



**Supplement to the Second Report
to Court of KSV Restructuring Inc.
as Receiver and Manager of
all partnership interests in Mizrahi
Constantine (180 SAW) LP owned by Sam M
(180 SAW) LP Inc. and all shares in the capital
of Mizrahi Constantine (180 SAW) Inc. owned
by Sam M (180 SAW) Inc.**

September 13, 2024

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COURT FILE NUMBER: CV-24-00715326-00CL

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

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

APPLICANT

- AND -

**SAM M (180 SAW) LP INC. AND
SAM M (180 SAW) INC.**

RESPONDENTS

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) 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**

**SUPPLEMENT TO THE SECOND REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER**

SEPTEMBER 13, 2024

1.0 Introduction

1. This report (the “**Supplemental Report**”) supplements the Second Report of KSV Restructuring Inc. dated August 20, 2024 (the “**Second Report**”) in its capacity as receiver and manager (the “**Receiver**”) of (i) all partnership interests in Mizrahi Constantine (180 SAW) LP owned by Sam M (180 SAW) LP Inc. (“**Mizrahi Partner**”); and (ii) all shares in the capital of Mizrahi Constantine (180 SAW) Inc. (the “**General Partner**”) owned by Sam M (180 SAW) Inc. (“**Mizrahi Shareholder**”, and together with Mizrahi Partner, the “**Respondents**”).
2. This Supplemental Report is subject to the restrictions in the Second Report. Defined terms in this Supplemental Report have the meaning provided to them in the Second Report unless otherwise defined herein.

1.1 Purposes of this Second Report

1. The purpose of this Supplemental Report is to respond to concerns regarding the Transaction raised by Sam Mizrahi and the Respondents (the “**Mizrahi Parties**”), as set out in letters dated August 23, 2024 and September 4, 2024 from Morse Shannon LLP, counsel to Mr. Mizrahi (the “**August 23 Letter**” and “**September 4 Letter**” respectively), to the Receiver’s counsel, Norton Rose. Copies of the August 23 Letter and September 4 Letter are provided in Appendix “A” and “B”, respectively.

2.0 Receiver’s Response

1. The August 23 Letter says, “[t]he Receiver’s materials make no mention of the signed Letter of Intent for the purchase of the entire project with Hyundai Asset Management (“**HAM**”) for \$220 million (Net \$200 Million), but nonetheless refers to the CBRE listing of the project last summer.” The September 4 Letter also addresses this issue, and others. On September 13, 2024, Norton Rose provided a response to the September 4 Letter, a copy of which is provided in Appendix “C”.
2. CEI has provided the Receiver with information concerning the negotiations with HAM and Daewoo Engineering & Construction (“**Daewoo**”) that took place prior to the receivership. Mr. Hiscox has advised the Receiver that several letters of intent were exchanged between the parties, but none of them were executed by both parties.
3. Mr. Hiscox has provided the Receiver with emails from January and February 2024 where HAM advised that (a) apparent misrepresentations by Mr. Mizrahi regarding the zoning status of the 180 SAW Project impaired HAM’s ability to raise capital from Korean investors, including from HAM’s partner, Daewoo, and created issues with Korean regulators concerning an investment in the 180 SAW Project; and (b) any investment by HAM in the 180 SAW Project was conditional upon final zoning approval. Mr. Hiscox has advised the Receiver that in January and February of 2024 there were significant conditions that needed to be satisfied before final zoning approval could be obtained, and certain conditions remain outstanding such that approval is not anticipated until at least December 2025. In an email dated February 5, 2024, HAM proposed an alternative transaction structure; however, that transaction never advanced. These emails are included in Appendix “D”.
4. KSV is the court-officer appointed in another proceeding involving a real estate development which is part of the same land-owners group as the 180 SAW Project. KSV has first-hand knowledge of the status of zoning and other issues affecting the 180 SAW Project through its other appointment. KSV is able to confirm Mr. Hiscox’s views concerning the timing of the approvals as a result of this mandate.
5. Mr. Hiscox advised HAM’s agent, Terry Kim of Toronto Capital, of the Sale Process in an email dated June 9, 2024. On June 19, 2024, Mr. Kim responded to Mr. Hiscox’s email. In the response, Mr. Kim confirms that HAM will not be participating in the Sale Process. The Receiver was copied on this email exchange. A copy of this email exchange is provided in Appendix “E”.
6. CBRE conducted a wide marketing in carrying out the Sale Process, as detailed in the Second Report. HAM and Daewoo had the opportunity to participate in the Sale Process but elected not to. Nothing prevented Mr. Mizrahi from contacting HAM to persuade HAM to participate in the Sale Process.

7. Mr. Mizrahi was well positioned to bid on the 180 SAW Project given his detailed knowledge of the proposed development. Nothing prevented Mr. Mizrahi from being a bidder in the Sale Process; however, he also elected to not participate.
8. CEI has advised the Receiver that (a) CEI and HAM have spoken periodically and may continue to do so; (b) no transaction has materialized from those discussions; (c) no further discussions will occur until after closing; (d) CEI has not had any discussions as to the terms of a transaction; (e) that it would prefer to have a partner for this transaction; and (f) it is not committed to a transaction with any particular party. Lastly, CEI has advised that it originally intended its investment in the 180 SAW Project to end once zoning was approved, which has still not happened, as mentioned above.

3.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver continues to recommend that the Court make an order approving the Transaction.

* * *

All of which is respectfully submitted,



**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
ALL PARTNERSHIP INTERESTS IN MIZRAHI
CONSTANTINE (180 SAW) LP OWNED BY SAM M (180 SAW) LP INC. AND
ALL SHARES IN THE CAPITAL OF MIZRAHI CONSTANTINE (180 SAW) INC.
OWNED BY SAM M (180 SAW) INC.**

Appendix “A”

August 23, 2024

BY EMAIL Jennifer.stam@nortonrosefullbright.com

Jennifer Stam
Norton Rose Fullbright Canada LLP
222 Bay Street, Suite 3000
P.O. Box 53
Toronto ON M5K 1E7

Dear Ms Stam,

Re: Mizrahi (128 Hazelton) Inc. et al
Our file no.: 50190

Our client maintains that the Receiver's motion on 128 Hazelton and 180 Saw requires much more than one hour to address and cannot reasonably proceed on August 30.

