igisam.com>, custody@hanafn.com, in-custody@hanafn.com, #글로벌펀드운용 2팀 <gfm2@igisam.com>, Wes Diong <wdiong@cocogroup.com>, david.jo@igisusa.com, 박동빈/팀원/글로벌마켓담당 Jake Park <jake.park@meritz.co.kr>, Rocky Coco <Rcoco@cocogroup.com>, 노영호/ Ho 글로벌마켓팀 Young <youngho.roh@meritz.co.kr>, "신민재 Sheen, Minjae" <Minjae.sheen@igisam.com>, #법무팀 <LegalTeam@igisam.com>, "김선미 Kim, Sunmi" <sunmi.kim@igisam.com>
Subject: Monthly Payments - October 2022

Hi Sam,

I'm in receipt of this month's list of payables for the Project. While I am of course entitled to this information and expect to continue to receive such information going forward, I continue to struggle with your request that I also provide signatures each month authorizing the payment of such payables.

Given the release last week of Justice Penny's decision, and the need to go back to arbitration, at least to determine the venue for the dispute over the validity of the Resolution you purported to pass, I will not be signing any more cheques pending determination of the Resolution and your conduct both in making the Resolution and thereafter in reliance on the Resolution. You have unlawfully and oppressively purported to pass this Resolution in order to seize unilateral control of the project and deny me my decision-making rights under the project agreements and arbitral awards/agreements. You have stripped me of fulsome transparency into the Project. This has made it impossible for me to continue to provide meaningful ongoing review and authorization in a timely manner. As a result, until the validity of the Resolution is decided either by arbitration or the court (and I expect the Resolution will be declared invalid and unlawful), I will not be signing any more cheques. It is inconsistent with the position that you have taken to date and this inconsistency cannot continue. You cannot concurrently insist that I have no authority in respect of the Project and yet appeal each month for my signature authorizing the payment of itemized Project payables. Likewise, you cannot assert that I am jeopardizing the Project in withholding a signature that you insist is not required. You are well aware of the concerns about the Project that I have raised time and time again and you have ignored them. I am not, and will not be, responsible for steps that you take while I have been excluded from decision-making and transparency into the Project. The lead lender is copied on this email, and will have to make its own determination as to the validity of the Resolution, and your proceeding without my signature or consent to Project payables. Decisions that you purport to make under the Resolution are yours and yours alone.

Please note, however, that the staff at Coco Group will continue to assist as a clearing house for the payments so as not to jeopardize the Project. Our doing so does not expressly or impliedly amount to an approval of any such payments.

Regards,

Jenny

From: 김선미 Kim, Sunmi <sunmi.kim@igisam.com>

Sent: November 2, 2022 10:21 PM

To: Jenny Coco <JCoco@cocogroup.com>

Cc: Mark Kilfoyle <Mark@mizrahidevelopments.ca>; 윤주성 Yoon, Joosung <joosung.yoon@igisam.com>; custody@hanafn.com; in-custody@hanafn.com; #글로벌 펀드운용 2팀 <gfm2@igisam.com>; Wes Diong <wdiong@cocogroup.com>; david.jo@igisusa.com; 박동빈/팀원/글로벌마켓담당 Jake Park <jake.park@meritz.co.kr>; Rocky Coco <Rcoco@cocogroup.com>; 노영호/ Ho 글로벌마켓팀 Young <youngho.roh@meritz.co.kr>; 신민재 Sheen, Minjae <Minjae.sheen@igisam.com>; #법무팀 <LegalTeam@igisam.com>; Sam Mizrahi <sam@mizrahidevelopments.ca>

Subject: RE: Monthly Construction Financing Release (September 2022) - 1 of 2

Hello Jenny,

I think you missed Joosung's reply. He responded to you with my confirmation.

I appreciate you for your idea and suggestions. We understood your points. We as a senior lender will review and decide what we should do to protect project and our interest as well.

If we have any information to be shared to the borrower, we will convey to Mizrahi and CoCo's simultaneously.

And please uphold the process we had suggested for monthly release, so the project could continue and not to make any further delay.

Thank you for your cooperation.

Best Regards,

Sunmi Kim

Global Fund Management Team

Senior Vice President/2팀장(부장)



이지스자산운용주식회사

IGIS Asset Management Co., Ltd

11th Fl. CCMM Bldg.,
101 Yeouigongwon-ro
Yeongdeungpo-gu, Seoul, Korea
07241
www.igisam.com

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M. +82 10 3225 8511
F. +82 2 780 7303
sunmi.kim@igisam.com
gfm2@igisam.com

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From: 윤주성 Yoon, Joosung <joosung.yoon@igisam.com>

Sent: Monday, October 31, 2022 5:28 PM

To: Jenny Coco <JCoco@cocogroup.com>; 김선미 Kim, Sunmi <sunmi.kim@igisam.com>

Cc: Mark Kilfoyle <Mark@mizrahidevelopments.ca>; custody@hanafn.com; in-custody@hanafn.com; #글로벌펀드운용 2팀 <gfm2@igisam.com>; Wes Diong <WDiong@cocogroup.com>; david.ijo@igisusa.com; 박동빈/팀원/글로벌마켓담당 Jake Park <jake.park@meritz.co.kr>; Rocky Coco <Rcoco@cocogroup.com>; 노영호/ Ho 글로벌마켓팀 Young <youngho.roh@meritz.co.kr>; 신민재 Sheen, Minjae <Minjae.sheen@igisam.com>; #법무팀 <LegalTeam@igisam.com>; Sam Mizrahi <sam@mizrahidevelopments.ca>

Subject: RE: Monthly Construction Financing Release (September 2022) - 1 of 2

Good morning Jenny,

I am getting back to you on behalf of Sunmi.

We have taken your points well, and we will get back to you once we consider/review your suggestions.

Thank you so much.

Kind Regards,
Joosung

Joosung Yoon

Global Fund Management Team
Assistant Vice President



IGIS Asset Management Co., Ltd
11th Fl. C.C.M Bldg.,
101 Yeouigongwon-ro
Yeongdeungpo-gu, Seoul,
Korea
www.igisam.com

T 02 6959 6782
M 010 7104 5453
F 02 6499 7302
joosung.yoon@igisam.com

From: Jenny Coco <JCoco@cocogroup.com>

Sent: Sunday, October 30, 2022 1:31 AM

To: 김선미 Kim, Sunmi <sunmi.kim@igisam.com>

Cc: Mark Kilfoyle <Mark@mizrahidevelopments.ca>; custody@hanafn.com; in-custody@hanafn.com; 윤주성 Yoon, Joosung <joosung.yoon@igisam.com>; #글로벌 펀드운용 2팀 <gfm2@igisam.com>; Wes Diong <WDiong@cocogroup.com>; david.jo@igisusa.com; 박동빈/팀원/글로벌마켓담당 Jake Park <jake.park@meritz.co.kr>; Rocky Coco <Rcoco@cocogroup.com>; 노영호/ Ho 글로벌마켓팀 Young <youngho.roh@meritz.co.kr>; 신민재 Sheen, Minjae <Minjae.sheen@igisam.com>; #법무팀 <LegalTeam@igisam.com>; Sam Mizrahi <sam@mizrahidevelopments.ca>

Subject: RE: Monthly Construction Financing Release (September 2022) - 1 of 2

Hi Sunmi,

Thank-you for your e-mail, apologies for the delayed response as my system was compromised, as you are aware.

We agree that our over-riding objective is aligned with yours; namely, the successful completion of the Project. Successful completion means without further delay or further cost overruns. The concerns that we raise are not meant to in anyway jeopardize the Project but rather to ensure that our mutual goal is accomplished. We want to work collaboratively with you to that end. We believe it is essential for many reasons –

including the delays and cost overruns encountered to date – that the Project be properly managed.

As you know the Coco family is both a primary equity holder and a principal secured creditor. The success of the Project remains dependent upon due recognition of our rights and interests in this regard. To be clear, we are not seeking to usurp undue control over the Project or to prevent the Project from being concluded. Rather, we wish to ensure that the Project's success is facilitated by, among other things, (i) timely, transparent and even-handed communication of information, (ii) proper oversight and administration by qualified and independent third parties, and (iii) rigorous cost controls to ensure that cost overruns to date are stemmed.

We appreciate that Altus remains engaged and is reviewing our most recently-provided comments, particularly as they relate to the Project budget and your comments on the budget from the perspective of a senior lender. Given events and circumstances to date, we believe the successful completion of the Project is best facilitated at this time by the following additional steps:

- An expansion of the role played by Altus to include financial review of all Project Costs including Project management and scheduling, cost management and quantity surveying, valuation and advisory services as required. Participation of all cost negotiation to ensure cost optimization.
- The engagement of a third party is required to confirm or provide ancillary services to Altus.
- The timely, transparent and even-handed ongoing communication of information by third party advisors and the lender concurrently to the Project stakeholders, including the Cocos;
- Providing the Cocos with meaningful opportunities to ask questions and obtain answers – particularly with respect to revenue generation, costs / budgets and ongoing disbursements- as the Project continues to advance. With respect to disbursements in particular, the Cocos should not be asked or expected to “rubber stamp” approvals without sufficient and timely information pertaining to such disbursements (and that is especially true where the timing and/or quantum of disbursements deviates from approved budgets and timelines).
- Meaningful participation, together with Altus in the strategy for the Project, establishing a plan to achieve optimization of revenue, reduce expenses, improve construction management, including financial budgeting and planning.

We believe that you, as senior lender would similarly be comforted by implementation of and adherence to these additional steps.

Thank you,
Jenny

Jenny Coco
Coco Group

----- Original message -----

From: "김선미 Kim, Sunmi" <sunmi.kim@igisam.com>

Date: 2022-10-25 9:48 a.m. (GMT+00:00)

To: Sam Mizrahi <sam@mizrahidevelopments.ca>, Jenny Coco <JCoco@cocogroup.com>
 Cc: Mark Kilfoyle <Mark@mizrahidevelopments.ca>, custody@hanafn.com, in-custody@hanafn.com, "윤주성 Yoon, Joosung" <joosung.yoon@igisam.com>, #글로벌펀드운용 2팀 <gfm2@igisam.com>, Wes Diong <WDiong@cocogroup.com>, david.io@igisusa.com, 박동빈/팀원/글로벌마켓담당 Jake Park <jake.park@meritz.co.kr>, Rocky Coco <Rcoco@cocogroup.com>, 노영호/ Ho 글로벌마켓팀 Young <youngho.roh@meritz.co.kr>, "신민재 Sheen, Minjae" <Minjae.sheen@igisam.com>, #법무팀 <LegalTeam@igisam.com>
 Subject: RE: Monthly Construction Financing Release (September 2022) – 1 of 2

[EXTERNAL EMAIL]

Dear Sam & Jenny,

We understand that you have different opinions with respect to the project costs and are perhaps building records in connection with the ongoing litigation between both of you.

That said, we would appreciate if you could kindly refrain from sending across emotionally charged emails.

Both of you would agree that we all have a mutual goal (i.e., successful completion of the project); therefore, it would be in the best interest of all stakeholders to cooperate with each other to achieve that goal throughout the project.

At this juncture, our top priorities would be ensuring both the construction and the residential sales progress. None of us would want any delay or extra costs caused by not paying subcontractors and vendors properly on time.

As you know, time is of the essence of the project. I believe this is more important on the borrowers' side as the project is already behind the schedule (the extension of the maturity has been granted notwithstanding multiple EODs triggered).

Jenny,

Could you please update your opinion on the revised payment listing with Mark's response and add your signature on the wire instructions accordingly?

I see the most arguable comments for payment is the marketing invoices. I don't have information that if you or Maria reviewed/approved the updated marketing budget or not.

But I know that borrower's sales progress is really behind the schedule. I'd like to know your opinion/suggestion about marketing process.

On a separate note, we will have Altus to review your comments about altus report.

We are reviewing the project budget from the perspective of a senior lender as

objectively as possible, and that is why we have hired Altus for professional review.

I understand your concerns of the budget and we have same concerns as you do, but

not approving the invoice in a timely manner may disrupt marketing or construction progress and even jeopardize the completion of the project.
I would appreciate if the Cocos could continue to support having the Project completed.

Warmest Regards,

Sunmi Kim

Global Fund Management Team

Senior Vice President/2팀장(부장)



**이지스자산
운용주식회
사**

IGIS Asset Management Co., Ltd

11th Fl. CCMM Bldg.,

101 Yeouigongwon-ro

Yeongdeungpo-gu, Seoul, Korea 07241

<https://link.edgepilot.com/s/398609b9/rH0bg4m0W0mDRpzDriP78g>

?u=http://www.igisam.com/

T. +82 2 6959 7823

M. +82 10 3225 8511

F. +82 2 780 7303

sunmi.kim@igisam.com

gfm2@igisam.com

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From: Sam Mizrahi <sam@mizrahidevelopments.ca>

Sent: Tuesday, October 25, 2022 6:08 AM

To: Jenny Coco <jcoco@cocogroup.com>

Cc: Mark Kilfoyle <Mark@mizrahidevelopments.ca>; custody@hanafn.com; in-custody@hanafn.com; 김선미 Kim, Sunmi <sunmi.kim@igisam.com>; 윤주성 Yoon,

Joosung <joosung.yoon@igisam.com>; #글로벌펀드운용 2팀 <gfm2@igisam.com>;

Wes Diong <wdiong@cocogroup.com>; david.jo@igisusa.com; 박동빈/팀원/글로벌마켓

담당 Jake Park <jake.park@meritz.co.kr>; Rocky Coco <Rcoco@cocogroup.com>; 노

영호/ Ho 글로벌마켓팀 Young <youngho.roh@meritz.co.kr>

Subject: Re: Monthly Construction Financing Release (September 2022) - 1 of 2

Jenny,

Unlike yourself. We write our own emails. You just don't like the facts!
As I said in my previous email everyone is now seeing through you.

