

**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**

**RESPONDING MOTION RECORD OF
THE SENIOR SECURED LENDERS
(SISP Approval Order, returnable June 6, 2024)**

June 5, 2024

OSLER, HOSKIN & HARCOURT LLP
P.O. Box 50, 1 First Canadian Place
Toronto, ON M5X 1B8

Michael De Lellis (LSO# 48038U)
Email: mdelellis@osler.com

Jeremy Dacks (LSO# 41851R)
Email: jdacks@osler.com

Shawn Irving (LSO# 50035U)
Email: sirving@osler.com

Mark Sheeley (LSO# 66473)
Email: msheeley@osler.com

Tel: 416.862.5997

Lawyers for the Senior Secured Lenders

TO: Service List

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

SERVICE LIST
(As at June 4, 2024)

OSLER, HOSKIN & HARCOURT LLP 100 King Street West, 1 First Canadian Place Suite 6200, P.O. Box 50 Toronto, ON M5X 1B8 Michael De Lellis Direct: 416.862.5997 E-mail: mdelellis@osler.com Jeremy Dacks Direct: 416.862.4923 E-mail: jdacks@osler.com Shawn Irving Direct: 416.862.4733 E-mail: sirving@osler.com Mark Sheeley Direct: 416.862.6791 E-mail: msheeley@osler.com	DENTONS CANADA LLP 99 Bank Street, Suite 1420 Ottawa, ON K1P 1H4 Kenneth D. Kraft Direct: 416.863.4374 E-mail: kenneth.kraft@dentons.com Phil M. Rimer Direct: 613.783.9634 E-mail: philip.rimer@dentons.com <i>Counsel to the Respondents, Mizrahi Commercial (The One) LP, Mizrahi Development Group (The One) Inc., and Mizrahi Commercial (The One) GP Inc.</i>
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<p><i>Counsel to the Applicant, 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</i></p>	
<p>GOODMANS LLP Bay Adelaide Centre – West Tower 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7</p> <p>Brendan O’Neill Direct: 416.849.6017 E-mail: boneill@goodmans.ca</p> <p>Christopher Armstrong Direct: 416.849.6013 E-mail: carmstrong@goodmans.ca</p> <p>Mark Dunn Direct: 416.849.6895 E-mail: mdunn@goodmans.ca</p> <p>Jennifer Linde Direct: 416.849.6922 E-mail: jlinde@goodmans.ca</p> <p><i>Counsel to the Receiver</i></p>	<p>ALVAREZ & MARSAL CANADA INC. Royal Bank Plaza, South Tower 200 Bay Street, Suite 2900 P.O. Box 22 Toronto, ON M5J 2J1</p> <p>Stephen Ferguson Direct: 416.847.5162 E-mail: sferguson@alvarezandmarsal.com</p> <p>Josh Nevsky Direct: 416.847.5161 E-mail: jnevsky@alvarezandmarsal.com</p> <p>Melanie MacKenzie Direct: 416.847.5158 E-mail: mmackenzie@alvarezandmarsal.com</p> <p><i>Receiver</i></p>
<p>BORDEN LADNER GERVAIS LLP (BLG) Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3400 Toronto, ON, Canada M5H 4E3</p> <p>Roger Jaipargas Direct: 416.367.6266 E-mail: RJaipargas@blg.com</p> <p><i>Counsel to Mizrahi Inc., Sam M Inc., and Sam Mizrahi</i></p>	<p>MORSE SHANNON LLP 133 Richmond Street West, Suite 501 Toronto, ON M5H 2L3</p> <p>Jerome R. Morse Direct: 416.941.5867 E-mail: jmorse@morseshannon.com</p> <p>David Trafford Direct: 416-941-5850 E-mail: dtrafford@morseshannon.com</p> <p><i>Counsel to Mizrahi Inc., Sam M Inc., and Sam Mizrahi</i></p>
<p>MCCARTER GRESPAN LAWYERS 539 Riverbend Drive, Kitchener, ON N2K 3S3</p> <p>Avril Lavallee Direct: 519.571.8800 Ext. 135 E-mail: alavallee@mgbwlaw.com</p>	<p>FOGLER RUBINOFF LLP 77 King Street West, Suite 3000, P.O. Box 95 Toronto, Ontario, M5K 1G8</p> <p>Nina Perfetto Direct: 416.941.8866 E-mail: nperfetto@foglers.com</p>

<p><i>Counsel to Mizrahi Inc., Sam M Inc., and Sam Mizrahi</i></p>	<p>David Levangie Direct: 416.864.7603 E-mail: dlevangie@foglers.com <i>Counsel to Coco International Inc. and 12823543 Canada Ltd.</i></p>
<p>TORYS LLP 79 Wellington Street West, Unit 3300 Toronto, Ontario, M5K 1N2 David Bish Direct: 416.865.7353 E-mail: dbish@torys.com <i>Counsel to Coco International Inc. and 12823543 Canada Ltd.</i></p>	<p>BABIN BESSNER SPRY LLP 185 Frederick St., Suite 101 Toronto, ON M5A 4L4 Edward J. Babin Direct: 416.637.3294 E-mail: ebabin@babinbessnerspry.com Cynthia L. Spry Direct: 416.637.3295 E-mail: cspry@babinbessnerspry.com Michael Bookman Direct: 647.725.2604 E-mail: mbookman@babinbessnerspry.com Brendan Monahan Direct: 416.637.3296 E-mail: bmonahan@babinbessnerspry.com <i>Counsel to CERIECO Canada Corp.</i></p>
<p>HARRIS SHEAFFER LLP 4100 Yonge Street, Suite 610 Toronto, ON M2P 2B5 Michael J. Baum Direct: 416.250.2892 E-mail: mbaum@harris-sheaffer.com <i>Deposit Trustee</i></p>	<p>AVIVA INSURANCE COMPANY OF CANADA c/o Westmount Guarantee Services Inc. 600 Cochrane Drive, Suite 205 Markham, ON L3R 5K3 Brian Argue Direct: 647.499.8249 X 203 E-mail: brian@westmountguarantee.com Marlon Brown Direct: 647.499.8249 X 205 E-mail: marlon@westmountguarantee.com</p>

<p>CHAITONS LLP 5000 Yonge Street, 10th Floor Toronto, Ontario M2N 7E9</p> <p>Harvey Chaiton Direct: 416.218.1129 E-mail: harvey@chaitons.com</p> <p><i>Counsel to Aviva Insurance Company of Canada</i></p>	<p>SINGLETON URQUHART REYNOLDS VOGEL LLP 150 King St. West, Suite 2512 Toronto, ON M5H 1J9</p> <p>Bruce Reynolds Direct: 416.585.8601 E-mail: breynolds@singleton.com</p> <p><i>Counsel to Aviva Insurance Company of Canada</i></p>
<p>FASKEN MARTINEAU DuMOULIN LLP Bay Adelaide Centre, 333 Bay St. #2400 Toronto, ON M5H 2T6</p> <p>Stuart Brotman Direct: 416.865.5419 E-mail: sbrotman@fasken.com</p> <p>Daniel Richer Direct: 416.865.4445 E-mail: dricher@fasken.com</p> <p><i>Counsel to NongHyup Bank, in its capacity as trustee of Hana Private Real Estate Investment Trust No. 137</i></p>	<p>HANA ALTERNATIVE ASSET MANAGEMENT CO., LTD. 21F, 66 Eulji-ro Jung-gu, Seoul 04538, Republic of Korea</p> <p>Cecilia Lee Manager, Alternative Investment Division E-mail: chmlee@hanafn.com</p>
<p>MIZRAHI INC. 189 Forest Hill Road Toronto, ON M5P 2N3</p> <p>Sam Mizrahi E-mail: sam@mizrahidevelopments.ca</p>	<p>SAM MIZRAHI 189 Forest Hill Road Toronto, ON M5P 2N3</p> <p>Sam Mizrahi E-mail: sam@mizrahidevelopments.ca</p>
<p>JENNY COCO 271 Spadina Road, 5th Floor Toronto, ON M5R 2V3</p> <p>Jenny Coco E-mail: jcoco@cocogroup.com</p>	<p>SAM M INC. 189 Forest Hill Road Toronto, ON M5P 2N3</p> <p>Sam Mizrahi E-mail: sam@mizrahidevelopments.ca</p>

<p>DLA PIPER (CANADA) LLP 1 First Canadian Place, Suite 6000 100 King Street West Toronto, ON M5X 1E2</p> <p>Edmond F .B. Lamek Direct: 416.365.4444 Email: edmond.lamek@dlapiper.com</p> <p>Danny M. Nunes Direct: 416.365.3421 Email: danny.nunes@dlapiper.com</p> <p><i>Counsel to Hyatt Hotels of Canada Inc.</i></p>	<p>HYATT HOTELS OF CANADA, INC. 150 North Riverside Plaza Chicago, IL 60606</p> <p>Mark Sweeney Direct: 312.780.2928 Email: mark.sweeney@hyatt.com</p>
<p>SPEIGEL NICHOLS FOX LLP 1 Robert Speck Parkway, Suite 200 Mississauga, Ontario L4Z 3M3</p> <p>Allison J. Speigel Direct: 905.366.9700 Ext. 280 E-mail: allison@ontlaw.com</p> <p><i>Counsel to Mappro Realty Inc.</i></p>	<p>NORTON ROSE FULBRIGHT CANADA LLP 222 Bay Street, Suite 3000, P.O. Box 53 Toronto, ON M5K 1E7</p> <p>Evan Cobb Direct: 416.216.1929 E-mail: evan.cobb@nortonrosefulbright.com</p> <p><i>Counsel to Read Jones Christoffersen Ltd.</i></p>
<p>TORYS LLP 79 Wellington St. W., Suite 3000 Box 270, TD Centre Toronto, ON M5K 1N2</p> <p>Adam Slavens Direct: 416.865.7333 E-mail: aslavens@torys.com</p> <p><i>Counsel to Tarion Warranty Corporation</i></p>	<p>MILLER THOMSON LLP Vaughan Metropolitan Centre 100 New Park Place, Suite 700 Vaughan, ON L4K 0H9</p> <p>Enzo Di Iorio Direct: 905.532.6613 ediiorio@millerthomson.com</p> <p>Paul Guaragna Direct: 905.532.6679 pguaragna@millerthomson.com</p> <p><i>Counsel to Innocon by its general partners Innocon Inc., Heidelberg Materials Canada Limited/Materiaux Heidelberg Canada Limitee, Lehigh Hanson Materials Limited, Lafarge Canada Inc. and Allmix Concrete Inc.</i></p>

<p>GARDINER ROBERTS LLP Bay Adelaide Centre, East Tower 22 Adelaide Street West, Suite 3600 Toronto, ON M5H 4E3</p> <p>S. Michael Citak Direct: 416.865.6706 E-mail: mcitak@grllp.com <i>Counsel to PSR Brokerage Ltd.</i></p>	<p>BISCEGLIA AND ASSOCIATES P.C. 9100 Jane Street Suite 200, Building A Vaughan, ON L4K 0A4</p> <p>Emilio Bisceglia Direct: 905.695.3100 E-mail: ebisceglia@lawtoronto.com <i>Counsel to Cult Iron Works Limited</i></p>
<p>COZEN O'CONNOR LLP Bay Adelaide Centre - North Tower 40 Temperance Street, Suite 2700 Toronto, Ontario M5H 0B4</p> <p>Steven Weisz Direct: 647.295.2616 E-mail: sweisz@cozen.com</p> <p>Heidi Esslinger Direct: 236.317.6885 E-mail: hesslinger@cozen.com <i>Counsel to Mizrahi Inc.</i></p>	<p>MCMILLAN LLP Suite 4400, 181 Bay Street Toronto ON M5J 2T3</p> <p>Glenn Grenier Direct: 416.307.4005 E-mail: glenn.grenier@mcmillan.ca</p> <p>Jeffrey Levine Direct: 416.865.7791 E-mail: jeffrey.levine@mcmillan.ca <i>Counsel to Gamma Windows and Walls International Inc.</i></p>

Ministries / Government Entities / Regulatory Authorities

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

E-MAIL DISTRIBUTION LIST:

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

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

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Applicant

- and -

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

**AFFIDAVIT OF MARK SHEELEY
(Made June 5, 2024)**

I, Mark Sheeley, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY AS FOLLOWS:

1. I am a partner at Osler, Hoskin & Harcourt LLP, counsel to the applicant KEB Hana Bank (i) as trustee of IGIS Global Private Placement Real Estate Fund No. 301 (in such capacity, the “**Term Lender**”), (ii) as trustee of IGIS Global Private Placement Real Estate Fund No. 434 (in such capacity, the “**Standby Lender**”, and together with the Term Lender, the “**Senior Secured Lenders**”), and (iii) as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (in such capacity, the “**Receivership Lender**”), in connection with the within Receivership Proceedings

and the appointment of Alvarez & Marsal Canada Inc. as receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP (the “**Beneficial Owner**”), Mizrahi Development Group (The One) Inc. (the “**Nominee**”, and together with the Beneficial Owner, the “**Borrower**”), and Mizrahi Commercial (The One) GP Inc., the general partner of the Beneficial Owner (“**GP Inc.**”, and together with the Borrower, the “**Debtors**”), acquired for, or used in relation to a business carried on by the Debtors, including, without limitation, in connection with the development of an 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario marketed as “The One” (the “**Project**”) and the Project itself, including all proceeds thereof, pursuant to the Order (Appointing Receiver) entered by this Court on October 18, 2023.

2. As such, I have personal knowledge of the matters deposed to in this affidavit, except where indicated otherwise. The Senior Secured Lenders and the Receivership Lender do not waive or intend to waive any applicable privilege by any statement in this affidavit.

3. I have been authorized and directed by the Senior Secured Lenders and the Receivership Lender to swear this affidavit in connection with the Receiver’s motion, returnable June 6, 2024, seeking, among other things, an order approving the proposed sale and investment solicitation process (the “**SISP Approval Order**”).

4. In support of the application to appoint the Receiver, the Senior Secured Lenders delivered the Affidavit of Joo Sung Yoon, made October 17, 2023 (the “**Yoon Affidavit**”). A copy of the Yoon Affidavit, without exhibits, is attached as **Exhibit “A”**. Capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Yoon Affidavit.

A. Guarantees provided by Coco and Mizrahi

5. A copy of the guarantee executed by Jenny Coco (“Coco”), Sam Mizrahi (“Mizrahi”) and GP Inc. of all Obligations under the Credit Agreement referred to in paragraph 65(a) of the Yoon Affidavit is attached as **Exhibit “B”**.

6. A copy of the guarantee executed by Coco, Mizrahi and GP Inc. in respect of cost overruns and to complete the Project referred to in paragraph 65(b) of the Yoon Affidavit is attached as **Exhibit “C”**.

B. Intercreditor agreements with Coco Lender

7. Copies of the Coco Priority Agreements referred to in paragraph 73 of the Yoon Affidavit (and attached thereto as Exhibits “Z”, “AA”, “BB”, and “CC”) are attached hereto for ease of reference as **Exhibits “D”, “E”, “F” and “G”**.

SWORN BEFORE ME over videoconference
in accordance with the *Administering Oath or
Declaration Remotely Regulation*, O. Reg.
431/20, on June 5, 2024, while I was located
in the City of Toronto, in the Province of
Ontario, and the affiant was located in the City
of Toronto, in the Province of Ontario.



Sierra Farr (LSO #: 87551D)



MARK SHEELEY

THIS IS **EXHIBIT “A”** REFERRED TO IN THE
AFFIDAVIT OF MARK SHEELEY,
SWORN BEFORE ME over videoconference in accordance with
the *Administering Oath or Declaration Remotely Regulation*, O.
Reg. 431/20, on June 5, 2024, while I was located in the City of
Toronto, in the Province of Ontario, and the affiant was located
in the City of Toronto, in the Province of Ontario.

THIS 5th DAY OF JUNE, 2024.

A handwritten signature in black ink, appearing to be 'SF' or similar initials, written in a cursive style.

Sierra Farr (LSO# 87551D)

Court File No.

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

**AFFIDAVIT OF JOO SUNG YOON
(Made October 17, 2023)**

I, Joo Sung Yoon, of Seoul Special City, in the Republic of Korea, MAKE OATH AND
SAY AS FOLLOWS:

1. I am a Vice President within the Global Fund Management Team of IGIS Asset Management Co., Ltd. (“**IGIS**”). IGIS is an asset management firm headquartered in Seoul, South Korea, and is the asset manager for the Senior Secured Lenders and the Receivership Lender (each as defined below). I have been involved in the administration of the Credit Agreement (as defined below) pursuant to which KEB Hana Bank (i) as trustee of IGIS Global Private Placement Real Estate Fund No. 301 (in such capacity, the “**Term Lender**”), and (ii) as trustee of IGIS Global

Private Placement Real Estate Fund No. 434 (in such capacity, the “**Standby Lender**” and together with Term Lender, the “**Senior Secured Lenders**”) has advanced over \$950 million (exclusive of interest and fees) to Mizrahi Commercial (The One) LP (the “**Beneficial Owner**”) and Mizrahi Development Group (The One) Inc. (the “**Nominee**” and together with the Beneficial Owner, the “**Borrower**”) in connection with the development of an 85-storey condominium, hotel and retail tower located at the southwest corner of Yonge Street and Bloor Street West in Toronto, Ontario, marketed as “The One” (the “**Project**”).

2. I have been directly involved in the Senior Secured Lenders’ discussions with the Borrower and the evaluation of their options with respect to the enforcement of their rights, in particular following the Borrower’s failure to repay in full funds owing under the Credit Agreement following its maturity (as more fully described below). I have been authorized and directed by the Senior Secured Lenders to swear this affidavit in support of an application seeking an order appointing a receiver over the Borrower and GP Inc. (as defined below) and the Project and authorizing the receiver to perform all ancillary duties in connection therewith. As such, I have knowledge of the matters to which I hereinafter depose. Where the information set out in this affidavit is based upon information that I have received from others, I have stated the source of that information and believe it to be true. In preparing this affidavit, I have also consulted with other individuals from the Senior Secured Lenders involved in the administration of the Credit Agreement, and the Senior Secured Lenders’ advisors. The Senior Secured Lenders do not waive or intend to waive any applicable privilege by any statement herein.

3. More particularly, this affidavit is sworn in support of an application by the Senior Secured Lenders for an order (the “**Appointment Order**”), among other things:

- (a) appointing Alvarez & Marsal Canada Inc. (“**A&M**”) as receiver (in such capacity, and not in its personal or corporate capacity, the “**Receiver**”), without security, in respect of all of the assets, undertakings and properties of the Borrower and GP Inc. acquired for or used in relation to a business carried on by the Borrower or GP Inc., including, without limitation, in connection with the Project and the Project itself, including all proceeds thereof (collectively, the “**Property**”), pursuant to section 243 of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act* (Ontario);
- (b) granting the Receiver a charge over all of the Property as security for the Receivership Costs (as defined below), with such charge having priority over all other charges and security interests other than Aviva’s security interest in the Condo Deposits in the Condo Deposit Account (each as defined below) and subject to subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA (the “**Receiver’s Charge**”);
- (c) approving the Receivership Funding Credit Agreement (as defined below);
- (d) granting KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 530 (in such capacity, the “**Receivership Lender**”) a charge over all of the Property as security for the performance, including repayment, of all obligations incurred under the Receivership Funding Credit Agreement, with such charge having priority over all other charges and security interests other than (i) the Receiver’s Charge and (ii) Aviva’s security interest in the Condo Deposits in the

Condo Deposit Account, and subject to subsections 14.06(7), 81.4(4) and 81.6(2) of the BIA (the “**Receiver’s Borrowings Charge**”);

- (e) prohibiting the commencement or continuance of any proceedings against the Receiver and the Receiver’s counsel, except with the written consent of the Receiver or leave of the Court;
- (f) staying all proceedings currently underway against or in respect of the Borrower, GP Inc. or the Property until further order of the Court and prohibiting the commencement or continuance of any proceedings against or in respect of the Borrower, GP Inc. or the Property, except with the written consent of the Receiver or leave of the Court;
- (g) requiring cooperation and information sharing in respect of the Project from all individuals, firms, corporations, governmental bodies or agencies, and other entities having notice of the Appointment Order, including the Borrower and GP Inc. (and their current and former directors, officers, employees, shareholders, limited partners and general partners), and the Developer, Mizrahi LP Inc., Coco LP Ltd., Mizrahi and Coco (each as defined below), and construction managers, general contractors, contractors and subcontractors of the Project;
- (h) staying and suspending all rights and remedies against the Receiver, the Borrower or GP Inc., or affecting the Property, except with the written consent of the Receiver or leave of the Court, and subject to other customary exclusions;
- (i) restraining any person from interfering with, terminating or ceasing to perform any right in favour of or held by the Borrower, GP Inc., the Developer, or in respect of the Project, except with the written consent of the Receiver or leave of the Court;

- (j) restraining all counterparties to oral or written agreements with the Borrower, GP Inc. or the Developer, or those with contractual, statutory or regulatory mandates for the supply of goods and/or services to the Borrower, GP Inc., the Developer and/or the Project, from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, until further order from the Court and provided that the normal prices or charges for all such goods or services received are paid by the Receiver or the Developer, as determined by the Receiver, in accordance with normal payment practices of the Borrower and GP Inc. or the Developer, as applicable; and
- (k) requiring any party that has provided a financial assurance to or for the benefit of the Borrower or GP Inc., including where such financial assurance has been provided to the Developer, to continue to honour such financial assurance, notwithstanding any default of cross-default provisions arising as a result of the Appointment Order, the financial circumstances of the Borrower or GP Inc., or otherwise.

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A. Overview

5. As described in greater detail below, the Borrower, the Senior Secured Lenders, GP Inc., Mizrahi, Coco, the Developer and KEB Hana Bank Canada are parties to a credit agreement dated August 30, 2019, as amended by agreements dated April 30, 2020, October 30, 2020, February 4, 2021, September 9, 2021, and August 30, 2022 (as amended, the “**Credit Agreement**”). The Credit Agreement consists of two facilities: the Term Facility and the Standby Facility (each as defined below). As of September 29, 2023, the Borrower has incurred indebtedness totalling over \$1.23 billion under the Credit Agreement (inclusive of interest and fees).

6. More particularly, as of September 29, 2023, outstanding amounts owing under the Credit Agreement inclusive of principal, accrued interest and certain other fees costs and expenses (the “**Obligations**”) are as follows:

- (a) Term Facility: \$906,122,776.25; and
- (b) Standby Facility: \$329,165,620.51.

7. The Term Facility matured on August 30, 2023, and all Obligations in respect of the Term Facility are now due and payable. On the same day, the Term Lender demanded repayment of the Obligations under the Term Facility.

8. The Standby Facility matured on September 29, 2023, and all Obligations in respect of the Standby Facility are now due and payable. On the same day, the Standby Lender demanded repayment of the Obligations under the Standby Facility, and the Term Lender reiterated its demand for repayment of the Obligations under the Term Facility. To date, the Borrower has failed to repay the Obligations under both the Term Facility and the Standby Facility, which failures are independent events of default under the Credit Agreement (each event of default thereunder, an

“Event of Default”). The Borrower has committed numerous other defaults for which any applicable cure periods have expired.

9. On October 4, 2023, the Senior Secured Lenders delivered a letter to the Borrower, demanding immediate payment of all Obligations under both the Term Facility and the Standby Facility, and providing notice of their intention to enforce on security pursuant to section 244 of the BIA (the **“Demand and 244 Notice”**). The Demand and 244 Notice has not been satisfied since its delivery.

10. The Borrower’s failure to repay the Obligations under the Credit Agreement upon maturity and its repeated defaults over the course of the Project (all as described more fully below) are symptomatic of the Borrower’s inability to effectively manage the Project and the instability and uncertainty caused by the ongoing disputes between the principal investors in the Project, Sam Mizrahi (**“Mizrahi”**) and Jenny Coco (**“Coco”**). Since the closing of the Credit Agreement in 2019, the Senior Secured Lenders have gone to great lengths to accommodate the Borrower and assist the Project; they have advanced hundreds of millions of dollars to fund construction, even as the budget increased and delays mounted. Construction of the entire Project was expected to be completed by December 31, 2022, but as of October 4, 2023 concrete columns and walls have only been poured up to the 40th floor. Even on the Borrower’s revised timeline, construction is now not expected to be completed until March 2025. The Senior Secured Lenders understand that, recently, the Project lost its anchor retail tenant and, to date, the Borrower has not secured another tenant to lease the space. In addition, over the past several years, Mizrahi and Coco’s relationship has become increasingly acrimonious and dysfunctional. They have been embroiled in litigation against one another in connection with the Project. The Senior Secured Lenders are not prepared to advance additional funds without the appointment of a receiver within this proceeding, under

the supervision of the Court, to manage the Project and oversee its development, and without the approval of the proposed Receivership Funding Credit Agreement.

