

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.

(the “**Applicant**”)

**APPLICATION RECORD**

October 15, 2024

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Toronto, ON M5H 0B4

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**SERVICE LIST**

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# TAB 1

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**NOTICE OF APPLICATION**

**TO THE RESPONDENT(S)**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the applicant appears on the following page.

**THIS APPLICATION** will come for a hearing before the Honourable Justice Kershman presiding over the Ontario Superior Court of Justice:

- In person
- By telephone conference
- By video conference

at the following location:

<https://ca01web.zoom.us/j/63648670516?pwd=YXEwZG9xcUlRaytYajNBYUYvZ25Ldz09>

on October 15, 2024 at 3:00 PM EST.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of **SUPERIOR COURT OF JUSTICE**  
Court office: 161 Elgin Street, 2<sup>nd</sup> Floor  
Ottawa, Ontario K2P 2K1

**TO: THE SERVICE LIST**

## APPLICATION

1. The Applicant makes this application for an Order substantially in the form attached as **Tab 3** to the Application Record (the “**Proposed Initial Order**”), among other things:
  - a) abridging the time for service of this Notice of Application and the Application Record and dispensing with further service thereof;
  - b) declaring that the Applicant is a company to which the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) applies;
  - c) appointing MNP Ltd. (“**MNP**” or the “**Proposed Monitor**”) as an officer of the Ontario Superior Court of Justice (the “**Court**”) to monitor the business and financial affairs of the Applicants (once appointed in such capacity, the “**Monitor**”);
  - d) staying, for an initial period of not more than ten (10) days, all proceedings, demands, remedies and enforcement processes taken or that might be taken in respect of the Applicant, Mizrahi Inc. (the “**General Contractor**”), the Monitor, their respective subsidiaries, affiliates, directors, officers, employees, or representatives, or affecting the Applicant’s business, the Property (as defined below) or the Project (as defined below), except as otherwise set forth in the Proposed Initial Order or with leave of the Court (the “**Stay of Proceedings**”);
  - e) granting the following priority charges (collectively as the “**Charges**”) over the Property in the following priorities:
    - i. First - an administration charge in favour of the Proposed Monitor, its Counsel and Counsel to the Applicant for services rendered in respect of the Applicant in connection with the Project and these proceedings, in the maximum amount of \$100,000.00 (the “**Administration Charge**”); and
    - ii. Second - a charge securing all funds advanced under the DIP Facility (as defined below) in favour of TCC Mortgage Holdings Inc. (“**TCC**” or the “**DIP Lender**”) in and to all present and after-acquired property, assets and undertakings of the

Applicant, including, among other things, the Project, including all proceeds therefrom (the “**DIP Lender’s Charge**”);

- f) authorizing and empowering the Applicant to obtain and borrow up to a principal amount of \$2,345,00.00 under a debtor-in-possession credit facility (the “**DIP Facility**”) from the DIP Lender pursuant to a debtor-in-possession term sheet (the “**DIP Agreement**”) in order to finance the Applicant’s working capital requirements and other general corporate purposes, post-filing expenses and costs over the next ten (10) days;
- g) granting the Applicant and/or the General Contractor authority to make payments, with the consent of the Monitor and the DIP Lender, in respect of pre-filing amounts owing for goods or services supplies to the Applicant or the Project, if, in the opinion of the Applicant and/or the General Contractor, such supplier or service provider is critical to the ongoing progress, advancement and completion of the Project; and
- h) such further and other relief as to this Honourable Court may seem just.

2. If the Proposed Initial Order is granted, the Applicant intends to return to Court within ten (10) days (the “**Comeback Hearing**”) to seek approval of an Amended and Restated Initial Order (the “**ARIO**”), which among other things:

- a) extends the Stay of Proceedings;
- b) increases the maximum principal amount that the Applicant can borrow from the DIP Lender under the DIP Facility;
- c) increases the quantum of each of the Administration Charge (to a maximum amount of \$300,000.00) and the DIP Lender’s Charge (to a maximum amount of the DIP Obligations (as defined in the Proposed Initial Order) at the relevant time); and
- d) seek such further and other relief as may be required to advance the Applicant’s restructuring.