Information has been sought on the proposed transactions for many weeks. Our client has significant concerns over the proposed transactions on 128 Hazelton for units that were not marketed. Our client will take the position the units are being sold at valuations far below market value and are prejudicial to the estate and its stakeholders and unfairly prefers CEI interests.

Our client has similar concerns about the proposed 180 Saw transaction. The Receiver's materials make no mention of the signed Letter of Intent for the purchase of the entire project with Hyundai Asset Management for \$220 million (Net \$200 Million), but nonetheless refers to the CBRE listing of the project last summer. We have previously sought information on the status of any negotiations for the sale of the entirety of 180 Saw and your client refused to provide it or obtain such information from CEI.

Both of these matters require a fulsome response by our clients, and we require time to deliver responding materials. There is no urgency to these transactions and a one-hour motion is insufficient to address the issues raised.

Finally, please advise why representatives of Alvarez & Marshal and Goodmans were included in the service list for your materials.

Yours very truly,

J.R. Morse

Jerome R. Morse
DT/vs

Cc: Steven Weisz
Michael Osborne

Appendix “B”

September 4, 2024

BY EMAIL Jennifer.stam@nortonrosefullbright.com

Jennifer Stam
Norton Rose Fullbright Canada LLP
222 Bay Street, Suite 3000,
P.O. Box 53,
Toronto, Ontario M5K 1E7

Dear Ms. Stam,

Re: Mizrahi (128 Hazelton) Inc. et al
Our file no.: 50190

We write on behalf of Mr. Mizrahi and with the concurrence of the Respondents to ask the Receiver questions referable to the Second Report of the Receiver for both the 128 Hazelton and 180 Saw matters and the proposed transactions at issue therein. Please provide the Receiver's responses to these questions as soon as possible so that we may assess the time required to prepare and finalize our clients' responding submissions.

128 Hazelton

The Second Floor Units

1. Does the Receiver agree that the Second Floor Units are completed and no further construction is required on those units?
2. Does the Receiver agree that the Second Floor Units are zoned for both residential and commercial use?
3. Does the Receiver agree that it would be in the best interests of the Debtor for the Second Floor Units to sell expeditiously but at a price in excess of \$3.196 million, being the proposed purchase price by CEI?
4. Will the Receiver entertain offers to purchase the Second Floor Units in excess of \$3.196 million?

5. What investigation did the Receiver undertake to determine the market value of the Second Floor Units other than to receive the Simon Appraisal provided by CEI?
6. Did the Receiver review the communications between CEI and RBC Wealth Management and Simon with respect to the request for the Simon Appraisal?
7. With respect to the Receiver's recommendation set out in s. 6.1 1(c) of the Second Report, what is the Receiver's position on what amount the purchase price for the Second Floor Units would need to exceed the proposed purchase price in order to justify a marketing process?
8. Has the Receiver discussed a marketing process for the Second Floor Units with any real estate brokerage? If so, which ones and when?

Unit 403

9. Does the Receiver agree that Unit 403 is complete and no further construction is required?
10. The proposed purchaser of Unit 403 has agreed to pay \$2.45 million for the unit pursuant to the 403 Assignment Agreement. Please confirm what amounts will be credited to the Debtor as a result of this transaction, assuming it closes.
11. If the answer to question 10 is an amount less than \$2.45 million, advise where the remaining funds will be directed.
12. The proposed transaction for Unit 403 contemplates the assignment of a parking spot to CEI. What investigations if any did the Receiver undertake to determine the market value of the parking spot?
13. Is the Receiver prepared to agree that the value of the parking spot assigned should be credited to the Debtor?

180 Saw

1. Is the Receiver aware that CEI was party to a Letter of Intent with Hyundai Asset Management for the sale of the entire 180 Saw project?
2. Has the Receiver been provided with and reviewed a copy of this Letter of Intent?
3. If so, why is there no reference to the Letter of Intent and the proposed transaction for the sale of 180 Saw in the Receiver's report?
4. If not, why has the Receiver not made inquiries into the proposed transaction with Hyundai Asset Management for the sale of the entire 180 Saw project?

5. Does the Receiver agree that a proposed transaction for the sale of the entirety of the 180 Saw project is relevant to the valuation of the partnership interest subject to the proposed transaction?
6. Has the Receiver made any inquiries of CEI as to the status of any negotiations with Hyundai Asset Management or any other third party for the sale of the entire project?
7. Will the Receiver advise as to what information and documentation it has in its possession referable to the potential sale of the entirety of the 180 Saw project?
8. If so, will the Receiver agree to provide all such information and documentation to our clients? If not, will the Receiver produce some, but not all of the information and documentation to our clients? If so, what will the Receiver produce and what will it refuse to produce?

The information with respect to the potential sale of the entirety of the 180 Saw project is required for our clients to properly respond to the Receiver's motion. Should there be a refusal to provide the information sought, we will require an examination of a representative of CEI pursuant to Rule 39.03.

Yours very truly,

Jerome R. Morse

Jerome R. Morse
DT/vs

Cc: Steven Weisz
Michael Osborne

Appendix “C”

September 13, 2024

Sent By Email

Jerome R. Morse
Morse Shannon LLP
133 Richmond Street West, Suite 501
Toronto, ON M5H 2L3

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7 Canada

F: +1 416.216.3930
nortonrosefulbright.com

Jennifer Stam
+1 416.202.6707
jennifer.stam@nortonrosefulbright.com

Our reference

Dear Mr. Morse:

RE: Mizrahi (128 Hazelton) Inc.: Court File No. CV-24 715321-00CL

AND RE: Sam M (180 SAW) LP Inc. and Sam M (180 SAW) Inc.: Court File No. CV-24 715326-00CL

We are in receipt of your letter dated September 4, 2024. As a preliminary matter, our view is that several of the questions set out below are based on inaccurate premises and assumptions. Nonetheless, we have set out responses below.