11. The immediate appointment of a receiver is just and appropriate in these circumstances.

Among other things:

- (a) the Borrower is in default of the Credit Agreement;
- (b) the Credit Agreement has matured, and all Obligations outstanding under the Term Facility and the Standby Facility are now due and payable;
- (c) the Borrower is neither able to repay the Obligations under the Term Facility and the Standby Facility, nor able to continue developing the Project in the short term;
- (d) the Senior Secured Lenders have lost confidence in the Borrower;
- (e) the Senior Secured Lenders are contractually entitled to seek the appointment of a receiver over the Borrower upon an Event of Default; and
- (f) a Court-appointed receiver can best preserve and protect the Property in order to maximize recoveries from the Project for the benefit of all stakeholders.

12. Pursuant to an agreement that will be made effective as of the date of the Appointment Order (the “**Receivership Funding Credit Agreement**”), the Receivership Lender has agreed to make available to the Receiver a non-revolving term credit facility in the maximum principal amount of \$315 million (the “**Receivership Facility**”), on a super-priority basis, to fund Receivership Costs and ongoing Project Costs (as defined below), subject to certain conditions and in accordance with the Cash Flow Projections (as defined below) and the terms of the proposed Appointment Order. Following the closing of the Receivership Facility, the Receivership Lender will advance \$80 million to fund, among other things, accrued and ongoing Project Costs and Receivership Costs. Following the initial advance, the Receivership Lender may make monthly

advances of no more than \$30 million (to a maximum of \$235 million), subject to the satisfaction of the conditions precedent in the Receivership Funding Credit Agreement, to fund approved Project Costs and Receivership Costs, based on actual expenditures from the immediately preceding month.

13. The Receivership Lender's ongoing funding commitments under the Receivership Funding Credit Agreement are conditioned on several factors, including the continuation of the proposed Appointment Order, the achievement of the Receivership Milestones (as defined below), the determination of the cost to complete the Project, and the Receivership Lender's right, at any time upon 60 days' notice to the Receiver, to require the Receiver to seek Court approval of a sales process in respect of the Property, with the cost of such sales process to be funded by the Receivership Lender.

14. The proposed Appointment Order and the provision of up to \$315 million of incremental financing for the Project made available through the Receivership Funding Credit Agreement are intended to bring much needed stability and appropriate oversight to the Project. If the proposed Appointment Order is granted, the Receiver will continue its review of the status of the Project, immediately engage with stakeholders, including Mizrahi Inc., the developer and general contractor of the Project (the "**Developer**") and the trades and subtrades contracted on the Project, and will hire a project manager, as well as other advisors that it deems necessary (each on terms acceptable to the Receivership Lender) to assist with and oversee the administration and construction of the Project.

15. In addition, as required under the Receivership Funding Credit Agreement, during the first six months the Receiver will, among other things:

- (a) prepare a report on the fair market value for each condominium unit in the Residential Component (as defined below);
- (b) prepare a plan with respect to the treatment of any condominium sales agreements entered into to date (the “**CSA Plan**”);
- (c) obtain a report on Project Costs incurred to date, the estimated cost (and time) to complete and the estimated revenues (the “**Cost to Complete Report**”);
- (d) prepare a business plan setting out an execution strategy for the Project to maximize recoveries for the benefit of all stakeholders (the “**Initial Business Plan**”); and
- (e) complete the legal severance of the lands and premises of the Commercial Component (as defined below) from the balance of the Project (the “**Severance**”).

B. Parties to the Credit Agreement

(a) The Borrower

16. As set out above, the Borrower under the Credit Agreement is Mizrahi Commercial (The One) LP (defined above as the Beneficial Owner) and Mizrahi Development Group (The One) Inc. (defined above as the Nominee).

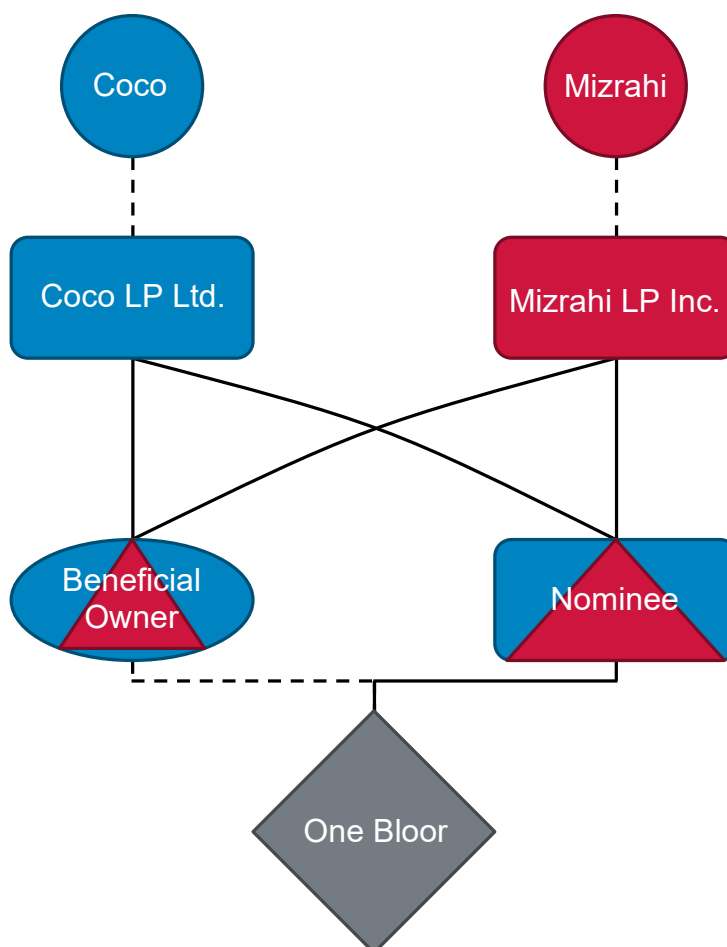
17. The Beneficial Owner is an Ontario-based limited partnership formed to undertake the development of the Project. Coco (and/or her family and other related persons or entities) and Mizrahi each have a 50% ultimate indirect voting interest in the Beneficial Owner through their respective indirect ownership of the Beneficial Owner’s two limited partners, each of which holds 50% of the voting interest in the Beneficial Owner:

- (a) 12823543 Canada Ltd. (“**Coco LP Ltd.**”), successor by amalgamation to 8891303 Canada Inc., a corporation under the laws of Canada controlled by Coco (and/or her family and other related persons or entities); and
- (b) Sam M Inc. (“**Mizrahi LP Inc.**”), a corporation incorporated under the laws of Ontario and controlled by Mizrahi.

18. The Beneficial Owner’s sole general partner is Mizrahi Commercial (The One) GP Inc. (“**GP Inc.**”), a corporation incorporated under the laws of Ontario. The limited partners of the Beneficial Owner, Coco LP Ltd. and Mizrahi LP Inc., each hold 50% of the common shares of GP Inc. A corporation profile report obtained from the Ontario Ministry of Government Service for GP Inc. is attached as **Exhibit “A”**. A limited partnership report obtained from the Ontario Ministry of Government Services for the Beneficial Owner is attached as **Exhibit “B”**.

19. The Nominee is a corporation incorporated under the laws of Ontario. The Nominee is the registered owner of One Bloor as bare trustee on behalf of the Beneficial Owner. The Nominee is wholly-owned by GP Inc. A corporation profile report obtained from the Ontario Ministry of Government Service for the Nominee is attached as **Exhibit “C”**.

20. Below is a chart setting out the above entities:



(b) The Senior Secured Lenders

21. As set out above, KEB Hana Bank as trustee of IGIS Global Private Placement Real Estate Fund No. 301 (defined above as the Term Lender), and as trustee of IGIS Global Private Placement Real Estate Fund No. 434 (defined above as the Standby Lender) are the Senior Secured Lenders under the Credit Agreement.

22. KEB Hana Bank is a commercial bank headquartered in South Korea. KEB Hana Bank acts as bare trustee for IGIS Global Private Placement Real Estate Fund No. 301 and IGIS Global Private Placement Real Estate Fund No. 434.

(c) **Other parties to the Credit Agreement**

23. KEB Hana Bank Canada is a Schedule II bank under the *Bank Act* (Canada), with its head office in Ontario. KEB Hana Bank Canada was the administrative agent under the Credit Agreement (in such capacity, the “**Administrative Agent**”) until it resigned from that role on August 31, 2022. As a replacement administrative agent has not been appointed, pursuant to the terms of the Credit Agreement (including subsection 16.07(2)), KEB Hana Bank Canada continues to hold security on behalf of the Senior Secured Lenders and, in effect, acts as a *de facto* collateral agent for the Senior Secured Lenders.

24. IGIS is a real estate investment firm headquartered in South Korea. IGIS Asset Management Co., Ltd. is the asset manager of IGIS Global Private Placement Real Estate Fund No. 301 and IGIS Global Private Placement Real Estate Fund No. 434.

25. Mizrahi Inc. (defined above as the Developer) is a corporation incorporated under the laws of Ontario and is controlled by Mizrahi. The Developer is responsible for overseeing the development, construction and day-to-day management of the Project.

26. Mizrahi is a resident of Ontario and, as noted above, has a 50% interest in the Project and is the principal of the Developer. Mizrahi is a guarantor under the Credit Agreement.

27. Coco is a resident of Ontario and, as noted above, together with family members and other related persons or entities, has (or controls) a 50% interest in the Project. Coco is a guarantor under the Credit Agreement.

C. One Bloor

28. The real property at issue comprises the lands and premises on the southwest corner of Bloor Street West and Yonge Street in Toronto, Ontario (“**One Bloor**”), on which the Project is being constructed and developed and which are more particularly described in **Exhibit “D”**.

29. The Nominee is the registered owner of One Bloor as nominee for and on behalf of the Beneficial Owner pursuant to an amended and restated nominee agreement entered into by, among others, the Beneficial Owner and the Nominee dated March 30, 2015. A copy of the parcel register in respect of One Bloor, as of October 11, 2023, is attached as **Exhibit “E”**.

D. The Project

30. As described above, the Project, which is partially constructed, is contemplated to be an 85-storey mixed use residential tower. The Project features underground parking, concourse and ground floor retail, a restaurant on the third level, and a hotel on levels 5 and 7 through 16 (collectively, the “**Commercial Component**”), and luxury residential suites occupying the remainder of the building up to level 84, plus the mechanical penthouse on level 85 (the “**Residential Component**”). Under the initial plans for the Project approved by the Senior Secured Lender, once complete, the building will span approximately 123,000 square feet of hotel space, 66,000 square feet of retail space, and 519,000 square feet of residential space. This does not include any additional square footage resulting from the Borrower’s recent zoning bylaw amendment application seeking approval of nine additional floors (the construction of which is not contemplated in the Credit Agreement and which has not been approved by the Senior Secured Lenders).

31. The relationships between and responsibilities of the Borrower, Coco LP Ltd., Mizrahi LP Inc., the Developer and other participant entities involved in the development and construction of the Project are governed by a series of limited partnership, unanimous shareholder, development management, construction management, lending, and other collateral agreements.

32. Portions of One Bloor were first acquired by affiliate entities of the Borrower in 2014. Pre-construction of the Project commenced in mid-2016. Construction began in mid-2017. The Borrower financed certain acquisitions, pre-construction and early construction costs through advances under the Coco Credit Agreement and the CERIECO Credit Agreements (each as defined below), and a credit facility provided by a third-party mortgage lender that was repaid with funds advanced at the closing of the Credit Agreement.

33. By 2019, when the Credit Agreement was executed, the Project was expected to be completed by December 31, 2022. At that time, based on a report on anticipated costs from August 2019, the Borrower projected gross costs for the Project of approximately \$1.4 billion. The Borrower sought to finance the Project principally through secured loans.

34. As set out in more detail below, the Borrower has subsequently extended the estimated completion date of the Project on numerous occasions and the estimated cost to completion has significantly increased. Based on an August 20, 2023 monthly status update report on the Project, the Borrower anticipates that the Project will not be completed until March 2025. Recently, the Senior Secured Lenders' cost consultant, Altus Group Limited ("**Altus**"), issued a budget review letter in respect of the Project's budget using, among other things, the Borrower's latest construction schedule and commitments and cost data to May 31, 2023, and subject to the limitations set out therein. In the budgets set out in the review letter, anticipated gross expenditures

for the Project are at least \$2 billion, which is over \$600 million more than projected when the Credit Agreement was signed and over \$300 million more than the previous budget from August 2022.

E. Secured indebtedness of the Borrower

35. The below table sets out the approximate total secured indebtedness of the Borrower, based on the best information available to the Senior Secured Lenders, which in the case of the secured lenders other than the Senior Secured Lenders and Aviva is limited to the principal amounts of the Borrower's indebtedness (and which amounts may have accrued additional interest and/or fees):

Creditor	Approximate secured indebtedness
Senior Secured Lenders	\$1.235 billion
Aviva	\$130 million
Hana Lender (as defined below)	\$55 million
Coco Lender (as defined below)	\$60 million
CERIECO (as defined below)	\$182 million
Total:	\$1.662 billion

(a) Secured indebtedness to the Senior Secured Lenders

(i) The Original Credit Agreement

36. On or about August 30, 2019, the Term Lender, the Borrower, the Developer, GP Inc., Coco, Mizrahi and KEB Hana Bank Canada entered into a credit agreement (the “**Original Credit Agreement**”), pursuant to which the Term Lender made available to the Borrower a term credit facility (the “**Term Facility**”) in the maximum principal amount of \$565 million (“**Tranche A**”). The Original Credit Agreement also contemplated the establishment of a standby credit facility, at

the election of the Senior Secured Lenders, subject to certain conditions precedent. A copy of the Original Credit Agreement, without schedules, is attached as **Exhibit “F”**.

37. The Tranche A funds were made available to the Borrower for the purpose of funding the following uses:

- (a) \$211,682,039.86 to fund the Borrower’s repayment of existing indebtedness owing to a third party mortgage lender at closing;
- (b) \$175,642,960.14 to fund hard and soft construction costs of the Project (“**Project Costs**”);
- (c) \$152,550,000 to fund the payment of interest on Tranche A;
- (d) \$23,125,000 to pay the fees of IGIS and the Term Lender; and
- (e) \$2 million to fund the Borrower’s closing costs.

38. As contemplated by the Original Credit Agreement, upon closing on August 30, 2019, the Term Lender advanced \$287,162,500 to the Borrower under Tranche A, of which \$37,642,960.14 was advanced to fund Project Costs. The remaining funds available under Tranche A were subsequently advanced to fund Project Costs and interest payments.

39. Interest, inclusive of standby fees payable on Tranche A, accrues on the funds advanced under Tranche A at a rate of 9% per annum plus an additional margin triggered by various events in recognition that such events are indicative of the Borrower being a greater lending risk (the “**Applicable Margin**”), calculated on the maximum principal amount available under Tranche A. More particularly, the Applicable Margin is the sum of the following:

- (a) 0.25% per annum, if at any time after December 31, 2019, the aggregate projected gross sale price of condominium units in the Residential Component, net of certain

- amounts, in respect of purchase and sale agreements that satisfy certain conditions in respect of deposits is less than approximately \$547 million;
- (b) 3.00% per annum, if at any time after March 31, 2020, less than \$213 million has been advanced under the CERIECO Credit Agreements;
 - (c) 0.25% per annum, if at any time after September 30, 2020, the aggregate projected gross sale price of condominium units in the Residential Component, net of certain amounts, in respect of purchase and sale agreements that satisfy certain conditions in respect of deposits is less than approximately \$742 million;
 - (d) 3.00% per annum, if on March 31, 2021, the sum of
 - (i) funds deposited in the Construction Account (as defined below), and
 - (ii) certain funds paid from (to fund Project Costs) or held in the Condo Deposit Account and eligible to be used to fund Project Costs,is less than approximately \$171 million;
 - (e) 3.00% per annum, if at any time after March 31, 2021, the Severance and construction of the Commercial Component have not been completed; and
 - (f) 3.00% per annum, if as of December 31, 2021, either (i) less than \$60 million is deposited in the bank account designated for Project revenues or (ii) the aggregate projected gross sale price of condominium units in the Residential Component, net of certain amounts, in respect of purchase and sale agreements that satisfy certain conditions in respect of deposits is less than approximately \$857 million.

40. As of the date of this affidavit, the Applicable Margin is 12.5% per annum and therefore the aggregate interest rate on the funds advanced under Tranche A is 21.5% per annum.

41. Under the Original Credit Agreement, the maturity date of the Term Facility was August 30, 2022.

42. It is an Event of Default if the Borrower fails to meet any of the major milestones set out in Schedule O of the Original Credit Agreement (the “**Milestones**” and each a “**Milestone**”). Several of these Milestones were subsequently extended. A copy of Schedule O to the Credit Agreement is attached as **Exhibit “G”**.

43. Under the Original Credit Agreement, the Borrower has various reporting obligations to the Administrative Agent and the Senior Secured Lenders (the “**Reporting Requirements**”), including that the Borrower must deliver (i) annually, its financial statements and statements of each individual Guarantor’s net worth, and (ii) monthly, reports on Project Costs, the status of construction against the applicable construction schedule, and amounts deposited in the Borrower’s accounts.

44. In a traditional construction lending arrangement, a lender would periodically advance funds after approving and for the purposes of paying construction costs. In contrast, under the Credit Agreement the Senior Secured Lenders advance funds into a blocked account in the name of GP Inc. maintained with KEB Hana Bank Canada and designated for the deposit of advances to fund Project Costs (the “**Construction Account**”). The Senior Secured Lenders make such advances into the Construction Account quarterly, based on anticipated funding needs. GP Inc. periodically requests the Administrative Agent (on behalf of the Senior Secured Lenders) to approve the release of funds from the Construction Account to pay Project Costs. At each stage, the Borrower is required to provide certain information to the Administrative Agent. The release

requires the Senior Secured Lenders' approval based on the information provided by the Borrower pursuant to the Reporting Requirements, among other things.

(ii) The Tranche B Amendment

45. By an amending agreement dated February 4, 2021 (the "**Tranche B Amendment**"), the parties to the Original Credit Agreement agreed to amend the Credit Agreement to, among other things:

- (a) increase the maximum principal amount under the Term Facility by \$67 million ("**Tranche B**");
- (b) make various necessary amendments to provide terms for Tranche B, including the uses of the funds advanced, the interest rate and ranking as *pari passu* the Obligations under Tranche A and Tranche B;
- (c) amend and establish certain Milestones;
- (d) incorporate the Hana Credit Agreement, the Hana Indebtedness, the Hana Lender's security and the Hana Priority Agreements (each as defined below) into the Credit Agreement as, among other things, material agreements and the Hana Lender's security as permitted encumbrances; and
- (e) modify the Reporting Requirements to require statements of each individual Guarantor's net worth on a biannual basis.

46. The Tranche B funds were made available to the Borrower for the purpose of funding the following uses:

- (a) \$52,200,342 to fund Project Costs;
- (b) \$13,124,658 to fund the payment of interest on Tranche B;

(c) \$1,675,000 to pay the fees of an investment bank and the Term Lender.

47. As contemplated in the Tranche B Amendment, on February 22, 2021, the Term Lender advanced \$8,175,000 to the Borrower under Tranche B, of which \$6,500,000 was advanced to fund Project Costs. The remaining funds available under Tranche B were subsequently advanced to fund Project Costs and interest payments on Tranche B.

48. Interest, inclusive of any standby fees, accrues on the funds advanced under Tranche B at a rate of 12.5% per annum plus the Applicable Margin calculated on the maximum principal amount available under Tranche B. As of the date of this affidavit, the aggregate interest rate on the funds advanced under Tranche B is 25% per annum.

49. The Tranche B Amendment expressly provides that neither it, nor the advance of further funds under the Term Facility, constitutes a waiver of the 2020 CERIECO Advance Events of Default (as defined below).

50. A copy of the Tranche B Amendment is attached as **Exhibit “H”**.

(iii) The Standby Amendment

51. By an amending agreement dated September 9, 2021 (the “**Standby Amendment**”), the parties to the Original Credit Agreement and the Standby Lender agreed to amend the Credit Agreement to, among other things,

- (a) make available a standby credit facility in the maximum principal amount of \$325 million (the “**Standby Facility**”); and
- (b) provide terms for, and amend the terms of the Original Credit Agreement in respect of, the Standby Facility, including the uses of the funds advanced, the interest rate

and ranking the Obligations under the Term Facility in priority to the Obligations under the Standby Facility.

52. The Standby Facility was made available to the Borrower for the purpose of funding Project Costs, interest on the Standby Facility, and the handling fee payable in respect of the Standby Facility. As contemplated by the Standby Amendment, on September 29, 2021, the Standby Lender advanced \$35 million to the Borrower under the Standby Facility, of which approximately \$26 million was advanced to fund Project Costs. The remaining funds available under the Standby Facility were subsequently advanced to fund Project Costs and interest payments, such that the Standby Facility was used as follows:

- (a) approximately \$289.1 million to fund Project Costs;
- (b) approximately \$27.7 million to fund the payment of interest on the Standby Facility; and
- (c) \$8,125,000 to pay the handling fee payable in respect of the Standby Facility.

53. Interest on amounts outstanding under the Standby Facility accrues at a rate of 9% per annum, payable quarterly in advance of each quarter.

54. The maturity date for the Standby Facility is September 29, 2023.

55. A copy of the Standby Amendment is attached as **Exhibit “I”**.

(iv) The Maturity Date Amendment

56. By amending agreement dated August 30, 2022 (the “**Maturity Date Amendment**”), the parties to the Credit Agreement, among other things, agreed to extend the maturity date of the Term Facility by one year from August 30, 2022 to August 30, 2023.

57. A copy of the Maturity Date Amendment is attached as **Exhibit “J”**.

(b) The Security held by the Senior Secured Lenders

58. As security for the Obligations under the Credit Agreement, the Borrower executed and delivered, among other things, a general security agreement, dated August 30, 2019 (the “**GSA**”). The GSA grants the Administrative Agent, for the benefit of the Senior Secured Lenders, a security interest over all of the Borrower’s current and after-acquired property located at, used primarily in connection with, or arising from One Bloor. The GSA expressly authorizes the institution of proceedings for the appointment of a receiver of all or any part of the Borrower’s property upon the occurrence of an Event of Default that is continuing. A copy of the GSA is attached as **Exhibit “K”**.

59. In addition, the Nominee executed and delivered a demand debenture dated August 30, 2019, as amended on February 4, 2021 and September 9, 2021 (as amended, the “**Demand Debenture**”), and a general assignment of rents and leases dated August 30, 2019 (the “**GAR**” and, collectively with all other security, the “**Security**”). The Beneficial Owner irrevocably authorized the Nominee to provide the Demand Debenture, the GAR and the GSA pursuant to a direction dated August 30, 2019. A copy of the direction is attached as **Exhibit “L”**.

60. The Demand Debenture was originally in the principal amount of \$565 million, later amended on February 4, 2021 and September 9, 2021 to increase the principal amount to \$632 million and \$957 million, respectively. The Demand Debenture secures, among other things, the Borrower’s Obligations under the Credit Agreement and grants a security interest over the Nominee’s real and personal property, then owned or thereafter acquired. The Demand Debenture provides that, upon an Event of Default that is continuing, the holder of the Demand Debenture

may, among other things, seek to appoint a receiver (subparagraph 14(f)) and/or may seek any other remedy authorized or permitted by law (subparagraph 14(i)). The Demand Debenture further provides that a receiver appointed thereunder may borrow money for the purpose of maintaining, protecting or preserving One Bloor or carrying on the Borrower's business, and may issue receiver's certificates that form a charge upon One Bloor in priority to the amounts secured by the Demand Debenture (subparagraph 19(g)).

61. The Administrative Agent, for and on behalf of the Senior Secured Lenders, registered a charge in respect of the Demand Debenture pursuant to the *Land Titles Act* against title to One Bloor on August 30, 2019 (receipted as AT5225851), which charge was amended pursuant to amending agreements registered against title to One Bloor on February 16, 2021 and October 5, 2021 (receipted as AT5650701 and AT5877000) to increase the amount of the charge consistent with the increase to the principal amount of the Demand Debenture noted above. Copies of the charge, with the original Demand Debenture, and the amendments to the charge, with the amending agreements, are attached as **Exhibits "M", "N" and "O"**, respectively.

62. The GAR grants security in the leases and rents from the Nominee's real property, including One Bloor. The Administrative Agent, for and on behalf of the Senior Secured Lenders, registered a notice in respect of the GAR pursuant to the *Land Titles Act* against title to One Bloor on August 30, 2019 (receipted as AT5225852). A copy of such notice, with the GAR, is attached as **Exhibit "P"**.

63. In addition to the above Security, GP Inc. executed and delivered two pledge agreements dated August 30, 2019:

- (a) an agreement granting to the Administrative Agent, for the benefit of the Senior Secured Lenders, a first priority security interest in certain of GP Inc.'s bank accounts, including the Construction Account (the "**Account Pledge Agreement**"); and
- (b) an agreement granting to the Administrative Agent, for the benefit of the Senior Secured Lenders, a first priority security interest in GP Inc.'s investment assets, including GP Inc.'s common shares in the Nominee (the "**Pledge of Investment Collateral**").