Sincerely,

Sam Mizrahi
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

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

https://link.edgepilot.com/s/067ad383/_yX0GfhlwUOP7SPvirkKwg?u=http://www.mizrahidevelopments.ca/

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On Oct 24, 2022, at 3:52 PM, Jenny Coco
<jcoco@cocogroup.com> wrote:

Mark,

I'm not responding any further. You have my position.

Unless you have retained separate counsel, it is obvious to me that Project counsel is providing you advice on this matter. This is another reason why he is conflicted and should be removed as counsel.

Jenny

From: Mark Kilfoyle <mark@mizrahidevelopments.ca>
Sent: October 24, 2022 4:21 PM
To: Jenny Coco <JCoco@cocogroup.com>
Cc: custody@hanafn.com; in-custody@hanafn.com; "김선미 Kim, Sunmi" <sunmi.kim@igisam.com>; "윤주성 Yoon, Joosung" <joosung.yoon@igisam.com>; #글로벌펀드운용 2팀 <gfm2@igisam.com>; Wes Diong <WDiong@cocogroup.com>; david.jo@igisusa.com; 박동빈/팀원/글로벌마켓담당 Jake Park <jake.park@meritz.co.kr>; sam@mizrahidevelopments.ca; Rocky Coco <Rcoco@cocogroup.com>; 노영호/ Ho 글로벌마켓팀 Young

<youngho.roh@meritz.co.kr>

Subject: Re: Monthly Construction Financing Release (September 2022) - 1 of 2

[**EXTERNAL EMAIL**]

Hi Jenny,

If Meritz believes it's been misled in any way (for instance, with respect to whether it thought you'd actually signed anything or whether the expenses it processed were in the best interest of the Project) I'd invite Jake to say so.

Your remark that the "SIGNED UNDER RESOLUTIONS" text is somehow "unlawful" (a charge you make twice) is quite out of line. That text merely confirms that (a) the documents have been executed per the resolution you've referred to, which remains in effect unless and until revoked or invalidated, and (b) your signature is not required. No one has signed any document in your name, as you suggest. Nevertheless, for greater clarity, going forward the text will say "SIGNATURE NOT REQUIRED PER RESOLUTIONS".

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
E. Mark@MizrahiDevelopments.ca

https://link.edgepilot.com/s/325715d6/QXyW7_8FS0uo6KbE7IDteg?u=http://www.mizrahidevelopments.ca/

On Oct 24, 2022, at 2:04 PM, Jenny Coco
<JCoco@cocogroup.com> wrote:

Hi Mark,

Your e-mail with attachments has been forwarded to me by Wes. I have added Meritz to this response.

I note that where my signature is required, someone has purported to sign a signature block in my name with the words “signed under resolutions.” This is not the first time that this has occurred and it is both unlawful and deeply disturbing. As you know, there is a Control Agreement dated May 2021 that has expired and a Resolution of Mizrahi Commercial (The One) GP Inc. (the “Corporation”) unilaterally purporting to extend the Control Agreement. That Resolution and the acts of those involved are the subject of litigation recently commenced. Irrespective of the outcome of that dispute, at no time have I ever granted a power of attorney for anyone to sign any document or authorize any payment in my name. Mr. Mizrahi may assert that he can continue to control and direct the Corporation solely on his own (which is contested), but at no time has he or the Corporation ever had the right to sign any document in my name or to direct any other person or entity to sign any document in my name. It is one thing to purport not to require my signature, but it is another thing altogether – and entirely unlawful – to purport to sign any document or authorize any payment in my name and to represent to third parties that such authority exists or is binding upon me. Such intentional conduct amounts to fraud.

Not surprisingly then, I am concerned that the Company is continuing to execute documents and to initiate payments without my consent or my signature while the validity of the Resolution is before the Court, and to represent to third parties that someone else has authority to sign anything in my name. I require that Mr. Mizrahi, the Corporation and their affiliates immediately cease executing documents or authorizing payments in my name and to cease representing to third parties that any such persons have authority to sign in my name, and I reserve all rights and claims against Mr. Mizrahi, the Corporation and any others who have engaged and who continue to engage in this practice, including you. My signature block should not appear on any document unless I execute it. If Mr. Mizrahi or the Corporation truly believe my signature is not required as they assert, it should be unnecessary for my name to appear on any document other than those that I personally elect to execute.

As a matter of record, Meritz should be aware that I am not in agreement with the list of invoices provided in your aforementioned email and exhibits, and I have indicate the reasons for my objection. Please be aware that I intend to rely on the continuing manner in which you flagrantly ignore my concerns, as Project costs continue to increase without accountability and without my approval.

Jenny

From: Wes Diong <WDiong@cocogroup.com>
Sent: October 24, 2022 9:57 AM
To: Jenny Coco <JCoco@cocogroup.com>
Subject: FW: Monthly Construction Financing Release (September 2022) - 1 of 2

Jenny,

FYI. Your signature has been indicated as "signed under resolutions".

Wes

From: Mark Kilfoyle <mark@mizrahidevelopments.ca>
Sent: October 24, 2022 9:28 AM
To: custody@hanafn.com; in-custody@hanafn.com; sunmi.kim@igisam.com
Cc: joosung.yoon@igisam.com; Gfm2@igisam.com; Wes Diong <WDiong@cocogroup.com>; david.jo@igisusa.com
Subject: Re: Monthly Construction Financing Release (September 2022) - 1 of 2

[EXTERNAL EMAIL]

Good morning/evening all,

Please find enclosed the signed documents. I believe we are just waiting on the Altus Report. Please let us know if there is anything missing.

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
E. Mark@MizrahiDevelopments.ca

<https://link.edgepilot.com/s/c88ebb8a/3AuNo7QogES64gBrgKCNYA?u=http://www.mizrahidevelopments.ca/>

On Oct 20, 2022, at 5:17 PM, Wes Diong
<WDiong@cocogroup.com> wrote:

Please see attached documents relating to this month's draw. The Release Notice is unsigned given Jenny's outstanding comments/questions.

HC and GC links below:

Sub Trade Invoices

Password: 2mzZ9bKA

<https://link.edgepilot.com/s/e18be85f/eb-t44syPkuXS9YtOKExFQ?u=https://mizrahi.egnyte.com/fl/wbw4uNof37>

GC Invoices

Password: ZAPyzDWn

<https://link.edgepilot.com/s/9b8baf18/FL0E214clEiFmL8y8DBVBA?u=https://mizrahi.egnyte.com/fl/U7Bg3cof74>

There is one remaining document which has been compressed and will be sent in a second email.

Regards,
Wes

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<September 2022 - Payment Listing - Oct 28
2022 REVISED 10.17.22 Final.xlsx><September
2022 Soft Costs.pdf><The One - Payment Listing
Tracking_2022.10.xlsx><Appendix 2 -
September 2022 Monthly Drawdown
Items_2022.10.21.xlsx><September 2022
Project Status Certificate.pdf><September 2022
Release Notice -20221020.pdf><GC Recoverable
Cost Inv# C1247.pdf><Wire Instruction -
Payment Listing Oct 28 Executed By Jenny.pdf>

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<September 2022 – Payment Listing – Oct 28
 2022 REVISED 10.17.22 Final.xlsx –
 Group.pdf><September 2022 Release Notice –
 20221020.pdf><Signed Wires.pdf>

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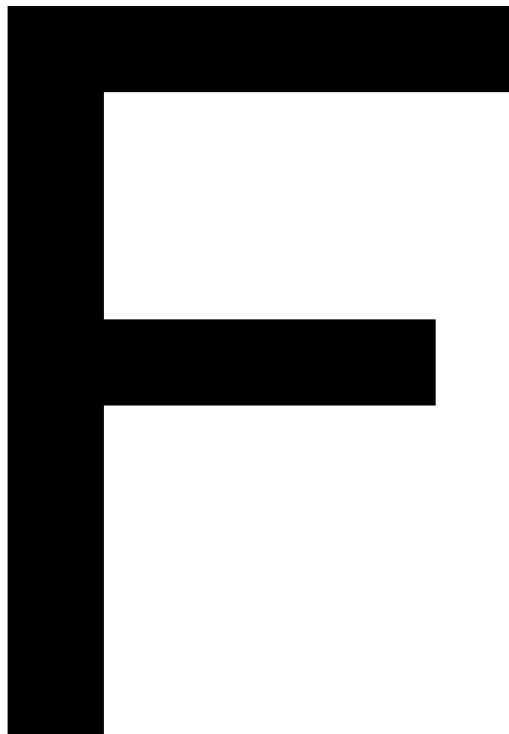
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**APPENDIX “5”
OCTOBER 2023 PAYMENT LISTING**

**Please see enclosed native
[Excel spreadsheet](#)**



**APPENDIX “6”
EXCERPTS FROM OCTOBER 2023 PAYMENT LISTING (CM FEE OBJECTIONS)**

Month Year ->	August 2022				
Vendor	Date	Num	FX	Open Balance	COCO APPROVED OR NOT APPROVED (N. A)
Mizrahi - GC					
	08/16/2022	C1233		660,459.69	Not Approved - Note: this is also Construction Labour cost and same comment as Site Labour
Construction Staff Cost					
	08/16/2022	C1231		153,719.43	Approved subject to receipt of Contract - copy of the contract required to confirm rates paid.
Crane Labour					
	08/16/2022	C1234		27,542.38	Approved
Equipment Cost					
	09/16/2022	C1230		745,683.89	Not Approved - Coco has repeatedly requested details of all Mizrahi staff and the works performed. To date, no information other than Job Titles has been received. Accountability it lacking. coco is requesting a meeting with all personnel to review scope of work. All Security is paid to a third party and invoicing from the Group should be paid directly, not with OH / Costs of Mizrahi.
Site Labour					

Month Year ->	September 2022				
Vendor	Date	Num	FX	Open Balance	JC COMMENTS COCO APPROVED OR NOT APPROVED (N. A)
Mizrahi - GC					
	08/16/2022	C1244		679,352.59	Not approved, see comments below. Also, MI provides no insight for the wages, and pay period, to be provided by a third party consultant.
Construction Staff Cost					
	08/16/2022	C1243		149,160.61	Not approved, see comments below. Also, MI provides no insight for the wages, and pay period, to be provided by a third party consultant.
Crane Labour					
	08/16/2022	C1246		27,542.38	Accountability of containers / Office Containers - copy of the actual invoice required. Why are we continuing to rent in lieu of own - excessive lack of cost management of \$16K / month since Mike Clark.
Equipment Cost					
	09/16/2022	C1242		646,692.07	Not approved, see comments below. Also, MI should only be invoicing for the period of September, not October, 2022. Why is MI permitted to invoice for period ending October 15th, with an "estimation of hours"? Coco protests payments as invoiced, and requests a third party consultant to review each as noted below
Site Labour					

Month Year ->	October 2022				
Vendor	Date	Num	FX	Open Balance	JC COMMENTS:
	It has been repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard.				
Mizrahi - GC					
		C1262		680,273.47	Not approved, see comments below. Also, we are financing MI cash flow as he is invoicing all of November, which has not been paid to the employees, and payroll certification of payment is required, as noted below.
Construction Staff Cost					
		C1266		135,688.61	Not approved, see comments below. Also, are we financing MI cash flow as he is invoicing November 12th, which has not been paid to the employees, payroll certification of payment is required as per below.
Crane Labour					
		C1263		27,542.38	Accountability of containers / Office Containers - copy of the actual invoice required. Why are we continuing to rent in lieu of own - excessive lack of cost management of \$16K / month since Mike Clark.
Equipment Cost					
		C1257		641,132.64	Not approved, see comments below. Also, MI should only be invoicing for the period of October, not November, 2022, financing Mizrahi cash flow.. Why is MI permitted to invoice for period ending November 15th, with an "estimation of hours"? Coco protests payments as invoiced, and requests a third party consultant to review each as noted below
Site Labour					