Mizrahi (128 Hazelton Inc.)

Capitalized terms used in this section and not otherwise defined have the meaning given to them in the Second Report of the Receiver dated August 20, 2024 (the “**Second Report**”) and the supplement to the Second Report dated August 29 (the “**Supplement**”) both filed in Court File No. CV-24-00715321-00CL.

The Second Floor Units

1. Does the Receiver agree that the Second Floor Units are completed and no further construction is required on those units?

As set out in Section 6.0.1 of the Second Report, the Second Floor APAs provide that there is no further work to be done by the vendor.

2. Does the Receiver agree that the Second Floor Units are zoned for both residential and commercial use?

A description of the zoning is provided in the Simon Appraisal, which is provided in the Second Report.

3. Does the Receiver agree that it would be in the best interests of the Debtor for the Second Floor Units to sell expeditiously but at a price in excess of \$3.196 million, being the proposed purchase price by CEI?

The Receiver believes that this question is flawed because it ignores the current status of the Second Floor Units and assumes the Receiver is free to disclaim the existing Second Floor APAs without issue.

As set out in the Second Report and the Receiver’s factum, the Second Floor APAs were entered into prior to the receivership and were substantially performed by the time the receivership order was

granted. As set out in the answer to Question 1, there is no work left to perform on the Second Floor Units and CEI is taking them as is. In fact, CEI is already occupying the Second Floor Units.

While receivers may disclaim pre-sale contracts with Court approval, the facts of each case influence whether disclaimer is appropriate and available. In this case, as the Second Floor Units are complete and being occupied by their purchaser, the Receiver does not view disclaimer as appropriate. At the very least, the Receiver anticipates that any attempt to disclaim the Second Floor APAs would be vigorously opposed by CEI, which would generate additional costs of the Receivership, potentially for no benefit.

*In this case, it would seem that CEI would likely have a strong case to assert specific performance. In the context of receiverships, case law suggests that specific performance is available in respect of a contract that requires “no further work or services to be performed or provided by the receiver and manager”.¹ In particular, the Court in *Centurion* held that where a project had been completed and the units were sold and occupied, specific performance was available particularly given that the “[t]he only material steps remaining [were] for title to be conveyed to [the Purchaser] and any project mortgages discharged”.²*

Further, even if the Receiver could disclaim the Second Floor APAs, doing so would only be sensible if relisting the Second Floor Units would be likely to lead to a materially higher purchase price than what is contemplated by the Second Floor APAs. As set out in the Second Report, the Receiver has no basis to believe that if it were to re-market the Second Floor Units, it would attract a materially higher price for those units. The appraisal included in the Second Report, which was obtained by Royal Bank of Canada (“RBC”), shows an estimated value of \$3.2 million for the Second Floor Units.

The Simon Appraisal was provided for CEI’s lender, RBC. The Receiver does not believe that the values in the appraisal was somehow contrived, as inferred by the Respondents. The Receiver believes that the Simon Appraisal provided adequate evidence on which the Receiver could rely; however, in order to obtain a second opinion, the Receiver has also since asked CBRE for an opinion of fair market value (“OPV”) from CBRE. The OPV provided by CBRE indicates that the estimated opinion as to value for the Second Floor Units is in the range of \$3,050,000- \$3,250,000. This is consistent with the Simon Appraisal. A copy of the OPV will be appended a supplemental report of the Receiver.

Additional considerations as to whether any greater value could be obtained include (a) the cost of the litigation relating to a disclaimer; (b) the time and expense of marketing the Second Floor Units; (c) the unique nature of the units which have been purpose-built for CEI as office space and as a single open unit; (d) the significant cost converting the premises to a residential use, as inferred by the question; (e) the current distressed state of Toronto’s condominium market; (f) the negative publicity which the 128 Hazelton project has drawn as a result of the Mizrahi receivership and Mr. Mizrahi’s other well-publicized challenges on various projects; (g) the amount of time other residential condominium units available for sale at 128 Hazelton have been listed for sale. No evidence has been provided to the Receiver to suggest that disclaiming the Second Floor APAs would result in a materially better outcome than completing the recommended transaction for these units.

¹ This principle has been accepted by the Ontario Superior Court in a number of cases, including in [Re 1565397 Ontario Inc.](#), 2009 CanLII 32257; [Firm Capital Mortgage Fund Inc. v. 2012241 Ontario Ltd.](#), 2012 ONSC 4816; and [Centurion Mortgage Capital Corp. et al. v. Brightstar Newcastle Corp et al.](#), 2022 ONSC 1059 [[Centurion](#)].

² *Centurion* at para 35.

4. Will the Receiver entertain offers to purchase the Second Floor Units in excess of \$3.196 million?

See previous answer. The Receiver has no basis to be able to entertain offers given the existence of the Second Floor APAs.

5. What investigation did the Receiver undertake to determine the market value of the Second Floor Units other than to receive the Simon Appraisal provided by CEI?

Given all of the circumstances as outlined in the Second Report, and as also set out in the response to Question 3, the Receiver was comfortable with the Simon Appraisal as one of the elements leading to making its recommendation.

6. Did the Receiver review the communications between CEI and RBC Wealth Management and Simon with respect to the request for the Simon Appraisal?

No. The Receiver would have no reason to request this; however, it appears that the Respondents are questioning the professionalism and independence of Simon. The Receiver does not believe it would be in the interest of Simon to understate the value of the Second Floor Units to the detriment of its client, RBC.