3. The grounds for the application are:

**BACKGROUND & OVERVIEW**

- a) the Applicant is insolvent;
- b) the Applicant is a company to which the CCAA applies;
- c) the claims against the Applicant exceed CAD \$5 Million;
- d) the Applicant is a corporation incorporated under the laws of Ontario;
- e) the Applicant, Mizrahi Development Group (1451 Wellington) Inc. (“**WellingtonCo**”) is developing a residential mixed-use luxury condominium development known as “*1451 Wellington – The Residences at Island Park Drive*” (the “**Project**”), located in Ottawa’s Westboro neighborhood on the Property;
- f) one hundred percent (100%) of the shares in WellingtonCo are owned by Mizrahi Developments Inc.;
- g) WellingtonCo is a single purpose real estate development company incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the “**OBCA**”) with its head office located at 133 Hazelton Avenue, Toronto, Ontario M5R 0A6. WellingtonCo was incorporated for the purpose of developing and constructing the Project and holding the Property;
- h) Mizrahi Inc., the General Contractor, is an entity incorporated under the OBCA with its head office located at 133 Hazelton Avenue, Toronto, Ontario M5R 0A6. In addition to the Applicant, the General Contractor provides contracting and project management services to other related development entities within the Mizrahi group of companies;
- i) the Applicant owns real property with a municipal address of 1451 Wellington Street West, Ottawa, Ontario and having a legal description as follows:

PIN 04030-0261 (LT) LOTS 1, 2 & 3 & PART LOT 4, PLAN 45, N/S RICHMOND ROAD (NOW WELLINGTON STREET), PARTS 1 & 2 PLAN

4R35696; SUBJECT TO AN EASEMENT AS IN OC2360765; SUBJECT TO AN EASEMENT AS IN OC2671330; CITY OF OTTAWA (the “**Real Property**”);

- j) the Applicant’s assets comprise of almost exclusively the Project, including the Real Property, development costs, prepaid expenses, deposits and certain pre-sale agreements of purchase and sale (the “**Pre-Sale Agreements**”) (collectively as the “**Property**”);
- k) the Project was expected to be completed in the fall of 2024 and, as of the date of filing, is approximately 85% complete and interior finishings on the lower floors are in an advanced stage;
- l) Pre-sales launched in or about 2017. Approximately 72 of the 93 units (each a “**Unit**” and collectively, the “**Units**”) have been sold;
- m) the Project has suffered certain setbacks including cost overruns and extended construction delays due to factors that include, among others, escalating costs for all construction related goods and services (including labour costs, material costs and fuel costs). Currently, the Applicant finds itself in a liquidity crisis and, absent approval of the additional financing proposed to be made available under the DIP Facility, is not able to meet its obligations as they become due. Accordingly, there is significant urgency to this CCAA application and the relief sought pursuant to the Proposed Initial Order;

## **INDEBTEDNESS & SECURITY OF THE APPLICANT**

### **1. Project Financing**

#### **A. The First Lien Loan Commitment**

- n) the Project was financed through a credit facility with a principal amount of CAD \$68,000,000.00 advanced to WellingtonCo by Trez Capital Limited Partnership, by its general partner, Trez Capital (2011) Corporation (collectively as the “**Construction Lender**”) by way of a Commitment Letter dated October 2, 2019 that was subject to several renewals (the “**First Lien Commitment Letter**”);

- o) pursuant to the First Lien Commitment Letter, the Construction Lender agreed to extend the following loan facilities to WellingtonCo: (1) a Construction Loan Facility with a maximum principal amount of the lesser of (i) \$67,000,000, and (ii) 73.6% of eligible project costs, as determined by the Construction Lender (the “**Construction Loan**”), and (2) a Letter of Credit Facility with a maximum principal amount of \$1,000,000 (the “**LOC Facility**”, and together with the Construction Loan, the “**First Lien Loan Facilities**”);
- p) together, the First Lien Loan Facilities have a maximum aggregate principal amount of \$68,000,000;
- q) as of October 1, 2024, there was in aggregate principal approximately \$73,146,752.97 outstanding under the First Lien Loan Facilities (the “**First Lien Indebtedness**”);
- r) the payment and performance of all of the obligations under the First Lien Loan Facilities have been guaranteed by: (i) Sam Mizrahi pursuant to a Guarantee and Postponement of Claim dated October 29, 2019; and (ii) Mizrahi Developments Inc.(“**MDI**”) pursuant to a Limited Recourse Guarantee and Postponement of Claim dated October 29, 2019;
- s) pursuant to the First Lien Commitment Letter, the Term (as defined in the First Commitment Letter) was extended on a number of occasions by the Construction Lender (the “**Maturity Date Extensions**”). As a result of the Maturity Date Extensions, the Loan Facilities matured on July 1, 2024;
- t) as general and continuing security for the payment and performance of the First Lien Indebtedness, the Applicant, among others, granted certain security (the “**First Lien Security**”) including, *inter alia*, a first mortgage in favor of Computershare Trust Company of Canada (“**Computershare**”) who holds the interest on behalf of the Construction Lender, which was registered against the Real Property on October 29, 2019 and was amended by a mortgage amending agreement increasing the principal amount to CAD \$70,000,000.00 (collectively as the “**First Mortgage**”);