Copies of the Account Pledge Agreement and the Pledge of Investment Collateral are attached as **Exhibits "Q" and "R"**, respectively.

64. On August 20, 2019, the Administrative Agent, for and on behalf of the Senior Secured Lenders, registered financing statements pursuant to the *Personal Property Security Act* (Ontario) (the "**PPSA**") against (i) the Nominee (registration number 20190820 1243 1590 3460), and (ii) the Beneficial Owner and GP Inc. (registration number 20190820 1238 1590 3457). The PPSA registrations were for a period of five years and cover all classes of personal property. The PPSA registrations were renewed on April 14, 2023 (registration numbers 20230414 1731 1590 9073 and 20230414 1731 1590 9072). On May 26, 2023, the PPSA registration against the Beneficial Owner and GP Inc. was amended to add the Senior Secured Lenders as additional secured parties. Copies of uncertified PPSA searches, current to October 10, 2023, against (i) the Nominee, (ii) the Beneficial Owner and (iii) GP Inc. are attached as **Exhibits "S", "T" and "U"**, respectively.

(c) Guarantees and other rights

65. In addition to the Security, the Borrower's Obligations are guaranteed by Coco (in her personal capacity), Mizrahi (in his personal capacity), and GP Inc. (together the "**Guarantors**" and each a "**Guarantor**"). In particular, each of the Guarantors are parties to two guarantees dated August 30, 2019 in favour of the Administrative Agent, for and on behalf of the Senior Secured Lenders:

- (a) a guarantee of all Obligations under the Credit Agreement, as principal debtor and on a joint and several basis; and
- (b) a guarantee in respect of cost overruns and to complete the Project, as principal debtor and on a joint and several basis.

66. The Senior Secured Lenders also obtained the following further protections in other agreements dated August 30, 2019:

- (a) four agreements assigning the Borrower's interest in condominium sales agreements, material agreements, insurance, and construction contracts and construction subcontracts to the Administrative Agent;
- (b) an agreement assigning the Borrower's, Mizrahi's and the Developer's interests in payment and performance bonds related to the Project;
- (c) an agreement from the Borrower and GP Inc. indemnifying the Senior Secured Lenders against environmental claims against the Project;
- (d) three blocked account agreements conditioning GP Inc.'s control over certain Project bank accounts, including the Construction Account;

- (e) agreements with each of Mizrahi LP Inc., Coco LP Ltd. and the Beneficial Owner in which each of them pledges its equity interests in the Nominee, GP Inc., and the Beneficial Owner;
- (f) an agreement under which Mizrahi LP Inc, Coco LP Ltd., and GP Inc. consent to the pledges and waive compliance with the unanimous shareholder agreement;
- (g) consents executed by Mizrahi LP Inc., Coco LP Ltd., and GP Inc. in respect of the share and unit transfers, and related documentation evidencing the transfer of share and unit certificates to, and the creation of applicable powers of attorney in, the Administrative Agent; and
- (h) a direction from the Borrower irrevocably authorizing Harris, Sheaffer LLP to remit proceeds from condominium unit sale deposits and closings to the Administrative Agent.

(d) Other secured creditors and intercreditor agreements

67. I am advised by Rod Davidge, a partner at Osler, Hoskin & Harcourt LLP (“**Osler**”) and counsel to the Senior Secured Lenders and the Receivership Lender, that a review of the parcel register for One Bloor and PPSA searches against (i) the Nominee and (ii) the Beneficial Owner and GP Inc., indicate that, other than the security interests in favour of the Senior Secured Lenders (by way of the Administrative Agent), no other security interests are registered against the Borrower or One Bloor, except as described below.

(i) Aviva Insurance Company of Canada

68. Aviva Insurance Company of Canada (“**Aviva**”) is surety to Tarion Warranty Corporation on behalf of the Nominee in connection with Project, for the amount of \$8,320,000. Aviva also

provides excess condominium deposit insurance to the Nominee in respect of the Project, which coverage limit was originally \$185 million and has since been approved by Aviva to be increased to \$201,680,000. The Borrower and others have entered into an indemnity agreement dated November 24, 2017 in favour of Aviva. The Nominee and Aviva are also party to a deposit trust agreement, dated November 24, 2017, requiring the Nominee to deposit into a designated trust account (the “**Condo Deposit Account**”) all deposit monies received from purchasers of condominiums in the Residential Component and the interest thereon (the “**Condo Deposits**”).

69. As security, the Nominee granted Aviva:

- (a) a charge against One Bloor in the face principal sum of \$210 million, which Aviva registered against title to One Bloor pursuant to the *Land Titles Act* on March 12, 2018 (receipted as AT4818862); and
- (b) a security interest in respect of deposits received from purchasers of condominiums in the Residential Component and all accrued interest on same, in respect of which Aviva registered financing statements pursuant to the PPSA on December 21, 2017 (registration numbers 20171221 1015 1590 9620 and 20171221 1016 1590 9621).

70. Aviva, the Borrower and the Administrative Agent for and on behalf of the Senior Secured Lenders are parties to a priority, postponement and standstill agreement, dated August 30, 2019 (as amended February 4, 2021), and related agreements dated September 9, 2021 and August 30, 2022 (collectively, the “**Aviva Priority Agreements**”). Pursuant to the Aviva Priority Agreements, Aviva agreed to subordinate and postpone its security interests in One Bloor and all other personal property of the Borrower other than the Condo Deposits in the Condo Deposit Account, in favour of the Senior Secured Lenders’ security interests. Copies of the Aviva Priority Agreements are attached as **Exhibits “V”, “W”, “X” and “Y”**.

71. Based on the most recent monthly statement provided to the Senior Secured Lenders, as of August 31, 2023, the Condo Deposit Account had a balance of \$2,240,716.50.

(ii) The Coco Lender

72. Coco International Inc. (the “**Coco Lender**”), a corporation controlled by Coco (or other related persons or entities), and the Beneficial Owner are parties to a credit agreement dated August 5, 2015, as amended on October 20, 2015, November 30, 2015, April 8, 2016, December 21, 2016 and January 31, 2017 (the “**Coco Credit Agreement**”). Pursuant to the Coco Credit Agreement, the Coco Lender agreed to provide a \$75 million credit facility to the Beneficial Owner, secured by, among other things, a charge against One Bloor in the face principal amount of \$75 million. The Coco Lender registered the charge against title to One Bloor on November 30, 2015 (in the amount of \$30 million, receipted at AT4081016), as amended by notice registered on April 13, 2016 (increasing the principal amount to \$40 million and receipted at AT4192503) and as further amended by notice registered on January 31, 2017 (increasing the principal amount to \$75 million, receipted at AT4474782).

73. The Coco Lender, the Borrower and the Administrative Agent for and on behalf of the Senior Secured Lenders are parties to a priority, subordination and standstill agreement dated August 30, 2019 (as amended February 4, 2021), and related agreements dated September 9, 2021 and August 30, 2022 (collectively, the “**Coco Priority Agreements**”). Pursuant to the Coco Priority Agreements, the Coco Lender agreed to subordinate and postpone its security interest in One Bloor and the Borrower’s other assets in favour of the Senior Secured Lenders. Copies of the Coco Priority Agreements are attached as **Exhibits “Z”, “AA”, “BB” and “CC”**.

(iii) **CERIECO**

74. Between June 13 and July 4, 2017, CERIECO Canada Corp. (“**CERIECO Canada**”) and its agent 10216267 Canada Corp. (“**102 Canada**”, and together with CERIECO Canada, “**CERIECO**”) entered into several agreements whereby CERIECO agreed to advance a contractor’s loan in the amount of \$213 million to the Borrower in connection with the first stage of construction of the Project (collectively, the “**CERIECO Credit Agreements**”). Among other things, advances under the CERIECO Credit Agreements are secured by:

- (a) a charge against One Bloor to and in favour of CERIECO Canada Corp. securing the face principal sum of \$213 million and registered against title to One Bloor pursuant to the *Land Titles Act* on July 11, 2019 (receipted as AT5183295);
- (b) a general assignment of rents registered against title to One Bloor pursuant to the *Land Titles Act* on July 11, 2019 (receipted as AT5183330); and
- (c) security interests over the Borrower’s interest in all present and after-acquired personal property for which a financing statement has been registered pursuant to the PPSA (registration number 20170629 1702 1862 8504).

75. CERIECO, the Borrower and the Administrative Agent for and on behalf of the Senior Secured Lenders are parties to a priority, subordination and standstill agreement, dated August 30, 2019 (as amended February 4, 2021), and a related agreement dated September 9, 2021 (collectively, the “**CERIECO Priority Agreements**”). Pursuant to the CERIECO Priority Agreements, CERIECO agreed to subordinate and postpone its security interest in One Bloor and the Borrower’s other assets in favour of the Senior Secured Lenders. Copies of the CERIECO Priority Agreements (without schedules to the August 30, 2019 agreement) are attached as Exhibits “DD”, “EE” and “FF”.

76. There is certain outstanding litigation pertaining to the CERIECO Credit Agreements. On May 24, 2022, CERIECO Canada commenced an action against the Borrower, the Developer, Coco, Mizrahi, 102 Canada and Bosco Chan (a.k.a. Ye Chen) (“**Bosco**”), and other entities related to Bosco, Coco and Mizrahi (Court File No. CV-22-00681586-00CL, the “**CERIECO Guarantee Litigation**”). In the CERIECO Guarantee Litigation, CERIECO Canada alleges, among other things, that:

- (a) Bosco, acting outside of his authority as a (now former) director and officer of CERIECO Canada and contrary to CERIECO Canada’s by-laws, improperly executed a release that released Coco Paving Inc. (a corporation that was, at least at that time, owned by Coco or members of her family) and Bridging Income Fund LP (now in a receivership) from their obligations in respect of the CERIECO Credit Agreements;
- (b) 102 Canada was not its agent;
- (c) Bosco undertook the wrongful actions in exchange for a payment of \$4.5 million, of which he paid Mizrahi \$3 million; and
- (d) the CERIECO Priority Agreements were executed by Bosco on behalf of CERIECO Canada without proper authorization.

77. In addition to the CERIECO Guarantee Litigation, on August 31, 2023, CERIECO Canada commenced an action against Dentons Canada LLP and Philip Rimer (collectively, the “**Dentons Defendants**”), in which CERIECO Canada alleges that the Dentons Defendants, among other things, breached their fiduciary duties to and/or were negligent in the course of their representation of CERIECO Canada in connection with various transactions related to the Project, including in respect of the CERIECO Priority Agreements (Court File No. CV-23-00705343-00CL, the

“**CERIECO Dentons Litigation**”). In the CERIECO Dentons Litigation, CERIECO Canada makes similar allegations as in the CERIECO Guarantee Litigation, including that Bosco executed the CERIECO Priority Agreements outside of his authority.

78. CERIECO Canada does not seek a declaration that the CERIECO Priority Agreements are invalid in neither the CERIECO Guarantee Litigation nor the CERIECO Dentons Litigation.

(iv) The Hana Lender

79. The Borrower, NongHyup Bank, in its capacity as trustee of Hana Private Real Estate Investment Trust No. 137 (the “**Hana Lender**”), and others are parties to a credit agreement dated May 29, 2020 (the “**Hana Credit Agreement**”), pursuant to which the Hana Lender advanced funds under a term loan facility in the maximum principal amount of \$55 million (together with all other obligations and amounts owing thereunder or the security in respect thereof, the “**Hana Indebtedness**”). Among other things, the Hana Indebtedness is secured by:

- (a) a charge against the Property securing the face principal sum of \$75 million registered against title to One Bloor pursuant to the *Land Titles Act* on June 26, 2020 (receipted as AT5461644);
- (b) a general assignment of rents registered against title to One Bloor pursuant to the *Land Titles Act* on June 26, 2020 (receipted as AT5461645); and
- (c) security interests over all of the Borrower’s interest in all present and after-acquired personal property for which financing statements have been registered pursuant to the PPSA on June 24, 2020 (registration numbers 20200624 1148 1862 6488, 20200624 1150 1862 6490, and 20200624 1151 1862 6491).

80. Hana Lender, KEB Hana Bank Canada as collateral agent for the Hana Lender, the Borrower and the Administrative Agent for and on behalf of the Senior Secured Lenders are parties to a priority, subordination and standstill agreement, dated May 29, 2020 (as amended February 4, 2021), and related agreements dated September 9, 2021 and August 30, 2022 (collectively, the “**Hana Priority Agreements**”). Pursuant to the Hana Priority Agreements, the Hana Lender agreed to subordinate and postpone its security interest in One Bloor and the Borrower’s other assets in favour of the Senior Secured Lenders. Copies of the Hana Priority Agreements are attached as **Exhibits “GG”, “HH”, “II” and “JJ”**.

(e) Summary of priority

81. As a result of the Aviva Priority Agreements, the Coco Priority Agreements, the CERIECO Priority Agreements and the Hana Priority Agreements, and the timeliness and good standing of the Administrative Agent’s security registrations, the Administrative Agent, for and on behalf of the Senior Secured Lenders, has first priority over One Bloor and all other Property, other than the Condo Deposits in the Condo Deposit Account, over which it has second priority to Aviva. The table below sets out priorities, in descending order:

One Bloor	All Property other than One Bloor and Condo Deposits in the Condo Deposit Account	Condo Deposits in the Condo Deposit Account
Senior Secured Lenders	Senior Secured Lenders	Aviva
Aviva	Hana Lender	Senior Secured Lenders
Hana Lender	Coco Lender	Hana Lender
Coco Lender	CERIECO	Coco Lender
CERIECO		CERIECO

F. The current status of the Project

(a) Construction of Residential Component is far from completion

82. As set out above, the initial projected completion date for the Project was December 31, 2022. In its most recent construction schedule, the Borrower projects the Project will not be completed until March 14, 2025. As of September 6, 2023, structural construction of the mid-rise phase (levels 39 through 58) has commenced. On October 4, 2023, concrete columns and walls were poured at levels 39 and 40.

83. Below are photographs showing the current status of construction of the Project, taken from the monthly status update report for the Project, as of August 20, 2023 (issued September 8, 2023).





84. As of May 31, 2023, the Borrower had incurred construction and other costs of approximately \$1.3 billion. This represents approximately 65% of the recent base case budget of approximately \$2 billion (the “**Budget to March 2025**”). The Budget to March 2025 is based on information provided by the Borrower to May 31, 2023, including the projected completion date of March 14, 2025 included in the most recent construction schedule obtained from the Borrower. The Budget to March 2025 represents an increase of over \$300 million from the previous budget, which was issued as of August 9, 2022.

85. Altus has observed that the Borrower's estimated completion date for the Project may not be achievable. In light of the status of construction of the Project, Altus has noted a more realistic completion date of July 2025. Based on information available to Altus, Altus prepared a further budget, also as of May 31, 2023, that includes a July 2025 completion date (the "**Budget to July 2025**"). The Budget to July 2025 projects a total budget of approximately \$2.14 billion.

(b) Condominium units in the Residential Component remain unsold

86. As of August 31, 2023, the Borrower has entered into purchase and sale agreements with respect to 346 residential suites, with gross sales totalling approximately \$675 million. There are 70 residential suites that remain unsold, all of which are above the 50th floor. Such unsold residential suites occupy approximately 147,000 square feet of indoor space in the Residential Component.

(c) Hotel construction ongoing

87. On December 20, 2018, Hyatt Hotels of Canada, Inc., Hyatt International Technical Services, Inc., and Hyatt Corporation (collectively, "**Hyatt**"), and the Nominee entered into several agreements pursuant to which, among other things, Hyatt agreed to provide certain services in connection with the planning, building, furnishing, management, and operation of a hotel within the Commercial Component. The hotel is expected to comprise approximately 138 guest rooms and suites to be named as "Andaz Toronto – Yorkville".

88. As of June 18, 2021, the complete construction document package was issued in respect of the interior design of the hotel. However, in the Developer's most recent monthly status report prepared on August 20, 2023, the Developer observed that the "Andaz/Hyatt Interior Design

schedule has not been agreed upon and dates continue to be missed by the consultants. Impacts continue to be a concern.”

(d) Departure of anchor retail tenant

89. In 2016, the Nominee and Apple Canada Inc. (“**Apple**”) entered into a lease agreement pursuant to which Apple agreed to serve as the anchor tenant of the retail space in the Commercial Component of the Project, occupying approximately 19,000 square feet including over 9,000 square feet on the ground floor.

90. Delays in the completion of the leased premises and other issues led to disputes between Apple and the Borrower. On October 5, 2021, in the face of Apple’s threat to terminate the lease, the Nominee commenced an application in the Ontario Superior Court of Justice against Apple seeking certain declaratory relief related to whether the lease was in good standing. On November 4, 2021, Apple delivered a notice of termination under the lease agreement to the Borrower and subsequently commenced its own application seeking a declaration that the termination was valid (the consolidated applications bearing Court File No. CV-21-00669764-0000). The applications were scheduled for a three-week trial commencing September 11, 2023. However, shortly before the commencement of the trial the parties advised the Court that the trial would not proceed.

91. The Senior Secured Lenders understand that Apple will no longer be a tenant in the Commercial Component of the Project. To date, the Borrower has not secured another tenant to lease the space that would have been occupied by Apple.

(e) Other litigation

(i) 2694128 Ontario Inc. v The Beneficial Owner

92. The Beneficial Owner, GP Inc., Mizrahi and Bosco are defendants in an action (Court File No. CV-22-689865-0000) brought by 2694128 Ontario Inc. (“**269 Ontario**”) in which 269 Ontario alleges breaches of an agreement between 269 Ontario, GP Inc. and the Beneficial Owner, and seeks damages of approximately \$3 million together with declarations and relief under the oppression remedy. The Beneficial Owner, GP Inc. and Mizrahi brought a motion to stay this action on the basis that, among other things, it sought recovery of a portion of the indebtedness under the CERIECO Credit Agreements and is therefore a prohibited enforcement action. On June 12, 2023, Justice Kimmel dismissed the motion, reported at 2023 ONSC 4803.

(ii) Mappro Realty Inc. v The Nominee

93. The Nominee is a defendant in an action brought by Mappro Realty Inc. (CV-22-00686696-0000), in which it is alleged that the installation and operation of a staging area directly in front of the plaintiff’s property (neighbouring One Bloor) does not comply with the relevant permits. The plaintiff seeks damages in the amount of \$3 million and injunctive relief.

G. Defaults and Events of Default have occurred and are continuing

94. As set out in more detail below, over the life of the Credit Agreement, the Borrower has committed numerous defaults and Events of Default, including most recently failing to repay the Term Facility and the Standby Facility at maturity.

(a) **The 2020 CERIECO Advance Events of Default**

95. Under the terms of the Credit Agreement, the Borrower was required to obtain advances of all remaining amounts available under the CERIECO Credit Agreements, which would bring total advances to \$213 million, by March 31, 2020, and any failure to do so would be a breach of the Credit Agreement. The Borrower only obtained approximately \$159 million of such advances by March 31, 2020, contrary to the requirement (the “**CERIECO Advance Failure**”). As such, on April 1, 2020, the Administrative Agent advised the Borrower that the interest rate applicable to the Term Facility would be increased by 3%, as provided in the Credit Agreement. A copy of the April 1, 2020 letter is attached as **Exhibit “KK”**.

96. The Borrower failed to cure the CERIECO Advance Failure:

- (a) by April 30, 2020, which constituted an Event of Default pursuant to section 11.01(e) of the Credit Agreement; and
- (b) by May 31, 2020, which constituted an Event of Default pursuant to section 11.01(d) of the Credit Agreement (collectively, the “**2020 CERIECO Advance Events of Default**”).

97. The parties to the Original Credit Agreement addressed the 2020 CERIECO Advance Events of Default in a waiver agreement executed June 17, 2020 and effective as of April 30, 2020 (the “**April 2020 Waiver Agreement**”), pursuant to which the Term Lender agreed to waive the 2020 CERIECO Advance Events of Default, subject to certain conditions subsequent requiring, among other things:

- (a) the Borrower to close the Hana Credit Agreement by June 30, 2020;
- (b) the Borrower to close a bridge loan in an amount of no less than \$30 million (the “**Bridge Loan**”) by October 31, 2020; and

- (c) the Borrower and the Guarantors to deposit in the Construction Account an amount equal to the funding shortfall under the CERIECO Credit Agreement (the “**CERIECO Funding Shortfall**”) if the CERIECO Advance Failure continued as of May 31, 2021.

98. The April 2020 Waiver Agreement was amended by way of an amended and restated waiver agreement dated October 30, 2020 (the “**Amended and Restated Waiver Agreement**”), which, among other things, modified certain conditions subsequent contained in the April 2020 Waiver Agreement, including extending the deadline for closing the Bridge Loan to December 18, 2020. The Amended and Restated Waiver Agreement established a further condition that, until the Severance was completed and the Borrower had obtained a commercial mortgage facility or sale in respect of the Commercial Component, the Guarantors would make monthly equity contributions to the Borrower to fund construction liens and holdbacks and other costs necessary to complete the Project in a timely manner. Pursuant to section 2.02(2) of the Amended and Restated Waiver Agreement, the failure of the Borrower or a Guarantor (as applicable) to meet any of the conditions subsequent constitutes an Event of Default under the Credit Agreement. Copies of the April 2020 Waiver Agreement and the Amended and Restated Waiver Agreement are attached as **Exhibits “LL” and “MM”**.

99. The Borrower failed to close the Bridge Loan by December 18, 2020. On December 28, 2020, Osler, on behalf of the Term Lender, wrote to the Borrower and the Guarantors to advise them of same, and as such the 2020 CERIECO Advance Events of Default were continuing. A copy of the December 28, 2020 letter is attached as **Exhibit “NN”**.

(b) The Shortfall Event of Default

100. By May 31, 2021, the 2020 CERIECO Advance Events of Default were continuing and the Borrower (and the Guarantors) failed to deposit an amount equal to the CERIECO Funding Shortfall in the Construction Account, as required by the Amended and Restated Waiver Agreement. This failure constituted an Event of Default under the Credit Agreement (the “**Shortfall Event of Default**”). On June 1, 2021, Osler, on behalf of the Term Lender, wrote to the Borrower and the Guarantors to advise of the Shortfall Event of Default. A copy of the June 1, 2021 letter is attached as **Exhibit “OO”**.

(c) The Milestone Events of Defaults

101. The Borrower failed to achieve the following Milestones by May 31, 2021, each such failure constituting an Event of Default (the “**May 2021 Defaults**”):

- (a) completion of the Severance;
- (b) completion of a sale or a commercial mortgage financing of the Commercial Component providing sale or financing proceeds of no less than \$325 million; and
- (c) the sum of certain funds paid from and deposited into the Condo Deposit Account and funds deposited into the Construction Account to be at least \$171,400,099.

102. On June 1, 2021, Osler, on behalf of the Term Lender, wrote to the Borrower and the Guarantors to advise them of the occurrence of the May 2021 Defaults. A copy of the June 1, 2021 letter is attached as **Exhibit “OO”**.

103. By August 31, 2021, the Borrower had also failed to achieve the Milestone requiring it to complete the construction of the Commercial Component and the various deliverables for the hotel floors required in the agreements between the Nominee and Hyatt Corporation and certain of its

affiliates, which failure constituted an Event of Default under the Credit Agreement (the “**August 2021 Default**”). On September 2, 2021, Osler, on behalf of Term Lender, wrote to the Borrower and the Guarantors to advise them of the August 2021 Default. A copy of the September 2, 2021 letter is attached as **Exhibit “PP”**.

104. By February 28, 2022, the Borrower had further failed to achieve the Milestone requiring it to have (a) deposited at least \$60 million in certain of the Borrower’s accounts, and (b) completed agreements of purchase and sale for condominiums in the Residential Component that have not been terminated and provide for (i) a minimum deposit of 25% of the applicable purchase price and 20% of such deposit having been received by the Borrower, and (ii) aggregate projected gross sale proceeds of at least \$857,000,494, which failure constituted an Event of Default under the Credit Agreement (the “**February 2022 Default**” and together with the May 2021 Defaults and the August 2021 Default, the “**Milestone Events of Default**”).

105. On March 1, 2022, Osler, on behalf of the Senior Secured Lenders, wrote to the Borrower and the Guarantors to advise them of the February 2022 Default. A copy of the March 1, 2022 letter is attached as **Exhibit “QQ”**.

(d) The Project Completion Event of Default

106. On November 4, 2022, Osler, on behalf of the Senior Secured Lenders, wrote to the Borrower and the Guarantors to advise them that because the maturity date of the Term Facility was extended by the Maturity Date Amendment, pursuant to Schedule O of the Credit Agreement, the Borrower was required to complete, by December 31, 2022, construction of the Residential Component and closing of then-existing condominium sales agreements (the “**Project Completion Milestone**”). A copy of the November 4, 2022 letter is attached as **Exhibit “RR”**.