7. With respect to the Receiver's recommendation set out in s. 6.1 1(c) of the Second Report, what is the Receiver's position on what amount the purchase price for the Second Floor Units would need to exceed the proposed purchase price in order to justify a marketing process?

See above.

8. Has the Receiver discussed a marketing process for the Second Floor Units with any real estate brokerage? If so, which ones and when?

The Receiver has not discussed any marketing process for the Second Floor Units given its analysis above as set out in the Second Report and Question 3 above.

Unit 403

9. Does the Receiver agree that Unit 403 is complete and no further construction is required?

Yes. See paragraph 7.0.1 of the Second Report.

10. The proposed purchaser of Unit 403 has agreed to pay \$2.45 million for the unit and one parking spot pursuant to the 403 Assignment Agreement. Please confirm what amounts will be credited to the Debtor as a result of this transaction, assuming it closes.

*The full amount of the purchase price net of HST, commissions, fees and special assessments will be paid to 128 Hazelton, however, CEI will receive on closing: (a) credit for the deposits paid under the original APS (~\$442,000) ("**Deposits**"); (b) an adjustment based on the original purchase price of \$2.208mm to \$2.450mm; and (c) the parking spot that the Unit 403 Purchaser is assigning to CEI, on which the Receiver has estimated a \$100,000 value based on the Simon Appraisal and discussions with CBRE.*

The Receiver believes that the credit for the Deposits is appropriate in the circumstances given that CEI had an existing APS in respect of a finished unit on which it could have made an argument for specific performance. Further, absent a credit for the Deposits, CEI has advised it would make a claim against Aviva which would potentially increase priority claims in the estate and/or against the guarantors of the Aviva facility, who the Receiver understands are Mr. Mizrahi and Mr. Hiscox.

In respect of the balance of the amounts referenced above, CEI has agreed that it will provide a release of its secured debt in an amount equal to items listed in (b) and (c) above.

11. If the answer to question 10 is an amount less than \$2.45 million, advise where the remaining funds will be directed.

See above.

12. The proposed transaction for Unit 403 contemplates the assignment of a parking spot to CEI. What investigations if any did the Receiver undertake to determine the market value of the parking spot?

The Receiver attributes a value of approximately \$100,000 to the parking spot, which is based on the Simon Appraisal and discussions with CBRE. Although the Simon Appraisal estimated the value of the parking spots in respect of the Second Floor Units, the Receiver believes that the valuation is reasonable estimation of value given that the parking spots for 403 and for the Second Floor Units are of comparable type (i.e. single, not tandem spots)

13. Is the Receiver prepared to agree that the value of the parking spot assigned should be credited to the Debtor?

Yes (\$100,000) – see above. CEI has agreed to a reduction in its secured debt in this amount.

SAM M (180 SAW) LP and SAM M (180 SAW) Inc.

Capitalized terms used in this section and not otherwise defined have the meaning given to them in the Second Report of the Receiver dated August 20, 2024 (the “**Second Report**”) filed in Court File No. CV-24-715326-00CL.

14. Is the Receiver aware that CEI was party to a Letter of Intent with Hyundai Asset Management for the sale of the entire 180 Saw project?

The Receiver has been advised by CEI that while there were a number of letters of intent exchanged with Hyundai Asset Management (“HAM”), no letter of intent was ever executed by both parties.

15. Has the Receiver been provided with and reviewed a copy of this Letter of Intent?

The Receiver has been provided a copy of a Letter of Intent dated November 21, 2023 that was signed by Robert Hiscox on behalf of CEI and Mr. Mizrahi on behalf of Mizrahi Constantine (180 SAW) LP and Sam M (180 SAW) LP Inc. It was not countersigned by the purchaser entities.

16. If so, why is there no reference to the Letter of Intent and the proposed transaction for the sale of 180 Saw in the Receiver’s report?

Given that the prospective purchaser did not participate in the Sale Process, it was not relevant to the Receiver’s recommendation to approve the Stalking Horse APS.

On June 9, 2024, HAM was advised by email from Mr. Hiscox (i.e., in advance of the Sale Process launch) of the SAW Sale Process in the receivership. On June 19, 2024, HAM’s agent confirmed by email that HAM would not be participating in that process. The Receiver was copied on these emails.

The Receiver has also since been advised and provided emails showing that misrepresentations by Mr. Mizrahi regarding the zoning status of the 180 impaired HAM’s ability to raise capital from Korean investors and created issues with Korean regulators concerning an investment in the 180 Saw Project.

The Receiver's supplemental report will provide the above referenced correspondence.

17. If not, why has the Receiver not made inquiries into the proposed transaction with Hyundai Asset Management for the sale of the entire 180 Saw project?

HAM had the opportunity to participate in the Sale Process. It was advised of the Sale Process and it advised that it would not be participating.

18. Does the Receiver agree that a proposed transaction for the sale of the entirety of the 180 Saw project is relevant to the valuation of the partnership interest subject to the proposed transaction?

This was not the asset available for sale in the Sale Process, so the Receiver does not understand the relevance of the question. In any event, nothing precluded a buyer from making an offer for the entirety of the 180 SAW Project.

Given there was no proposed transaction for the sale of the entirety of the 180 Saw Project, the most relevant information as to the valuation of the proposed partnership interests is the testing of the market through the Court approved Sale Process, which did not yield any bids at all, much less any bid higher or better than the stalking horse bid submitted by CEI.

19. Has the Receiver made any inquiries of CEI as to the status of any negotiations with Hyundai Asset Management or any other third party for the sale of the entire project?

The Receiver has been advised during the receivership that there have been no substantive discussions with Hyundai or its representatives. The Receiver followed up again in this regard on August 30, 2024.