Month Year ->	November 2022				
Vendor	Date	Num	FX	Open Balance	JC COMMENTS:
	It has been repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard.				
Mizrahi - GC					
	12/08/2022	C1268		666,962.07	Not approved, see comments below. Also, we are financing MI cash flow as he is invoicing all of December, which has not been paid to the employees, and payroll certification of payment is required, as noted below.
Construction Staff Cost					
	12/08/2022	C1271		191,560.59	Not approved, see comments below. Also, are we financing MI cash flow as he is invoicing December 17th, which has not been paid to the employees, payroll certification of payment is required as per below.
Crane Labour					
	12/08/2022	C1269		27,416.56	Accountability of containers / Office Containers - copy of the actual invoice required. Why are we continuing to rent in lieu of own - excessive lack of cost management of \$16K (note seacans are also paid thru MI invoices)/ month including the payment of Cell Equipment, computers, Primavera and Blue Beam - all for the account of Mizrahi as this is the cost associated to being a Developer on the Project, in particular given the excessive fees earned, above industry standards.
Equipment Cost					
	12/08/2022	C1272		976,843.83	Not approved, see comments below. Also, MI should only be invoicing for the period of November, not until December 17th, 2022, financing Mizrahi's cash flow. Why is MI permitted to invoice for period ending December 17th, with an "estimation of hours"? Coco protests payments as invoiced, and requests a third party consultant to review each as noted below. Certification of payment is required by an approved provider to ensure Mizrahi has paid all accounts, including any government remittances.
Site Labour					

Month Year ->	December 2022					
Vendor	Date	Num	FX	Open Balance	JC COMMENTS:	Mark Kilfoyle comments (31st Jan 2023)
Mizrahi - GC	Once again, Coco has repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard. Thus, the Project is financing Mizrahi Inc cash flow.					Mizrahi is acting in the best interest of the Project and always has. We are not going to get into the weeds of responding to your open ended and unproven allegations. All costs are billed through at invoiced values and rates that have always been charged since the beginning of the Project as is standard industry practice. If you have concerns about the hourly employees' work, they can only be considered if you particularize them. Vague allegations of
Construction Staff Cost	01/11/2023	C1279		676,632.80	Not approved, see comments below. Also, we are financing MI cash flow as he is invoicing all of January, which has not been paid to the employees, and payroll certification of payment is required, as noted below.	Report provided to Coco. There is no further information to provide Coco other than what has been provided. Coco has been provided full access to the information requested. Coco has received all relevant information Mizrahi can provide site staff and their roles. There has not been any significant change in the site staff since the inception of the Project. The staff are all required on the site, especially as the Project is now moving faster and with more complex works being required as we move towards finishings of the commercial component of the building. we are constantly reassessing the staffing requirements to see if process could be streamlined and made more efficient, but the building is now getting even more complex as we rise to the higher floor levels and finishing to commence inside of the spaces.
Crane Labour	01/11/2023	C1283		106,365.95	Paid on estimates for last week, this should be stopped and actual hours to be invoiced.	This is a process that was agreed to by Maria Rico and Coco so that we could produce the month end reports faster instead of waiting until the October 15th payroll. The accrual is reversed the next month and actuals at inserted. Same as above. There is no contract, these are billed from Mizrahi Inc directly as Mizrahi labour. This is the same process that has been done since the beginning of the Project and as approved by Maria Rico and Coco. A copy of the invoice is provided in the link noted above along with the time sheets for the Crane Labour.
Equipment Cost	01/11/2023	C1280		27,699.61	Accountability of containers / Office Containers - copy of the actual invoice required. Why are we continuing to rent in lieu of own - excessive lack of cost management of \$16K (note seacans are also paid thru MI invoices)/ month including the payment of Cell Equipment, computers, Primavera and Blue Beam - all for the account of Mizrahi as this is the cost associated to being a Developer on the Project, in particular given the excessive fees earned, above industry standards.	The containers are owned by Mizrahi Inc and rented to the Project. Mike Clark followed the same process and was approved by Ms. Coco and Maria Rico from day one of the Project.
Site Labour	01/11/2023	C1284		713,416.78	<div>Not approved, see comments below. Also, MI should only be invoicing for the period of December, not until January 14th, 2023, financing Mizrahi's cash flow. Why is MI permitted to invoice for period ending January 14th, with an "estimation of hours"? Coco protests payments as invoiced, and requests a third party consultant to review each as number of personnel is excessive and as noted below. Certification of payment is required by an approved provider to ensure Mizrahi has paid all accounts, including any government remittances.</div> <div>When queried about no. of security and traffic control during the Xmas break as there were no other contractors on site, the daily report was revised. This revision was not made at the time of invoicing. Extra 156 hours charged for 3 days (28-30 Dec 2022) at avg rate of \$96.66/hr working out to \$15k approx.[Attachment 4]</div>	<div>This is a process that was agreed to by Maria Rico and Coco so that we could produce the month end reports faster instead of waiting until the October 15th payroll. The accrual is reversed the next month and actuals at inserted. Same as above. There is no contract, these are billed from Mizrahi Inc directly as Mizrahi labour. This is the same process that has been done since the beginning of the Project and as approved by Maria Rico and Coco. A copy of the invoice is provided in the link noted above along with the time sheets for the Crane Labour. We have responded to your queries about labour as you provide them to our team.</div> <div>With respect to Attachment 4, you are making a statement here out of context. First, as it was explained to you over the holidays there was an error in the information provided to you that did not impact the billing. With respect to</div>

Month Year ->	January 2023					
Vendor	Date	Num	FX	Open Balance	JC COMMENTS:	No comments provided by Mizrahi to Coco's query from Jan 2023
	Once again, Coco has repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard. Thus, the Project is financing Mizrahi Inc cash flow. Mizrahi should be responsible for all costs, as he is in default of the Credit Agreement, exceeding the completion date as notified by the lender on 4th January 2023. This is a contractor's lack of proper & efficient management , not to mention the lack of execution capability on to deliver the Project within the budget and on time.					
Mizrahi - GC						
	02/13/2023	C1296		676,632.80	NOT APPROVED: Mizrahi continues to fail to provide Coco the actual payroll payments for all personnel, (administration / construction / equipment operators / labourers etc....) and this is not in the best interest of the Project, nor is it reflective of the Arbitration Award, wherein Mizrahi is entitled to a specific fee, which Mizrahi is exceeding.	
Construction Staff Cost						
	02/13/2023	C1297		149,557.61	NOT APPROVED: Mizrahi continues to fail to provide Coco the actual payroll payments for all personnel, (administration / construction / equipment operators / labourers etc....) and this is not in the best interest of the Project, nor is it reflective of the Arbitration Award, wherein Mizrahi is entitled to a specific fee, which Mizrahi is exceeding.	
Crane Labour						
	02/13/2023	C1295		27,699.61	NOT APPROVED: Incremental cost are now being incurred after the construction completion date committed to the senior lender. Notice of default has been served by senior lender for failure to complete construction within the deadline. This cost is now being incurred due to Contractor's fault and is recoverable from Contractor, Mizrahi	
Equipment Cost						
	02/13/2023	C1298		794,551.35	NOT APPROVED: Mizrahi continues to fail to provide Coco the actual payroll payments for all personnel, (administration / construction / equipment operators / labourers etc....) and this is not in the best interest of the Project, nor is it reflective of the Arbitration Award, wherein Mizrahi is entitled to a specific fee, which Mizrahi is exceeding.	
Site Labour						

Month Year ->	February 2023				
Vendor	Date	Num	FX	Open Balance	JC COMMENTS:
	Once again, Coco has repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard. Thus, the Project is financing Mizrahi Inc cash flow. Mizrahi should be responsible for all costs, as he is in default of the Credit Agreement, exceeding the completion date as notified by the lender on 4th January 2023. This is a contractor's lack of proper & efficient management , not to mention the lack of execution capability on to deliver the Project within the budget and on time.				
Mizrahi - GC					
	03/13/2023	C1313		780,612.77	NOT APPROVED: Mizrahi continues to fail to provide Coco the actual payroll payments for all personnel, (administration / construction / equipment operators / labourers etc....) and this is not in the best interest of the Project, nor is it reflective of the Arbitration Award, wherein Mizrahi is entitled to a specific fee, which Mizrahi is exceeding.
Construction Staff Cost					
	03/13/2023	C1310		155,784.50	NOT APPROVED: Mizrahi continues to fail to provide Coco the actual payroll payments for all personnel, (administration / construction / equipment operators / labourers etc....) and this is not in the best interest of the Project, nor is it reflective of the Arbitration Award, wherein Mizrahi is entitled to a specific fee, which Mizrahi is exceeding.
Crane Labour					
	03/13/2023	C1314		28,800.39	NOT APPROVED: Incremental cost are now being incurred after the construction completion date committed to the senior lender. Notice of default has been served by senior lender for failure to complete construction within the deadline. This cost is now being incurred due to Contractor's fault and is recoverable from Contractor, Mizrahi
Equipment Cost					
	03/13/2023	C1311		1,102,841.06	NOT APPROVED: Mizrahi continues to fail to provide Coco the actual payroll payments for all personnel, (administration / construction / equipment operators / labourers etc....) and this is not in the best interest of the Project, nor is it reflective of the Arbitration Award, wherein Mizrahi is entitled to a specific fee, which Mizrahi is exceeding.
Site Labour					

Month Year ->	March 2023				
Vendor	Date	Num	FX	Open Balance	JC COMMENTS: (19th April 2023)
	Once again, Coco has repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard. Thus, the Project is financing Mizrahi Inc cash flow. Mizrahi should be responsible for all costs, as he is in default of the Credit Agreement, exceeding the completion date as notified by the lender on 4th January 2023. This is a contractor's lack of proper & efficient management , not to mention the lack of execution capability on to deliver the Project within the budget and on time.				
Mizrahi - GC					
	03/13/2023	C1325		812,892.80	NOT APPROVED: Failure to be transparent on costs by Mizrahi. Mizrahi continues to fail to provide Coco the actual payroll payments for all personnel, (administration / construction / equipment operators / labourers etc....) and this is not in the best interest of the Project, nor is it reflective of the Arbitration Award, wherein Mizrahi is entitled to a specific fee, which Mizrahi is exceeding. Coco and the Project reserve the right to recover all costs incurred from Mizrahi Developments Inc. for all costs that are unjustifiable and unreasonable.
Construction Staff Cost					
	03/13/2023	C1327		253,093.01	APPROVED SUBJECT TO RESERVATION OF RIGHTS: Mizrahi continues to fail to provide Coco the actual payroll payments for all personnel, (administration / construction / equipment operators / labourers etc....) and this is not in the best interest of the Project, nor is it reflective of the Arbitration Award, wherein Mizrahi is entitled to a specific fee, which Mizrahi is exceeding. Coco and the Project reserve the right to recover all costs incurred from Mizrahi Developments Inc. for all costs that are unjustifiable and unreasonable.
Crane Labour					
	03/13/2023	C1326		29,114.89	APPROVED SUBJECT TO RESERVATION OF RIGHTS: Incremental cost are now being incurred after the construction completion date committed to the senior lender. Notice of default has been served by senior lender for failure to complete construction within the deadline. This cost is now being incurred due to Contractor's fault and is recoverable from Contractor, Mizrahi Coco and the Project reserve the right to recover all costs incurred from Mizrahi Developments Inc. for all costs that are unjustifiable and unreasonable.
Equipment Cost					
	03/13/2023	C1323		891,731.36	APPROVED SUBJECT TO RESERVATION OF RIGHTS: Mizrahi continues to fail to provide Coco the actual payroll hourly rates and payments for all personnel, (administration / construction / equipment operators / labourers etc....) and this is not in the best interest of the Project, nor is it reflective of the Arbitration Award, wherein Mizrahi is entitled to a specific fee, which Mizrahi is exceeding. Coco and the Project reserve the right to recover all costs incurred from Mizrahi Developments Inc. for all costs that are unjustifiable and unreasonable.
Site Labour					

Month Year ->	April 2023				
Vendor					JC COMMENTS:
	Date	Num	FX	Open Balance	
Mizrahi - GC	Once again, Coco has repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard. Thus, the Project is financing Mizrahi Inc cash flow. Mizrahi should be responsible for all costs, as he is in default of the Credit Agreement, exceeding the completion date as notified by the lender on 4th January 2023. This is a contractor's lack of proper & efficient management , not to mention the lack of execution capability on to deliver the Project within the budget and on time.				
					NOT APPROVED: Failure to be transparent on costs by Mizrahi. Mizrahi continues to fail to provide Coco the actual payroll payments for all personnel, (administration / construction / equipment operators / labourers etc....) and this is not in the best interest of the Project, nor is it reflective of the Arbitration Award, wherein Mizrahi is entitled to a specific fee, which Mizrahi is exceeding. Coco and the Project reserve the right to recover all costs incurred from Mizrahi Developments Inc. for all costs that are unjustifiable and unreasonable.
Construction Staff Cost	05/12/2023	C1337		812,892.80	
					APPROVED SUBJECT TO RESERVATION OF RIGHTS: Mizrahi continues to fail to provide Coco the actual payroll payments for all personnel, (administration / construction / equipment operators / labourers etc....) and this is not in the best interest of the Project, nor is it reflective of the Arbitration Award, wherein Mizrahi is entitled to a specific fee, which Mizrahi is exceeding. Coco and the Project reserve the right to recover all costs incurred from Mizrahi Developments Inc. for all costs that are unjustifiable and unreasonable.
Crane Labour	05/12/2023	C1340		289,038.61	
					APPROVED SUBJECT TO RESERVATION OF RIGHTS: Incremental cost are now being incurred after the construction completion date committed to the senior lender. Notice of default has been served by senior lender for failure to complete construction within the deadline. This cost is now being incurred due to Contractor's fault and is recoverable from Contractor, Mizrahi Coco and the Project reserve the right to recover all costs incurred from Mizrahi Developments Inc. for all costs that are unjustifiable and unreasonable.
Equipment Cost	05/12/2023	C1338		29,114.89	
					APPROVED SUBJECT TO RESERVATION OF RIGHTS: Mizrahi continues to fail to provide Coco the actual payroll hourly rates and payments for all personnel, (administration / construction / equipment operators / labourers etc....) and this is not in the best interest of the Project, nor is it reflective of the Arbitration Award, wherein Mizrahi is entitled to a specific fee, which Mizrahi is exceeding. Coco and the Project reserve the right to recover all costs incurred from Mizrahi Developments Inc. for all costs that are unjustifiable and unreasonable.
Site Labour	05/12/2023	C1341		1,219,906.65	