107. The Borrower failed to achieve the Project Completion Milestone by December 31, 2022, which, like all the other Milestone failures, constituted an Event of Default (the “**Project Completion Event of Default**”). On January 4, 2023, Osler, on behalf of the Senior Secured Lenders, wrote to the Borrower and the Guarantors to advise them of the Project Completion Event of Default. A copy of the January 4, 2023 letter is attached as **Exhibit “SS”**.

(e) The Repayment Event of Default

108. All Obligations under the Term Facility became due and owing on August 30, 2023.

109. On August 30, 2023, the Senior Secured Lenders wrote to the Borrower demanding the repayment of all Obligations under the Term Facility, totalling \$894,690,600.93. A copy of the letter is attached as **Exhibit “TT”**.

110. The Borrower failed to repay the amounts outstanding under the Term Facility on August 30, 2023, which constituted an Event of Default under paragraph 11.01(a) of the Credit Agreement (the “**Term Principal Event of Default**”), which paragraph provides that an Event of Default occurs if the Borrower or the Guarantors fail to pay any principal amount advanced under the Term Facility when due. On August 31, 2023, Osler, on behalf of the Senior Secured Lenders, delivered a notice of default to the Borrower in respect of the Term Principal Event of Default. Despite this, and with an express statement that such action would not constitute a waiver of default, the Senior Secured Lenders advised the Borrower that the Standby Lender would advance the \$29,918,521.27 requested by the Borrower by notice dated August 8, 2023, and approve the release of \$17,710,836.65 of the \$19,482,970.91 requested by the Borrower by notice dated August 23, 2023. The Standby Lender advised it was prepared to make such further advances and approve such further releases, notwithstanding the Term Principal Event of Default, in order to

ensure the Borrower would be able to fund near-term Project Costs, and to protect and preserve the Senior Secured Lenders' collateral and mitigate their risk of loss in connection with the Project. A copy of the August 31, 2023 letter is attached as **Exhibit "UU"**.

111. The Borrower did not repay the amounts outstanding under the Term Facility by September 6, 2023, which constituted a further Event of Default under paragraph 11.01(b) of the Credit Agreement (the "**Term Non-Principal Event of Default**"), which paragraph provides that an Event of Default occurs if the Borrower or the Guarantors fail to pay any interest, fees or other Obligations (other than any principal amount) when due and such default continues for three business days after notice of such default.

112. All Obligations under the Standby Facility became due and owing on September 29, 2023.

113. On September 29, 2023, the Senior Secured Lenders wrote to the Borrower again demanding repayment of the Term Facility and noting the Term Principal Event of Default and the Term Non-Principal Event of Default. The Senior Secured Lenders further requested the repayment of all Obligations under the Standby Facility. A copy of the September 29, 2023 letter is attached as **Exhibit "VV"**.

114. The Borrower also failed to repay the amounts outstanding under the Standby Facility on September 29, 2023, which constituted an Event of Default under paragraph 11.01(a) of the Credit Agreement (the "**Standby Principal Event of Default**").

115. Further, the Borrower did not repay the amounts outstanding under the Standby Facility by October 10, 2023, which constituted an Event of Default under paragraph 11.01(b) of the Credit Agreement (collectively with the Term Principal Event of Default, the Term Non-Principal Event

of Default and the Standby Principal Event of Default, the “**Repayment Events of Default**”), which paragraph provides that an Event of Default occurs if the Borrower or the Guarantors fail to pay any interest, fees or other Obligations (other than any principal amount) when due and such default continues for three business days after notice of such default.

(f) The Events of Default are continuing

116. The Repayment Events of Default are continuing. The Borrower has not repaid the outstanding principal, interest and other Obligations under the Credit Agreement, which amounts totalled approximately \$1,235,288,396.76 as of September 29, 2023.

117. As of the date of this affidavit, each of the 2020 CERIECO Advance Events of Default, the Shortfall Event of Default, the Milestone Events of Default and the Project Completion Event of Default are continuing, as the Borrower acknowledged in the status certificate in respect of the Project issued August 22, 2023, a copy of which is attached as **Exhibit “WW”**. The CERIECO Funding Shortfall has not been cured and the work and events at the heart of the Milestone Events of Default pertaining to the construction of the Project remain incomplete. The Borrower, itself, estimates that the Project will not be completed until March 2025. The Borrower has not been able to complete a sale or mortgage of the Commercial Component.

118. Moreover, sales of condominium units in the Residential Component remain below the February 28, 2022 Milestone goal of \$857,000,494, having generated at most approximately \$675 million.

119. Section 11.02(1) of the Credit Agreement provides that the Senior Secured Lenders are entitled to “exercise any right or recourse and proceed by any action, suit, remedy or proceeding

against [the Borrower] authorized or permitted by law for the recovery of all the Obligations” under the Credit Agreement, which necessarily includes the appointment of a receiver.

120. Furthermore, the Demand Debenture expressly authorizes the Senior Secured Lenders to seek the appointment of a receiver by judicial proceedings (subparagraph 14(i) and 14(f)), which receiver appointed pursuant to the Demand Debenture is further authorized to borrow money for the purpose of carrying on the business of the Borrower, or for the maintenance and preservation of the collateral, as set out in subparagraphs 14(f), 14(i), and 19(g), excerpted below.

14. Remedies

Upon the occurrence of an Event of Default that is continuing, the Holder (acting on the instructions of the Required Lenders) may proceed to realize the security hereby constituted and to enforce its rights:

[...]

- (f) by proceedings in any court of competent jurisdiction for the appointment of one or more receivers, receivers and managers, or interim receivers under any applicable law;

[...]

- (i) by any other action, suit, proceeding or other remedy authorized or permitted by law or by equity[.]

[...]

19. Receiver

Subject to the provisions of any instrument in writing appointing a receiver or receivers, upon the appointment hereunder of a receiver of the Property or any part thereof, the following provisions shall apply:

[...]

- (g) Every such receiver may, with the consent in writing of the Holder (acting on the instructions of the Required Lenders), borrow money for the purpose of maintaining, protecting or preserving the Property or any part thereof, or for the

purpose of carrying on the business of the Corporation in respect of the Property, and any receiver may issue certificates (in this sub clause called “receiver’s certificates”) for such sums as will, in the opinion of the Holder (acting on the instructions of the Required Lenders), be sufficient for obtaining security upon the Property or any part thereof for the amounts from time to time so required by the receiver, and such receiver’s certificate may be payable either to order or to bearer and may be payable at such time or times, and shall bear such interest as the Holder (acting on the instructions of the Required Lenders) may approve and the receiver may sell, pledge or otherwise dispose of the receiver’s certificates in such manner and may pay such commission on the sale thereof, as the Holder (acting on the instructions of the Required Lenders) may consider reasonable, and the amounts from time to time payable by virtue of such receiver’s certificates shall form a charge upon the Property in priority to the amounts secured under this Debenture.

121. The GSA similarly expressly authorizes the appointment of a receiver by judicial proceedings (subparagraph 3.2(j)), set out below:

3.2 Remedies

Whenever the Security Interest is enforceable, the Administrative Agent (acting on the instructions of the Required Lenders) may, subject to the rights of any existing tenants or residents of the Property, realize upon the Collateral and enforce the rights of the Administrative Agent (acting on the instructions of the Required Lenders) and the Secured Parties by:

...

- (j) institution of proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Collateral;

122. On October 4, 2023, Osler, on behalf of the Senior Secured Lenders, delivered the Demand and 244 Notice to the Borrower and the Guarantors. As set out in the Demand and 244 Notice, as of September 29, 2023, the aggregate Obligations under the Credit Agreement totalled

\$1,235,288,396.76, inclusive of principal, interest, fees, costs and other allowable charges accrued to that date. A copy of the Demand and 244 Notice is attached as **Exhibit “XX”**.

123. Neither the Borrower nor the Guarantors have satisfied the outstanding Obligations to date, and interest continues to accrue.

H. The Borrower cannot continue construction without further advances

124. The Borrower cannot continue construction of the Project without further advances under the Credit Agreement or alternative financing acceptable to the Senior Secured Lenders, and, in any event, the Borrower is unable to repay the outstanding Obligations under the Credit Agreement.

125. As of September 29, 2023, the ending balance of the Construction Account was approximately \$25.3 million. A copy of a bank statement for the Construction Account for the period ending September 29, 2023 is attached as **Exhibit “YY”**.

126. Project expenditures during the month of September 2023 exceeded \$20 million. Assuming Project expenditures in October 2023 are consistent with average monthly expenditures, which are approximately \$20 million, the amounts owing to various trades and other vendors may be in excess of any remaining amounts in the Construction Account by the end of October 2023. GP Inc., on behalf of the Borrower, has several other bank accounts, none of which, to the knowledge of the Senior Secured Lenders, contain sufficient amounts to continue funding construction.

127. Urgent funding is therefore needed to cover ongoing Project Costs and provide stability to the Project for the benefit of all stakeholders.

I. Mizrahi and Coco's relationship is dysfunctional and hinders the Project

128. During the pendency of the Credit Agreement, Mizrahi and Coco's relationship has been strained. To the knowledge of the Senior Secured Lenders, including based on a review of materials filed in the Ontario Superior Court of Justice and other disclosures made to the Senior Secured Lenders in connection with the various disputes, the issues between the two parties date back to at least fall 2019, when Coco LP Ltd. commenced a mediation-arbitration that initially resulted in a consent resolution on governance matters. Before that resolution had been fully implemented, Mizrahi LP Inc. commenced a separate arbitration against Coco LP Ltd. The parties agreed to "merge" the arbitrations into a single proceeding, which was ultimately resolved through an agreement in June 2020, pursuant to which Mizrahi LP Inc. agreed to purchase Coco LP Ltd.'s interest in the Project, with a closing by no later than March 1, 2021.

129. As the deadline for Mizrahi LP Inc. to purchase Coco LP Ltd.'s interest in the Project approached, it became apparent that Mizrahi LP Inc. could not close in time and the parties began negotiating an extension to closing. In spring 2021, the parties reached a further agreement extending the time for Mizrahi LP Inc. to close the transaction and granting Mizrahi LP Inc. sole control and management of all aspects of the Project, GP Inc. and the Borrower until August 30, 2022. After further negotiations, the parties agreed to a closing in June 2022.

130. Once again, the transaction did not close. As it became apparent that Mizrahi LP Inc. did not have the funds to purchase Coco LP Ltd.'s interest, Coco began to seek a return to participation in management of the Borrower, as the delegation of control over the Project to Mizrahi LP Inc. was due to expire on August 30, 2022. Mizrahi LP Inc. requested Coco LP Ltd. to consent to an extension to the delegation, to which consent Coco LP Ltd. did not agree.

131. By resolution dated August 6, 2022, Mizrahi LP Inc. sought to adopt a resolution that would effectively indefinitely extend Mizrahi's sole control over the business and affairs of the Borrower and GP Inc. (the "**Control Resolution**").

132. Coco LP Ltd. objected to the Control Resolution and commenced an application in the Ontario Superior Court of Justice (Commercial List) alleging oppression and seeking a declaration that the Control Resolution was invalid (Court File No. CV-22-00685567-00CL). In response, Mizrahi, GP Inc., and Mizrahi LP Inc. moved to stay the application in favour of arbitration, which motion was granted on November 7, 2022, reported at 2022 ONSC 6206.

133. The Senior Secured Lenders now understand that the Control Resolution was void and of no force and effect from the outset.

134. Mizrahi and Coco's disagreements have impeded the Borrower's ability to complete the Project and impaired the relationship with the Senior Secured Lenders. The Senior Secured Lenders are no longer prepared to continue funding the Project outside of a receivership and in the absence of the proposed Appointment Order.

J. Appointing a receiver is just and convenient

135. Given the Borrower's failure to remedy the continuing Events of Default under the Credit Agreement, including in respect of the maturity of the Term Facility and Standby Facility, the dysfunction between the ultimate shareholders of the Borrower, and the Senior Secured Lenders' general loss of confidence in the Borrower, the Senior Secured Lenders believe that it is necessary and appropriate for a receiver to be appointed by this Court to take possession and control of the Project and oversee its development in accordance with the terms set out in the proposed

Appointment Order and the Receivership Funding Credit Agreement. The Senior Secured Lenders are not prepared to advance any additional funds to continue construction of the Project absent the appointment of a receiver inside a Court-supervised process pursuant to the proposed Appointment Order and the proposed Receivership Funding Credit Agreement.

136. After a series of Events of Default that are continuing, and the deterioration of the relationship between Mizrahi and Coco—the two principal equity holders in the Project—to a now untenable state where business decisions regarding the Project are deadlocked, the Senior Secured Lenders have lost confidence in the Borrower.

137. As a general matter, information received by the Senior Secured Lenders and Altus concerning the Project has been insufficient to form an accurate view of the ultimate expected cost to complete the Project and the completion date. Despite this lack of clarity, on August 31, 2023 the Standby Lender agreed to advance amounts necessary to fund construction for the month of September for the reasons outlined above. Accordingly, as more particularly described below, the Receivership Funding Credit Agreement contains a specific milestone relating to the delivery to the Receivership Lender of the Cost to Complete Report in a timely manner.

138. Finally, the Borrower has advised that it requires ongoing additional financing to continue the development of the Project, including to fund the cost of construction, its debt servicing costs and its property taxes. The Senior Secured Lenders are not prepared to advance further funds, or to release any funds remaining in the Construction Account, beyond the end of September 2023, outside of this receivership proceeding and in accordance with the proposed Appointment Order.

139. The situation requires the assistance of an experienced Court officer to bring stability to the Project for the benefit of all stakeholders. The Senior Secured Lenders propose that A&M be

appointed as Receiver for the purpose of, among other things, taking possession and control over the Project and overseeing and monitoring its continued development.

140. A&M is a reputable corporate restructuring, financial advisory and consulting firm with extensive experience in restructuring transactions in Canada, including having acted as receiver and manager of other significant real estate development projects. A&M was engaged by Osler in mid-September 2023 to assist in considering strategic alternatives available to the Senior Secured Lenders and other matters related to the Project, including to serve as a proposed Court-appointed receiver if the Senior Secured Lenders elected to pursue a receivership application. During the course of its involvement, A&M has developed a preliminary understanding of the Project based on the available information, including in respect of many of the issues and challenges outlined herein. I believe that the appointment of A&M as Receiver will further the objectives of ensuring the fair, transparent, and efficient continuation of the development of the Project.

141. A&M has consented to act as Receiver if appointed by this Honourable Court, subject to the form of receivership order granted being substantially in the form of the proposed Appointment Order. A copy of the consent is attached to this affidavit as **Exhibit “ZZ”**.

142. The proposed Appointment Order expressly authorizes the Receiver to retain Goodmans LLP as its independent counsel to advise and represent it in these proceedings. It is proposed that the fees and expenses of the Receiver and its independent legal counsel in carrying out the Receiver’s duties, once appointed, will be secured by the Receiver’s Charge (described in paragraph 3(b) above).

K. Financing during the receivership

143. Given the Borrower's limited cash resources, it is expected that the Receiver (if appointed) will require substantial and ongoing funding throughout the receivership proceedings. The anticipated costs include ongoing Project Costs and A&M's fees and expenses that are necessary to perform its powers and duties as Receiver, including the fees and disbursements of A&M's independent counsel (such fees and expenses, "**Receivership Costs**").

144. The Receivership Lender is only prepared to advance additional amounts in the context of these receivership proceedings. If the proposed Appointment Order is granted, the Receivership Lender is prepared to advance funds to the Receiver under the Receivership Facility during the receivership, provided that such advances are made in accordance with the Receivership Funding Credit Agreement and the proposed Appointment Order.

145. More specifically, under the Receivership Funding Credit Agreement, a copy of which (excluding certain schedules thereto) is attached as **Exhibit "AAA"**:

- (a) The Receivership Lender has agreed to make available to the Receiver the Receivership Facility, in the maximum principal amount of \$315 million.
- (b) Funds advanced under the Receivership Facility will be used to:
 - (i) fund the ongoing Project Costs;
 - (ii) fund the ongoing Receivership Costs; and
 - (iii) pay the fees of the Receivership Lender and IGIS, including their fees, costs and expenses incurred in the preparation, negotiation and administration of the Receivership Funding Credit Agreement and in respect of the receivership.

- (c) Each of the above uses is to be made in accordance with the projected cash flow included at Schedule A of the Receivership Funding Credit Agreement (as may be amended, the “**Cash Flow Projections**”).
- (d) The Receivership Lender will make an initial advance to the Receiver of \$80 million, provided certain conditions precedent are met, including the issuance of an order appointing a receiver in the form of the Appointment Order.
- (e) From the initial advance, a commitment fee of \$4,725,000, being 1.5% of the maximum principal amount of the Receivership Facility, will be paid to the Receivership Lender, and the remainder will be held to fund permitted uses.
- (f) Following the initial advance, beginning in November 2023, the Receivership Lender will make monthly advances of no more than \$30 million (to a maximum of \$235 million) to fund approved Project Costs and Receivership Costs, based on actual expenditures for the immediately preceding month.
- (g) Amounts outstanding under the Receivership Facility accrue interest at a rate of 10% per annum, computed and compounded daily on the total amount outstanding each day, and payable at maturity. For any amounts that are not repaid when due (including after default or maturity), interest will accrue at a rate of 12% per annum, computed and compounded monthly.
- (h) The Receivership Facility matures on the earlier of:
 - (i) March 31, 2025;
 - (ii) the date on which the Receiver completes a sale of the Project;
 - (iii) the termination of the Receivership Funding Credit Agreement by the Receivership Lender upon the occurrence of an event of default;

- (iv) the termination or conversion of the receivership proceedings; and
 - (v) payment in full of the obligations under the Receivership Funding Credit Agreement.
- (i) The following milestones are established in Schedule H to the Receivership Funding Credit Agreement (the “**Receivership Milestones**”, and each a “**Receivership Milestone**”):

Receivership Milestone	Date
Engagement of a project manager approved by the Receivership Lender to assist with and oversee the administration and construction of the Project	Within one month of closing
Delivery to the Receivership Lender of a report on the fair market price for each condominium in the Project	Within two months of closing
Development of a CSA Plan acceptable to the Receivership Lender	Within three months and two weeks of closing
Delivery to the Receivership Lender of the Cost to Complete Report, in a form acceptable to the Receivership Lender	Within four months of closing
Delivery to the Receivership Lender of the Initial Business Plan, in a form acceptable to the Receivership Lender	Within six months of closing
Delivery to the Receivership Lender of updated business plans	Every six months after delivery of first business plan
Completion of the Severance	March 31, 2024

- (j) Each of the following constitutes an event of default under the Receivership Funding Credit Agreement (which can only be waived in the sole discretion of the Receivership Lender), among other things:
- (i) if actual cash flow disbursements exceed those included in the latest approved Cash Flow Projections in excess of:

- (A) 15% in respect of any disbursement line item (not including costs of the Receiver or the Receiver's counsel); or
 - (B) 10% in respect of aggregate costs (not including costs of the Receiver or the Receiver's counsel) for any calendar month;
 - (ii) an order is granted that (x) dismisses, vacates or stays the Appointment Order, (y) lifts the stay provided in the Appointment Order or otherwise modifies the Appointment Order in a manner unacceptable to the Receivership Lender, or (z) grants any claim of super priority status or a lien equal or superior to the Receiver's Borrowings Charge (other than the Receiver's Charge);
 - (iii) if a Receivership Milestone is not met; and
 - (iv) if the cost to complete the Project set out in the Cost to Complete Report exceeds the then-remaining unadvanced portion of the Receivership Facility.
- (k) At any time upon 60 days' notice from the Receivership Lender (or such shorter time as may be agreed), the Receiver is required to seek Court approval of a sales process in respect of the Project, on terms to be agreed by the Receivership Lender and the Receiver, each acting reasonably, which terms will include the Receivership Lender's commitment to fund the costs required to run the sale process.
- (l) The Receiver is required to establish bank accounts for purposes of the receivership, including an account solely for the deposit (and holding) of deposits from purchasers of condominiums in the Residential Component during the receivership

and an account solely for the deposit of holdbacks maintained pursuant to construction lien legislation.

146. The Receivership Facility contemplates a maximum of \$315 million of funding by the Receivership Lender. The Budget to July 2025, after considering actual Project Costs incurred since the effective date thereof, suggests funding beyond the maximum amount available under the Receivership Facility will likely be required to complete construction of the Project. One of the Receivership Milestones is for the Receiver to obtain and deliver the Cost to Complete Report within four months of the Appointment Order being granted. Upon receipt of the Cost to Complete Report, the Receivership Lender and the Senior Secured Lenders intend to consider and discuss available options and alternatives with their advisors and the Receiver. Among other options, the Receivership Lender and the Senior Secured Lenders may consider the possibility of providing further funding and/or requesting that the Receiver pursue Court approval of a sales process for the Project, as contemplated by the terms of the Receivership Funding Credit Agreement.

147. In connection with negotiating the Receivership Funding Credit Agreement, A&M, as proposed receiver, has prepared a comparative analysis of the economic terms of the Receivership Funding Credit Agreement with the economic terms of credit facilities approved in other recent real estate and significant Court-supervised insolvency proceedings. A copy of this analysis as delivered to the Senior Secured Lenders is attached as **Exhibit “BBB”**.

148. Accordingly, the Senior Secured Lenders are requesting this Court to approve the Receivership Funding Credit Agreement and grant the Receiver’s Borrowings Charge (described in paragraphs 3(c) and (d) above).

149. If the Receiver's Borrowings Charge and the Receiver's Charge are granted, priority over the Borrower's assets will be as follows:

One Bloor	All Property other than One Bloor and Condo Deposits in the Condo Deposit Account	Condo Deposits in the Condo Deposit Account
Receiver's Charge	Receiver's Charge	Aviva
Receiver's Borrowings Charge	Receiver's Borrowings Charge	Receiver's Charge
Senior Secured Lenders	Senior Secured Lenders	Receiver's Borrowings Charge
Aviva	Hana Lender	Senior Secured Lenders
Hana Lender	Coco Lender	Hana Lender
Coco Lender	CERIECO	Coco Lender
CERIECO		CERIECO

L. Proposed Appointment Order

150. The proposed Appointment Order is based on and includes most of the customary terms contained in the model receivership order. The key provisions in the proposed Appointment Order are set out in paragraph 3 above, and a copy of the proposed Appointment Order, together with a blackline to the model receivership order, will be included in the Senior Secured Lenders' application record.


M. Notice

151. This application has been brought on notice to the service list to be included with the application record, including the Borrower, GP Inc., the Developer, Coco LP Ltd., Mizrahi LP Inc., the Guarantors, Aviva, the Hana Lender, the Coco Lender, CERIECO, and A&M. Notice to other stakeholders will be provided by and through the Receiver, if appointed.

N. Conclusion

152. For the reasons set out above, I believe that it is just and equitable and in the interest of the Senior Secured Lenders that a receiver be appointed in respect of the Project and the proposed Appointment Order be granted.

SWORN BEFORE ME over videoconference
in accordance with the *Administering Oath or
Declaration Remotely Regulation*, O. Reg.
431/20, on October 17, 2023, while I was
located in the City of Toronto, in the Province
of Ontario, and the affiant was located in the
City of Toronto, in the Province of Ontario



Ainsley Leguard, a Commissioner, etc.
Province of Ontario, while a
Student-at-Law. Expires June 9, 2025.



JOO SUNG YOON

THIS IS **EXHIBIT “B”** REFERRED TO IN THE
AFFIDAVIT OF MARK SHEELEY,
SWORN BEFORE ME over videoconference in accordance with
the *Administering Oath or Declaration Remotely Regulation*, O.
Reg. 431/20, on June 5, 2024, while I was located in the City of
Toronto, in the Province of Ontario, and the affiant was located
in the City of Toronto, in the Province of Ontario.

THIS 5th DAY OF JUNE, 2024.

A handwritten signature in black ink, appearing to read 'SF', is positioned above a horizontal line.

Sierra Farr (LSO# 87551D)

GUARANTEE

THIS GUARANTEE is dated as of August 30, 2019.

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

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

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

RECITALS:

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

THEREFORE, the Guarantors agree as follows:

ARTICLE 1

DEFINITIONS AND PRINCIPLES OF INTERPRETATION

1.1 Definitions

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

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

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

1.2 Certain Rules of Interpretation

In this Guarantee:

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

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

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

1.3 Nature of Obligations

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

1.4 Entire Agreement

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

ARTICLE 2 GUARANTEE

2.1 Guarantee

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

2.2 Payment and Performance

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

2.3 Continuing Obligation

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

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

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

2.4 Guarantee Unaffected

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

ARTICLE 3 REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 Representation - Authority and Enforceability

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

ARTICLE 4 POSTPONEMENT OF CLAIMS AND SUBROGATION

4.1 Postponement of Claims and Subrogation

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

ARTICLE 5 AMENDMENTS

5.1 Amendments

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

ARTICLE 6 WAIVERS AND REMEDIES

6.1 Waivers

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

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

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

6.2 Limitation Periods

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

6.3 Administrative Agent's Right to Act

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

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

6.4 Administrative Agent's Waiver

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

6.5 Administrative Agent's Action or Inaction

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

6.6 Rights

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

ARTICLE 7 GENERAL

7.1 Acknowledgements

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

7.2 Demand

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

7.3 Set-Off

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

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

7.4 Notices

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

7.5 Costs and Expenses

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

7.6 No Representations

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

7.7 Further Assurances

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

7.8 Assignment and Enurement

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

7.9 Submission to Jurisdiction

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

7.10 Judgement Currency

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

7.11 Execution and Delivery

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

[Remainder of page intentionally left blank]

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

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

By: 

Name: Sam Mizrahi

Title: President

By: 

Name: Jenny Coco

Title: Vice President

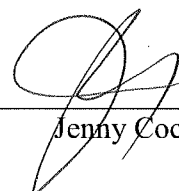
We have authority to bind the Corporation.