- u) under the First Lien Commitment Letter, WellingtonCo was prohibited from permitting the registration of other encumbrances against the Property without the consent of the Construction Lender;
- v) on October 15, 2024, the Construction Lender and Computershare entered into an Assignment and Assumption Agreement with TCC wherein the Construction Lender and Computershare agreed to assign their rights under the First Lien Commitment Letter and First Lien Security to TCC;

#### **B. The Second Lien Loan Commitment**

- w) the Construction Lender , as lender, and the Applicant, as borrower, entered into a further Commitment Letter dated October 18, 2021, as has been amended, supplemented and/or renewed from time to time, including by a side letter agreement dated October 27, 2021, a renewal letter dated October 24, 2022, a second renewal letter dated April 10, 2023, a third renewal letter dated July 21, 2023 and a fourth renewal letter date December 22, 2023 (collectively, the “**Second Lien Commitment Letter**”). Pursuant to the terms of the Second Commitment Letter, the Construction Lender agreed to extend a further loan facility to the Applicant with a principal amount of \$6,000,000 (the “**Second Lien Loan Facility**” and together with the First Lien Loan Facilities, the “**Construction Loan Facilities**”);
- x) as of October 1, 2024, there was in aggregate approximately \$7,908,211.34 outstanding under the Second Lien Loan Facility (the “**Second Lien Indebtedness**”) with interest, fees and costs continuing to accrue;
- y) as general and continuing security for the payment and performance of the Second Lien Indebtedness, the Applicant, among others, granted certain security (the “**Second Lien Security**” and together with the First Lien Security, the “**Security**”) including, *inter alia*, a second mortgage in favor of Computershare which was registered against the Real Property on December 1, 2021 (the “**Second Mortgage**”);
- z) on October 15, 2024, the Construction Lender and Computershare entered into an Assignment and Assumption Agreement with TCC wherein the Construction Lender

and Computershare agreed to assign their rights under the Second Lien Commitment Letter and Second Lien Security to TCC;

### **C. Westmount Deposit Insurance**

- aa) Westmount Guarantee Services Inc. (“**Westmount**”) made available to the Applicant a surety facility in the amount of \$24,000,000 (the “**Surety Facility**”) pursuant to a Commitment Letter Agreement dated December 5, 2018 (the “**Deposit Insuring Agreement**”). The Deposit Insuring Agreement was entered into in connection with the insurance of deposits paid by the Purchasers (as defined below);
- bb) in order to secure the Surety Facility, Westmount was granted certain security including, among other things, a mortgage in favor of Westmount which was registered against the Real Property on October 29, 2019 (the “**Westmount Security**”);
- cc) pursuant to a Priority Agreement dated October 24, 2019, as amended and restated by the Amended and Restated Priority Agreement dated April 22, 2021, by and between Westmount and Computershare (together, the “**Westmount Priority Agreement**”), the Westmount Security is subordinated and postponed, save and except for the deposit monies received from time to time from Purchasers and accrued interest thereon, in favor of the Security;

## **2. Additional Indebtedness & Encumbrances of the Applicant**

### **(i) The V2I Investments Loan**

- dd) Sam Mizrahi was advanced a loan pursuant to a loan agreement dated October 31, 2019 (the “**V2I Loan Agreement**”) from V2 Investment Holdings Inc. (“**V2I**”) as lender, with a principal amount of CAD \$12,900,000.00 (the “**V2I Loan**”);
- ee) WellingtonCo is a guarantor of the V2I Loan;
- ff) the maturity date for the V2I Loan was extended to December 31, 2023 by way of an Amending Agreement dated March 31, 2023 (the “**V2I Amending Agreement**”),

which also set out a new schedule for interest payments. It provided that I, as borrower, would use best efforts to catch up on interest payments from July 1, 2022 to March 1, 2023 and in the interim, no monthly interest payments were payable for the months from July 2022 to and including March 2023 and that interest from July 1, 2022 to December 1, 2023 would accrue and be paid in accordance with the schedule appended to the V2I Amending Agreement;

- gg) the security granted to V2I in respect of the V2I Loan included, among other things, a demand debenture granted by the WellingtonCo in favour of V2I, which provided V2I a charge of the Real Property (the “**V2I Mortgage**”) and a charge of the WellingtonCo’s present and future personal property, provided, however, that V2I was not permitted to register the V2I Mortgage against the title of the Property unless there was a default in respect of the V2I Loan;
- hh) the V2I Loan Agreement provided that the V2I Mortgage shall not be registered on title to the Real Property until there was a default to the V2I Loan Agreement.