Month Year ->	May 2023					
Vendor	Date	Num	FX	Open Balance	Payment for this month (30 June 2023)	JC COMMENTS:
	Once again, Coco has repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard. Thus, the Project is financing Mizrahi Inc cash flow. Mizrahi should be responsible for all costs, as he is in default of the Credit Agreement, exceeding the completion date as notified by the lender on 4th January 2023. This is a contractor's lack of proper & efficient management , not to mention the lack of execution capability on to deliver the Project within the budget and on time. This month, the excess fees charged to the Project are being recouped through Mizrahi GC invoices.					
Mizrahi - GC						
						NOT APPROVED: Coco shall require a certified payroll report, inclusive of benefits and MI shall be paid the fee. Coco has disputed these costs repeatedly for lack of transparency and recurring requests for payroll information is ignored by Mizrahi from 2019. The CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. MI account shall require an adjustment for the amount paid to date vs the actual payroll cost plus a % mark up, in accordance with the Mediation adopted and accepted by both Parties. See 'Annexure 2 - Mizrahi Staff Cost C1354 for May 2023' for excess charged by Mizrahi to the Project. Coco and the Project reserve the right to recover all costs that were not approved prior to have been incurred from Mizrahi Developments Inc.
Construction Staff Cost	06/14/2023	C1354		812,892.80	-	
						NOT APPROVED: Coco shall require a certified payroll report, inclusive of benefits and MI shall be paid the fee. Coco has disputed these costs repeatedly for lack of transparency and recurring requests for payroll information is ignored by Mizrahi from 2019. The CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. MI account shall require an adjustment for the amount paid to date vs the actual payroll cost plus a % mark up, in accordance with the Mediation adopted and accepted by both Parties. Coco and the Project reserve the right to recover all costs that were not approved prior to have been incurred from Mizrahi Developments Inc.
Crane Labour	06/14/2023	C1356		339,985.36	-	
						NOT APPROVED: Coco have not received copies of the Contract, Change Orders, Extras or the legal claim status in a manner that is legible or easy to follow. This requires Mizrahi to provide documents in an assembled order to Coco. Incremental cost are now being incurred after the construction completion date committed to the senior lender. Notice of default has been served by senior lender for failure to complete construction within the deadline. This cost is now being incurred due to Contractor's fault and is recoverable from Contractor, Mizrahi Coco and the Project reserve the right to recover all costs that were not approved prior to have been incurred from Mizrahi Developments Inc.
Equipment Cost	06/14/2023	C1355		29,114.89	-	
						NOT APPROVED : Coco shall require a certified payroll report, inclusive of benefits and MI shall be paid the fee. Coco has disputed these costs repeatedly for lack of transparency and recurring requests for payroll information is ignored by Mizrahi from 2019. The CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. All traffic and security personnel is deployed through a subcontractor on site, ASG Traffic Ltd. This sub should be paid in accordance with our Agreement, as a sub trade to the Project without any mark-up or margin. Coco does not approve this payment due to lack of transparency. Coco and the Project reserve the right to recover all costs incurred from Mizrahi Developments Inc.
Site Labour	06/14/2023	C1357		1,322,038.34	-	

Month Year ->	June 2023					
Vendor	Date	Num	FX	Open Balance	Payment for this month (31 July 2023)	JC COMMENTS:
	Once again, Coco has repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard. Thus, the Project is financing Mizrahi Inc cash flow. Mizrahi should be responsible for all costs, as he is in default of the Credit Agreement, exceeding the completion date as notified by the lender on 4th January 2023. This is a contractor's lack of proper & efficient management , not to mention the lack of execution capability on to deliver the Project within the budget and on time. This month, the excess fees charged to the Project are being recouped through Mizrahi GC invoices.					
Mizrahi - GC						
						NOT APPROVED: Coco shall require a certified payroll report, inclusive of benefits and MI shall be paid the fee. Coco has disputed these costs repeatedly for lack of transparency and recurring requests for payroll information is ignored by Mizrahi from 2019. The CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. MI account shall require an adjustment for the amount paid to date vs the actual payroll cost plus a % mark up, in accordance with the Mediation adopted and accepted by both Parties. See 'Annexure 2 - Mizrahi Staff Cost C1368 for Jul 2023' for excess charged by Mizrahi to the Project. The Project is cash flowing Mizrahi Inc. for their costs that should be paid after the month. Coco and the Project reserve the right to recover all costs that were not approved prior to have been incurred from Mizrahi Developments Inc.
Construction Staff Cost	07/12/2023	C1368		738,382.33	-	
						NOT APPROVED: Coco shall require a certified payroll report, inclusive of benefits and MI shall be paid the fee. Coco has disputed these costs repeatedly for lack of transparency and recurring requests for payroll information is ignored by Mizrahi from 2019. The CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. MI account shall require an adjustment for the amount paid to date vs the actual payroll cost plus a % mark up, in accordance with the Mediation adopted and accepted by both Parties. Coco and the Project reserve the right to recover all costs that were not approved prior to have been incurred from Mizrahi Developments Inc.
Crane Labour	07/12/2023	C1370		116,102.57	-	
						NOT APPROVED: Coco have not received copies of the Contract, Change Orders, Extras or the legal claim status in a manner that is legible or easy to follow. This requires Mizrahi to provide documents in an assembled order to Coco. Further, the CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. Incremental cost are now being incurred after the construction completion date committed to the senior lender. Notice of default has been served by senior lender for failure to complete construction within the deadline. This cost is now being incurred due to Contractor's fault and is recoverable from Contractor, Mizrahi. Coco and the Project reserve the right to recover all costs that were not approved prior to have been incurred from Mizrahi Developments Inc.
Equipment Cost	07/12/2023	C1369		28,800.39	-	
						NOT APPROVED : Coco shall require a certified payroll report, inclusive of benefits and MI shall be paid the fee. Coco has disputed these costs repeatedly for lack of transparency and recurring requests for payroll information is ignored by Mizrahi from 2019. The CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. All traffic and security personnel is deployed through a subcontractor on site, ASG Traffic Ltd. This sub should be paid in accordance with our Agreement, as a sub trade to the Project without any mark-up or margin. Coco does not approve this payment due to lack of transparency. Coco and the Project reserve the right to recover all costs incurred from Mizrahi Developments Inc.
Site Labour	07/12/2023	C1371		1,048,481.87	-	

Month Year ->	July 2023					
Vendor	Date	Num	FX	Open Balance	Payment for this month (30 Aug 2023)	JC COMMENTS:
	Once again, Coco has repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard. Thus, the Project is financing Mizrahi Inc cash flow. Mizrahi should be responsible for all costs, as he is in default of the Credit Agreement, exceeding the completion date as notified by the lender on 4th January 2023. This is a contractor's lack of proper & efficient management , not to mention the lack of execution capability on to deliver the Project within the budget and on time. This month, the excess fees charged to the Project are being recouped through Mizrahi GC invoices.					
Mizrahi - GC						
						NOT APPROVED: Coco shall require a certified payroll report, inclusive of benefits and MI shall be paid the fee. Coco has disputed these costs repeatedly for lack of transparency and recurring requests for payroll information is ignored by Mizrahi from 2019. The CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. MI account shall require an adjustment for the amount paid to date vs the actual payroll cost plus a % mark up, in accordance with the Mediation adopted and accepted by both Parties. See 'Annexure 2 - Mizrahi Staff Cost C1368 for Jul 2023' for excess charged by Mizrahi to the Project. The Project is cash flowing Mizrahi Inc. for their costs that should be paid after the month. Coco and the Project reserve the right to recover all costs that were not approved prior to have been incurred from Mizrahi Developments Inc.
Construction Staff Cost	08/11/2023	C1383		784,212.82	-	
						NOT APPROVED: Coco shall require a certified payroll report, inclusive of benefits and MI shall be paid the fee. Coco has disputed these costs repeatedly for lack of transparency and recurring requests for payroll information is ignored by Mizrahi from 2019. The CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. MI account shall require an adjustment for the amount paid to date vs the actual payroll cost plus a % mark up, in accordance with the Mediation adopted and accepted by both Parties. Coco and the Project reserve the right to recover all costs that were not approved prior to have been incurred from Mizrahi Developments Inc.
Crane Labour	08/11/2023	C1380		93,968.96	-	
						NOT APPROVED: Coco have not received copies of the Contract, Change Orders, Extras or the legal claim status in a manner that is legible or easy to follow. This requires Mizrahi to provide documents in an assembled order to Coco. Further, the CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. Incremental cost are now being incurred after the construction completion date committed to the senior lender. Notice of default has been served by senior lender for failure to complete construction within the deadline. This cost is now being incurred due to Contractor's fault and is recoverable from Contractor, Mizrahi. Coco and the Project reserve the right to recover all costs that were not approved prior to have been incurred from Mizrahi Developments Inc.
Equipment Cost	08/11/2023	C1384		28,800.39	-	
						NOT APPROVED : Coco shall require a certified payroll report, inclusive of benefits and MI shall be paid the fee. Coco has disputed these costs repeatedly for lack of transparency and recurring requests for payroll information is ignored by Mizrahi from 2019. The CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. All traffic and security personnel is deployed through a subcontractor on site, ASG Traffic Ltd. This sub should be paid in accordance with our Agreement, as a sub trade to the Project without any mark-up or margin. Coco does not approve this payment due to lack of transparency. Coco and the Project reserve the right to recover all costs incurred from Mizrahi Developments Inc.
Site Labour	08/11/2023	C1381		879,400.56	-	

Month Year ->	August 2023					
Vendor	Date	Num	FX	Open Balance	Payment for this month (30 Sep 2023)	JC COMMENTS:
Mizrahi - GC	Once again, Coco has repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard. Thus, the Project is financing Mizrahi Inc cash flow. Mizrahi should be responsible for all costs, as he is in default of the Credit Agreement, exceeding the completion date as notified by the lender on 4th January 2023. This is a contractor's lack of proper & efficient management , not to mention the lack of execution capability on to deliver the Project within the budget and on time. This month, the excess fees charged to the Project are being recouped through Mizrahi GC invoices.					
Construction Staff Cost	09/11/2023	C1393		835,808.18	-	NOT APPROVED: Coco shall require a certified payroll report, inclusive of benefits and MI shall be paid the fee. Coco has disputed these costs repeatedly for lack of transparency and recurring requests for payroll information is ignored by Mizrahi from 2019. The CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. Further, this month shows an increase of 3% on staff rates applied when the progress on site shows significant delays and failings against the baseline schedule. The invoice is for September 2023 and Mizrahi is seeking to fund himself by having the project prepay his costs. The Contractor, Mizrahi Inc. has caused undue and irrecoverable delays to the Project causing additional costs incurred currently and in the future. These are costs to be recovered from Mizrahi Inc. In order to protect the Sub-contractors and the Project, the remaining funds from the Term Facility from the lender is being preserved and prioritized towards applying payments towards the sub-contractors, Coco does not approve payment to this vendor.
Crane Labour	09/11/2023	C1394		154,086.50	-	NOT APPROVED: Coco shall require a certified payroll report, inclusive of benefits and MI shall be paid the fee. Coco has disputed these costs repeatedly for lack of transparency and recurring requests for payroll information is ignored by Mizrahi from 2019. The CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. The Contractor, Mizrahi Inc. has caused undue and irrecoverable delays to the Project causing additional costs incurred currently and in the future. These are costs to be recovered from Mizrahi Inc. In order to protect the Sub-contractors and the Project, the remaining funds from the Term Facility from the lender is being preserved and prioritized towards applying payments towards the sub-contractors, Coco does not approve payment to this vendor.
Equipment Cost	09/11/2023	C1401		12,915.59	-	NOT APPROVED: Coco have not received copies of the Contract, Change Orders, Extras or the legal claim status in a manner that is legible or easy to follow. This requires Mizrahi to provide documents in an assembled order to Coco. Further, the CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. The Contractor, Mizrahi Inc. has caused undue and irrecoverable delays to the Project causing additional costs incurred currently and in the future. These are costs to be recovered from Mizrahi Inc. In order to protect the Sub-contractors and the Project, the remaining funds from the Term Facility from the lender is being preserved and prioritized towards applying payments towards the sub-contractors, Coco does not approve payment to this vendor.
Site Labour	09/11/2023	C1395		1,055,932.06	-	NOT APPROVED : Coco shall require a certified payroll report, inclusive of benefits and MI shall be paid the fee. Coco has disputed these costs repeatedly for lack of transparency and recurring requests for payroll information is ignored by Mizrahi from 2019. The CM fee is at 5% while the mediator's proposal allows Mizrahi 2% CM fee. All traffic and security personnel is deployed through a subcontractor on site, ASG Traffic Ltd. This sub should be paid in accordance with our Agreement, as a sub trade to the Project without any mark-up or margin. Coco does not approve this payment due to lack of transparency. The Contractor, Mizrahi Inc. has caused undue and irrecoverable delays to the Project causing additional costs incurred currently and in the future. These are costs to be recovered from Mizrahi Inc. In order to protect the Sub-contractors and the Project, the remaining funds from the Term Facility from the lender is being preserved and prioritized towards applying payments towards the sub-contractors, Coco does not approve payment to this vendor.