SIGNED, SEALED & DELIVERED

In the presence of:



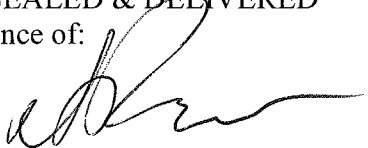
Witness



Jenny Coco

SIGNED, SEALED & DELIVERED

In the presence of:



Witness



Sam Mizrahi

THIS IS **EXHIBIT “C”** REFERRED TO IN THE
AFFIDAVIT OF MARK SHEELEY,
SWORN BEFORE ME over videoconference in accordance with
the *Administering Oath or Declaration Remotely Regulation*, O.
Reg. 431/20, on June 5, 2024, while I was located in the City of
Toronto, in the Province of Ontario, and the affiant was located
in the City of Toronto, in the Province of Ontario.

THIS 5th DAY OF JUNE, 2024.

A handwritten signature in black ink, appearing to read 'SF', is positioned above a horizontal line.

Sierra Farr (LSO# 87551D)

COST OVERRUN AND COMPLETION GUARANTEE

THIS AGREEMENT dated as of August 30, 2019

IS MADE BY:

MIZRAHI COMMERCIAL (THE ONE) GP INC.

- and -

JENNY COCO

- and -

SAM MIZRAHI

(collectively, the “**Guarantors**”)

IN FAVOUR OF:

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

(the “**Administrative Agent**”)

RECITALS:

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

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

ARTICLE 1 DEFINITIONS

1.1 Definitions

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

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

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

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

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

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

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

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

1.2 Capitalized Terms

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

1.3 Applicable Law

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

1.4 Extended Meaning

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

1.5 Nature of Obligations

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

1.6 Entire Agreement

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

1.7 Business Day

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

1.8 Statutory References

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

ARTICLE 2 COMPLETION GUARANTEE

2.1 Completion Guarantee

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

2.2 Completion Demand

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

2.3 Intentionally Deleted

ARTICLE 3 COVENANTS REGARDING COSTS

3.1 Payment

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

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

(b) **Intentionally deleted.**

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

3.2 Demand

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

3.3 Establishment of Cost Overrun Amount

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

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

3.4 Payee

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

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

3.5 Right to Make Further Demand

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

3.6 Obligations and Liabilities Not Contingent

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

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

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

3.7 Subordination

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

3.8 Subrogation

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

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

3.9 Obligations Absolute

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

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

3.10 No Release

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

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

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

ARTICLE 4 MISCELLANEOUS

4.1 Successors

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

4.2 Notices

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

4.3 Severability

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

4.4 Amendments

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

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

4.5 Jurisdiction

Each of the Guarantors irrevocably:

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

4.6 Conflict

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

ARTICLE 5 TERMINATION

5.1 Termination

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

5.2 Further Assurances

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

ARTICLE 6 EXECUTION, ETC.

6.1 Counterparts and Formal Date

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

[Remainder of this page intentionally left blank]

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

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

By: _____

Name: Sam Mizrahi

Title: President

By: _____

Name: Jenny Coco

Title: Vice President

We have authority to bind the Corporation.

SIGNED, SEALED & DELIVERED

In the presence of:

Witness

Jenny Coco

SIGNED, SEALED & DELIVERED


In the presence of:

Witness

Sam Mizrahi

THIS IS **EXHIBIT “D”** REFERRED TO IN THE
AFFIDAVIT OF MARK SHEELEY,
SWORN BEFORE ME over videoconference in accordance with
the *Administering Oath or Declaration Remotely Regulation*, O.
Reg. 431/20, on June 5, 2024, while I was located in the City of
Toronto, in the Province of Ontario, and the affiant was located
in the City of Toronto, in the Province of Ontario.

THIS 5th DAY OF JUNE, 2024.

A handwritten signature in black ink, appearing to be 'SF' or similar initials, written over a horizontal line.

Sierra Farr (LSO# 87551D)

PRIORITY, SUBORDINATION AND STANDSTILL AGREEMENT

THIS AGREEMENT made as of the 30th day of August, 2019

B E T W E E N:

KEB HANA BANK CANADA, as administrative agent for and on behalf of the Lenders
(the “**Senior Lender**”)

- and -

COCO INTERNATIONAL INC.
(the “**Subordinate Lender**”)

- and -

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.
(the “**Registered Owner**”)

- and -

MIZRAHI COMMERCIAL (THE ONE) LP
(the “**Beneficial Owner**” and collectively with the Registered Owner, the “**Owner**”)

WHEREAS:

- A. The Owner intends to construct a 84-storey mixed-use building (the “**Building**”), including (i) a condominium consisting of an area of approximately 720,000 gross square feet (approximately 518,000 of which is anticipated to be net saleable square feet – inclusive of interior and exterior/outdoor spaces) located within the Building with approximately 416 luxury condominium units on floors 19 through 84, inclusive, of the Building (the “**Condominium Project**”) and (ii) a hotel component consisting of an area of approximately 130,000 gross square feet, to be operated as a full-service hotel, and related amenity areas, a retail component consisting of an area of approximately 60,000 gross square feet and a below-grade parking component consisting of an area of approximately 115,000 gross square feet with approximately 291 parking spaces and related driveways and ramps, located within and underneath the Building (the “**Commercial Project**”, and together with the Condominium Project, the “**Project**”) in accordance with the plans and specifications approved by the Senior Lender and the Lenders on the lands municipally known as One Bloor Street West and 768 Yonge Street, Toronto, Ontario, the legal description of which is annexed as Schedule “A” hereto (the “**Property**”).

Credit Agreement with Senior Lender and Senior Security

- B. Pursuant to the terms and provisions of a credit agreement dated August 30, 2019 among, *inter alia*, the Owner, as borrower, the Senior Lender, as administrative agent, and the Lenders (as defined in the Senior Credit Agreement), as lenders, and certain other parties as credit parties (as the same may be amended, supplemented, restated, superseded or otherwise modified from time to time and, if replaced, any such replacement, the “**Senior Credit Agreement**”), the Lenders agreed to provide credit facilities in respect of the Project by way of a senior term loan credit

facility in the maximum principal amount of CAD \$565,000,000 and an option to provide an additional standby facility in the maximum amount of CAD \$325,000,000 (collectively, the “**Senior Loan**”), which, together with interest on the Senior Loan, Costs, Protective Advances, and all existing and future indebtedness, other obligations and other amounts owing to the Senior Lender and the Lenders from time to time pursuant to the Senior Credit Agreement, the Senior Security or in connection with the Project are called the “**Senior Indebtedness**”.

- C. The Senior Loan is secured by, amongst other things,
- a. a charge against the Property securing the face principal sum of \$565,000,000 registered against title to the Property in the Land Registry Office for the Land Titles Division of Toronto (No. 80) (the “**LRO**”) on August 30, 2019, as Instrument No. AT5225851 (the “**Senior Mortgage**”);
 - b. a general assignment of rents registered against title to the Real Property in the LRO on August 30, 2019, as Instrument No. AT5225852; and
 - c. security interests over all of the Owner’s present and after-acquired personal property assets and undertakings in respect of which financing statements have been registered under the Personal Property Security Act (Ontario) (the “**PPSA**”) as Registration No. 20190820 1238 1590 3457 (File Reference No. 754567497) and as Registration No. 20190820 1243 1590 3460 (File Reference No. 754568523),

which, together with all other security documents and instruments heretofore or hereafter granted to or in favour of the Senior Lender in respect of the Project or pursuant to the provisions of the Senior Credit Agreement (and whether secured against realty or personalty, or any legal, beneficial or other interest therein, and whether hereafter amended from time to time), being collectively referred to as the “**Senior Security**”.

Refinancing of the Commercial Component and Commercial Security

- D. Following near-completion of the Commercial Project, the Owner intends to seek a severance of the Commercial Project (such severed property, the “**Commercial Property**”) to enable the Commercial Project to be sold or refinanced separately from the balance of the Property, including the Condominium Project.
- E. Following the severance of the Commercial Project, the Owner intends to sell the Commercial Project (a “**Commercial Sale**”) or to obtain additional financing (the “**Commercial Loan**”) secured by such security as agreed upon between the Owner and the lender(s) providing the Commercial Loan (the “**Commercial Lender**”) which may include, amongst other things,
- a. a charge against the Commercial Property to be registered against title to the Commercial Property in the LRO;
 - b. a general assignment of rents registered against title to the Commercial Property in the LRO; and
 - c. security interests over all of the Owner’s present and after-acquired personal property located on or used exclusively in connection with the Commercial Property, to be registered under the PPSA,

which, together with such other security documents or instruments hereafter granted to or in favour of the Commercial Lender in connection with the Commercial Loan (and whether secured against realty or personalty, or any legal, beneficial or other interest therein, and whether hereafter amended from time to time), being collectively referred to as the “**Commercial Security**”.

Credit Agreement with Subordinate Lender and Subordinate Security

F. Pursuant to the terms and provisions of a credit agreement dated August 5, 2015 among, *inter alia*, the Beneficial Owner, as borrower, and the Subordinate Lender, as lender, as amended on October 20, 2015, as further amended on November 30, 2015, as further amended on April 8, 2016, as further amended on December 21, 2016, as further amended on January 31, 2017 and as further amended on June 29, 2017 (as the same may be further amended, supplemented, restated, superseded or otherwise modified from time to time and, if replaced, any such replacement, the “**Subordinate Credit Agreement**”), the Subordinate Lender agreed to provide a credit facility to the Beneficial Owner in the principal amount of \$75,000,000 in Canadian funds (hereinafter collectively referred to as the “**Subordinate Loan**”), which, together with interest on the Subordinate Loan, any Costs (except to the extent incurred through Enforcement Actions in violation of this Agreement), Protective Advances, and all existing and future indebtedness, other obligations and other amounts owing to the Subordinate Lender from time to time under the Subordinate Credit Agreement, the Subordinate Security or in connection with the Property, are called the “**Subordinate Indebtedness**”.

G. The Subordinate Indebtedness is secured by, amongst other things,

- a. a charge against the Property to and in favour of the Subordinate Lender securing the face principal sum of \$75,000,000 registered against title to the Property with registration particulars as set forth in Schedule “B” hereto (the “**Subordinate Mortgage**”),

which, together with all other security documents and instruments heretofore or hereafter granted to or in favour of the Subordinate Lender in respect of the Project, securing the Subordinate Indebtedness or granted pursuant to the provisions of the Subordinate Credit Agreement (and whether secured against realty or personalty, or any legal, beneficial or other interest therein, and whether hereafter amended from time to time), being collectively referred to as the “**Subordinate Security**”.

H. In order to induce the Lenders to provide the Senior Loan to the Owner notwithstanding the existence of the Subordinate Indebtedness and the Subordinate Security, the Subordinate Lender has agreed to subordinate and postpone the Subordinate Indebtedness and the Subordinate Security to and in favour of the Senior Indebtedness and the Senior Security. Reference herein to the Senior Indebtedness, Senior Security, Subordinate Indebtedness and Subordinate Security includes all renewals, extensions, amendments, modifications, replacements and restatements thereof or thereto from time to time.

I. The parties hereto wish to record their agreement as to the priorities of the Senior Security and the Subordinate Security, to outline obligations with respect to the development and construction of the Project, and to set out certain other matters.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set forth, the sum of TEN DOLLARS (\$10.00) of lawful money of Canada paid by each of the parties hereto to the other, and for other good and valuable

consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby covenant and agree, to and with each other, as follows:

1. In this Agreement, in addition to the defined terms set forth in this Agreement, the following defined terms will have the following meanings unless the context otherwise requires.
 - (a) **“Agreement”** means this Priority, Subordination and Standstill Agreement and any Schedules attached hereto, as amended or restated from time to time.
 - (b) **“Collateral”** means any and all present and future undertaking, property or assets of the Owner and any proceeds thereof, whether real, personal or mixed, including the Property and Project.
 - (c) **“Costs”** means:
 - (i) in respect of the Senior Lender, any costs and expenses incurred by the Senior Lender and the Lenders arising from or in connection with the Senior Credit Agreement, the Senior Loan or the Senior Security, including such costs and expenses incurred by the Senior Lender (acting on the instructions of the Required Lenders) in enforcing the Senior Credit Agreement or the Senior Security or undertaking Enforcement Action; and
 - (ii) in respect of the Subordinate Lender, any costs and expenses incurred by the Subordinate Lender arising from or in connection with the Subordinate Credit Agreement, the Subordinate Loan or the Subordinate Security, including such costs and expenses incurred by the Subordinate Lender or on behalf of the Subordinate Lender in enforcing the Subordinate Credit Agreement or the Subordinate Security or undertaking Enforcement Action to the extent permitted by this Agreement.
 - (d) **“Enforcement Action”** means the exercise of any remedy available to the Subordinate Lender (subject always to the standstill provisions contained in Section 13 hereof) or the Senior Lender and shall include the commencement of power of sale, foreclosure or other judicial or private sale proceedings, appointing or applying for, or obtaining or consenting to the appointment of, a receiver, a manager or a receiver and manager or other person having similar powers in respect of the Beneficial Owner or Registered Owner or all or any part of the Collateral, taking possession or control of all or any part of the Collateral, giving notice of intention to enforce security, or undertaking, commencing, giving notice of or taking any action or proceeding seeking payment or recovery of all or any part of the Subordinate Indebtedness (subject always to the standstill provisions contained in Section 13 hereof) or the Senior Indebtedness, as the case may be, or damages in lieu thereof, or accepting a transfer of any property in lieu of foreclosure, or the exercise of any other rights or remedies available to a creditor under its security or otherwise at law or in equity, including without limitation, any bankruptcy or insolvency proceedings or any participation in or any actions in furtherance of the foregoing.
 - (e) **“Protective Advance”** means, in respect of the Senior Loan, an advance or other extension of credit necessary or prudent for the protection or preservation of the Property or the Collateral or to avoid the probability or likelihood of losses to the Senior Lender and the Lenders under the Senior Loan, the Senior Credit Agreement and/or the Senior Security, including, without limitation, a loan advance, payments for property taxes,

environmental remediation, legal fees, realization costs, appraisals, consultant's fees, receiver's fees, property manager's fees, insurance or repairs in respect of the Property, construction costs, other costs, or other collateral or to discharge any liens, charges or encumbrances ranking in priority to the Senior Security as against the Property or the Collateral.

2. **Covenants, Representations and Warranties of the Subordinate Lender.** The Subordinate Lender represents and warrants to the Senior Lender that (i) the Subordinate Indebtedness and the Subordinate Security are in good standing and there is no existing default thereunder, (ii) it holds no security of any kind against the Property, and will not obtain any other security of any kind, other than the Subordinate Security, (iii) it is the sole owner of the Subordinate Indebtedness and the Subordinate Security and has full power, authority and legal right to enter into this Agreement, (iv) the credit agreement dated August 5, 2015 among, *inter alia*, the Beneficial Owner and the Subordinate Lender, as lender, as amended on October 20, 2015, as further amended on November 30, 2015, as further amended on April 8, 2016, as further amended on December 21, 2016, as further amended on January 31, 2017 and as further amended on June 29, 2017, is in full force and effect, with no further amendments, and provides for a credit facility in the principal amount of \$75,000,000 in Canadian funds, (v) the total amount owing under the Subordinate Indebtedness as of August 31, 2019 will be \$167,284,479, and (vi) notwithstanding any provision to the contrary in the Subordinate Credit Agreement or the Subordinate Security, and until such time as the Senior Indebtedness is fully repaid and the Senior Security fully discharged, the Subordinate Security does not and shall not secure any indebtedness, liability or obligation of the Owner except in respect of the Project. Upon request by the Senior Lender (acting on the instructions of the Required Lenders) from time to time, the Subordinate Lender shall provide to the Senior Lender copies of the Subordinate Security and/or a statement confirming the status thereof, including the amount of the Subordinate Indebtedness then outstanding, interest due and particulars of all existing or alleged defaults by the Owner in respect thereof.

The Subordinate Lender acknowledges and consents to Senior Indebtedness, the entering into of the Senior Credit Agreement and the other Loan Documents (as defined therein), and the granting of the Senior Security, and confirms that there shall be no default under the Subordinate Credit Agreement or the Subordinate Security resulting from the incurrence of the Senior Indebtedness, the entering into of the Senior Credit Agreement and the other Loan Documents, and the granting of the Senior Security.

The Subordinate Lender acknowledges and consents to the Owner completing a Commercial Sale or entering into one or more Commercial Loan(s) and securing such loan(s) with the Commercial Security or such other security over the Commercial Project or registered on title to the Commercial Property as agreed to between the Owner and the Commercial Lender(s). No further consent or agreement from the Subordinate Lender shall be required for the Owner to complete a Commercial Sale or to enter into a Commercial Loan or to grant any Commercial Security, and completion of a Commercial Sale or entering into the Commercial Loan and granting the Commercial Security shall not cause any default under the Subordinate Credit Agreement or Subordinate Security.

3. **Covenants, Representations and Warranties of the Senior Lender.** The Senior Lender (acting on the instructions of the Required Lenders) consents to the Subordinate Indebtedness and Subordinate Security and represents and warrants to the Subordinate Lender that (i) the Senior Indebtedness and Senior Security are in good standing and to the Subordinate Lender's knowledge the Owner is not in default thereunder, (ii) it holds no security of any kind against the Property except the Senior Security and (iii) it has full power, authority and legal right to enter into this Agreement.

4. **Priorities.** The parties hereto hereby acknowledge and agree that the following priorities shall govern with respect to the Senior Security and the Subordinate Security:
 - (a) the Senior Security, and all advances or other extensions of credit made thereunder from time to time or made pursuant to the Senior Credit Agreement or in respect of the Project, shall constitute a **first priority charge and security interest** against the Collateral, including the Property and all other real and personal property assets of the Owner (excluding certain deposits and interest thereon in connection with the Condominium Project, in respect of which the Senior Security constitutes a **second charge and security interest**); and
 - (b) the Subordinate Security shall constitute a **third priority charge and security interest** against the Collateral, including the Property.
5. **Standby Facility and Security.** For greater certainty, the Subordinate Lender confirms that (i) the additional standby facility in the maximum amount of CAD \$325,000,000 (the “**Standby Facility**”), as set out in the Senior Credit Agreement, forms part of the Senior Loan, (ii) any Costs (except to the extent incurred through Enforcement Actions in violation of this Agreement), Protective Advances, and all existing and future indebtedness, other obligations and other amounts owing to the Senior Lender and the Lenders from time to time in connection with the Standby Facility form part of the Senior Indebtedness, and (iii) all security documents and instruments heretofore or hereafter granted to or in favour of the Senior Lender in respect of the Standby Facility (and whether secured against realty or personalty, or any legal, beneficial or other interest therein, and whether hereafter amended from time to time) form part of the Senior Security to which this Agreement applies. Without limiting the generality of the foregoing, the Subordinate Lender agrees to execute and provide the Senior Lender with whatever documents that, in the reasonable opinion of the Senior Lender’s counsel, may be required from time to time to evidence the postponement and subordination of the Subordinate Security to the security provided in connection with the Standby Facility.
6. **Subordination and Postponement.** Without limiting the generality of the foregoing, the Subordinate Lender hereby subordinates and postpones the Subordinate Security and the Subordinate Indebtedness in all respects to the Senior Security and the Senior Indebtedness. All Senior Indebtedness due to the Senior Lender and the Lenders secured by the Senior Security shall rank senior in right of payment and in all other respects to all Subordinate Indebtedness due to the Subordinate Lender and secured by the Subordinate Security, and the Senior Indebtedness due to the Senior Lender and the Lenders secured by the Senior Security shall be indefeasibly paid in full before the Subordinate Lender shall be entitled to be paid or receive any on account of, or with respect to, the Subordinate Indebtedness or indebtedness secured by the Subordinate Security.
7. **Subordination and Postponement to Commercial Loan.** Provided that the Commercial Property has been severed from the balance of the Property, the Subordinate Lender agrees to postpone and subordinate the Subordinate Security and all of its rights, powers and interests thereunder, to and in favour of the Commercial Security, and to provide a full standstill of any Subordinate Security to any Commercial Security and to any security over the Commercial Property or Commercial Project arranged after the severance of the Commercial Property. On request of the Owner, a Commercial Lender or the Senior Lender (acting on the instructions of the Required Lenders), the Subordinate Lender agrees to enter into a priority, postponement and standstill agreement, substantially in the form of this agreement, to evidence and confirm such postponement, subordination and standstill.
8. **Discharge on Commercial Sale.** Provided that the Commercial Property has been severed from the balance of the Property, the Subordinate Lender agrees to discharge the Subordinate Security as it

relates to the Commercial Property and the Commercial Project in connection with any Commercial Sale, provided that the sale proceeds are distributed as per the Senior Credit Agreement.

9. **Effect of Subordination.** The subordination and postponement provided for in this Agreement shall be valid and effective as between the Senior Lender and the Subordinate Lender notwithstanding any past, present or future agreement, event, act or omission to act on the part of the Senior Lender, the Subordinate Lender, the Owner, or any other person, and notwithstanding, without limitation, any one or more of the following:
- (a) the timing of execution, delivery, attachment, perfection, crystallization, registration or enforcement of the Senior Security or the Subordinate Security;
 - (b) the validity or enforceability of the Senior Loan, the Senior Credit Agreement or the Senior Security;
 - (c) the failure of the Senior Lender to register, maintain, renew or keep current any registration of or pertaining to any of the Senior Security;
 - (d) the commencement of any Enforcement Action or Insolvency Proceeding (as defined in Section 23 hereof) in respect of the Registered Owner, the Beneficial Owner or the Collateral;
 - (e) the dates of any defaults by the Owner under the Senior Security or the Subordinate Security, and the dates of crystallization of any floating charges contained in the Senior Security or the Subordinate Security;
 - (f) the dates any demands for payment are made, the dates any notices are given, and any failure to make or give any such demands or notices;
 - (g) the respective dates or timing of any advances or defaults under the Senior Indebtedness, the Senior Credit Agreement and/or the Senior Security, or the Subordinate Indebtedness, the Subordinate Credit Agreement and/or the Subordinate Security, including all advances or other extensions of credit made by the Senior Lender and the Lenders from time to time after the date hereof, and whether such advances or extensions of credit occurred before, during or after the occurrence of any default under the Senior Security, Senior Credit Agreement, Subordinate Security or Subordinate Credit Agreement and whether the Senior Lender had notice of any such event of default at the time of making such advance or extension of credit;
 - (h) whether any or all of the loan advances or other extensions of credit made by the Senior Lender and the Lenders reflect or comprise monies advanced to fund overruns in the cost of constructing the Project, to service debt, or to fund cash shortfalls attributable to the Project;
 - (i) whether loan advances or other extensions of credit have been made by the Senior Lender and the Lenders in excess of the facilities provided for in the Senior Credit Agreement or the Senior Security;
 - (j) any partial or complete repayment at any time and from time to time by the Owner of any monies secured by the Subordinate Security;
 - (k) any contrary intention expressed in the Senior Credit Agreement, the Senior Security, the Subordinate Credit Agreement, the Subordinate Security or any other documents;

- (l) any priority granted by any principle of law or equity or any statute, including, without limitation, the *Mortgages Act* (Ontario), the *Land Titles Act* (Ontario) and applicable personal property security legislation; and
 - (m) any other circumstances which might constitute a defence available to, or a discharge of:
 - (i) the Registered Owner or the Beneficial Owner in respect of the Senior Security, or (ii) the Subordinate Lender in respect of this Agreement.
10. **Payments.** The Subordinate Lender agrees that (i) no rents, revenue, income, cash flow, insurance proceeds and any other proceeds arising from or relating to the Property including, without limitation, any funds that have been advanced by the Senior Lender and the Lenders under the Senior Mortgage (collectively, the “**Property Cash Flow**”) shall be applied to any payment on account of the Subordinate Indebtedness until the Senior Indebtedness is paid in full and the Senior Security fully discharged, and (ii) it shall not accept any payment on account of the Subordinate Indebtedness and if any such payments are received, the Subordinate Lender shall immediately pay such amount to the Senior Lender without deduction. All monies received by the Senior Lender on account of the Senior Indebtedness including without limitation, sale, refinancing, occupancy fees, insurance, expropriation and condemnation proceeds relating to the Property shall be dealt with and applied, whether before or after any default under or in respect of the Senior Indebtedness or the Subordinate Indebtedness, to any part of the Senior Indebtedness as the Senior Lender (acting on the instructions of the Required Lenders in their sole, unfettered and subjective discretion) may determine notwithstanding any provision to the contrary in the Subordinate Security, the Subordinate Credit Agreement, the Senior Security and/or the Senior Credit Agreement. If any payments, including the Property Cash Flow, are made to or received by the Subordinate Lender in contravention of this Agreement, the Subordinate Lender shall hold such payments in trust for the Senior Lender and the Lenders and shall forthwith pay such payments to the Senior Lender for application to the payment of the Senior Indebtedness. The Subordinate Lender hereby agrees that if all or any part of any payment made on account of the Senior Indebtedness is recovered from the Senior Lender and the Lenders as a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or other law, any payment or distribution received by the Subordinate Lender on the Subordinate Indebtedness will be deemed to have been received by it in trust for the Senior Lender and the Lenders and will promptly be paid over to the Senior Lender until the Senior Indebtedness is indefeasibly paid and satisfied in full.
11. **Instruments, Securities, Etc.** Notwithstanding the terms and provisions of the Subordinate Security, the Subordinate Lender hereby agrees that no instruments, securities, letters of credit, advances of credit, consents, transfers, whether or not endorsed in blank, and/or negotiable documents of title relating to or arising from the Senior Security and/or the Subordinate Security (collectively, the “**Documents**”) shall be delivered to the Subordinate Lender until the Senior Indebtedness is paid in full. The Subordinate Lender hereby covenants not to accept any Documents, and if any such Documents are received in contravention of this Agreement, the Subordinate Lender shall immediately deliver such Documents to the Senior Lender and shall hold such Documents in trust for the Senior Lender and the Lenders until delivery of same to the Senior Lender.
12. **Information.** The Subordinate Lender, if requested by the Senior Lender (acting on the instructions of the Required Lenders), shall provide to the Senior Lender such information respecting the Subordinate Indebtedness, Subordinate Credit Agreement or Subordinate Security as the Senior Lender (acting on the instructions of the Required Lenders) may from time to time reasonably request, including, without limitation, the outstanding amount of the Subordinate Indebtedness. In the event of a default under the Subordinate Security, the Subordinate Lender, shall forthwith provide written notice to the Senior Lender of such default, which notice shall specify the nature of such default. The Registered Owner and the Beneficial Owner hereby irrevocably authorize and direct the

Subordinate Lender to provide any information with respect to the Registered Owner and/or the Beneficial Owner to the Senior Lender.