CEI has advised the Receiver that (a) CEI and HAM have spoken periodically and may continue to do so; (b) no transaction has materialized from those discussions; (c) no further discussions will occur until after closing; (d) CEI has not had any discussions as to the terms of a transaction; (e) that it would prefer to have a partner for this transaction; and (f) it is not committed to a transaction with any particular party. Lastly, CEI has advised that it originally intended its investment in the 180 SAW Project to end once zoning was approved, which has still not happened.

20. Will the Receiver advise as to what information and documentation it has in its possession referable to the potential sale of the entirety of the 180 Saw project?

The Receiver does not have any such information, nor does the Receiver understand what this has to do with the Court-approved Sale Process.

21. If so, will the Receiver agree to provide all such information and documentation to our clients? If not, will the Receiver produce some, but not all of the information and documentation to our clients? If so, what will the Receiver produce and what will it refuse to produce?

N/A

Yours truly,



Jennifer Stam
Partner

Appendix “D”

Robert HISCOX

From: 강재욱 <jw.kang@hyundaiam.com>
Sent: January 30, 2024 8:56 AM
To: robert.hiscox; Chris Donlan
Cc: Terry Kim; 계봉정
Subject: Re: Re: Fw: CONFIRMATION FROM Loopstra Nixon Required RE: STATUS REQUEST RE: 180 Steeles Ave. West ZONING & COST SHARING AGREEMENT UPDATE?

Dear Robert,

Further to our call on this morning (Korea time), I will explain the current status in Korea about ZBLA's matter and please find below our proposed transaction structure in light of the recent issues surrounding the timing of the final zoning by-law being released and coming into force:

* Current Status in Korea

In order to attract "Project 180" investment in Korea as an Asset Management Company from September, we have stated that all ZBLA approval has been completed in relation to the investment declaration and investment memorandum provided to the Korean supervisory authority and investors in accordance with relevant laws and standards, which we have been our work in accordance with the data and statements provided by the seller Sam Mizrahi. However, in a conference call on the 18th of Jan., Sam and his lawyer confirmed that ZBLA, which was verbally approved by the court in August 2023, was conditional approval, not the final version, and the trust in the counterparty has been damaged, and the problem caused by this is very large.

Above all, the investment declaration and memorandum have provided are different from the facts concerning ZBLA, and this ZBLA is a very major factor in investment, so if investors and regulators find that they have attracted investments in the future with incorrect information, we will be held legally responsible. Fortunately, the investment could be clarified and corrected before it was actually made, which did not develop into a bigger problem, but the Korean regulators and compliance have instructed to withdraw the funds at least after obtaining all the development-related permits to protect investors.

As you may know, there have been cases of loss of investment due to delays in approval in overseas real estate development projects invested by Korean investors in the past, so compliance has no choice but to follow the instruction of the regulators after discussion with them.

*** Proposal of Investment based on ZBLA's matter**

- We will utilize a blind fund structure where all Korean investors will commit to providing capital within 20 business days of a capital call notice from us;
- we will set a reasonable capital drawdown period (to be discussed and determined) within the definitive agreements for the project, during which capital call notice can be sent from us;
- Once the final zoning by-law has been released and is confirmed to be in force and provided that it is within the capital drawdown period, we will immediately send a capital call notice to all Korean investors to fund within 20 business days of our capital call notice;

and

- Once the definitive agreement with the capital drawdown concept has been signed, any costs incurred by the vendor in connection with demolition, excavation and shoring of the project will be repaid either from the project financing loan for Phase 1 of the project or from the capital drawn from all Korean investors (shared on a pro rata basis amongst the Korean investors).

Please provide us with yours thoughts on the above as soon as you can. We believe that the structure above provides a good solution to the issue surrounding the zoning by-law.

Many thanks

Jaewook Kang

----- 원본 메시지 -----

보낸 사람: 강재욱 <jw.kang@hyundaiam.com>

받는 사람: Robert Hiscox <Robert.hiscox@constantineinc.com>, Chris Donlan <Chris.donlan@constantineinc.com>

참조: Terry Kim <terry@torontocapital.com>, 계봉정 <kyebongjeong@hyundaiam.com>

날짜: 2024-01-29 13:55:49

제목: Re: Fw: CONFIRMATION FROM Loopstra Nixon Required RE: STATUS REQUEST RE: 180 Steeles Ave. West ZONING & COST SHARING AGREEMENT UPDATE?

Hi Robert,

FYI. I got an email from Sam this morning and reply to him as below.

I forward to my lawyer this email and will check with our lawyer whether Sam's email is true or not.

Many thanks

Jaewook Kang

----- 원본 메시지 -----

보낸 사람: Sam Mizrahi <sam@mizrahidevelopments.ca>

받는 사람: 강재욱 <jw.kang@hyundaiam.com>

참조: Terry Kim <terry@cullinaninvestment.com>

날짜: 2024-01-29 12:11:44

제목: Re: CONFIRMATION FROM Loopstra Nixon Required RE: STATUS REQUEST RE: 180 Steeles Ave. West ZONING & COST SHARING AGREEMENT UPDATE?

Jaewook,

The final version of the ZBLA is already out and approved as per the written decision of January 18, 2024

There is no further changes or written decisions to the January 18, 2024 ZBLA.

Everything is already in the current written and approved ZBLA including all conditions no different to any other ZBLA.

1. Correct
2. Not correct or accurate. Yes we can commence excavation and shoring.
3. Correct. which is already stated that the 3 pre conditions required as per the Jan 18, 2024 written ZBLA.

The 3 conditions being:

1. A member in good standing with the LOG - already confirmed
2. By laws signed - draft by law already finished and ready for signatures
3. Infrastructure agreement signed with LOG - agreement being finalized with LOG

Best wishes,



Sam Mizrahi
President

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4210

C. 416.818.5288

F. 1.866.300.0219

E. Sam@MizrahiDevelopments.ca

On Jan 28, 2024, at 8:44 PM, 강재욱 <jw.kang@hyundaiam.com> wrote:

Hi Sam,

Your lawyer's advice and our lawyer's advice to me are not very different, but if I check it out correctly

1. Demolition can be carried out regardless of ZBLA.
2. Excavation and foundation work may be permitted at the discretion of the person in charge of Vaughan City. However, such approval is not based on legal grounds. As you said, a nearby site has been approved, so we are the same, but it would be good to interpret this as a story that there is a high possibility.
3. Installation of footings and construction of above-grade structures must have a final version of the ZBLA.