*(ii) The CWB Maxium Ltd.*

- ii) the Applicant remediated certain portions of the Real Property to qualify for the Brownfield Financial Tax Incentive Program (the “**Brownfield Credit**”);
- jj) pursuant to a Promissory Note (the “**CWB Note**”), CWB Maxium Financial Inc. (“**CWB**”) advanced a loan to the Applicant in the principal amount of \$675,930.46 in in connection with WellingtonCo’s remediation efforts and the underlying Brownfield Credit;
- kk) the Applicant currently owes CWB \$589,930 in connection with the CWB Note required for the Brownfield Credit, which CWB secured by registering a PPSA financing statement against the Applicant;

*(iii) The Berry Loan*

- ll) by way of a loan agreement dated June 29, 2016, David Berry (“**Berry**”) advanced a loan with a principal amount of CAD \$10,000,000 (the “**Berry Loan**”) to Mizrahi Developments Inc. (“**MDI**”), the parent company of the Applicant;
- mm) the Berry Loan was advanced through two (2) facilities, of \$4,000,000 (“**Berry Loan #1**”) and \$6,000,000 (“**Berry Loan #2**”), respectively;
- nn) the security granted to Berry in respect of the Berry Loan included, among other things, (i) a guarantee provided by the WellingtonCo for all indebtedness of MDI under the Berry Loan (the “**Berry Loan Guarantee**”), (ii) a general security agreement securing all present and after acquired personal property of the WellingtonCo for registration pursuant to the *Personal Property Security Act* (Ontario); and (iii) an Acknowledgement and Direction executed by the WellingtonCo in favour of Berry’s solicitors annexing a mortgage against the Real Property setting out certain amounts due under the Berry Loan, which is held in escrow by Berry’s solicitors and not to be registered unless the first of the two credit facilities under the Berry Loan of CAD \$6,000,000.00 is not repaid in full by the two (2) year deadline;
- oo) Berry Loan #1 has been repaid in full and no amount remains outstanding.
- pp) Berry entered into an Agreement of Purchase and Sale (the “**Berry APS**”) to purchase Suite PH 901, a condominium unit in a development project (the “**Hazelton Project**”) located at 128 Hazelton Avenue, Toronto, Ontario (the “**Berry Unit**”). The Supplementary Agreement provides that, in the event that the closing of the Berry Unit occurs prior to the full repayment of the Berry Loan, then Sam Mizrahi, in his personal capacity, agreed to pay to Mizrahi (128 Hazelton) Inc. (the developer of the Hazelton Project and hereinafter referred to as “**Mizrahi Hazelton**”), any amounts due by Berry for the Berry Unit pursuant to the Berry APS (the “**Berry Balance**”), up to a maximum amount of the principal that remains outstanding under the Berry Loan, plus all accrued interest (the “**Mizrahi Bridge Payment**”);

qq) in satisfaction of the remaining amounts owing to Berry under the Berry Loan Agreement following the Mizrahi Bridge Payment, Berry was: (i) assigned corporate shares in 2659100 Ontario Inc.; and (ii) provided with two (2) units in the Project and two (2) units in a separate development at One Bloor Street, Toronto, Ontario. In light of the foregoing, it is the Applicant's position that there remains no amounts outstanding under the Berry Loan, and specifically, Berry Loan #2;

**(iv) Consideration Owing to Seller of the 1445 Parcel**

rr) prior to WellingtonCo's acquisition of the Real Property, it was two separate properties, namely, (i) 1451 Wellington Street West, Ottawa, Ontario (PIN 04030-0259) (the "**1451 Parcel**"); and (ii) 1445 Wellington Street West, Ottawa, Ontario (PIN 04030-0260) (the "**1445 Parcel**"). The 1451 Parcel and the 1445 Parcel were consolidated to form the Real Property on October 26, 2023;

ss) the 1445 Parcel was acquired by way of an Agreement of Purchase and Sale dated April 17, 2013 (the "**1445 Purchase Agreement**") by and between the Applicant and Alfredo Giannuzzi, Mario Giannuzzi and Eugenio Milito (collectively, the "**1445 Seller**");

tt) the consideration contemplated under the 1445 Purchase Agreement included the 1445 Seller receiving 4,027 square feet of space in the Project (the "**Conveyed Project Space**"). The 1445 Purchase Agreement contemplates that approximately 2,080 square feet of the Conveyed Project Space shall be commercial ready space on the ground floor of the Project, nearest the corner of Island Park Drive and Wellington Street, fronting on Wellington Street. The remaining approximately 1,947 square feet of the Conveyed Project Space is to be a residential Unit(s);