13. **Standstill.** The Subordinate Lender agrees that from and after the date hereof, to and until the date of the repayment and/or satisfaction of all of the Senior Indebtedness and/or liabilities of the Owner to the Senior Lender and the Lenders under the Senior Credit Agreement and the Senior Security and the complete discharge thereof (the “**Standstill Period**”), the Subordinate Lender shall not take, direct, initiate, pursue, continue, support or otherwise participate in, either directly or indirectly, any Enforcement Action in connection with or in respect of the Subordinate Indebtedness, Subordinate Credit Agreement or the Subordinate Security against or in respect of the Owner, the guarantors under the Senior Credit Agreement or Senior Security (the “**Guarantors**”) or against or in respect of all or any part of the Collateral nor against any party or parties who may be entitled to claim contribution or indemnity against the Owner.

The Subordinate Lender hereby covenants and agrees that, during the Standstill Period, the Owner shall not be obliged to make any payments to the Subordinate Lender under the Subordinate Credit Agreement or the Subordinate Security, notwithstanding the maturation of the Subordinate Loan, nor shall the Subordinate Lender receive or hold from the Owner any payments under the Subordinate Security until the Senior Indebtedness has been fully repaid and the Senior Security has been completely discharged.

The Subordinate Lender hereby expressly acknowledges and confirms that the Senior Lender and the Lenders are relying upon such forbearance on the part of the Subordinate Lender during the Standstill Period, in order to be assured that in the event that the Senior Credit Agreement or the Senior Security is hereafter in default, then no actions, steps or proceedings shall or will be taken by or on behalf of the Subordinate Lender or permitted by the Subordinate Lender (whether culminating in any document or instrument hereafter registered against or otherwise affecting the Property (or any portion thereof), or otherwise) which might negatively or detrimentally impact upon the Senior Lender’s ability to expeditiously complete the development, construction and management of the Project, including the severance of the Commercial Project and the registration of one or more condominiums on the Property, and/or which might restrict, inhibit, hinder or delay the sale and closing of all or any portion of the Commercial Property or the individual condominium unit sale transactions in respect of the Condominium Project by or on behalf of the Senior Lender.

Should the Subordinate Lender hereafter breach any of its covenants and agreements herein set forth, then in addition to its exposure to an application for injunctive relief, a suit for specific performance and/or a claim in damages sought by the Senior Lender (acting on the instructions of the Required Lenders) and/or the Owner against it, it is understood and agreed that the Owner shall automatically be deemed to be in default under the Senior Credit Agreement and the Senior Security.

14. **No Challenge.** The Subordinate Lender and the Owner shall not take, or cause or permit or support any other person to take on its behalf or their behalf, any steps or action whatsoever whereby the priority, validity or enforceability of any of the Senior Credit Agreement, the Senior Security or the rights of the Senior Lender hereunder (including as to any Enforcement Action) or under the Senior Credit Agreement or the Senior Security shall be delayed, defeated, impaired or diminished in any way, and the Subordinate Lender and the Owner shall not challenge, object to, compete with or impede in any manner any Enforcement Action commenced or taken by the Senior Lender in connection with or in respect of the Senior Indebtedness, the Senior Credit Agreement and/or the Senior Security, or against or in respect of all or any part of the Collateral.
15. **Acceleration and Exercise of Remedies.** Nothing herein contained shall compel the Senior Lender at any time to accelerate the Senior Loan or commence any action or enforcement proceeding under

the Senior Credit Agreement or the Senior Security. The Subordinate Lender acknowledges that all rights and remedies which the Senior Lender (acting on the instructions of the Required Lenders) may have under the Senior Credit Agreement, Senior Security and related agreements and hereunder are cumulative and not alternative rights and remedies.

The Senior Lender shall not be obliged to exercise recourse to any other persons or property or any guarantees, indemnities or other security it may at any time hold before being entitled to exercise recourse to or against the Collateral. No failure of the Senior Lender to exercise any power or right reserved to the Senior Lender under or in respect of the Senior Security, the Senior Credit Agreement or the Senior Indebtedness and no custom or practice of the parties at variance with the terms of the Senior Security, the Senior Credit Agreement or the Senior Indebtedness shall constitute a waiver of any of the Senior Lender's rights under this Agreement or affect the priority of the Senior Security or the Senior Indebtedness or the subordinations and postponements of the Subordinate Security or the Subordinate Indebtedness as provided for herein. Waiver by the Senior Lender (acting on the instructions of the Required Lenders) (which must be in writing), of any default or any event of default under or in respect of the Senior Security, the Senior Credit Agreement or the Senior Indebtedness or any forbearance arrangement as may be agreed to by the Senior Lender (acting on the instructions of the Required Lenders) in respect of the Senior Security, the Senior Credit Agreement or the Senior Indebtedness shall not require any notice to the Subordinate Lender nor shall it affect the priority of the Senior Security or the Senior Indebtedness secured thereby.

16. **Insurance.** Unless and until the Senior Indebtedness has been indefeasibly paid or satisfied in full, subject to the terms of the Senior Credit Agreement and the Senior Security, the Senior Lender (acting on the instructions of the Required Lenders) shall have the sole and exclusive right to adjust settlement for any insurance policy covering the Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Collateral. In addition, all proceeds of any such policy and any such award (or any payments with respect to a deed in lieu of condemnation) if in respect to the Collateral and to the extent required by the Senior Credit Agreement or the Senior Security shall be paid to the Senior Lender pursuant to the terms of the Senior Credit Agreement or the Senior Security.
17. **Partial Discharges and Releases.** Until the Senior Indebtedness has been paid in full and the Senior Security has been discharged, the Subordinate Lender will release and discharge its security which may now or hereafter be encumbering the Collateral in respect of each condominium dwelling, commercial/retail, commercial/office, hotel, parking, locker, residential or other unit(s) or parcels created and registered within the Property (or any portion thereon, including parcels created pursuant to a severance) that is purported to be sold, transferred or conveyed to a buyer, without any payment whatsoever being made to the Subordinate Lender until the Senior Loan and the Senior Indebtedness is repaid in full, provided that the net closing proceeds are applied in accordance with the Senior Credit Agreement. The Subordinate Lender further acknowledges that the Subordinate Lender shall have no right to any proceeds received (or receivable) in connection with any Commercial Sale, Commercial Loan or any other financing of the Commercial Project, Commercial Property or any portion or parcel thereof.
18. **Development Documents.** Notwithstanding any default under the Subordinate Credit Agreement or the Subordinate Security, the Subordinate Lender hereby covenants, agrees and undertakes to and with the Senior Lender to execute and deliver promptly to the Owner or its solicitor, or, if the Owner is in default under the Senior Credit Agreement or the Senior Security and the Senior Lender (acting on the instructions of the Required Lenders) is completing all or a portion of the Project on the Property on its own, to the Senior Lender and its solicitor, without payment of any kind to the Subordinate Lender, any documentation requested in connection with the Project, and the completion and development thereof, including without limitation:

- a. all consents required for registration of the Condominium Project as one or more condominiums;
 - b. partial discharges or partial releases of the Subordinate Security and related instruments in connection with land contributions to any municipalities, governmental authorities or agencies, including in connection with the giving of any road widenings, one (1) foot (or 0.3 meter) reserves, park dedications, or other land contribution(s) to any governmental authorities or agencies required as part of the development process in respect of the Project (or any portion thereof or any lands adjacent thereto);
 - c. all instruments, consents, acknowledgement, agreements or easements granted to governmental authorities or agencies, any public or private utility authorities or agencies, or as between the owners of different components of the Project in respect of the Project or any portion thereof; and
 - d. all consents and acknowledgements (and postponements or partial discharges of any Subordinate Security) required in connection with land contributions to any municipalities, governmental authorities or agencies; utility easements; municipal easements; development agreements (including heritage easement agreements); subdivision agreements; site plan agreements, agreements pursuant to the *Planning Act* (Ontario) or any other applicable legislation (including section 37 agreements); cost-sharing and other agreements; engineering agreements; condominium development agreements or similar agreements for the Project (or any portion thereof, or for different components thereof) and/or like instruments with any relevant governmental authorities or utilities which may be required in respect of the Project (or any portion thereof, or for different components thereof), including in connection with the preservation of the heritage-designated component of the Property or in connection with the installation of storm and/or sanitary sewers, gas, telephone, cable television, elevator, fire safety, hydro-electric and water services and/or similar services, and any easements for access and egress purposes in favour of any lands adjacent to the lands encompassing the Project, or any portion thereof, or for different components of the Project.
19. **Assignment by Subordinate Lender.** The Subordinate Lender agrees that it shall not sell, transfer, assign or otherwise dispose of any interest in the Subordinate Indebtedness, the Subordinate Credit Agreement, the Subordinate Security or this Agreement to any person or persons (the “Assignee”) except upon terms and conditions which are expressly subject to the terms of this Agreement and unless the prior written consent thereto of the Senior Lender (acting on the instructions of the Required Lenders in their sole and unfettered discretion) has been obtained. Concurrently with any such sale, transfer, assignment or other disposition, the Subordinate Lender shall cause each Assignee to enter into a priority, subordination and standstill agreement with the Senior Lender on the same terms and conditions as this Agreement. No such sale, transfer, assignment or other disposition shall be effective unless and until the Senior Lender (acting on the instructions of the Required Lenders) has given its written consent thereto and the Assignee has entered into a priority, subordination and standstill agreement with the Senior Lender on the same terms and conditions as this Agreement. The Senior Lender may transfer or assign its interest in the Senior Loan, the Senior Credit Agreement, the Senior Security and this Agreement without restriction and without prior notice to or the consent of the Subordinate Lender.
20. **Further Assurances.** The Subordinate Lender shall execute and deliver upon request by the Senior Lender (acting on the instructions of the Required Lenders), at the Owner’s expense, such further documents or instruments and take such further action as the Senior Lender (acting on the instructions of the Required Lenders) may reasonably require from time to time to carry out the intent of this Agreement, including, without limitation, executing and delivering any short form subordination and

postponement agreement or instrument to register or record or file notice of the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness as provided for herein on title to the Property and/or in any other office of public record and to give notice to third parties of the provisions of this Agreement.

21. **Notices.** Any notice, demand or other communication which any party may desire or may be required to give to any other party shall be in writing and may be made or given by personal delivery, by registered mail, or by facsimile transmission to the address for service of the recipient set forth below.

TO THE OWNER: 125 Hazelton Avenue
Toronto, ON M5R 2E4

Attention: Sam Mizrahi

and a copy to its solicitor: Dentons Canada LLP
99 Bank Street, Suite 1420
Ottawa, ON K1P 1H4

Attention: Phil Rimer

TO THE SENIOR LENDER: KEB Hana Bank Canada
627 Bloor Street West
Toronto, ON M6G 1K8

Attention: Young Choi

and a copy to: Osler, Hoskin & Harcourt LLP
Box 50, 1 First Canadian Place
100 King Street West, Suite 6200
Toronto, ON M5X 1B8

Attention: Rod Davidge

TO THE SUBORDINATE LENDER: Coco International Inc.
949 Wilson Avenue
Toronto, Ontario, M3K 1G2

and a copy to its solicitor: Fogler Rubinoff LLP
77 King Street West, Suite 3000, P.O. Box 95
Toronto, Ontario, M5K 1G8

Any demand, notice or communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof, and if given by registered mail, on the third business day following the deposit thereof in the mail, and if given by facsimile transmission, on the date of delivery unless transmitted after 5:00 P.M. in which case it shall be deemed to be delivered on the first business day following the transmittal thereof. If any party giving any demand, notice or other communication knows or reasonably ought to know of any difficulties with the postal system

that might affect delivery of mail, such demand, notice or other communication shall not be mailed, but shall be given by personal delivery or by facsimile transmission.. Any party hereto may change its address for service to which notices hereunder are required to be made or given by notice to other parties in accordance herewith.

22. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without application of any principle of conflict of laws which may result in laws other than the laws in force in such Province applying to this agreement; and the Subordinate Lender consents to the jurisdiction of the courts of the Province of Ontario and irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement shall be litigated in such courts and the Subordinate Lender unconditionally accepts the non-exclusive jurisdiction of the said courts and waives any defense of *forum non-conveniens*, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement, provided nothing herein shall affect the right to serve process in any other manner permitted by law.
23. **Insolvency.** The Senior Lender (acting on the instructions of the Required Lenders) shall have the right, but shall not be obliged or bound, to claim and prove in respect of all or any part of the Subordinate Indebtedness in any bankruptcy, insolvency, composition, scheme of arrangement, liquidation or winding up, voluntary or involuntary (each, an “**Insolvency Proceeding**”), affecting the Registered Owner or the Beneficial Owner or any distribution of Collateral among creditors of the Registered Owner or the Beneficial Owner, and to vote any of the interests of the Subordinate Lender in respect of the Subordinate Indebtedness in any such proceedings, and the Subordinate Lender agrees that all dividends, distributions or other sums which may be or become payable in respect of the Subordinate Indebtedness pursuant to any such proceedings shall be due and be paid to the Senior Lender until the Senior Lender shall have received, together with dividends on the Senior Indebtedness, indefeasible payment and satisfaction of the full amount of the Senior Indebtedness. The Subordinate Lender will from time to time execute and deliver all statements, proofs of claim, transfers, assignments and documents and do all such other acts and things as the Senior Lender (acting on the instructions of the Required Lenders) may request from time to time to implement and give effect to the foregoing.. The Subordinate Lender hereby irrevocably constitutes and appoints the Senior Lender (acting on the instructions of the Required Lenders) or its respective officers from time to time the true and lawful attorney of the Subordinate Lender, with full power of substitution, to do any of the foregoing in the name of the Subordinate Lender, whenever the Senior Lender (acting on the instructions of the Required Lenders in their sole discretion) deems it to be necessary or expedient.

During any Insolvency Proceeding in respect of the Registered Owner, the Beneficial Owner or the Collateral and until the Senior Indebtedness has been indefeasibly paid in full, the Subordinate Lender agrees that it shall:

- a. not provide, facilitate or consent to any interim or debtor-in-possession financing for the Registered Owner or the Beneficial Owner that provides for a court ordered charge or other lien on the Collateral in priority to the Senior Security without the prior written consent of the Senior Lender (acting on the instructions of the Required Lenders);
- b. not object to or seek any other relief, or file any motion, application or other action in respect of: (i) any interim or debtor-in-possession financing that may be provided to the Registered Owner or the Beneficial Owner by the Senior Lender and the Lenders or with the consent of the Senior Lender (acting on the instructions of the Required Lenders), which consent may be unreasonably withheld or delayed or (ii) any court ordered charge or lien made or granted on the Collateral in respect thereof;

- c. not seek any relief, or file any motion, application or other action in respect of the Collateral or the Registered Owner or the Beneficial Owner without the prior written consent of the Senior Lender (acting on the instructions of the Required Lenders),
- d. not seek (or support any other person seeking) relief from the automatic stay or any other stay of proceedings in any Insolvency Proceeding in respect of the Collateral or the Registered Owner or the Beneficial Owner without the prior written consent of the Senior Lender (acting on the instructions of the Required Lenders), and
- e. direct any trustee, receiver, monitor or similar person to pay and distribute over any distributions, payments, Collateral or proceeds thereof received by the Subordinate Lender to the Senior Lender until the Senior Indebtedness is paid in full.

24. **Amendments or Modifications.** The Senior Lender (acting on the instructions of the Required Lenders) may extend, renew, modify, amend, restate or vary the terms of the Senior Security, the Senior Credit Agreement or any other agreement or instrument governing or evidencing the Senior Indebtedness, the Senior Credit Agreement or the Senior Security without affecting the rights of the Senior Lender under this Agreement or under or in respect of the Senior Indebtedness, the Senior Credit Agreement or the Senior Security, or affecting the priority of the Senior Indebtedness, Senior Credit Agreement and the Senior Security or the subordination and postponement of the Subordinate Indebtedness and the Subordinate Security as provided for herein. The Subordinate Lender shall not make or permit any material amendment to be made to the Subordinate Security or the Subordinate Credit Agreement or any part thereof, including the increase in the principal sum thereof, without the prior written approval of the Senior Lender (acting on the instructions of the Required Lenders), which approval may be unreasonably withheld or delayed.

No discharge, release or waiver by the Senior Lender of any of the Senior Security against or in respect of any part of the Collateral or any person or any amendment, renewal, extension, modification, supplement, replacement or restatement of any Senior Indebtedness, the Senior Credit Agreement and/or the Senior Security, shall require notice to or the consent of Subordinate Lender or shall otherwise affect the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness hereby granted by the Subordinate Lender.

25. **Directions to Third Parties.** In the event that the Subordinate Lender has obtained any directions to third parties from the Owner, or any one of them, or has given or gives any directions to any third parties in relation to the Property, the Project or any portion or parcel thereof, the Subordinate Indebtedness, the Subordinate Credit Agreement and/or any of the Subordinate Security (collectively, the “**Directions**”), all such Directions shall include provisions which (i) discloses the interests of the Senior Lender in respect of the Senior Indebtedness in priority to the Subordinate Lender’s interests in the Subordinate Indebtedness and (ii) qualifies the rights of the Subordinate Lender in respect of such Directions as being subject to the prior rights of the Senior Lender (the “**Priority Provisions**”), which provisions shall be to the satisfaction of the Senior Lender (acting on the instructions of the Required Lenders) in its sole and subjective discretion. The Subordinate Lender hereby covenants and agrees to provide drafts of such Directions to the Senior Lender for approval prior to the execution and/or disclosure of such Directions to any third parties. In the event that any Direction does not contain the Priority Provisions, the Subordinate Lender shall, forthwith upon discovery of such omission and/or receipt of notice from the Senior Lender (acting on the instructions of the Required Lenders), destroy and/or revoke such erroneous Direction and cause to be executed and/or deliver amended Directions containing the Priority Provisions to the applicable third parties and obtain acknowledgements from such third parties of the receipt of the amended Direction.

26. **Execution of Postponements.** The Subordinate Lender covenants and agrees to promptly execute and provide the Senior Lender with whatever documents may, in the reasonable opinion of the Senior Lender's counsel, be required from time to time to evidence and confirm the foregoing postponement and subordination, including a postponement of charge in registerable form in respect of the Subordinate Mortgage and an electronic registration acknowledgement and direction in respect of same, as well the Subordinate Lender hereby authorizes the Senior Lender (acting on the instructions of the Required Lenders) to register any financing change statements or other documents required to record such postponement and subordination under the *Personal Property Security Act* (Ontario), as amended, and all reasonable legal fees and disbursements incurred in connection with the foregoing shall be for the account of the Owner and if not paid shall form part of the Senior Indebtedness and shall bear interest at the rate stipulated in the Senior Mortgage.
27. **Owner Confirmations.** The Owner hereby acknowledges the foregoing priorities and postponements, and agrees to be bound by the respective priorities of the Senior Security, being first in priority on the Property, and the Subordinate Security, being subsequent in priority, as hereinbefore set forth, and to pay or fully reimburse the Senior Lender and the Subordinate Lender, for all reasonable legal fees, expenses and disbursements incurred by the Senior Lender and the Subordinate Lender in connection with their execution and delivery of the postponement and subordination documentation hereinbefore provided or contemplated which if not paid shall form part of the Senior Indebtedness and/or the Subordinate Indebtedness, as the case may be and bear interest at the rate stipulated in the Senior Mortgage or the Subordinate Mortgage as the case may be. The Owner covenants not to make any payments to the Subordinate Lender and not to deliver any Documents to the Subordinate Lender, in contravention of this Agreement. Nothing in this Agreement shall create any rights in favour of, or obligations to, the Owner, and the covenants and agreements of the Senior Lender and the Subordinate Lender herein shall not be enforceable by the Owner. No consent of the Owner shall be necessary for any amendment to this Agreement by the Senior Lender and the Subordinate Lender and any such amendment shall be at the expense of the Owner. The Owner covenants that it shall not make any payments of any kind to the Subordinate Lender until the Senior Loan and the Senior Indebtedness is paid in full.
28. **Subordinate Lender Confirmation.** Except as otherwise provided herein, the Subordinate Lender agrees and confirms that the Senior Lender shall have no liability to the Subordinate Lender and the Subordinate Lender hereby waives any claim against the Senior Lender arising out of any and all actions which the Senior Lender (acting on the instructions of the Required Lenders) may take or permit or omit to take with respect to:
- a. the Senior Security, the Senior Credit Agreement, the Senior Loan or the Senior Indebtedness;
 - b. any Enforcement Action in respect of the Senior Security; or
 - c. the collections of any amounts owing in connection with the Senior Indebtedness.
29. **Successors.** The acknowledgements and agreements contained in this Agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns and shall likewise be binding on any trustee or receiver in bankruptcy of any party hereto, and on any trustee or appointee of any court or other tribunal, and on any person (including a corporation) who shall receive the property of any party hereto upon any liquidation proceedings, or any proceedings involving the disposition or devolution of property by operation of law or otherwise. Where any reference is made in this Agreement to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than

relating to the constitution or existence of the trust) by or with respect to, a trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, the trustee(s) of the trust.

30. **Non-Waiver.** The failure of any party hereto to seek redress from the breach or violation of any provision of this Agreement, or to insist upon the strict performance thereof, shall not constitute a waiver of such breach, nor a waiver of such party's respective rights and remedies in connection therewith, and shall not prevent a subsequent act, which would have originally constituted a violation or breach of any provision of this Agreement, from having the effect of an original violation or breach. No waiver on behalf of any party hereto in relation to any breach or default by any other party hereto, shall be effective or binding upon such first-mentioned party, unless and until such waiver is specifically confirmed or expressed in writing, and same shall not limit or affect such first-mentioned party's rights and remedies with respect to any further or other breach or default by the other party or parties hereto.
31. **Severability of Invalid Provisions.** Every provision of this Agreement is intended to be several, and accordingly, if any term or provision hereof is adjudged by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, then such illegal or invalid provision shall not affect the validity of the remainder of this Agreement, but shall be severable therefrom, and this Agreement shall accordingly be construed and enforced as if such illegal or invalid provision had not been inserted in this Agreement.
32. **Time of the Essence.** Time shall in all respects be of the essence hereof, provided that the time for doing or completing any matter provided or contemplated in this Agreement may be extended or abridged by an agreement in writing between the Senior Lender (acting on the instructions of the Required Lenders) and the Subordinate Lender, or by their respective solicitors who are hereby specifically authorized in that regard. All acts required of the Subordinate Lender hereunder shall be carried out promptly and without delay and in any event within five business days of a request for same.
33. **Recitals.** All recitals contained herein are true and correct and form an integral part of this Agreement.
34. **Heading and Gender.** Any headings used throughout this Agreement are for ease of reference only, and shall not be deemed or construed to form a part of this Agreement, nor shall they influence the construction or interpretation of this Agreement. This Agreement shall be read and construed with all changes in gender or number as may be required.
35. **Plural and Singular.** Where the context so requires, words importing the singular number will include the plural and vice versa.
36. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto in connection with the respective priorities between the Senior Security and the Subordinate Security, and the respective obligations and agreements among the parties with respect to the financing of the Property and the realization upon their respective security.
37. **Conflicts.** In the event of any conflict between the terms of this Agreement and the Subordinate Mortgage, the Subordinate Credit Agreement, the Subordinate Security or any other documentation relating to the Subordinate Indebtedness, the terms of this Agreement shall govern and control.