Month Year ->	September 2023					
Vendor	Date	Num	FX	Open Balance	Payment for this month as per Receiver (30 Oct 2023)	Cocos Comments
Mizrahi - GC	Once again, Coco has repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard. Thus, the Project is financing Mizrahi Inc cash flow. Mizrahi should be responsible for all costs, as he is in default of the Credit Agreement, exceeding the completion date as notified by the lender on 4th January 2023. This is a contractor's lack of proper & efficient management , not to mention the lack of execution capability on to deliver the Project within the budget and on time. This month, the excess fees charged to the Project are being recouped through Mizrahi GC invoices.					
Construction Staff Cost	10/12/2023	C1406		751,646.30	-	<p>The invoice submitted is not supported with a certified payroll report, inclusive of benefits and there is a lack of transparency Mizrahi from 2019. Further, the CM fee invoiced is at 5% while the mediator's proposal allows Mizrahi only 2% of actual costs as CM fee. In accordance with the Mediator's proposal and Arbitral Award, Coco has repeatedly asked the Lender to recapture the fees overpaid to Mizrahi Inc., see Annexure 2 attached to this MS Excel workbook.</p> <p>Further, from August 2023 the staff rates have been increased by 3% when the progress on site shows significant delays and failings against the baseline schedule.</p> <p>The invoice is for October 2023 and Mizrahi is seeking to fund himself by having the project prepay his costs.</p> <p>Cocos are unsure if all personnel charged are working for the Project as stated and costs incurred are in the interest of the Project. Coco has expressed concerns that since Clark Construction Management was unilaterally removed from the Project by Mizrahi Inc., without Coco's knowledge or consent, Mizrahi Inc. has never had the Project executed on budget and on time.</p> <p>Defer to the Receiver, Alvarez & Marsal, to evaluate.</p>
Crane Labour	10/12/2023	C1410		139,234.50	-	<p>The invoice submitted is not supported by a genuine supplier invoice or a certified payroll report, inclusive of benefits and there is a lack of transparency Mizrahi from 2019 as required to be provided by the Mediator's proposal. Further, the CM fee invoiced is at 5% while the mediator's proposal allows Mizrahi only 2% of actual costs as CM fee.</p> <p>The invoice is for October 2023 and Mizrahi is seeking to fund himself by having the project prepay his costs.</p> <p>Cocos are unsure if this is within scope of works relating to the budget, if the status of work is completed and has occurred as per the invoice and whether the costs incurred are in the interest of the Project.</p> <p>Defer to the Receiver, Alvarez & Marsal, to evaluate.</p>
Equipment Cost	10/12/2023	C1408		12,482.26		<p>The invoice submitted is not supported by a genuine supplier invoice and there is a lack of transparency Mizrahi from 2019. Further, the CM fee invoiced is at 5% while the mediator's proposal allows Mizrahi only 2% of actual costs as CM fee.</p> <p>The invoice is for October 2023 and Mizrahi is seeking to fund himself by having the project prepay his costs.</p> <p>Cocos are unsure if this is within scope of works relating to the budget, if the status of work is completed and has occurred as per the invoice and whether the costs incurred are in the interest of the Project.</p> <p>Defer to the Receiver, Alvarez & Marsal, to evaluate.</p>
Site Labour	10/12/2023	C1409		1,382,907.60		<p>The invoice submitted is not supported by a genuine supplier invoice or a certified payroll report, inclusive of benefits and there is a lack of transparency Mizrahi from 2019. Further, the CM fee invoiced is at 5% while the mediator's proposal allows Mizrahi only 2% of actual costs as CM fee.</p> <p>All traffic and security personnel is deployed through a subcontractor on site, ASG Traffic Ltd. This sub should be paid in accordance with our Agreement, as a sub trade to the Project without any mark-up or margin. Coco does not recommend that this invoice be approved due to lack of transparency and high Time & Material costs that is not commensurate to the progress on site to date.</p> <p>The invoice is for October 2023 and Mizrahi is seeking to fund himself by having the project prepay his costs.</p> <p>Cocos are unsure if this is within scope of works relating to the budget, if the status of work is completed and has occurred as per the invoice and whether the costs incurred are in the interest of the Project.</p> <p>Defer to the Receiver, Alvarez & Marsal, to evaluate.</p>

Month Year ->	October 2023					
Vendor	Date	Num	FX	Open Balance	Payment for this month as per Receiver (30 Oct 2023)	Cocos Comments
Mizrahi - GC	Once again, Coco has repeatedly written the GC is not acting in the best interest of the Project, executing his own contract and grossly overpaying MI fees for site labour, crane operator, construction, equipment and marketing, all in excess of industry standard. Thus, the Project is financing Mizrahi Inc cash flow. Mizrahi should be responsible for all costs, as he is in default of the Credit Agreement, exceeding the completion date as notified by the lender on 4th January 2023. This is a contractor's lack of proper & efficient management , not to mention the lack of execution capability on to deliver the Project within the budget and on time. This month, the excess fees charged to the Project are being recouped through Mizrahi GC invoices.					
Construction Staff Cost				633,498.78	-	<p>The invoice submitted is not supported with a certified payroll report, inclusive of benefits and there is a lack of transparency Mizrahi from 2019. Further, the CM fee invoiced is at 5% while the mediator's proposal allows Mizrahi only 2% of actual costs as CM fee. In accordance with the Mediator's proposal and Arbitral Award, Coco has repeatedly asked the Lender to recapture the fees overpaid to Mizrahi Inc., see Annexure 2 attached to this MS Excel workbook.</p> <p>Further, from August 2023 the staff rates have been increased by 3% when the progress on site shows significant delays and failings against the baseline schedule.</p> <p>The invoice is for October 2023 and Mizrahi is seeking to fund himself by having the project prepay his costs.</p> <p>Cocos are unsure if all personnel charged are working for the Project as stated and costs incurred are in the interest of the Project. Coco has expressed concerns that since Clark Construction Management was unilaterally removed from the Project by Mizrahi Inc., without Coco's knowledge or consent. Mizrahi Inc. has never had the Project executed on budget and on time.</p> <p>Defer to the Receiver, Alvarez & Marsal, to evaluate.</p>
Crane Labour				81,623.54	-	<p>The invoice submitted is not supported by a genuine supplier invoice or a certified payroll report, inclusive of benefits and there is a lack of transparency Mizrahi from 2019 as required to be provided by the Mediator's proposal. Further, the CM fee invoiced is at 5% while the mediator's proposal allows Mizrahi only 2% of actual costs as CM fee.</p> <p>The invoice is for October 2023 and Mizrahi is seeking to fund himself by having the project prepay his costs.</p> <p>Cocos are unsure if this is within scope of works relating to the budget, if the status of work is completed and has occurred as per the invoice and whether the costs incurred are in the interest of the Project.</p> <p>Defer to the Receiver, Alvarez & Marsal, to evaluate.</p>
Equipment Cost				10,520.24		<p>The invoice submitted is not supported by a genuine supplier invoice and there is a lack of transparency Mizrahi from 2019. Further, the CM fee invoiced is at 5% while the mediator's proposal allows Mizrahi only 2% of actual costs as CM fee.</p> <p>The invoice is for October 2023 and Mizrahi is seeking to fund himself by having the project prepay his costs.</p> <p>Cocos are unsure if this is within scope of works relating to the budget, if the status of work is completed and has occurred as per the invoice and whether the costs incurred are in the interest of the Project.</p> <p>Defer to the Receiver, Alvarez & Marsal, to evaluate.</p>
Site Labour				886,702.88		<p>The invoice submitted is not supported by a genuine supplier invoice or a certified payroll report, inclusive of benefits and there is a lack of transparency Mizrahi from 2019. Further, the CM fee invoiced is at 5% while the mediator's proposal allows Mizrahi only 2% of actual costs as CM fee.</p> <p>All traffic and security personnel is deployed through a subcontractor on site, ASG Traffic Ltd. This sub should be paid in accordance with our Agreement, as a sub trade to the Project without any mark-up or margin. Coco does not recommend that this invoice be approved due to lack of transparency and high Time & Material costs that is not commensurate to the progress on site to date.</p> <p>The invoice is for October 2023 and Mizrahi is seeking to fund himself by having the project prepay his costs.</p> <p>Cocos are unsure if this is within scope of works relating to the budget, if the status of work is completed and has occurred as per the invoice and whether the costs incurred are in the interest of the Project.</p> <p>Defer to the Receiver, Alvarez & Marsal, to evaluate.</p>

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APPENDIX “7”

EMAIL FROM F. MAK TO T. HALLAM DATED AUGUST 19, 2024

From: Mak, Fiona

Sent: April 19, 2024 9:56 AM

To: Todd Hallam <thallam@skygrid.ca>; Sterling, Andrew <asterling@alvarezandmarsal.com>

Cc: Karim Kolta <kkolta@skygrid.ca>; Krieger, Ethan <ekrieger@alvarezandmarsal.com>; Chad MacWilliam <cmacwilliam@skygrid.ca>; Emad Azez <eazez@skygrid.ca>; Will Smith <wsmith@knightsbridgecorp.ca>; Adam Marciniak <amarciniak@skygrid.ca>

Subject: RE: The One- Contract MIZ 539- Detal Invoice #14 for L59-76 thermal breaks supply-70% before shipping

Hi Todd,

As per our discussion, A&M did not provide any confirmation that early payments would be made to Detal. Such requests need to go through an approval / review process, a business case for doing so (i.e., only under extenuating circumstances), and advance notice before any promises / agreements are made to the trade / vendor.

With that said, payments for Detal's invoices will be reviewed and processed in the normal course of business (i.e., at the end of the month) so please leverage your long-standing relationship with Frank and inform him of this. Detal's invoices have always been paid in the normal course so they should not have concerns regarding non-payment.

In addition, based on my conversations with you, there should be no risks of delay at this point. Would appreciate you confirming this for me once you've spoken to Frank.

Thank you,

Fiona Mak

Director

Direct: +1 416 847 5179

Mobile: +1 416 839 8719

fmak@alvarezandmarsal.com

From: Todd Hallam <thallam@skygrid.ca>

Sent: Friday, April 19, 2024 7:59 AM

To: Sterling, Andrew <asterling@alvarezandmarsal.com>

Cc: Karim Kolta <kkolta@skygrid.ca>; Krieger, Ethan <ekrieger@alvarezandmarsal.com>; Mak, Fiona <fmak@alvarezandmarsal.com>; Chad MacWilliam <cmacwilliam@skygrid.ca>; Emad Azez <eazez@skygrid.ca>; Will Smith <wsmith@knightsbridgecorp.ca>; Adam Marciniak <amarciniak@skygrid.ca>

Subject: RE: The One- Contract MIZ 539- Detal Invoice #14 for L59-76 thermal breaks supply-70% before shipping

⚠ [EXTERNAL EMAIL]: Use Caution

Andrew,

When Fiona, Will, Emad, Chad and I were in Vietnam in mid March, we had a meeting to discuss the extrusion supply coordination with Detal and BM.

It was identified that it would be helpful to BM Windows if we could expedite some extrusions to come earlier and it was agreed that Detal would invoice and be paid earlier to expedite the extrusions. Will was not in the meeting.

That was why Detal invoiced with an earlier payment date. Now we have not kept our part of the agreement.

I am guessing that you knew nothing about this. I believe that the information was on the invoicing information.

Can you fix this or do we prepare for the delay and potential delay costs from BM?

Please let me know,

Todd

Todd Hallam | Project Manager

SKYGRiD Construction Inc.