**(v) Additional Liabilities**

uu) the Applicant also has liabilities to trades, suppliers and related parties supplying goods and services in connection with the Project. As of October, 2024, the Applicant has \$5,051,684.37 in amounts outstanding to such parties supplying goods and services to the Project;

vv) On September 19, 2024, Alenfrage registered a construction lien against the Real Property;

### 3. Enforcement Actions against the Applicant

ww) V2I has taken enforcement actions in respect of the V2I Loan, including:

i. delivery of a Notice of Default on February 28, 2024,

ii. service of a Notice of Intent to Enforce security under section 244 of the *Bankruptcy and Insolvency Act*,

iii. registering the V2I Mortgage against the Real Property on April 15, 2024, and

iv. the commencement of an Application seeking the appointment of a receiver over the Project and the Property (the “**V2I Receivership Application**”);

xx) the Applicant engaged in negotiations with V2I concerning an extension agreement for the V2I Loan and a subordination and standstill agreement giving priority to the Construction Lender over V2I for any further amounts the Construction Lender advances to the Applicant to fund the completion of the Project, however, V2I has refused to sign these proposed agreements;

yy) V2I’s registration of the V2I Mortgage caused the Applicant to be in default of the First Lien Commitment Letter;

zz) the Construction Lender delivered a demand letter dated June 6, 2024 and a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act* with respect to the First and Second Lien Loan Indebtedness;

aaa) TCC is only willing to advance more funds to WellingtonCo to complete the project if it receives priority to V2I in respect of these funds. While it is open to TCC to obtain this priority by advancing this funding under a receivership, this will put the financial viability of the Project in jeopardy. As detailed above, a significant portion

of the Units have yet to be sold. A receivership would reduce the value of those Units, making them harder to sell and reducing the overall revenue from the Project. Reducing the potential revenue that can be earned through the sale of these Units creates the risk of a shortfall where WellingtonCo may not be able to repay its loan obligations in connection with the Project and other creditors, such as suppliers, trades and subtrades;

- bbb) in light of the Applicant's need to obtain further financing from the TCC to complete the Project, V21's registration of a charge and refusal to enter into an intercreditor agreement, and the threat to the Project's reputation and value with a receivership, a CCAA restructuring is the only viable path forward to permit the Applicant to secure the funding necessary to complete the Project in a stable environment that preserves its reputation and financial viability on a going forward basis;
- ccc) given the Applicant's contemplated debtor-in-possession financing and CCAA proceedings, V2I is now only seeking judgment against WellingtonCo, among others, and is no longer seeking the appointment of a receiver. The hearing of V2I's Application is currently scheduled for November 26, 2024;

#### **DEBTOR-IN-POSSESSION FINANCING**

- ddd) in order to fund the remaining costs to complete the Project, the Applicant has arranged for the DIP Facility to be provided by the DIP Lender;
- eee) by way of the DIP Loan Agreement, the DIP Lender has agreed to provide the DIP Facility to the Applicant by way of a super-priority, debtor in possession, non-revolving loan to the maximum principal amount of \$25,000,000 (the "**Maximum Amount**");
- fff) Pursuant to the DIP Agreement, funds will be advanced as draws against the Maximum Amount as follows:

- (i) a first advance in the amount of \$2,345,000 (the “**First DIP Advance**”) by the DIP Lender to the Applicant in accordance with section 9 of the DIP Agreement; and
  - (ii) one or more subsequent advances (each a “**Subsequent Draw**” and together with the First DIP Advance a “**DIP Advance**”) up to the Maximum Amount;
- ggg) all of the DIP Obligations are secured by the DIP Lender’s Charge;
- hhh) the First DIP Advance under the DIP Facility is conditional upon, among other things, the Court issuing the Proposed Initial Order providing for authorization and approval of the DIP Facility on the terms and conditions set out in the DIP Agreement, which terms include, *inter alia*, the granting of the DIP Lender’s Charge;
- iii) any Subsequent Draws under the DIP Facility are conditional upon, among other things: (i) the ARIO and any subsequent Court Orders being issued and in full force and effect; and (ii) delivery to the DIP Lender of a drawdown certificate certifying that proceeds of the Subsequent DIP Draw requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection (as defined in the DIP Agreement), that the Applicant is in compliance with Court Orders and that no Default or Event of Default has occurred or is continuing;
- jjj) the DIP Agreement provides that the outstanding principal amount of all DIP Advances shall bear interest from the date of advance at a rate per annum equal to 10%;
- kkk) the DIP Facility includes a commitment fee (the “**Commitment Fee**”), which the Applicant is required to pay to the DIP Lender for making the DIP Facility available, in an amount equal to 1.5% of the Maximum Amount. The Commitment Fee is payable upon execution and delivery of the DIP Agreement to the DIP Lender, approval of the DIP Agreement and issuance of the Proposed Initial Order;