38. **Counterparts**. This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.
39. **Electronic Delivery**. The execution and delivery of this Agreement by facsimile transmission or electronic mail shall be as effective and binding on the parties hereto as if this Agreement were executed and delivered in the original.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF the parties hereto have hereunto executed this agreement as of the date first above-mentioned.

**KEB HANA BANK CANADA, as
Administrative Agent**

By: 

Name: Moon Sung Lee
Title: CEO & President

By: _____

Name:
Title:

I/We have authority to bind the Bank.

COCO INTERNATIONAL INC.

Per: _____

Name: Jenny Coco

Title: Vice President

Per: _____

Name:

Title:

I/We have authority to bind the Corporation.

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

Per: 

Name: Sam Mizrahi

Title: President and Secretary

Per: 

Name: Jenny Virginia Coco

Title: Vice-President

We have authority to bind the Corporation.

**MIZRAHI COMMERCIAL (THE ONE) LP,
by its general partner, MIZRAHI
COMMERCIAL (THE ONE) GP INC.**

Per: 

Name: Sam Mizrahi

Title: President

Per: 

Name: Jenny Virginia Coco

Title: Vice-President

We have authority to bind the Corporation, and
the Corporation has the authority to bind the
Limited Partnership.

SCHEDULE "A"

LEGAL DESCRIPTION OF THE PROPERTY

PIN 21109-0154 (LT)

PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN;
SUBJECT TO AN EASEMENT AS IN AT5101384; CITY OF TORONTO

PIN 21109-0155 (LT)

PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN;
SUBJECT TO AN EASEMENT AS IN AT5101384; CITY OF TORONTO

PIN 21109-0156 (LT)

PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; SUBJECT TO AN EASEMENT AS IN
AT5101384; CITY OF TORONTO

PIN 21109-0157 (LT)

PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 63R658; SUBJECT TO AN EASEMENT AS IN
AT5101384; CITY OF TORONTO

PIN 21109-0158 (LT)

PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CA703847; SUBJECT TO AN EASEMENT AS IN
AT5101384; CITY OF TORONTO

PIN 21109-0160 (LT)

PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CT277770. T/W EASEMENT AS IN CT277770;
SUBJECT TO AN EASEMENT AS IN AT5101384; CITY OF TORONTO

PIN 21109-0200 (LT)

FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT
PARK LT 9 CON 1 FTB TWP OF YORK DESIGNATED AS PT 15 ON PL 63R-3142, ; S/T OVER PT
15 ON 63R-3142 AS IN CT277770;S/T OVER PT 15 ON PL 63R-3142 AS IN CT831646; SUBJECT
TO AN EASEMENT AS IN AT5101384; CITY OF TORONTO

SCHEDULE “B”**SUBORDINATE MORTGAGE PARTICULARS**

Charge/mortgage of land registered as Instrument No. AT4081016 on November 30, 2015 in favour of Coco International Inc. originally in the principal amount of \$30,000,000, as amended by a notice registered as Instrument No. AT4192503 on April 13, 2016 increasing the principal amount to \$40,000,000 and as further amended by a notice registered as Instrument No. AT4474782 on January 31, 2017 increasing the principal amount of the charge to \$75,000,000.

THIS IS **EXHIBIT “E”** REFERRED TO IN THE
AFFIDAVIT OF MARK SHEELEY,
SWORN BEFORE ME over videoconference in accordance with
the *Administering Oath or Declaration Remotely Regulation*, O.
Reg. 431/20, on June 5, 2024, while I was located in the City of
Toronto, in the Province of Ontario, and the affiant was located
in the City of Toronto, in the Province of Ontario.

THIS 5th DAY OF JUNE, 2024.

A handwritten signature in black ink, appearing to be 'SF' or similar initials, written above a horizontal line.

Sierra Farr (LSO# 87551D)

**PRIORITY, SUBORDINATION AND STANDSTILL AGREEMENT AMENDING
AGREEMENT**

THIS AGREEMENT (this “**Agreement**”) made as of the 4th day of February, 2021

B E T W E E N:

KEB HANA BANK CANADA, as administrative agent for and on behalf of the Lenders
(the “**Senior Lender**”)

- and -

COCO INTERNATIONAL INC.
(the “**Subordinate Lender**”)

- and -

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.
(the “**Registered Owner**”)

- and -

MIZRAHI COMMERCIAL (THE ONE) LP
(the “**Beneficial Owner**” and collectively with the Registered Owner, the “**Owner**”)

WHEREAS:

- A. The Owner intends to construct an 85-storey mixed-use building (the “**Building**”), including (i) a condominium consisting of an area of approximately 720,000 gross square feet (approximately 518,000 of which is anticipated to be net saleable square feet – inclusive of interior and exterior/outdoor spaces) located within the Building with approximately 416 luxury condominium units on floors 19 through 85, inclusive, of the Building (the “**Condominium Project**”) and (ii) a hotel component consisting of an area of approximately 130,000 gross square feet, to be operated as a full-service hotel, and related amenity areas, a retail component consisting of an area of approximately 60,000 gross square feet and a below-grade parking component consisting of an area of approximately 115,000 gross square feet with approximately 291 parking spaces and related driveways and ramps, located within and underneath the Building (the “**Commercial Project**”, and together with the Condominium Project, the “**Project**”) in accordance with the plans and specifications approved by the Senior Lender and the Lenders (as defined in the Senior Credit Agreement) on the lands municipally known as One Bloor Street West and 768 Yonge Street, Toronto, Ontario, the legal description of which is annexed as Schedule “A” hereto (the “**Property**”).

Credit Agreement with Senior Lender and Senior Security

- B. Pursuant to the terms and provisions of a credit agreement dated August 30, 2019 among, *inter alia*, the Owner, as borrower, the Senior Lender, as administrative agent, and the Lenders, as lenders, and certain other parties as credit parties (as the same has been amended prior to the date hereof, the “**Existing Senior Credit Agreement**”), the Lenders agreed to provide credit facilities

in respect of the Project by way of a senior term loan credit facility in the maximum principal amount of CAD \$565,000,000 and an option to provide an additional standby facility in the maximum amount of CAD \$325,000,000.

- C. The Senior Loan is secured by, amongst other things,
- a. a charge against the Property securing the face principal sum of \$565,000,000 registered against title to the Property in the Land Registry Office for the Land Titles Division of Toronto (No. 80) (the “**LRO**”) on August 30, 2019, as Instrument No. AT5225851 (the “**Senior Mortgage**”);
 - b. a general assignment of rents registered against title to the Property in the LRO on August 30, 2019, as Instrument No. AT5225852; and
 - c. security interests over all of the Owner’s present and after-acquired personal property assets and undertakings in respect of which financing statements have been registered under the Personal Property Security Act (Ontario) (the “**PPSA**”) as Registration No. 20190820 1238 1590 3457 (File Reference No. 754567497) and as Registration No. 20190820 1243 1590 3460 (File Reference No. 754568523).

Credit Agreement with Subordinate Lender and Subordinate Security

- D. Pursuant to the terms and provisions of a credit agreement dated August 5, 2015 among, *inter alia*, the Beneficial Owner, as borrower, and the Subordinate Lender, as lender, as amended on October 20, 2015, as further amended on November 30, 2015, as further amended on April 8, 2016, as further amended on December 21, 2016, as further amended on January 31, 2017 and as further amended on June 29, 2017, the Subordinate Lender agreed to provide a credit facility to the Beneficial Owner in the principal amount of \$75,000,000.
- E. The Subordinate Indebtedness is secured by, the Subordinate Security.
- F. The Subordinate Lender subordinated and postponed the Subordinate Indebtedness and the Subordinate Security to and in favour of the Senior Indebtedness and the Senior Security to the extent and in the manner provided for in a priority, subordination and standstill agreement made as of August 30, 2019 between the parties hereto (the “**Priority Agreement**”).
- G. An Event of Default exists under the Existing Senior Credit Agreement as is set out in the amended and restated waiver agreement dated October 30, 2020 between, among others, the Senior Lender and the Owner (the “**Waiver Agreement**”).
- H. The Lenders have agreed to increase the amount of the senior term loan credit facility component of the Senior Indebtedness by \$67,000,000 (the “**Increased Senior Loan Amount**”) and to make a further advance in the amount of \$67,000,000 under the senior term loan component of the Senior Indebtedness on the terms to be set out in an amendment to the Existing Senior Credit Agreement and in connection with such increase and advance, the amount of the Senior Mortgage will be increased by \$67,000,000 pursuant to an amendment to the Senior Mortgage to be registered on title to the Property (the “**Senior Mortgage Amendment**”). The advance of the Increased Senior Loan Amount does not constitute a waiver of the 2020 CERIECO Advance Events of Default (as defined in the Waiver Agreement).
- I. The parties hereto wish to record their agreement as to the priorities of the Increased Senior Loan Amount and the Senior Mortgage Amendment.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set forth, the sum of TEN DOLLARS (\$10.00) of lawful money of Canada paid by each of the parties hereto to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby covenant and agree, to and with each other, as follows:

1. **Definitions.** Capitalized terms used in this Agreement and not defined herein shall have the meanings given to them in the Priority Agreement. Capitalized terms used in this Agreement or in the Priority Agreement and not defined in this Agreement or the Priority Agreement shall have the meanings given to them in the Senior Credit Agreement.
2. **Agreement.** The parties hereto agree that: (a) the Increased Senior Loan Amount and the advance thereof shall be considered part of the Senior Loan and the Senior Indebtedness for the purposes of the Priority Agreement and shall have the priority over the Subordinate Indebtedness provided to the Senior Indebtedness in the Priority Agreement; and (b) the Senior Mortgage Amendment forms part of the Senior Security for the purposes of the Priority Agreement and shall have the priority over the Subordinate Security provided to the Senior Security in the Priority Agreement. The Subordinate Lender acknowledges that an Event of Default exists under the Senior Credit Agreement and that the advance of the Increased Senior Loan Amount and the entering into of the Senior Mortgage Amendment do not constitute a waiver of the 2020 CERIECO Advance Events of Default.
3. **Effect of Subordination.** The subordination and postponement provided in favour of the Increased Senior Loan Amount and to the Senior Mortgage as amended by the Senior Mortgage Amendment provided for pursuant to the Priority Agreement as amended by this Agreement shall be valid and effective as between the Senior Lender and the Subordinate Lender notwithstanding any past, present or future agreement, event, act or omission to act on the part of the Senior Lender, the Subordinate Lender, the Owner, or any other person, and notwithstanding, without limitation, any one or more of the following:
 - (a) the timing of execution, delivery, attachment, perfection, crystallization, registration or enforcement of any of Senior Security or the Subordinate Security;
 - (b) the validity or enforceability of the Senior Loan (as amended), the Senior Credit Agreement (as amended) or the Senior Security (as amended);
 - (c) the failure of the Senior Lender to register, maintain, renew or keep current any registration of or pertaining to any of the Senior Security;
 - (d) the commencement of any Enforcement Action or Insolvency Proceeding in respect of the Registered Owner, the Beneficial Owner or the Collateral;
 - (e) the dates of any defaults by the Owner under the Senior Security or the Subordinate Security, and the dates of crystallization of any floating charges contained in the Senior Security or the Subordinate Security;
 - (f) the dates any demands for payment are made, the dates any notices are given, and any failure to make or give any such demands or notices;
 - (g) the respective dates or timing of any advances or defaults under the Senior Indebtedness, the Senior Credit Agreement and/or the Senior Security, or the Subordinate Indebtedness, the Subordinate Credit Agreement and/or the Subordinate Security, including all advances or other extensions of credit made by the Senior Lender and the Lenders from

time to time after the date hereof, and whether such advances or extensions of credit occurred before, during or after the occurrence of any default under the Senior Security, Senior Credit Agreement, Subordinate Security or Subordinate Credit Agreement and whether the Senior Lender or the Lenders had notice of any such event of default at the time of making such advance or extension of credit;

- (h) whether any or all of the loan advances or other extensions of credit made by the Senior Lender and Lenders reflect or comprise monies advanced to fund overruns in the cost of constructing the Project, to service debt, or to fund cash shortfalls attributable to the Project;
- (i) whether loan advances or other extensions of credit have been made by the Senior Lender and Lenders in excess of the facilities provided for in the Senior Credit Agreement or the Senior Security;
- (j) any partial or complete repayment at any time and from time to time by the Owner of any monies secured by the Subordinate Security;
- (k) any contrary intention expressed in the Senior Credit Agreement, the Senior Security, the Subordinate Credit Agreement, the Subordinate Security or any other documents;
- (l) any priority granted by any principle of law or equity or any statute, including, without limitation, the *Mortgages Act* (Ontario), the *Land Titles Act* (Ontario) and applicable personal property security legislation; and
- (m) any other circumstances which might constitute a defence available to, or a discharge of: (i) the Registered Owner or the Beneficial Owner in respect of the Senior Security, or (ii) the Subordinate Lender in respect of the Priority Agreement, as amended by this Agreement.

4. Commercial Project.

- (a) The parties hereto agree that the Priority Agreement is amended by replacing Recitals D and E to the Priority Agreement with the following:

“D. Following near-completion of the Commercial Project, the Owner intends to seek a severance of the Commercial Project or a portion or portions thereof (and each such severed lands are a “**Commercial Property**”) to enable the applicable Commercial Property to be sold or refinanced separately from the balance of the Property, including the Condominium Project and, if applicable, the other portions of the Commercial Project.

E. Following the severance of the Commercial Project or any portion of the Commercial Project, the Owner intends to sell the applicable Commercial Property (each a “**Commercial Sale**”) or to obtain additional financing (each a “**Commercial Loan**”) secured by such security as agreed upon between the Owner and the lender(s) providing the applicable Commercial Loan (each a “**Commercial Lender**”) which may include, amongst other things,

- a. a charge against the applicable Commercial Property to be registered against title to the applicable Commercial Property in the LRO;

- b. a general assignment of rents registered against title to the applicable Commercial Property in the LRO; and
- c. security interests over all of the Owner's present and after-acquired personal property located on or used exclusively in connection with the applicable Commercial Property, to be registered under the PPSA,

which, together with such other security documents or instruments hereafter granted to or in favour of a Commercial Lender in connection with a Commercial Loan (and whether secured against realty or personalty, or any legal, beneficial or other interest therein, and whether hereafter amended from time to time), being collectively referred to as "**Commercial Security**". The terms "**Commercial Loan**" and "**Commercial Security**" may apply to any refinancing of a prior Commercial Loan or Commercial Security."

- (b) The parties hereto agree that the Priority Agreement is amended by replacing the third paragraph of Section 2 of the Priority Agreement with the following: "The Subordinate Lender acknowledges and consents to the Owner completing a Commercial Sale or entering into one or more Commercial Loan(s) and securing such loan(s) with the Commercial Security or such other security over the applicable Commercial Property or registered on title to the applicable Commercial Property as agreed to between the Owner and the applicable Commercial Lender(s). No further consent or agreement from the Subordinate Lender shall be required for the Owner to complete a Commercial Sale, to enter into a Commercial Loan, to grant any Commercial Security or to open any bank account required in connection with a Commercial Loan for the deposit of revenues in respect of the applicable Commercial Property, and completion of a Commercial Sale or entering into a Commercial Loan and granting any Commercial Security (or the opening and use of such an account) shall not cause any default under the Subordinate Credit Agreement or Subordinate Security.

The Subordinate Lender: (a) acknowledges and consents to (i) the Owner opening any bank accounts that may be required by the Lenders for the purposes of depositing revenues from the Projects and (ii) the agreement by the Owner to allow the Senior Lender and/or the Lenders to appoint the operator of the parking component of the Commercial Project (and negotiate the terms of such appointment) and to any such appointment made by the Senior Lender and/or the Lenders; and (b) confirms that (1) any additional security provided to the Senior Lender and/or the Lenders in respect of any such bank account and the amounts deposited therein shall constitute Senior Security and (2) the Senior Security provides for a charge and security interest in favour of the Senior Lender over the parking component of the Commercial Project and all agreements in respect thereof and revenues therefrom. No further consent or agreement from the Subordinate Lender shall be required for any of the foregoing."

- (c) The parties hereto agree that the Priority Agreement is amended by replacing Section 7. of the Priority Agreement with the following:

"7. **Subordination and Postponement to Commercial Loan.** Provided that the applicable Commercial Property has been severed from the balance of the Property, the Subordinate Lender agrees to postpone and subordinate the Subordinate Security and all of its rights, powers and interests thereunder, to and in favour of the Commercial Security, and to provide a full standstill of any Subordinate Security to any Commercial Security and to any security over the applicable Commercial Property arranged after the severance of the

applicable Commercial Property. On request of the Owner, a Commercial Lender or the Senior Lender (acting on the instructions of the Required Lenders), the Subordinate Lender agrees to enter into a priority, postponement and standstill agreement, substantially in the form of this agreement, as may be amended, supplemented, restated, superseded or otherwise modified from time to time, to evidence and confirm such postponement, subordination and standstill.”

- (d) The parties hereto agree that the Priority Agreement is amended by replacing Section 8. of the Priority Agreement with the following:

“8. **Discharge on Commercial Sale.** Provided that the applicable Commercial Property has been severed from the balance of the Property, completion of the applicable Commercial Property has occurred and a Commercial Sale has been elected by the Owner, the Subordinate Lender agrees to discharge the Subordinate Security as it relates to the applicable Commercial Property in connection with any Commercial Sale, provided that the sale proceeds are distributed in accordance with the terms of the Senior Credit Agreement.”.

- (e) The parties hereto agree that the Priority Agreement is amended by replacing the words “the severance of the Commercial Project” in the third paragraph of Section 13 of the Priority Agreement with “the severance of any Commercial Property”.

5. **Further Assurances.** The Subordinate Lender shall execute and deliver upon request by the Senior Lender (acting on the instructions of the Required Lenders), at the Owner’s expense, such further documents or instruments and take such further action as the Senior Lender (acting on the instructions of the Required Lenders) may reasonably require from time to time to carry out the intent of this Agreement, including, without limitation, executing and delivering any short form subordination and postponement agreement or instrument to register or record or file notice of the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness as provided for herein on title to the Property and/or in any other office of public record and to give notice to third parties of the provisions of this Agreement.
6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without application of any principle of conflict of laws which may result in laws other than the laws in force in such Province applying to this Agreement; and the Subordinate Lender consents to the jurisdiction of the courts of the Province of Ontario and irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement shall be litigated in such courts and the Subordinate Lender unconditionally accepts the non-exclusive jurisdiction of the said courts and waives any defense of *forum non-conveniens*, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement, provided nothing herein shall affect the right to serve process in any other manner permitted by law.
7. **Execution of Postponements.** The Subordinate Lender covenants and agrees to promptly execute and provide the Senior Lender with whatever documents may, in the reasonable opinion of the Senior Lender’s counsel, be required from time to time to evidence and confirm the foregoing postponement and subordination, including a postponement of charge in registerable form in respect of the Subordinate Mortgage and an electronic registration acknowledgement and direction in respect of same, as well the Subordinate Lender hereby authorizes the Senior Lender (acting on the instructions of the Required Lenders) to register any financing change statements or other documents required to record such postponement and subordination under the *Personal Property Security Act* (Ontario), as amended, and all reasonable legal fees and disbursements incurred in connection with the foregoing

shall be for the account of the Owner and if not paid shall form part of the Senior Indebtedness and shall bear interest at the rate stipulated in the Senior Mortgage.

8. **Owner Confirmations.** The Owner hereby acknowledges the priorities and postponements, and agrees to be bound by the respective priorities of the Senior Security (including the Senior Mortgage Amendment), being first in priority on the Property, and the Subordinate Security, being subsequent in priority, as hereinbefore set forth, and to pay or fully reimburse the Senior Lender and the Subordinate Lender, for all reasonable legal fees, expenses and disbursements incurred by the Senior Lender and the Subordinate Lender in connection with their execution and delivery of the postponement and subordination documentation hereinbefore provided or contemplated which if not paid shall form part of the Senior Indebtedness and/or the Subordinate Indebtedness, as the case may be and bear interest at the rate stipulated in the Senior Mortgage or the Subordinate Mortgage as the case may be.
9. **Subordinate Lender Confirmation.** Except as otherwise provided herein, the Subordinate Lender agrees and confirms that the Senior Lender shall have no liability to the Subordinate Lender and the Subordinate Lender hereby waives any claim against the Senior Lender arising out of any and all actions which the Senior Lender (acting on the instructions of the Required Lenders) may take or permit or omit to take with respect to:
 - a. the Senior Security, the Senior Credit Agreement, the Senior Loan or the Senior Indebtedness;
 - b. any Enforcement Action in respect of the Senior Security; or
 - c. the collections of any amounts owing in connection with the Senior Indebtedness.
10. **Amendment.** Except as specifically amended by this Agreement, the Priority Agreement shall remain in full force and effect and is hereby ratified and confirmed. Time shall remain of the essence of the Priority Agreement, as amended by this Agreement and as it may be further amended, supplemented, restated, extended, renewed or replaced from time to time.
11. **Successors.** The acknowledgements and agreements contained in this Agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns and shall likewise be binding on any trustee or receiver in bankruptcy of any party hereto, and on any trustee or appointee of any court or other tribunal, and on any person (including a corporation) who shall receive the property of any party hereto upon any liquidation proceedings, or any proceedings involving the disposition or devolution of property by operation of law or otherwise. Where any reference is made in this Agreement to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, a trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, the trustee(s) of the trust.
12. **Severability of Invalid Provisions.** Every provision of this Agreement is intended to be several, and accordingly, if any term or provision hereof is adjudged by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, then such illegal or invalid provision shall not affect the validity of the remainder of this Agreement, but shall be severable therefrom, and this Agreement

shall accordingly be construed and enforced as if such illegal or invalid provision had not been inserted in this Agreement.

13. **Recitals.** All recitals contained herein are true and correct and form an integral part of this Agreement.
14. **Heading and Gender.** Any headings used throughout this Agreement are for ease of reference only, and shall not be deemed or construed to form a part of this Agreement, nor shall they influence the construction or interpretation of this Agreement. This Agreement shall be read and construed with all changes in gender or number as may be required.
15. **Plural and Singular.** Where the context so requires, words importing the singular number will include the plural and vice versa.
16. **Conflicts.** In the event of any conflict between the terms of the Priority Agreement as amended by this Agreement and the Subordinate Mortgage, the Subordinate Credit Agreement, the Subordinate Security or any other documentation relating to the Subordinate Indebtedness, the terms of Priority Agreement as amended by this Agreement shall govern and control.
17. **Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.
18. **Electronic Delivery.** The execution and delivery of this Agreement by facsimile transmission, electronic mail or other electronic means shall be as effective and binding on the parties hereto as if this Agreement were executed and delivered in the original.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF the parties hereto have hereunto executed this Agreement as of the date first above-mentioned.

KEB HANA BANK CANADA, as Administrative Agent


Per: 

Name: Moon Sung Lee

Title: CEO & President

I have authority to bind the above.

COCO INTERNATIONAL INC.

Per: 
Name: _____
Title: _____

Per: _____
Name: _____
Title: _____

I/We have authority to bind the corporation.

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

Per: 

Name: Sam Mizrahi

Title: President

Per: _____

Name: Jenny Virginia Coco

Title: Vice-President

We have authority to bind the corporation.

MIZRAHI COMMERCIAL (THE ONE) LP, by its general partner, MIZRAHI COMMERCIAL (THE ONE) GP INC.

Per: 

Name: Sam Mizrahi

Title: President

Per: _____

Name: Jenny Virginia Coco

Title: Vice-President

We have authority to bind the corporation, and the corporation has the authority to bind the limited partnership.

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.

Per: _____
 Name: Sam Mizrahi
 Title: President

Per: _____
 Name: Jenny Virginia Coco
 Title: Vice-President

We have authority to bind the corporation.

MIZRAHI COMMERCIAL (THE ONE) LP, by its general partner, MIZRAHI COMMERCIAL (THE ONE) GP INC.

Per: _____
 Name: Sam Mizrahi
 Title: President

Per: _____
 Name: Jenny Virginia Coco
 Title: Vice-President

We have authority to bind the corporation, and the corporation has the authority to bind the limited partnership.