(Legally mandatory)

In this regard, I have been working on the premise that the ZBLA we received in August was the final version, but it was confirmed that it was not legally the final version, so I am currently facing a problem with Korean investors and supervisory authorities.

Realistically, no one can predict until the final version of ZBLA comes out, so there is no good solution to this. However, we are trying to solve this problem, but there is currently no visible solution.

Many thanks

Jaewook Kang

PS: I wanted to proceed with the Ohio investment that we visited last December, but the investor replied that they could not decide to invest in the current situation where Project 180 is being delayed, and the closing time is too tight to find additional investors, so it will be difficult to invest

----- 원본 메시지 -----

보낸 사람: Sam Mizrahi <sam@mizrahidevelopments.ca>

받는 사람: 강재욱 Jaewook <jw.kang@hyundaiam.com>, Terry Kim <terry@cullinaninvestment.com>

날짜: 2024-01-29 09:13:24

제목: Fwd: CONFIRMATION FROM Loopstra Nixon Required RE: STATUS REQUEST RE: 180 Steeles Ave. West ZONING & COST SHARING AGREEMENT UPDATE?

FYI



Sam Mizrahi
President

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F. 1.866.300.0219

E. Sam@MizrahiDevelopments.ca

Begin forwarded message:

From: "Brendan P. Ruddick" <bruddick@ln.law>

Date: January 28, 2024 at 6:19:48 PM EST

To: "robert.hiscox" <robert.hiscox@constantineinc.com>, "Quinto M. Annibale"

<QAnnibale@loonix.com>

Cc: Jonny Cracower <jonny@mizrahidevelopments.ca>, Sam Mizrahi <sam@mizrahidevelopments.ca>, Chris Donlan <chris.donlan@constantineinc.com>, David Ho <david.ho@constantineinc.com>

Subject:RE: CONFIRMATION FROM Loopstra Nixon Required RE: STATUS REQUEST RE: 180 Steeles Ave. West ZONING & COST SHARING AGREEMENT UPDATE?

Hi Robert,

Sam is correct that the conditions for release of the final Zoning Order do not need to be satisfied in order for demolition, shoring, and excavation permits to be obtained.

Given that the current use of the property is commercial, a demolition permit can be granted at any time in reliance on the existing zoning.

Excavation and any associated shoring permits, meanwhile, can be obtained for the purpose of undertaking remediation of contaminated soils identified through the Phase Two Environmental Site Assessment in advance of the ZBA coming into effect. A copy of the Phase Two Environmental Site Assessment can be accessed

here:  [Phase Two Environmental Site Assessment for 180 SAW.pdf](#)

A similar approach was used for the development of 1 Bloor West, where shoring and excavation permits were obtained for soil remediation in advance of the site-specific zoning by-law coming into force. I believe this was also referenced by Sam during the call.

The scope and extent of the excavation and shoring works that can be undertaken prior to the final Zoning Order being issued will be determined by the proponent and soils engineer in consultation with the City through the permitting process.

Brendan

Brendan P. Ruddick

Partner | Municipal, Land Use Planning & Development | Loopstra Nixon LLP

☎ 416.748.5126 | 📱 416.919.4662

✉ bruddick@LN.Law

From: robert.hiscox <robert.hiscox@constantineinc.com>

Sent: Friday, January 26, 2024 1:56 PM

To: Quinto M. Annibale <QAnnibale@loonix.com>; Brendan P. Ruddick <bruddick@LN.Law>

Cc: Jonny Cracower <jonny@mizrahidevelopments.ca>; Sam Mizrahi <sam@mizrahidevelopments.ca>; Chris Donlan <chris.donlan@constantineinc.com>; David Ho <david.ho@constantineinc.com>

Subject: CONFIRMATION FROM Loopstra Nixon Required RE: STATUS REQUEST RE: 180 Steeles Ave. West ZONING & COST SHARING AGREEMENT UPDATE?

Hi Brendan and Quinto:

On the conference call that we had together on Thursday Jan 18th with the Korea investors and their lawyers, Sam stated that under the current written zoning decision issued by the City of Vaughan last week that the project will be able to apply and be granted the following permits without having to satisfy the City's CPs outlined in the decision:

- 1.Demo permit
- 2.Shoring permit and
- 3.Excavation permit

Sam stated on the call that the Project can demo the site, do the excavation on the site, and do the shoring without having to satisfy the CP s in the current decision.

Please confirm that Sam's statements are in the opinion of your firm the correct. Can you please provide the name and contact information for the City of Vaughan planner for this project.

Further, can you please get written confirmation from the City that confirms the above statements made by Sam on the call.

I appreciate your attention to this matter.

Many thanks,

Robert

CONSTAN

ROBERT HISCOX | CONSTANTINE ENTERPRISES INC. | Co-founder & Chief Executive Officer

robert.hiscox@constantineinc.com | +1.416.266.0000 |

128 Hazelton Avenue, Suite 201, Toronto, Ontario, Canada M5R 2E5

From: Quinto M. Annibale <QAnnibale@loonix.com>

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I have been told it will be issued today

Q

Quinto M. Annibale

Partner | Municipal, Land Use Planning & Development | Loopstra Nixon LLP

<image002.png> 416.748.4757 | <image003.png> 416.917.5563

<image004.png> QAnnibale@loonix.com

* Quinto M. Annibale Professional Corporation

100 New Park Place
Suite 303, Vaughan, ON
Canada L4K 0H9
www.loopstrafox.com



Consistently Ranked as One of the Top Development Law Firms in the GTHA by Novae Res Urbis.