5750 Explorer Drive, Suite 200, Mississauga, ON L4W 0A9

Mobile: (647) 221-1592 | **Office:** (416) 622-9602

thallam@skygrid.ca

[Website](#) | [Linkedin](#) | [Instagram](#) | [Facebook](#) | [Twitter](#)



From: Sterling, Andrew <asterling@alvarezandmarsal.com>

Sent: Thursday, April 18, 2024 12:11 AM

To: Todd Hallam <thallam@skygrid.ca>

Cc: Karim Kolta <kkolta@skygrid.ca>; Krieger, Ethan <ekrieger@alvarezandmarsal.com>

Subject: FW: The One- Contract MIZ 539- Detal Invoice #14 for L59-76 thermal breaks supply-70% before shipping

Hi Todd – Could you please speak with Frank and remind him of our payment cadence. I am not sure what prompted this email is as he should be well aware of our timing – all of his prior invoices have been paid in a similar fashion.

You can let him know that invoice DTE-3096-13 is in our payment listing, and pending final approvals, will be paid at the end of April. His April invoice will be included in next months payment review, and if approved, paid at the end of May.

Please let me know if any issues.

Thanks,

Andrew Sterling
Senior Associate
Alvarez & Marsal Canada
Direct: +1 416 847 5152
Mobile: +1 647 994 7646

From: fchen@detalinternational.com <fchen@detalinternational.com>

Sent: Wednesday, April 17, 2024 2:26 AM

To: theone <theone@skygrid.ca>; The One Payments <TheOnePayments@alvarezandmarsal.com>

Cc: Todd Hallam <thallam@skygrid.ca>

Subject: The One- Contract MIZ 539- Detal Invoice #14 for L59-76 thermal breaks supply-70% before shipping

 **[EXTERNAL EMAIL]: Use Caution**

Dears,
Kindly please check below the due payment invoice.

Project Name: The One
Contract/PO#: MIZ 539

Regarding: Detal invoice #DTE-3096-14 for L59-76 thermal breaks supply - 70% before shipping
Invoice is attached.

Payment due: end of April 2024 (The materials will be completed and ready for shipping in the week of April 22, 2024)

Kindly please note the invoice DTE-3096-13 for 30% deposit of L59-76 thermal breaks supply has not been paid yet, which has been sent to you on 3/13/2024. Please help to check and confirm the payment.

Thanks

Best Regards,

Frank Chen
Managing Director



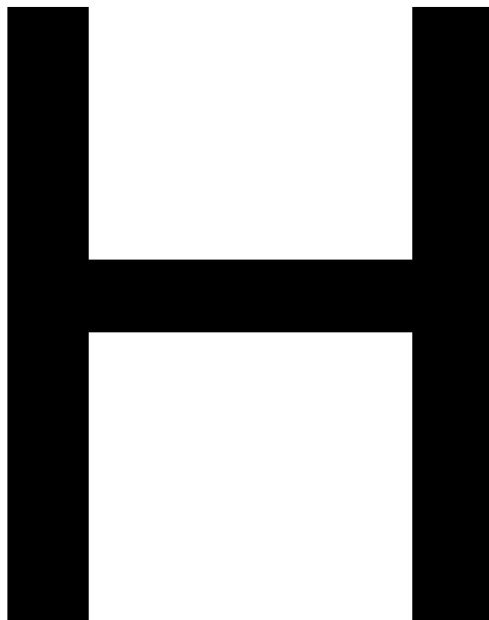
RM 526-528, No.3 JunYa North Street, HuangPu East Road, HuangPu District, Guangzhou, PRC. 510725.

(P) +86 20 3802 3905 | (F) +86 20 3237 0463 | (C) +86 136 0045 1181

fchen@detalinternational.com | www.detalinternational.com



Please be cautious: This email was sent from outside of SKYGRID. Do not open links or attachments unless you recognize the sender and the sender's email address is correct.



APPENDIX “8”

EMAIL FROM T. HALLAM TO A. MARCINIAK DATED MAY 1, 2024

Adedapo, Ini

From: Todd Hallam <thallam@skygrid.ca>
Sent: Wednesday, May 1, 2024 10:48 AM
To: Adam Marciniak
Cc: Chad MacWilliam; Giancarlo Fucile; Fernando Tito; Jason Pelaccia; Mak, Fiona; Will Smith
Subject: Updated Approval Request of Travel Required to Manage and Support the Building Envelope Production for The One
Attachments: Proposed Itinerary and Agenda for June 4 to 19th Trip.xlsx; Revised Travel Plan and Budget.xlsx

 [EXTERNAL EMAIL]: Use Caution

Dear Adam,

I hope this message finds you well.

I wanted to address the recent decision by A&M regarding the rejection of the travel plan request submitted on April 29th. Understandably, I find it disappointing, as it poses significant challenges to fulfilling my role effectively, which ultimately impacts our ability to deliver high-quality exterior wall systems for the project. This deviation from our established practices may lead to an increase in on-site issues and costly repairs.

The intricacy and technical difficulty of the wall systems for this project cannot be overstated, as evidenced by Gamma's previous struggles and eventual success after multiple attempts. My involvement in observing Gamma's progress and understanding the complexities involved has equipped me with invaluable insights into the necessary processes to ensure the delivery of a superior standard of work. Despite Gamma's withdrawal from the project, my commitment to ensuring optimal quality within budgetary and time constraints remains unchanged.

During my recent two-month stint in Vietnam at BM, alongside Don Jones, Ron Cowdy, and Brian McCallan, we successfully navigated the challenges leading to a positive outcome for PMU 5. While BM Windows may lack prior experience with projects of this magnitude, our collaborative efforts have provided them with the necessary support and guidance. Abandoning this support at this crucial stage could potentially result in unforeseen complications.

Our meticulous training program for over 40 staff members at BM aimed at establishing best practices and refining processes has been instrumental in ensuring the smooth operation of the production line. Continued oversight and periodic reviews are essential to preempting any deviations from the established protocols and minimizing on-site issues.

I'm concerned about the prospect of increased on-site testing beyond project requirements, especially with unconventional procedures recently proposed by RJC independent of the rest of the project team. It seems counterintuitive to incur additional costs for testing while neglecting preventative measures that could mitigate potential problems from arising in the first place.

Given the current circumstances and the inability to proceed with the proposed work in China, I propose delaying the related project work and revisiting the possibility of a combined trip to China and Vietnam commencing June 4th. I've attached the requested itinerary for your reference. The estimated budget for the trip is \$19,000 for airfare and \$6,000 for accommodation and expenses (to be confirmed). I have also provided a revised project travel plan based on the premise that BM will finish their work by the end of this year.

However, if this proposal cannot be approved by May 3rd, I regret to inform you that I will be tendering my resignation with a two-week notice, effectively ending my contract on May 17th, 2024. It's essential to adhere to our planned approach, and I cannot proceed further if this plan is not deemed acceptable.

Thank you for your understanding and consideration.

Warm regards,

Todd

Todd Hallam | Project Manager

SKYGRiD Construction Inc.

5750 Explorer Drive, Suite 200, Mississauga, ON L4W 0A9

Mobile: (647) 221-1592 | **Office:** (416) 622-9602

thallam@skygrid.ca

[Website](#) | [LinkedIn](#) | [Instagram](#) | [Facebook](#) | [Twitter](#)



From: Todd Hallam

Sent: Monday, April 29, 2024 6:55 AM

To: Adam Marciniak <amarciniak@skygrid.ca>

Cc: Chad MacWilliam <CMacWilliam@skygrid.ca>; Giancarlo Fucile <gfucile@skygrid.ca>

Subject: RE: Approval Request of Travel Required to Manage the Building Envelope Production for The One

Adam,

Attached is a copy of Details production report from last week for the mechanical floor wall systems for levels 37 -38.

This report indicates that they are on schedule to start assembly May 6th, which is why I requested to travel there to review and implement the packing plan as well as review the production work.

Could you please the status of the change order or PO for the revision to unitized framing?

Also, could you advise if my trip is approved?

We would like to avoid holding production as the supply of this system is urgently needed.

Please advise,

Todd

Todd Hallam | Project Manager

SKYGRiD Construction Inc.

5750 Explorer Drive, Suite 200, Mississauga, ON L4W 0A9

Mobile: (647) 221-1592 | **Office:** (416) 622-9602

thallam@skygrid.ca

[Website](#) | [LinkedIn](#) | [Instagram](#) | [Facebook](#) | [Twitter](#)



From: Todd Hallam <thallam@skygrid.ca>

Sent: Wednesday, April 24, 2024 9:51 AM

To: Adam Marciniak <amarciniak@skygrid.ca>

Cc: Chad MacWilliam <cmacwilliam@skygrid.ca>; Giancarlo Fucile <gfucile@skygrid.ca>

Subject: Re: Approval Request of Travel Required to Manage the Building Envelope Production for The One

Adam,

As an update to my email below from April 18th, I would like to have approval for the trip per item #6 at an earlier date of May 3rd to 16th as I have managed to get Detal to proceed with the production of the level 37-38 mechanical floor walls.

Fiona had asked me to use my influence to keep them going, understanding that they will be paid at the end of this month, and understanding that they will get the changes for the unitized wall system.

Detal has 20,000 kgs of extrusions and materials and is eager to start. This gives us a big jump on the production start.

My trip would be to inspect the first two trial assemblies and the production start and to do sample packing to ensure that the frames will fit well in the containers and be easily unloaded and removed once on site.

Could you please get back to me if this trip is approved and, hopefully, the complete proposal is acceptable in principle so that I can do my job.

Should you have any questions please let me know.

Thank you,

Todd

Get [Outlook for Android](#)

From: Todd Hallam

Sent: Thursday, April 18, 2024 1:25:48 PM

To: Adam Marciniak <amarciniak@skygrid.ca>

Cc: Chad MacWilliam <CMacWilliam@skygrid.ca>; Giancarlo Fucile <gfucile@skygrid.ca>

Subject: Approval Request of Travel Required to Manage the Building Envelope Production for The One

Adam,

In order to manage the Building Envelope work related to the production in Asia for the balance of this project I need to have confirmation from SKYGRiD and A&M that the following travel to BM Windows in Vietnam, Great Globe in Singapore and Alcade in Guangzhou, required for the ongoing support of the project is approved. I have proposed 6 trips.

1. Late May early June 2024 for 2 weeks for the trial assemblies and review of the production release for L59 to 76 (which is required by Mizrahi, assumed by us, in BM's contract). Budget \$20,000CAD
2. July 2024 for the start of assembly of L59 to 76 for 2 to 3 weeks to ensure work is going according to plan and to establish the taller vent frames to make sure that the operable vents will work correctly. Budget \$25,000CAD
3. September/October 2024 for 2 weeks for ongoing support and review of production releases for 79 to 84 (also required per BM's contract). Budget \$20,000CAD
4. December/ January 2024 for 2 weeks for ongoing review and wrap-up procedures and processes for completing the work. Budget \$20,000CAD
5. February 2025 for 2 weeks for review of completion and to make sure everything is done, complete and sent and wrapped-up. Budget \$20,000CAD
6. In June 2024 or later I will need to go to Guangzhou, China to inspect the start of production and packing of the first container for the level 37 – 38 unitized louver wall systems. This is tentatively arranged and is subject to the schedule which is tied to the change order/PO for the unitizing work per our PCO#0005. The budget for this would be \$22,000.

I may also need to go to Singapore during one or two of these trips to deal with potential issues with our extrusion and finishing supplier. The extra to budget would be about \$4,000CAD per trip or less to a maximum of \$8,000CAD total.

The dates are still tentative and subject to schedule coordination with BM Windows, Detal, Alcade and Great Globe. This Represents a \$135,000 CAD budget, which is less than the submitted budget for this work on the risk register (line 181) as \$185,000 so there is some budget for other team members to travel as well should this be needed.

Consultant and Bulletin 19 inspections will be coordinated with these trips as well to enable us to attend the inspections and work with the team.

Should there be any questions please let me know. In order to minimize costs, I need to book the first trip within the next two weeks.

Thank you,

Todd

Todd Hallam | Project Manager

SKYGRiD Construction Inc.