SCHEDULE "A"

LEGAL DESCRIPTION OF THE PROPERTY

PIN 21109-0242 (LT)

FIRSTLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP145729 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; SECONDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN EP93304 EXCEPT THE EASEMENT THEREIN; SUBJECT TO AN EASEMENT AS IN AT5101384; THIRDLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 1 64R16532; SUBJECT TO AN EASEMENT AS IN AT5101384; FOURTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK PT 163R658; SUBJECT TO AN EASEMENT AS IN AT5101384; FIFTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CA703847; SUBJECT TO AN EASEMENT AS IN AT5101384; SIXTHLY: PT PARKLT 9 CON 1 FTB TWP OF YORK AS IN CT277770. T/W EASEMENT AS IN CT277770; SUBJECT TO AN EASEMENT AS IN AT5101384; SEVENTHLY: FIRSTLY: PT PARK LT 9 CON 1 FTB TWP OF YORK, AS IN EP142034 AND SECONDLY: PT PT PARK LT 9 CON 1 FTB TWP OF YORK DESIGNATED AS PT 15 ON PL 63R-3142, ; S/T OVER PT 15 ON 63R-3142 AS IN CT277770; S/T OVER PT 15 ON PL 63R-3142 AS IN CT831646; SUBJECT TO AN EASEMENT AS IN AT5101384;; CITY OF TORONTO

THIS IS **EXHIBIT “F”** REFERRED TO IN THE
AFFIDAVIT OF MARK SHEELEY,
SWORN BEFORE ME over videoconference in accordance with
the *Administering Oath or Declaration Remotely Regulation*, O.
Reg. 431/20, on June 5, 2024, while I was located in the City of
Toronto, in the Province of Ontario, and the affiant was located
in the City of Toronto, in the Province of Ontario.

THIS 5th DAY OF JUNE, 2024.

A handwritten signature in black ink, appearing to read 'SF', is written above a horizontal line.

Sierra Farr (LSO# 87551D)

AGREEMENT RE: PRIORITY, SUBORDINATION AND STANDSTILL AGREEMENT

THIS AGREEMENT (this “**Agreement**”) made as of September 9, 2021

B E T W E E N:

KEB HANA BANK CANADA, as administrative agent for and on behalf of the Lenders
(the “**Senior Lender**”)

- and -

COCO INTERNATIONAL INC.
(the “**Subordinate Lender**”)

- and -

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.
(the “**Registered Owner**”)

- and -

MIZRAHI COMMERCIAL (THE ONE) LP
(the “**Beneficial Owner**” and collectively with the Registered Owner, the “**Owner**”)

WHEREAS:

- A. The parties to this Agreement entered into a priority, subordination and standstill agreement made as of August 30, 2019 (as amended by an agreement dated February 4, 2021, the “**Priority Agreement**”).
- B. A Senior Lender (as defined in the Senior Credit Agreement) has agreed to provide the Standby Facility in a principal amount of \$325,000,000 on the terms set out in an amendment to the Senior Credit Agreement dated September 9, 2021 (the “**Standby Facility Amendment**”).
- C. In connection with the establishment of the Standby Facility, the Senior Mortgage that was amended pursuant to an instrument registered against title to the Property on February 4, 2021 as Instrument No. AT5650701 (the “**Senior Mortgage Amendment**”) will be further amended to increase the principal amount of such mortgage by \$325,000,000 pursuant to an amendment to be registered on title to the Property (the “**Standby Senior Mortgage Amendment**”).
- D. Pursuant to the Priority Agreement, the Subordinate Lender agreed to execute and provide the Senior Lender with whatever documents may be, in the reasonable opinion of the Senior Lender’s counsel, required from time to time to evidence the postponement and subordination of the Subordinate Security to the security provided in connection with the Standby Facility.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set forth, the sum of TEN DOLLARS (\$10.00) of lawful money of Canada paid by each of the parties hereto to the other, and for other good and valuable consideration (the

receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby covenant and agree, to and with each other, as follows:

1. **Definitions.** Capitalized terms used in this Agreement and not defined herein shall have the meanings given to them in the Priority Agreement. Capitalized terms used in this Agreement or in the Priority Agreement and not defined in this Agreement or the Priority Agreement shall have the meanings given to them in the Senior Credit Agreement.
2. **Agreement.** The parties hereto confirm that:
 - (a) the Standby Facility as established pursuant to the Standby Facility Amendment and each advance thereof shall be considered part of the Senior Loan and the Senior Indebtedness for the purposes of the Priority Agreement and shall have the priority over the Subordinate Indebtedness provided to the Senior Indebtedness in the Priority Agreement;
 - (b) the Standby Senior Mortgage Amendment forms part of the Senior Security for the purposes of the Priority Agreement and shall have the priority over the Subordinate Security provided to the Senior Security in the Priority Agreement; and
 - (c) the Subordinate Lender acknowledges that Events of Default exist under the Senior Credit Agreement and that any advance of the Standby Facility and the entering into of the Standby Senior Mortgage Amendment do not constitute a waiver of such Events of Default under the Senior Credit Agreement.
3. **Effect of Subordination.** The subordination and postponement provided in favour of the Standby Facility and to the Senior Mortgage as amended by the Senior Mortgage Amendment and the Standby Senior Mortgage Amendment provided for pursuant to the Priority Agreement as amended by this Agreement shall be valid and effective as between the Senior Lender and the Subordinate Lender notwithstanding any past, present or future agreement, event, act or omission to act on the part of the Senior Lender, the Subordinate Lender, the Owner, or any other person, and notwithstanding, without limitation, any one or more of the following:
 - (a) the timing of execution, delivery, attachment, perfection, crystallization, registration or enforcement of any of Senior Security or the Subordinate Security;
 - (b) the validity or enforceability of the Senior Loan (as amended), the Senior Credit Agreement (as amended) or the Senior Security (as amended);
 - (c) the failure of the Senior Lender to register, maintain, renew or keep current any registration of or pertaining to any of the Senior Security;
 - (d) the commencement of any Enforcement Action or Insolvency Proceeding in respect of the Registered Owner, the Beneficial Owner or the Collateral;
 - (e) the dates of any defaults by the Owner under the Senior Security or the Subordinate Security, and the dates of crystallization of any floating charges contained in the Senior Security or the Subordinate Security;
 - (f) the dates any demands for payment are made, the dates any notices are given, and any failure to make or give any such demands or notices;
 - (g) the respective dates or timing of any advances or defaults under the Senior Indebtedness, the Senior Credit Agreement and/or the Senior Security, or the Subordinate Indebtedness,

the Subordinate Credit Agreement and/or the Subordinate Security, including all advances or other extensions of credit made by the Senior Lender and the Lenders from time to time after the date hereof, and whether such advances or extensions of credit occurred before, during or after the occurrence of any default under the Senior Security, Senior Credit Agreement, Subordinate Security or Subordinate Credit Agreement and whether the Senior Lender or the Lenders had notice of any such event of default at the time of making such advance or extension of credit;

- (h) whether any or all of the loan advances or other extensions of credit made by the Senior Lender and Lenders reflect or comprise monies advanced to fund overruns in the cost of constructing the Project, to service debt, or to fund cash shortfalls attributable to the Project;
- (i) whether loan advances or other extensions of credit have been made by the Senior Lender and Lenders in excess of the facilities provided for in the Senior Credit Agreement or the Senior Security;
- (j) any partial or complete repayment at any time and from time to time by the Owner of any monies secured by the Subordinate Security;
- (k) any contrary intention expressed in the Senior Credit Agreement, the Senior Security, the Subordinate Credit Agreement, the Subordinate Security or any other documents;
- (l) any priority granted by any principle of law or equity or any statute, including, without limitation, the *Mortgages Act* (Ontario), the *Land Titles Act* (Ontario) and applicable personal property security legislation; and
- (m) any other circumstances which might constitute a defence available to, or a discharge of: (i) the Registered Owner or the Beneficial Owner in respect of the Senior Security, or (ii) the Subordinate Lender in respect of the Priority Agreement, as amended by this Agreement.

4. **Further Assurances.** The Subordinate Lender shall execute and deliver upon request by the Senior Lender (acting on the instructions of the Required Lenders), at the Owner's expense, such further documents or instruments and take such further action as the Senior Lender (acting on the instructions of the Required Lenders) may reasonably require from time to time to carry out the intent of this Agreement, including, without limitation, executing and delivering any short form subordination and postponement agreement or instrument to register or record or file notice of the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness as provided for herein on title to the Property and/or in any other office of public record and to give notice to third parties of the provisions of this Agreement.
5. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without application of any principle of conflict of laws which may result in laws other than the laws in force in such Province applying to this Agreement; and the Subordinate Lender consents to the jurisdiction of the courts of the Province of Ontario and irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement shall be litigated in such courts and the Subordinate Lender unconditionally accepts the non-exclusive jurisdiction of the said courts and waives any defense of forum non-conveniens, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement, provided nothing herein shall affect the right to serve process in any other manner permitted by law.

6. **Execution of Postponements.** The Subordinate Lender covenants and agrees to promptly execute and provide the Senior Lender with whatever documents may, in the reasonable opinion of the Senior Lender's counsel, be required from time to time to evidence and confirm the foregoing postponement and subordination, including a postponement of charge in registerable form in respect of the Subordinate Mortgage and an electronic registration acknowledgement and direction in respect of same, as well the Subordinate Lender hereby authorizes the Senior Lender (acting on the instructions of the Required Lenders) to register any financing change statements or other documents required to record such postponement and subordination under the *Personal Property Security Act* (Ontario), as amended, and all reasonable legal fees and disbursements incurred in connection with the foregoing shall be for the account of the Owner and if not paid shall form part of the Senior Indebtedness and shall bear interest at the rate stipulated in the Senior Mortgage.
7. **Owner Confirmations.** The Owner hereby acknowledges the priorities and postponements, and agrees to be bound by the respective priorities of the Senior Security (including the Standby Senior Mortgage Amendment), being first in priority on the Property, and the Subordinate Security, being subsequent in priority, as hereinbefore set forth, and to pay or fully reimburse the Senior Lender and the Subordinate Lender for all reasonable legal fees, expenses and disbursements incurred by the Senior Lender and the Subordinate Lender in connection with their execution and delivery of the postponement and subordination documentation hereinbefore provided or contemplated which if not paid shall form part of the Senior Indebtedness and/or the Subordinate Indebtedness, as the case may be and bear interest at the rate stipulated in the Senior Mortgage or the Subordinate Mortgage as the case may be.
8. **Subordinate Lender Confirmation.** Except as otherwise provided herein, the Subordinate Lender agrees and confirms that the Senior Lender shall have no liability to the Subordinate Lender and the Subordinate Lender hereby waives any claim against the Senior Lender arising out of any and all actions which the Senior Lender (acting on the instructions of the Required Lenders) may take or permit or omit to take with respect to:
 - a. the Senior Security, the Senior Credit Agreement, the Senior Loan or the Senior Indebtedness;
 - b. any Enforcement Action in respect of the Senior Security; or
 - c. the collections of any amounts owing in connection with the Senior Indebtedness.
9. **Amendment.** Except as specifically amended by this Agreement, the Priority Agreement shall remain in full force and effect and is hereby ratified and confirmed. Time shall remain of the essence of the Priority Agreement, as amended by this Agreement and as it may be further amended, supplemented, restated, extended, renewed or replaced from time to time.
10. **Successors.** The acknowledgements and agreements contained in this Agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns and shall likewise be binding on any trustee or receiver in bankruptcy of any party hereto, and on any trustee or appointee of any court or other tribunal, and on any person (including a corporation) who shall receive the property of any party hereto upon any liquidation proceedings, or any proceedings involving the disposition or devolution of property by operation of law or otherwise. Where any reference is made in this Agreement to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, a trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or

proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, the trustee(s) of the trust.

11. **Severability of Invalid Provisions.** Every provision of this Agreement is intended to be several, and accordingly, if any term or provision hereof is adjudged by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, then such illegal or invalid provision shall not affect the validity of the remainder of this Agreement, but shall be severable therefrom, and this Agreement shall accordingly be construed and enforced as if such illegal or invalid provision had not been inserted in this Agreement.
12. **Recitals.** All recitals contained herein are true and correct and form an integral part of this Agreement.
13. **Heading and Gender.** Any headings used throughout this Agreement are for ease of reference only, and shall not be deemed or construed to form a part of this Agreement, nor shall they influence the construction or interpretation of this Agreement. This Agreement shall be read and construed with all changes in gender or number as may be required.
14. **Plural and Singular.** Where the context so requires, words importing the singular number will include the plural and vice versa.
15. **Conflicts.** In the event of any conflict between the terms of the Priority Agreement as amended by this Agreement and the Subordinate Mortgage, the Subordinate Credit Agreement, the Subordinate Security or any other documentation relating to the Subordinate Indebtedness, the terms of Priority Agreement as amended by this Agreement shall govern and control.
16. **Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.
17. **Electronic Delivery.** The execution and delivery of this Agreement by facsimile transmission, electronic mail or other electronic means shall be as effective and binding on the parties hereto as if this Agreement were executed and delivered in the original.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF the parties hereto have hereunto executed this agreement as of the date first above-mentioned.

**KEB HANA BANK CANADA, as
Administrative Agent**

Per: Young Jun Kim
Name: Young Jun Kim
Title: President & CEO

I have authority to bind the above.

COCO INTERNATIONAL INC.

Per: _____

Name: JENNY COCO

Title: C.E.O.

Per: _____

Name: ROCK- ANTHONY COCO

Title: PRESIDENT

I/We have the authority to bind the Corporation.

MIZRAHI COMMERCIAL (THE ONE) LP, by
its general partner, **MIZRAHI COMMERCIAL
(THE ONE) GP INC.**

Per: 

Name: Sam Mizrahi
Title: President

Per: _____

Name:
Title:

I/We have authority to bind the corporation.

**MIZRAHI DEVELOPMENT GROUP (THE
ONE) INC.**

Per: 

Name: Sam Mizrahi
Title: President and Secretary

Per: _____

Name:
Title:

I/We have authority to bind the corporation.

MIZRAHI COMMERCIAL (THE ONE) LP, by
its general partner, **MIZRAHI COMMERCIAL
(THE ONE) GP INC.**

Per: _____

Name:

Title:

Per: _____

Name: Jenny Coco

Title: Vice-President

I/We have authority to bind the corporation.

**MIZRAHI DEVELOPMENT GROUP (THE
ONE) INC.**

Per: _____

Name:

Title:

Per: _____

Name: Jenny Coco

Title: Vice-President

I/We have authority to bind the corporation.

THIS IS **EXHIBIT “G”** REFERRED TO IN THE
AFFIDAVIT OF MARK SHEELEY,
SWORN BEFORE ME over videoconference in accordance with
the *Administering Oath or Declaration Remotely Regulation*, O.
Reg. 431/20, on June 5, 2024, while I was located in the City of
Toronto, in the Province of Ontario, and the affiant was located
in the City of Toronto, in the Province of Ontario.

THIS 5th DAY OF JUNE, 2024.

A handwritten signature in black ink, appearing to be 'SF' or similar initials, written in a cursive style.

Sierra Farr (LSO# 87551D)

AGREEMENT RE: PRIORITY, SUBORDINATION AND STANDSTILL AGREEMENT

THIS AGREEMENT (this “**Agreement**”) made as of August 30, 2022

B E T W E E N:

KEB HANA BANK CANADA, as administrative agent for and on behalf of the Lenders
(the “**Senior Lender**”)

- and -

COCO INTERNATIONAL INC.
(the “**Subordinate Lender**”)

- and -

MIZRAHI DEVELOPMENT GROUP (THE ONE) INC.
(the “**Registered Owner**”)

- and -

MIZRAHI COMMERCIAL (THE ONE) LP
(the “**Beneficial Owner**” and collectively with the Registered Owner, the “**Owner**”)

WHEREAS:

- A. The parties to this Agreement entered into a priority, subordination and standstill agreement made as of August 30, 2019 (as amended by an agreement dated February 4, 2021, the “**Priority Agreement**”).
- B. The Term Lenders (as defined in the Senior Credit Agreement) have agreed to extend the maturity date of the term facility provided pursuant to the Senior Credit Agreement on the terms set out in an amendment to the Senior Credit Agreement dated August 30, 2022 (the “**Senior Credit Agreement Amendment**”).
- C. Pursuant to the Priority Agreement, the Subordinate Lender agreed to execute and provide the Senior Lender with whatever documents may be, in the reasonable opinion of the Senior Lender’s counsel, required from time to time to evidence the postponement and subordination of the Subordinate Security provided in the Priority Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter set forth, the sum of TEN DOLLARS (\$10.00) of lawful money of Canada paid by each of the parties hereto to the other, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby covenant and agree, to and with each other, as follows:

1. **Definitions.** Capitalized terms used in this Agreement and not defined herein shall have the meanings given to them in the Priority Agreement. Capitalized terms used in this Agreement or in the Priority Agreement and not defined in this Agreement or the Priority Agreement shall have the meanings given to them in the Senior Credit Agreement.
2. **Agreement.** The parties hereto confirm that:
 - (a) the Priority Agreement shall remain in full force and effect and is hereby ratified and confirmed and continues to apply to the Senior Loan, the Senior Indebtedness and the Senior Credit Agreement as amended by the Senior Credit Agreement Amendment;
 - (b) the Subordinate Lender acknowledges that Events of Default exist under the Senior Credit Agreement and that the amendments to the Senior Credit Agreement made pursuant to the Senior Credit Agreement Amendment do not constitute a waiver of such Events of Default under the Senior Credit Agreement and the Senior Agent and the Senior Lenders shall have all the rights set out in the Senior Credit Agreement in respect of such Events of Default; and
 - (c) nothing in this Agreement shall be construed as a consent to any matter or thing contemplated by, or a waiver, amendment or other modification of, any of the terms, conditions, rights or obligations of any of the parties hereto under any other agreement between or among any of them, except for the matters expressly amended by this Agreement.
3. **Further Assurances.** The Subordinate Lender shall execute and deliver upon request by the Senior Lender (acting on the instructions of the Required Lenders), at the Owner's expense, such further documents or instruments and take such further action as the Senior Lender (acting on the instructions of the Required Lenders) may reasonably require from time to time to carry out the intent of this Agreement, including, without limitation, executing and delivering any short form subordination and postponement agreement or instrument to register or record or file notice of the subordination and postponement of the Subordinate Security and the Subordinate Indebtedness as provided for herein on title to the Property and/or in any other office of public record and to give notice to third parties of the provisions of this Agreement.
4. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without application of any principle of conflict of laws which may result in laws other than the laws in force in such Province applying to this Agreement; and the Subordinate Lender consents to the jurisdiction of the courts of the Province of Ontario and irrevocably agrees that all actions or proceedings arising out of or relating to this Agreement shall be litigated in such courts and the Subordinate Lender unconditionally accepts the non-exclusive jurisdiction of the said courts and waives any defense of forum non-conveniens, and irrevocably agrees to be bound by any judgment rendered thereby in connection with this Agreement, provided nothing herein shall affect the right to serve process in any other manner permitted by law.
5. **Owner Confirmations.** The Owner hereby acknowledges the priorities and postponements, and agrees to be bound by the respective priorities of the Senior Security, being first in priority on the Property, and the Subordinate Security, being subsequent in priority, as hereinbefore set forth, and to pay or fully reimburse the Senior Lender and the Subordinate Lender for all reasonable legal fees, expenses and disbursements incurred by the Senior Lender and the Subordinate Lender in connection with their execution and delivery of the postponement and subordination documentation hereinbefore provided or contemplated which if not paid shall form part of the Senior Indebtedness and/or the Subordinate

Indebtedness, as the case may be and bear interest at the rate stipulated in the Senior Mortgage or the Subordinate Mortgage as the case may be.

6. **Subordinate Lender Confirmation.** Except as otherwise provided herein, the Subordinate Lender agrees and confirms that the Senior Lender shall have no liability to the Subordinate Lender and the Subordinate Lender hereby waives any claim against the Senior Lender arising out of any and all actions which the Senior Lender (acting on the instructions of the Required Lenders) may take or permit or omit to take with respect to:
 - a. the Senior Security, the Senior Credit Agreement, the Senior Loan or the Senior Indebtedness;
 - b. any Enforcement Action in respect of the Senior Security; or
 - c. the collections of any amounts owing in connection with the Senior Indebtedness.
7. **Amendment.** Except as specifically amended by this Agreement, the Priority Agreement shall remain in full force and effect and is hereby ratified and confirmed. Time shall remain of the essence of the Priority Agreement, as amended by this Agreement and as it may be further amended, supplemented, restated, extended, renewed or replaced from time to time.
8. **Successors.** The acknowledgements and agreements contained in this Agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns and shall likewise be binding on any trustee or receiver in bankruptcy of any party hereto, and on any trustee or appointee of any court or other tribunal, and on any person (including a corporation) who shall receive the property of any party hereto upon any liquidation proceedings, or any proceedings involving the disposition or devolution of property by operation of law or otherwise. Where any reference is made in this Agreement to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, a trust, such reference shall be construed and applied for all purposes as if it referred to an act to be performed by, an appointment to be made by, an obligation or liability of, an asset or right of, a discharge or release to be provided by, a suit or proceeding to be taken by or against or a covenant, representation or warranty (other than relating to the constitution or existence of the trust) by or with respect to, the trustee(s) of the trust.
9. **Severability of Invalid Provisions.** Every provision of this Agreement is intended to be several, and accordingly, if any term or provision hereof is adjudged by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, then such illegal or invalid provision shall not affect the validity of the remainder of this Agreement, but shall be severable therefrom, and this Agreement shall accordingly be construed and enforced as if such illegal or invalid provision had not been inserted in this Agreement.
10. **Recitals.** All recitals contained herein are true and correct and form an integral part of this Agreement.
11. **Heading and Gender.** Any headings used throughout this Agreement are for ease of reference only, and shall not be deemed or construed to form a part of this Agreement, nor shall they influence the construction or interpretation of this Agreement. This Agreement shall be read and construed with all changes in gender or number as may be required.
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13. **Counterparts.** This Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.
14. **Electronic Delivery.** The execution and delivery of this Agreement by facsimile transmission, electronic mail or other electronic means shall be as effective and binding on the parties hereto as if this Agreement were executed and delivered in the original.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF the parties hereto have hereunto executed this agreement as of the date first above-mentioned.

**KEB HANA BANK CANADA, as
Administrative Agent**


Per: 

Name: Young Jun Kim
Title: President & CEO

I have authority to bind the above.

Signature Page – Agreement Re: Priority, Postponement and Standstill Agreement (Coco International) – The One –
LEGAL_1:75570035.1 Senior Loan

COCO INTERNATIONAL INC.

Per: 
Name:
Title:

Per: _____
Name:
Title:

I/We have the authority to bind the Corporation.

**MIZRAHI COMMERCIAL (THE ONE) LP, by
its general partner, MIZRAHI COMMERCIAL
(THE ONE) GP INC.**

Per: _____

Name: _____

Title: **Sam Mizrahi President**

Per: _____

Name: _____

Title: _____

I/We have authority to bind the corporation.

**MIZRAHI DEVELOPMENT GROUP (THE
ONE) INC.**

Per: _____

Name: _____

Title: **Sam Mizrahi President**

Per: _____

Name: _____

Title: _____

I/We have authority to bind the corporation.

MIZRAHI COMMERCIAL (THE ONE) LP, by
its general partner, **MIZRAHI COMMERCIAL
(THE ONE) GP INC.**

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

I/We have authority to bind the corporation.

**MIZRAHI DEVELOPMENT GROUP (THE
ONE) INC.**

Per: _____

Name: _____

Title: _____

Per: _____

Name: _____

Title: _____

I/We have authority to bind the corporation.

**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 MARK SHEELEY
(Made June 5, 2024)**

OSLER, HOSKIN & HARCOURT LLP

100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50, Toronto ON M5X 1B8

Michael De Lellis (LSO# 48038U)

Tel: 416.862.5997

Email: mdelellis@osler.com

Jeremy Dacks (LSO# 41851R)

Tel: 416.862.4923

Email: jdacks@osler.com

Shawn Irving (LSO# 50035U)

Tel: 416.862.4733

Email: sirving@osler.com

Mark Sheeley (LSO# 66473))

Tel: 416.862.6791

Email: msheelley@osler.com

Lawyers for the Senior Secured Lenders

**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

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

and

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

Respondents

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

PROCEEDING COMMENCED AT: TORONTO

**RESPONDING MOTION RECORD OF
THE SENIOR SECURED LENDERS
(SISP Approval Order, returnable June 6, 2024)**

OSLER, HOSKIN & HARCOURT LLP
100 King Street West, 1 First Canadian Place
Suite 6200, P.O. Box 50, Toronto ON M5X 1B8

Michael De Lellis (LSO# 48038U)

Tel: 416.862.5997

Email: mdelellis@osler.com

Jeremy Dacks (LSO# 41851R)

Tel: 416.862.4923

Email: jdacks@osler.com

Shawn Irving (LSO# 50035U)

Tel: 416.862.4733

Email: sirving@osler.com

Mark Sheeley (LSO# 66473))

Tel: 416.862.6791

Email: msheeley@osler.com

Lawyers for the Senior Secured Lenders