Mansfield

Certified 2022-2

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costs of the pedestrian tunnel that includes a connection to the property? Please advise.

I appreciate hearing back on the above ASAP.

Thank you,

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<image001.jpg>

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128 Hazelton Avenue, Suite 201, Toronto, Ontario, Canada M5R 2E5

From: Jonny Cracower <jonny@mizrahidevelopments.ca>

Sent: Thursday, November 30, 2023 8:22 PM

To: Frank Mondelli - Toronto Capital <frank@torontocapital.com>

Cc: Sam Mizrahi <sam@mizrahidevelopments.ca>; Chris Donlan

<chris.donlan@constantineinc.com>; Terry

<terry@torontocapital.com>; robert.hiscox

<robert.hiscox@constantineinc.com>

Subject: Re: 180 Steeles Ave. West

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Sincerely,

Jonny Cracower



Jonny Cracower
Vice President Development
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
D. 613.296.7890
E. Jonny@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

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<image002.jpg>

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<chris.donlan@constantineinc.com>
<chris.donlan@constantineinc.com>

Sent: Sunday, November 26,
2023 1:49 PM
To: Frank Mondelli - Toronto
Capital
<frank@torontocapital.com>
Cc: Sam Mizrahi
<sam@mizrahidevelopments.ca>;
Terry
<terry@torontocapital.com>;
robert.hiscox
<robert.hiscox@constantineinc.com>
Subject: Re: 180 Steeles Ave.
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2) I have received the latest Cushman report. I'm reviewing it this afternoon and will send it today.

We'll work with Sam to get answers on the remaining items tomorrow.

Thanks,

CMD



CONSTANTINE ENTERPRISES INC.

CHRIS DONLAN | Chief Financial Officer | www.constantineinc.com

chris.donlan@constantineinc.com | +1.416.543.9327

128 Hazelton Ave., Suite 201, Toronto, Ontario, Canada M5R 2E5

On Nov 26, 2023,
at 1:17 PM, Frank Mondelli - Toronto Capital <frank@torontocapital.com> wrote:

We are helping Jaewook deal with the lawyers.

1 – Leases

Does the property manager have the full package of all leases and renewals?

Please provide contact information for the property manager and authorization to contact them directly.

The lawyers have commented – “There are 45 tenants and they only have 15 leases”

This should be an easy fix with the property manager.

HAM's understanding is that all tenants have been dealt with except for Sleep Country and Dollarama.

We need documentation

on each tenant
and how they
have been dealt
with to exit the
property.

2 – Cushman
report/analysis

We need a copy
of this final
report.

3 – Reliance
Letters

The new project
entity will require
all consultants
and lawyers to
sign reliance
letters.

This is pretty
obvious – but we
should start
getting these in
place.

4 –
Environmental

According to Sam
's email of
November 24,
2023 – there has
been no further

environmental
work done since
2019-2020.

It would have
been nice to have
the delineation of
the
contamination
and the cost
estimate for the
remediation.

At this point, we
need your
comments on the
environmental
situation

1. That you
have
budgeted
\$XX for
remediati
on
2. You will
provide
reps and
warranties
that the
remediati
on will
not
exceed
\$XX

The lawyers are
looking for some
guidance as to
how the

environmental situation is being mitigated.

HAM just wants comfort that this is not going to be some ridiculous liability.

Also, some commentary on the Record of Site Condition – when will this be done.

5 – Yonge Steeles Corridor
Secondary Plan
Landowners Group

1. Provide some commentary that the Trustee is aware of the transaction and will consent to the new entity

2. Obtain some status letter – stating that the existing owner is up to date and there no outstanding liabilities to the Group

3. If available, can they provide the requirements going forward.

<image001.jpg>

From: 강재욱
To: robert.hiscox
Cc: 계봉정 차장 (GIB2팀:현대자산운용)
Subject: RE: FW: STATUS REQUEST RE: 180 Steeles Ave. West ZONING & COST SHARING AGREEMENT UPDATE?
Date: January 20, 2024 8:40:34 PM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)

Hi Robert,

As we know, the ZBLA with no conditions is the most important CP of this transaction. We emphasized this CP at the beginning of the transaction, and seller assured us that it would be approved with no conditions.

For five months, we were only informed by the seller and their lawyer that ZBLA was orally approved and that the written document with final approval would be delivered imminently, and we believed it.

After the Zoom call on Thursday, we discovered that the ZBLA is not finalized yet, and the infrastructure agreement was one of the CPs for the final release of the ZBLA. The most important fact was that we do not have the final ZBLA, and the final approval date is unknown.

It was shocking to us and this is problematic, and the seller's side never informed us of the fact until our lawyer investigated and discovered it.

In the Zoom call, it seemed Sam and his lawyer were already aware of the states of ZBLA, too, but did not disclose it to us in advance.

Frankly speaking, we hoped our lawyer's comment was wrong before the Zoom call, but it was correct, and everyone on our side is in a bit of a panic due to what we discovered on Thursday.

All that Hyundai AM and Korean investors have approved based on the information that the seller provided. Also Daewoo has been preparing the investment committee based on our previous information so far.

In November 2023, as you know, Daewoo IC meeting was held, and they did not approve and postponed the 180 Steeles project due to the missing document of the final ZBLA.

After that, we have been arguing and complaining to Daewoo that ZBLA was already approved, and that 180 Steeles project should be approved immediately.

The new information we got on Thursday hurts our credibility with Daewoo greatly.

Also, we have reported to the Korean financial supervisory authority that oral approval is final approval in relation to ZBLA and has obtained legal approval for K-fund's reporting of overseas investment.

However, it appears we provided the wrong information to our investors and supervisory which can cause serious damage to our reputation and duty.