5750 Explorer Drive, Suite 200, Mississauga, ON L4W 0A9

Mobile: (647) 221-1592 | **Office:** (416) 622-9602

thallam@skygrid.ca

[Website](#) | [LinkedIn](#) | [Instagram](#) | [Facebook](#) | [Twitter](#)



Itinerary/Agenda for June 4th to 19th Trip to China and Vietnam

6/4/2024	Depart for Guangzhou, China
6/5/2024	Arrive in Guangzhou, China later in the day
6/6/2024	Alcade factory - Start Review of first two units assembled before and review processes to pack and load in a container, designing the load to be unloaded efficiently with no intended damage - Evening call in for SKYGRiD internal meeting
6/7/2024	Alcade factory - Continuation of review and packing of large mech floor frames
6/8/2024	Alcade factory - 1. Wrap-up review and agree on final processes 2. Review and confirm schedule of supply and logistics
6/9/2024	Rest in Guangzhou
6/10/2024	Travel to Ho Chi Minh City, Vietnam
6/11/2024	BM factory - start review of processes - first 10 of 40 - Also start of review of 8 trial assemblies for L59 to 76 - 3.3m floor geometry changes
6/12/2024	BM factory - start review of processes - next 10 of 40 - Continuation of review of 8 trial assemblies for L59 to 76 - 3.3m floor geometry changes
6/13/2024	BM factory - start review of processes - next 10 of 41 - Continuation of review of 8 trial assemblies for L59 to 76 - 3.3m floor geometry changes
6/14/2024	BM factory - start review of processes - next 10 of 42 - Continuation of review of 8 trial assemblies for L59 to 76 - 3.3m floor geometry changes
6/15/2024	Weekend catch-up on emails and admin work
6/16/2024	Weekend catch-up on emails and admin work
6/17/2024	Meet with BM Windows at head office to review and establish goals moving forward - discuss contract status and changes
6/18/2024	1. Final review of trial assemblies for 3.3m floors 2. Review of production releases for 59 to 76 with lessons learned from trial assemblies 3. Review of 3.3m operable vent hardware redesign. 4. Review plan for start of assembly and glazing for L59 and next visit with this start of assembly and glazing
6/19/2024	Return to Canada

Proposed Production Support Budget for Building Envelope Work

Projected Dates	Description of Planned Work
2024-06-04 to 2024-06-19	June 4th to 19th, 2024 for travel to Guangzhou, China and then to Vietnam. In Guangzhou I would review the first frame assemblies for 37-38 and review the packing and shipping processes ,. This is expected to be with staff from Bass. Then onward to Vietnam for production supplr visit and the trial assemblies and review of the production release for L59 to 76
2024-07-17 to 2024-07-31	Support the start of assembly of L59 to 76 for 2 to 3 weeks to ensure work is going according to plan and to establish the taller vent frames to make sure that the operable vents will work correctly.
2024-09-11 to 2024-09-26	Ongoing production support and review of production releases for 79 to 84.
2024-11-28 to 2024-12-13	Ongoing production support, review and wrap-up procedures and processes for completing the work.
	Possible side trip to Singapore for Extrusion Supply if needed during planned trip to Asia

Total proposed budget - subject to actuals

Budget Including Airfare, Expenses and Accommodation	
\$	25,000.00
\$	25,000.00
\$	22,000.00
\$	22,000.00
\$	6,000.00
\$	<u>100,000.00</u>



**APPENDIX “9”
EXCERPTS FROM OCTOBER 2023 PAYMENT LISTING (MAGIX OBJECTIONS)**

Month Year ->	August 2022				
Vendor	Date	Num	FX	Open Balance	COCO APPROVED OR NOT APPROVED (N. A)
Magix Technologies LLC.	09/16/2022	42091005 (Sales Commission)		190,292.84	Not Approved - Coco disputes the engagement of MAGIX, executed by Sam Mizrahi. Secondly, no commission due and payable in accordance with 6.2 & 6.3 of the disputed Agreement.
Total Magix Technologies LLC.				190,292.84	

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**APPENDIX “10”
EXCERPTS FROM OCTOBER 2023 PAYMENT LISTING
(MARKETING FEE OBJECTIONS)**

Mizrahi Commercial (The One) GP Inc.
Payment Listing 2023
(Wire Transfers)

Month Year ->	August 2022				
Vendor	Date	Num	FX	Open Balance	COCO APPROVED OR NOT APPROVED (N. A)
Marketing Commission	08/16/2022	C1235		113,000.00	Not approved

Mizrahi Commercial (The One) GP Inc.
 Payment Listing 2023
 (Wire Transfers)

Month Year ->	September 2022				
Vendor	Date	Num	FX	Open Balance	JC COMMENTS COCO APPROVED OR NOT APPROVED (N. A)
Marketing Commission	08/16/2022	C1245		113,000.00	Not approved, excessively over budget in marketing and Coco shall continue to protest payment

Month Year ->	October 2022				
Vendor	Date	Num	FX	Open Balance	JC COMMENTS:
Marketing Commission		C1258		113,000.00	Not approved, excessively over budget in marketing and Coco shall continue to protest payment.

Month Year ->	November 2022				
Vendor	Date	Num	FX	Open Balance	JC COMMENTS:
Marketing Commission	12/08/2022	C1270		113,000.00	In addition to the comments of last month (which we shall not repeat again), we remind all Parties the Credit Agreement Amending Agreement dated February 4th, 2021, executed by all parties states the following: "2.01(26)(ii) the Borrower shall not incur marketing and advertising costs in respect of the Prjoejcts in excess of \$15,000,000 (including costs incurred prior to Tranche B advance." Currently the Communication expenditures to date are in excess of \$17.7M. This is now \$2.7M over budget with no results. Thus, in summary, we shall not approve based upon our comments of prior months, as well as the above.

Month Year ->		December 2022				
Vendor	Date	Num	FX	Open Balance	JC COMMENTS:	Mark Kilfoyle comments (31st Jan 2023)
Marketing Commission	01/11/2023	C1281		113,000.00	<p>Not Approved -</p> <p>In addition to the comments of last month, we remind all Parties the Credit Agreement Amending Agreement dated February 4th, 2021, executed by all parties states the following: "2.01(26)(ii) the Borrower shall not incur marketing and advertising costs in respect of the Prjoejts in excess of \$15,000,000 (including costs incurred prior to Tranche B advance." Currently the Communication expenditures to date are in excess of \$17.7M. This is now in excess of \$2.7M over budget with questionable results. An email was sent on January 3rd, 2023, and to date, we have received no response from Mizrahi. Thus, in summary, we shall not approve based upon our comments of prior months, as well as the above.</p>	<p>New Marketing Development Program this is for the time of the MIZRAHI Team (such as Stacy, Amanda, Josh, Jonny, Remy, and me - anyone who is not directly charged to the Project) that spend time with the consultants developing the work produce, management, and weekly programs and negotiating the agreements for the new sales program. It also includes the travel costs and the Program's expenditures which are not billed to the Project. For instance, Sam spent the entire summer traveling building the relationships with Magix and the associated purchasers they have brought into to buy at our Project.</p>

Month Year ->		January 2023				
Vendor	Date	Num	FX	Open Balance	JC COMMENTS:	No comments provided by Mizrahi to Coco's query from Jan 2023
Marketing Commission	02/13/2023	C1294		113,000.00	<p>NOT APPROVED</p> <p>In addition to the comments related to marketing expenditure from previous months:</p> <p>This is a marketing expense which has exceeded the budget provided by the Credit Agreement Amending Agreement dated February 4th, 2021, lender approved \$15m limit. The budget increase by lender that Mizrahi refers to in his response to Coco query for Dec 2022 payment has not been approved by Coco group.</p> <p>Altus reports Marketing & Advertising cost to end of Dec 2022: \$17.93m; which exceeds the credit agreement sum of \$15m</p>	

Mizrahi Commercial (The One) GP Inc.
 Payment Listing 2023
 (Wire Transfers)

Month Year ->		February 2023			
Vendor	Date	Num	FX	Open Balance	JC COMMENTS:
Marketing Commission	03/13/2023	C1309		113,000.00	<p>NOT APPROVED - Scope of work has never been managed or defined by Mizrahi.</p> <p>In addition to the comments related to marketing expenditure from previous months:</p> <p>This is a marketing expense which has exceeded the budget provided by the Credit Agreement Amending Agreement dated February 4th, 2021, lender approved \$15m limit. The budget increase by lender that Mizrahi refers to in his response to Coco query from Jan 2023 has not been approved by Coco group.</p> <p>Altus reports Marketing & Advertising cost to end of Jan 2023: \$18.55m; which exceeds the credit agreement sum of \$15m</p> <p>To date, Mizrahi has invoiced the Project \$3.1 million for Marketing Commission.</p>

Month Year ->	March 2023				
Vendor	Date	Num	FX	Open Balance	JC COMMENTS: (19th April 2023)
Marketing Commission	03/13/2023	C1324		113,000.00	<p>NOT APPROVED:</p> <p>This is a marketing expense which has exceeded the budget provided by the Credit Agreement Amending Agreement dated February 4th, 2021, lender approved \$15m limit. The budget increase by lender that Mizrahi refers to in his response to Coco query from Jan 2023 has not been approved by Coco group.</p> <p>Altus reports Marketing & Advertising cost to end of Feb 2023: \$18.65m; which exceeds the credit agreement sum of \$15m</p>

Month Year ->		April 2023			
Vendor	Date	Num	FX	Open Balance	JC COMMENTS:
Marketing Commission	05/12/2023	C1339		113,000.00	<p>NOT APPROVED:</p> <p>This is a marketing expense which has exceeded the budget provided by the Credit Agreement Amending Agreement dated February 4th, 2021, lender approved \$15m limit. The budget increase by lender that Mizrahi refers to in his response to Coco query from Jan 2023 has not been approved by Coco group.</p> <p>Altus reports Marketing & Advertising cost to end of Mar 2023: \$18.75m; which exceeds the credit agreement sum of \$15m</p>

Mizrahi Commercial (The One) GP Inc.
Payment Listing 2023
(Wire Transfers)

Month Year ->	May 2023					
Vendor	Date	Num	FX	Open Balance	Payment for this month (30 June 2023)	JC COMMENTS:
Marketing Commission	06/14/2023	C1353		113,000.00	-	<p>NOT APPROVED: Marketing, advertising and promotion expense has exceeded the budget provided by the Credit Agreement dated February 4th, 2021, wherein the lender approved a \$15m limit.</p> <p>There is no basis for this charge by Mizrahi to the Project as per the mediator's proposal agreed by both parties. Coco does not approve this invoice.</p>

Mizrahi Commercial (The One) GP Inc.
Payment Listing 2023
(Wire Transfers)

Month Year ->	June 2023					
Vendor	Date	Num	FX	Open Balance	Payment for this month (31 July 2023)	JC COMMENTS:
Marketing Commission	07/12/2023	C1367		113,000.00	-	<p>NOT APPROVED: Marketing, advertising and promotion expense has exceeded the budget provided by the Credit Agreement dated February 4th, 2021, wherein the lender approved a \$15m limit.</p> <p>There is no basis for this charge by Mizrahi to the Project as per the mediator's proposal agreed by both parties. Coco does not approve this invoice.</p>

Mizrahi Commercial (The One) GP Inc.
 Payment Listing 2023
 (Wire Transfers)

Month Year ->	July 2023					
Vendor	Date	Num	FX	Open Balance	Payment for this month (30 Aug 2023)	JC COMMENTS:
Marketing Commission	08/11/2023	C1381		113,000.00	-	<p>NOT APPROVED: Marketing, advertising and promotion expense has exceeded the budget provided by the Credit Agreement dated February 4th, 2021, wherein the lender approved a \$15m limit.</p> <p>There is no basis for this charge by Mizrahi to the Project as per the mediator's proposal agreed by both parties. Coco does not approve this invoice.</p>

Mizrahi Commercial (The One) GP Inc.
Payment Listing 2023
(Wire Transfers)

Month Year ->	August 2023					
Vendor	Date	Num	FX	Open Balance	Payment for this month (30 Sep 2023)	JC COMMENTS:
Marketing Commission	09/11/2023	C1396		113,000.00	-	<p>NOT APPROVED: Marketing, advertising and promotion expense has exceeded the budget provided by the Credit Agreement dated February 4th, 2021, wherein the lender approved a \$15m limit. Coco has never approved a marketing budget for Mizrahi to charge to the Project. Coco feels the marketing costs are excessive and not result-oriented.</p> <p>There is no basis for this charge by Mizrahi to the Project as per the mediator's proposal agreed by both parties. Coco does not approve this invoice.</p>

Mizrahi Commercial (The One) GP Inc.
Payment Listing 2023
(Wire Transfers)

Month Year ->		September 2023				
Vendor	Date	Num	FX	Open Balance	Payment for this month as per Receiver (30 Oct 2023)	Cocos Comments
Marketing Commission	10/12/2023	C1407		113,000.00		<p>Re: Creative Design management for New Marketing Development Program</p> <p>Marketing, advertising and promotion expense has exceeded the budget provided by the Credit Agreement dated February 4th, 2021, wherein the lender approved a \$15m limit. Coco has never approved a marketing budget for Mizrahi to charge to the Project. Coco feels the marketing costs are excessive and not result-oriented. Coco notes that Mizrahi has paid himself a total of \$2.1m (excl. tax) over the course of the Project on this item alone from June 2021.</p> <p>There is no basis for this charge by Mizrahi to the Project as per the mediator's proposal agreed by both parties. Coco does not approve this invoice.</p> <p>Defer to the Receiver, Alvarez & Marsal, to evaluate.</p>

Month Year ->		October 2023				
Vendor	Date	Num	FX	Open Balance	Payment for this month as per Receiver (30 Oct 2023)	Cocos Comments
Marketing Commission						This month does not have an invoice for Marketting commission.

K

**APPENDIX “11”
MI MARKETING INVOICE C1407**

Mizrahi Inc.

125 Hazelton Ave

Toronto ON M5R 2E4

416-922-4200

HST Registration No.: 833650526RT0001

Invoice**BILL TO**

1 Bloor

Mizrahi Commercial (The One) GP
Inc.