## THE NEED FOR CCAA PROTECTION AND PROPOSED NEXT STEPS

### 1. Events Leading to this Application

- lll) the Applicant is no longer able to meet its financial obligations as they become due;
- mmm) absent protections afforded by the CCAA and approval of the proposed DIP Facility, the Applicant faces immediate liquidity challenges and is at risk of the Project becoming subject to various enforcement proceedings
- nnn) any alternative other than the proposed CCAA proceedings will create increased costs, delay and uncertainty for the completion of the Project, and would undoubtedly impact all stakeholders including, among others, suppliers, trades and subtrades and the Purchasers who have already entered into a Pre-Sale Agreement for a Unit;
- ooo) while significant progress has been made towards completing the Project, a combination of factors, including increases to and unanticipated construction costs and delays have made it necessary for the Applicant to seek additional credit facilities to fund construction costs to ensure completion of the Project;
- ppp) as a result of the sudden enforcement actions, including the V2I Receivership Application and V2I's refusal to enter into a standstill agreement with the Construction Lender, the Applicant is unable to secure additional funding and faced with an immediate liquidity crisis, which threatens its ability to continue as a going concern and with the Project towards its completion;
- qqq) repayment of the Applicant's indebtedness is dependent on the successful completion of the Project and closing of the sales of the Units;
- rrr) if CCAA protection is not granted and the Project cannot be completed by WellingtonCo, the Project is likely at risk of falling into receivership. Any option other than the proposed CCAA proceedings risks driving up the costs of construction, delays to completion, the sale of the remaining Units and general uncertainty for the Applicant's stakeholders at large;

- sss) given that that Mizrahi Inc., the General Contractor, entered into contracts with, among others, suppliers, trades and subtrades for the supply of goods and services for the Project, the Applicant is also seeking a limited stay of proceedings in favour of Mizrahi Inc. The proposed extension of the Stay of Proceedings to the General Contractor will ensure it will not be subject to potential actions from suppliers, trades and subtrades, or any others, any of which would risk completion of the Project in a timely fashion or at all;
- ttt) the Applicant's proposed restructuring involves initiating these CCAA proceedings to provide the breathing room and urgently needed liquidity to overcome the financial difficulties it has encountered and to ensure the Project's completion occurs in a supervised, organized and stable environment. This proposed restructuring includes, among others, the following measures:
- (iii) continuing construction under the monitoring of the Proposed Monitor, the Project Monitor and the DIP Lender's Cost Consultant (as defined in the DIP Agreement), each of whom will ensure proper oversight during the proposed restructuring; and
  - (iv) securing interim financing through the DIP Facility, which will allow the Applicant to resume construction and complete the Project; and
- uuu) the Applicants require a stay of proceedings and the other relief set out in the Proposed Initial Order, including approval of and access to the DIP Loan, to continue construction of the Project, which is for the benefit of all stakeholders involved;
- vvv) without the relief sought in the Proposed Initial Order, the Applicants and the Project are at risk of falling into enforcement proceedings, which will cause increased costs, delay, uncertainty and potential to devalue the Project and negatively impact suppliers, trades, subtrades and purchasers of condo units;
- www) the Applicant's restructuring plan involves initiating the within CCAA proceedings as a strategy to overcome the financial difficulties encountered and to ensure the Project's completion in a stable setting, through measures that include the following:

- i. continuing construction under the monitoring of the Proposed Monitor, who will ensure proper oversight during the restructuring; and
  - ii. securing interim financing through the DIP Facility, which will allow the Applicant to meet its financial obligations and to finish the Project, and
- xxx) the Applicant requires a stay of proceedings in order to secure access to the DIP Loan;
- yyy) with the benefit of the protections afforded by the CCAA, the Applicant will be in a better position to ensure completion of the Project and maintain the value of the Property and the Project for the benefit of all stakeholders involved;