So, yesterday we discussed this serious matter with Gowling and L&K and internal compliance, no appropriate solution was found, and we decided to continue the discussion and to inform this issue to Korean supervisory and with our investors.

In confronting this challenge with Korean investors and supervisory and it seems substituting this matter with R&W may not be sufficient to take care of it.

Indeed I am working hard internally and externally to find the solution with our lawyers, compliance and my chairman, and discuss it with Toronto Capital over the weekend, and let you know the our answer.

Many thaks

Jaewook Kang

PS : I will contact you after internal meeting on Monday (Korea time).

----- 원본 메시지 -----

보낸 사람: robert.hiscox <robert.hiscox@constantineinc.com>

받는 사람: JAEWOOK 강재욱 <jw.kang@hyundaiam.com>,EMMA 계봉정

<kvebongjeong@hyundaiam.com>

날짜: 2024-01-18 05:09:35

제목: FW: STATUS REQUEST RE: 180 Steeles Ave. West ZONING & COST SHARING AGREEMENT UPDATE?

FYI – let's see.

<image001.jpg>

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128 Hazelton Avenue, Suite 201, Toronto, Ontario, Canada M5R 2E5

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<image002.png> [416.748.4757](tel:416.748.4757) | <image003.png> [416.917.5563](tel:416.917.5563)

<image004.png> QAnnibale@loonix.com

* [Quinto M. Annibale Professional Corporation](#)

<image005.jpg> 100 New Park Place
Suite 303, Vaughan, ON
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www.loopstranixon.com

<image006.png>

Consistently Ranked as One of the Top Development Law Firms in the GTHA by Novae Res Urbis.

<image007.png> <image008.png>

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This is pretty obvious – but we should start getting these in place.

4 – Environmental

According to Sam’s email of November 24, 2023 – there has been no further environmental work done since 2019-2020.

It would have been nice to have the delineation of the contamination and the cost estimate for the remediation.

At this point, we need your comments on the environmental situation

1. That you have budgeted \$XX for remediation
2. You will provide reps and warranties that the remediation will not exceed \$XX

The lawyers are looking for some guidance as to how the environmental situation is being mitigated.

HAM just wants comfort that this is not going to be some ridiculous liability.

Also, some commentary on the Record of Site Condition – when will this be done.

5 – Yonge Steeles Corridor Secondary Plan Landowners Group

1. Provide some commentary that the Trustee is aware of the transaction and will consent to the new entity
2. Obtain some status letter – stating that the existing owner is up to date and there no outstanding liabilities to the Group
3. If available, can they provide the requirements going forward.



<image001.jpg>

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Appendix “E”

From: terry@torontocapital.com <terry@torontocapital.com>

Sent: June 19, 2024 7:39 PM

To: 'Robert HISCOX' <robert.hiscox@constantineinc.com>

Cc: Bobby Kofman <bkofman@ksvadvisory.com>

Subject: RE: 180 SAW - Receiver Appointed

Dear Robert,

I trust this message finds you well.

Thank you for informing me about the recent developments concerning the receivership of Sam M (180) LP Inc. ("Mizrahi") and the upcoming sale process for Mizrahi's 1/3 interest in Mizrahi Constantine (180 SAW) LP ("MC LP").

After careful consideration and discussions with our investors, we have decided that we cannot proceed with bidding for the receivership at this time. The current circumstances do not align with our strategic priorities and investment criteria.

I appreciate you considering us for this opportunity and providing detailed information about the process. Should our position change or should we identify any interested parties in the future, I will not hesitate to reach out.

Thank you again for considering us, and I look forward to staying in touch.

Best regards,

Terry

From: Robert HISCOX <robert.hiscox@constantineinc.com>

Sent: Sunday, June 9, 2024 1:33 PM

To: terry <terry@torontocapital.com>

Cc: Robert HISCOX <robert.hiscox@constantineinc.com>; Bobby Kofman <bkofman@ksvadvisory.com>

Subject: 180 SAW - Receiver Appointed

Hi Terry:

I trust this message finds you well.

I am writing to inform you that, as of last Tuesday, KSV Restructuring Inc. has been appointed by court order as receiver and manager of, inter alia, Sam M (180) LP Inc. ("Mizrahi"), which owns a 1/3 interest in Mizrahi Constantine (180 SAW) LP ("MC LP"), which owns the 180 Steeles Real Property. Information concerning the receivership will be available on KSV's website (www.ksvadvisory.com).

To provide context, Constantine Enterprises Inc. ("CEI") owns a 2/3 interest in the MC LP, while Mizrahi's 1/3 interest is now subject to the receivership. The receivership proceedings were initiated by CEI a few months ago due to, among other things, Mizrahi's failure to meet the loan obligations owing to CEI. A main purpose of the receivership is for KSV to commence a sale and investor solicitation process for Mizrahi's 1/3 interest.

CEI will be managing the project moving forward. We will be working in consult with KSV, as receiver. The auction process of the Mizrahi interest will be occurring sometime late summer.

Given your history with the site, I thought I should reach out to you to see if any of the investors that you work with may have an interest in bidding in the process. If you do, or if you want further information on the process I can put you in touch with Bobby Kofman of KSV for further information on the sale.

If you do have interested parties I am happy to set up a teams call with yourself and Bobby to make the introduction. I have cc'ed Bobby on this email.

Attached please find a general overview of the 180 SAW site.

If you have questions, please do not hesitate to reach out.

I look forward to hearing from you.

Robert



ROBERT HISCOX

CO-FOUNDER & CEO

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CONSTANTINE ENTERPRISES -and-
INC.

SAM M (180 SAW) LP INC. AND
SAM M (180 SAW) INC.

Court File No.: CV-24-00715326-00CL

Applicant

Respondents

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

Proceeding commenced at Toronto

**SUPPLEMENT TO THE SECOND REPORT
OF KSV RESTRUCTURING INC.
DATED SEPTEMBER 13, 2024**

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Lawyers for the Receiver