189 Forest Hill Road

Toronto ON M5P 2N3

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	ENCLOSED
C1407	10/12/2023	\$113,000.00	10/12/2023	Due on receipt	

DATE	DESCRIPTION	TAX	QTY	RATE	AMOUNT
	Creative Design Management Coordination - New Marketing Development Program	H	1	100,000.00	100,000.00

SUBTOTAL 100,000.00

HST @ 13% 13,000.00

TOTAL 113,000.00

BALANCE DUE **\$113,000.00****TAX SUMMARY**

RATE	TAX	NET
HST @ 13%	13,000.00	100,000.00

2

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

**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**

**AFFIDAVIT OF NIAL FINNEGAN
February 27, 2025**

I, NIAL FINNEGAN, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

A. BACKGROUND

1. I am a principal at Finnegan Marshall Inc. (“FM”), a multidisciplinary real estate and development cost consulting company that I co-founded in 2014. FM was retained as a cost

consultant for the Senior Secured Lenders¹ on the Project in February 2024. As such, I have knowledge of the matters to which I herein after depose.

2. I am providing this affidavit in response to the affidavit of Jeff Murva affirmed January 20, 2025 (the “**Murva Affidavit**”). The fact that I have not addressed a statement in the Murva Affidavit does not mean that I agree with it.
3. In his affidavit, Mr. Murva makes certain assertions about common practice in the GTA as it relates to CM Fees and Labour Rates. Mr. Murva specifically says that his statements are “common knowledge” with “larger Cost Consultants, involved with residential multi-family high-rise projects in the GTA.” I disagree that those statements are common knowledge, as further discussed below.

B. EXPERIENCE

4. I have worked in the Canadian construction industry for over 43 years. Before founding FM, I was the president of the cost consulting group at Altus Group Limited (“**Altus**”). A copy of my *curriculum vitae* is attached as Exhibit “A”.
5. FM has extensive experience providing cost consulting services to major construction projects, including mixed use and residential condominium buildings, in Toronto. We typically work on approximately 180 projects under construction at any given time. We are, therefore, very familiar with market rates for all aspects of construction and development at the time.

¹ For convenience, I have used certain defined terms from the Fifth Report of the Receiver dated October 11, 2024.

6. I understand that Altus worked as the Project's cost consultant from its inception until February 2024. Altus and FM are the two major cost consultants in the Toronto market. Either Altus or FM are retained on most major residential and mixed used construction projects in Toronto.
7. FM was retained as a cost consultant for the Senior Secured Lenders on the Project in February 2024. As part of FM's mandate on the Project, the Receiver consulted with FM about whether the fees charged by MI for its work on the Project were consistent with market rates. I advised the Receiver that MI's rates were higher than market rates. In the paragraphs below, I explain and elaborate on this conclusion.

C. AMOUNTS CHARGED BY MI

8. MI charged the following amounts to the Debtors for its work on the Project:
 - (a) costs owed to subtrades working on the Project (the "**Hard Costs**");
 - (b) out-of-pocket recoverable costs, including various equipment rentals, storage, materials, and other third party costs (the "**Recoverable Costs**");
 - (c) labour rates in respect of MI's labour and site staff working on the Project (the "**Labour Rates**"). The Labour Rates included two components: MI's actual labour costs (the "**Labour Costs**") and a mark-up on the Labour Costs (the "**Labour Profits**"); and
 - (d) a construction management fee equal to 5% on the sum of (i) Hard Costs, (ii) Recoverable Costs, and (iii) Labour Rates (the "**CM Fee**").

D. MR. MURVA'S CLAIM RELATING TO MI'S MARK-UP ON THE LABOUR RATES

9. In the Murva Affidavit, Mr. Murva states the following at Item 10 of Exhibit A:

Also, it is common industry practice, for most Construction Management agreements, in the GTA, for both ICI and residential high rise multi-family projects, that the prescribed staff charge rates are greater than the actual costs, as they include for indirect staff overhead and some corporate overhead costs associated with providing the construction management services, of the Construction Management service provider. [Emphasis added]

10. I do not agree with Mr. Murva's statement.
11. In the present circumstances, the construction manager (MI) was related to the owners (the Debtors). It is, accordingly, "self-performing" the construction management work.
12. A self-performing owner does not mark-up its labour costs in order to earn a profit on the labour provided to the Project. Self-performing owners charge labour at cost inclusive of labour burdens (both site labour hired from third parties and site supervisors or management hired by the developer directly). This "burden" covers indirect labour costs, such as Canada Pension Plan contributions, employment insurance and other similar costs.
13. As such, industry standard practice is that MI should charge salary costs, without any mark-up other than labour burdens.
14. MI charged significant amounts over and above its actual Labour Costs. As described above, this is not consistent with market practices for self-performing owners. These amounts are described below:
- (a) **Site labourers.** The bulk of the site labour on the Project was provided by Clonard Group Inc. ("**Clonard**"). Clonard is a major labour provider in the Toronto

construction market and FM is familiar with its rates from other projects. Clonard charged market hourly rates on the Project. MI charged the Debtors more than it paid Clonard. This is not consistent with market rates and practices.

- (b) **Crane operators.** Crane operators on the Project were provided by Amherst Crane Rentals Ltd. (“**Amherst**”). Amherst charged rates that are consistent with market rates, but MI marked those rates up significantly. This is not consistent with market practices.
- (c) **Site supervisory and management staff.** MI employed site supervisory and management staff and charged the Debtors for work performed by these individuals. MI’s staff were paid rates that are consistent with industry rates, but MI marked up site supervisory staff rates significantly. This is not consistent with industry practices for self-performing owners, who do not markup salaries.

15. MI’s mark-up on the rates discussed above are illustrated in the chart below based on actual amounts incurred in January 2024, billed on MI invoices C1470 and C1476. These invoices are examples from the period in which the Receiver has access to the full underlying labour invoices that MI paid. Based on my review, MI’s billing practices in this respect extended both before and after the periods covered by the invoices:

	Actual Cost	MI Cost	Markup (amount)	Markup (percentage)
Crane Labour				
Regular time	\$135.00/hr	\$196.57/hr	\$61.57/hr	45.61%

Travel time	\$160.00/hr	\$294.85/hr	\$134.85/hr	84.28%
Overtime	\$265.00/hr	\$294.85/hr	\$29.85/hr	11.26%
Site Labour				
Labourer	\$57.50/hr	\$106.31/hr	\$48.81/hr	84.89%
Foremen	\$65.00/hr	\$112.29/hr	\$47.29/hr	72.75%
Swamper ²	\$80.00/hr	\$106.31/hr	\$26.31/hr	32.89%
Security	\$32.00/hr	\$99.56/hr	\$67.56/hr	211.13%
Security Super	\$49.00/hr	\$112.29/hr	\$63.29/hr	129.16%
Fire Watch	\$32.00/hr	\$99.56/hr	\$67.56/hr	211.13%
Traffic Watch	\$30.50/hr	\$99.56/hr	\$69.06/hr	226.43%
MI Site Staff (Total Cost)	\$507,251	\$1,020,093	\$605,965	119.46%
	Actual Cost	MI Cost	Markup (amount)	Markup (percentage)

16. The Labour Rates charged by MI are higher than industry standard, or the rates required to recover the “indirect staff overhead and some corporate overhead costs” referenced by Mr. Murva in his affidavit.

E. MR. MURVA AND MR. MIZRAHI’S STATEMENTS RELATING TO CM FEES

17. In addition, Mr. Murva’s statement at Item 10 of Exhibit A is incomplete because he only addresses the categories of costs that MI has claimed (i.e. the Labour Rates). This is not fully responsive to KDC’s comment, which criticized MI’s decision to charge CM fees *on*

² A swamper assists the crane operator.

top of marking-up the Labour Rates. As such, consideration of whether this practice is “industry standard” also requires an analysis of the total CM Fee charged by MI.

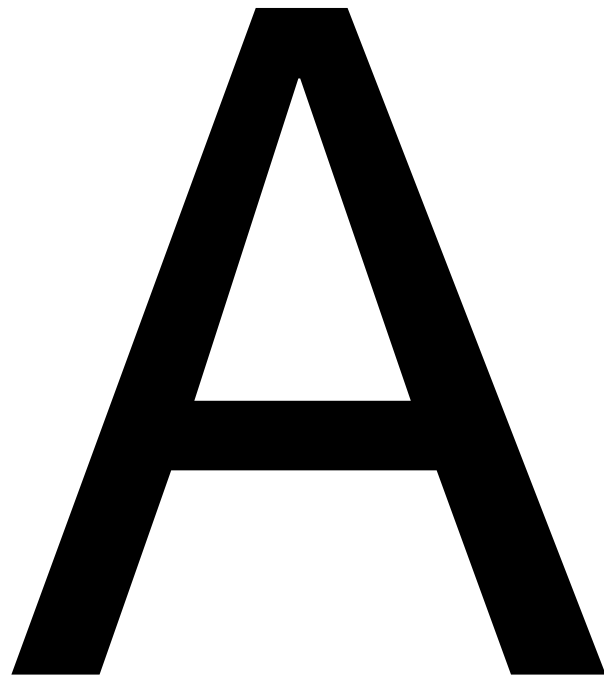
18. In his affidavit, Mr. Mizrahi claims that MI has charged a 5% CM Fee on all of its projects. I do not know the details of MI’s work on other Projects.
19. I note, however, that the 5% CM Fee charged by MI on the Project is higher than market CM Fees for Projects of comparable scale and quality. Based on the projects that FM is (or has been) engaged on, and our experience running requests for proposals on large mixed-use projects, the range of CM Fees in the market is between 2.75% and 3.5%. of construction costs. This market range is, in our experience, applicable to both third party construction managers and construction and development companies that perform their own construction management services.

Sworn remotely by Niall Finnegan at the City of Toronto in the Province of Ontario before me in the City of Toronto in the Province of Ontario, this 27th day of February, 2025 in accordance with O/ Reg. 431/20, *Administering Oath or Declaration Remotely*.

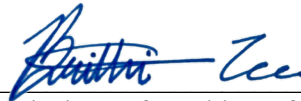


A Commissioner for taking affidavits
Name: Brittnei Tee LSO #85001P


NIAL FINNEGAN



This is Exhibit "A" referred to in the
affidavit of Niall Finnegan
affirmed before me, this 27th
day of February, 2025



A Commissioner for taking affidavits

Brittnei Tee

Name: NIAL FINNEGAN

Education:

Dublin Institute of Technology Ireland, Diploma Construction Economics (Honours) 1977-1981. Trinity College Dublin Ireland, Bachelor of Science (Surveying) Honours Degree 1977-1981.

Professional Memberships:

Member Canadian Institute of Quantity Surveyors (1984).
Member Royal Institution of Chartered Surveyors (1985).

Work Positions:

BTY – Niall emigrated to Canada in October 1981 and worked for BTY in their Winnipeg office for four years until September 1985. BTY are a specialist Construction Cost Consultant company providing construction cost estimate services to both private and public sector clients.

Helyar – Niall moved to Toronto in October 1985 and joined Helyar. In 1987, Niall became a partner at Helyar and over the next 18 years was instrumental in growing Helyar into Canada's largest Construction Cost Consultant Company with approximately 150 employees. Niall provided constructing cost consulting services primarily to private sector clients with a primary emphasis on the multi-residential market in Toronto. Niall became Senior Partner at Helyar in 1992. In 2005, Helyar merged with two companies of equal size being Altus and Derbyshire Viceroy and took the new company public.

Altus – Niall worked with Altus from May 2005 to July 2011 and was President of the Cost Consultancy practice with approximately 400 employees. He resigned in July 2011.

Finnegan Inc. – Niall formed Finnegan Inc., in July 2011 and operated this until the formation of Finnegan Marshall Inc. in May 2014. At Finnegan Inc., Niall acted for high net worth families invested in the new build high rise residential market in Toronto.

Finnegan Marshall Inc. – Niall formed Finnegan Marshall Inc. in May 2014 to concentrate on offering Construction Cost and Development Management services primarily to the new build high rise residential market in Toronto. The company has quickly grown to a staff of approximately 40 people and work on approximately 250 projects per annum. Niall possesses current in-depth knowledge of all new build construction costs for the Toronto market.

Presentations:

Niall speaks at several Real Estate Industry conferences annually including:

1. LandPro Conference
2. Land & Development Conference
3. Canadian Apartment Investment Conference
4. Toronto Construction Association

In addition, Niall also presents frequently to different private groups on Construction Costs including Royal Bank of Canada Real Estate Finance Group, Canadian Imperial Bank of Commerce, Bank of Nova Scotia, Toronto Dominion Bank, and Otera Capital among others.

Niall is also actively involved in preparing strategic, analysis and reports on behalf of BILD and other real estate development industry groups for use in evolving government policy discussions at municipal, provincial and federal levels.

**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

**AFFIDAVIT OF NIALL FINNEGAN
February 27, 2025**

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

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Lawyers for the Receiver

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

**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

REPLY MOTION RECORD OF THE RECEIVER
(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
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