#### **ADDITIONAL GROUNDS**

- zzz) it would be detrimental to the Applicant, the Project and their stakeholders if proceedings were commenced or rights or remedies executed against the Applicant;
- aaaa) MNP has consented to act as the Monitor in these CCAA proceedings;
- bbbb) the granting of the Administration Charge is appropriate in the circumstances and will facilitate the active involvement of the beneficiaries during these CCAA proceedings;
- cccc) the provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Honourable Court;
- dddd) Rules 2.03, 3.02, 14.05(2) and 16 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, and section 106 and 137 of the *Courts of Justice Act*, R.S.O., c. C. 43, as amended; and
- eeee) such further and grounds as counsel may advise and this Honourable Court may permit.
4. The following documentary evidence will be used at the hearing of this application:

- a) the Affidavit of Sam Mizrahi, sworn October 15, 2024 and the exhibits attached thereto;
- b) the consent of the Proposed Monitor;
- c) the Pre-Filing Report of the Proposed Monitor dated October 15, 2024; and
- d) such further and other grounds as counsel may advise and this Honourable Court may permit.

October 15, 2024

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Lawyers for the Applicant,  
Mizrahi Development Group (1451  
Wellington) Inc. and Mizrahi Inc., and for  
the General Contractor, Mizrahi Inc.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36,  
AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MIZRAHI  
DEVELOPMENT GROUP (1451 WELLINGTON) INC.

Court File No.:BK24-00000230-0033

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**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
OTTAWA

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**NOTICE OF APPLICATION**

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Lawyers for the Applicant,  
Mizrahi Development Group (1451 Wellington) Inc.,  
and for the General Contractor, Mizrahi Inc.

# TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.

Applicant

**AFFIDAVIT OF SAM MIZRAHI**  
(sworn October 15, 2024)

I, **SAM MIZRAHI**, of the City of Toronto, in the Province of Ontario, MAKE OATH  
AND SAY:

1. I am the person of knowledge of Mizrahi Development Group (1451 Wellington) Inc. (“**WellingtonCo**” or, the “**Applicant**”) and Mizrahi Inc. (the “**General Contractor**”). As such, I have personal knowledge of the Applicant and General Contractor and the matters to which I depose in this Affidavit. To the extent I do not have direct, first-hand knowledge of particular facts or events, I obtained that information from other persons or from my review of documentation attached as exhibits, and have indicated the source of that information in my Affidavit. I verily believe the facts hereinafter deposed to be true.

2. All references to currency in this Affidavit are in Canadian dollars unless noted otherwise.

**RELIEF REQUESTED**

3. I swear this Affidavit in support of WellingtonCo’s urgent application for an initial order (the “**Initial Order**”), substantially in the form found at Tab 3 of the within Application Record,

pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c C-36, as amended (the "CCAA"), among other things:

- (a) declaring that the Applicant is a party to which the CCAA applies;
- (b) appointing MNP Inc. ("**MNP**" or the "**Proposed Monitor**") as an officer of this Honourable Court to monitor the assets, business and affairs of the Applicant (once appointed in such capacity, the "**Monitor**");
- (c) staying, for an initial period of not more than ten (10) days, all proceedings, demands, remedies and enforcement processes taken or that might be taken in respect of the Applicant, the General Contractor, the Monitor, their respective subsidiaries, affiliates, directors, officers, employees, or representatives, or affecting the Applicant's business, the Property (as defined below) or the Project (as defined below), except as otherwise set forth in the Initial Order or with leave of the Court (the "**Stay of Proceedings**");
- (d) granting the following charges (collectively, the "**Charges**") over the Property of the Applicant in the following priorities:
  - (i) First – the Administration Charge (as defined below) up to a maximum amount of \$100,000.00 and
  - (ii) Second - the DIP Lender's Charge (as defined below) up to \$2,345,000.
- (e) granting the Applicant and/or the General Contractor authority to make payments, with the consent of the Monitor and the DIP Lender, in respect of pre-filing amounts owing for goods or services supplies to the Applicant or the Project, if, in the opinion of the Applicant and/or the General Contractor, such supplier or service provider is critical to the ongoing progress, advancement and completion of the Project;
- (f) authorizing and empowering the Applicant to obtain and borrow up to a principal amount of \$2,345,000 under a debtor-in-possession credit facility (the "**DIP**



**Facility**") from TCC Mortgage Holdings Inc. ("**TCC**" or the "**DIP Lender**") in order to finance the Applicant's critically required working capital requirements and other general corporate purposes, post-filing expenses and costs over the next ten (10) days; and

(g) such further and other relief as to this Honourable Court may seem just.

4. If the proposed Initial Order is granted, the Applicant intends to return to Court within ten (10) days (the "**Comeback Hearing**") to seek approval of an Amended and Restated Initial Order (the "**ARIO**"), which, among other things:

(a) extends the Stay of Proceedings;

(b) increases the maximum principal amount that the Applicant can borrow from the DIP Lender under the DIP Facility;

(c) increases the quantum of each of the Administration Charge (to a maximum amount of \$300,000.00), and the DIP Lender's Charge (to a maximum amount of the DIP Obligations (as defined in the Initial Order) at the relevant time); and

(d) seeks such other relief as may be required to advance the Applicant's restructuring.

## **OVERVIEW**

5. WellingtonCo is developing a residential mixed-use luxury condominium development known as "*1451 Wellington – The Residences at Island Park Drive*" (the "**Project**"), located in Ottawa's Westboro neighborhood on the Real Property.

6. One hundred percent (100%) of the shares in WellingtonCo are owned by Mizrahi Developments Inc.

7. The Project has suffered certain setbacks including cost overruns and extended construction delays due to factors that include, among others, escalating costs for all construction related goods and services (including labour costs, material costs and fuel costs). Currently, the Applicant finds itself in a liquidity crisis and, absent approval of the additional financing proposed

to be made available under the DIP Facility, is not able to meet its obligations as they become due. Accordingly, there is significant urgency to this CCAA application and the relief sought pursuant to the Initial Order.

8. In light of the foregoing, the Applicant is seeking protection under the CCAA to, among other things, secure the urgent financing required to continue operations in the ordinary course and advance construction with a view to completing and monetizing the Project. The CCAA filing is intended to benefit all of the Applicant's stakeholders at large including, among others, the trades, sub-trades and suppliers.

### **CORPORATE STRUCTURE**

9. WellingtonCo is a single purpose real estate development company incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B.16 (the "OBCA") with its registered office located at 133 Hazelton Avenue, Toronto, Ontario M5R 0A6. WellingtonCo was incorporated for the purpose of developing and constructing the Project and holding the Real Property. A true copy of the Corporation Profile Report for WellingtonCo is attached hereto as **Exhibit "A"**.

10. Mizrahi Inc., the General Contractor, is an entity incorporated under the OBCA with its head office located at 133 Hazelton Avenue, Toronto, Ontario M5R 0A6. In addition to the Applicant, the General Contractor provides contracting and project management services to other related development entities within the Mizrahi group of companies. A true copy of the Corporation Profile Report for the General Contractor is attached hereto as **Exhibit "B"**.

### **THE 1451 WELLINGTON DEVELOPMENT PROJECT**

11. WellingtonCo owns certain real property having a municipal address of 1451 and 1445 Wellington Street West, Ottawa, Ontario and the following legal description:

PIN 04030-0261 (LT) LOTS 1, 2 & 3 & PART LOT 4, PLAN 145, N/S RICHMOND ROAD (NOW WELLINGTON STREET), PARTS 1 & 2 PLAN 4R35696; SUBJECT TO AN EASEMENT AS IN OC2360765; SUBJECT TO AN EASEMENT AS IN OC2671330; CITY OF OTTAWA (the "**Real Property**").

A true copy of the parcel register for the Real Property, dated October 8, 2024, is attached as **Exhibit “C”** to my Affidavit.

12. The Real Property is comprised of 19,833 square feet of developable land which was formerly a single storey commercial building being used as a sales center for the proposed development and a two-storey brick residential building that was converted to a full-service restaurant. The Real Property was formerly two separate properties, namely: (i) 1451 Wellington Street West, Ottawa, Ontario (PIN 04030-0259) (the “**1451 Parcel**”); and (ii) 1445 Wellington Street West, Ottawa, Ontario (PIN 04030-0260) (the “**1445 Parcel**”). The 1451 Parcel and the 1445 Parcel were consolidated to form the Real Property on October 26, 2023..

13. As previously noted, WellingtonCo is in the process of developing and building the Project which consists of a twelve (12) storey concrete frame, condominium building featuring ninety-three (93) high-end individual suites, 5,268 square feet of retail space at grade, 100 storage lockers and 130 underground parking spaces. The Project was expected to be completed in the fall of 2024 and, as of the date of filing, is approximately 85% complete and interior finishings on the lower floors are in an advanced stage.

14. The General Contractor, Mizrahi Inc., is the general contractor of the Project who entered into contracts with suppliers, trades and subtrades in furtherance of the construction of the Project.

15. Pre-sales launched in or about 2017. Approximately seventy two of the ninety three (93) units<sup>1</sup> (each a “**Unit**” and collectively, the “**Units**”) have been sold.

## **FINANCIAL POSITION OF THE APPLICANT**

16. A copy of the Applicant’s most recent unaudited financial statements are attached hereto as **Exhibit “D”**. As of the date of this Affidavit, the Applicant’s assets are comprised almost] exclusively of the Project, including the Real Property, development costs, prepaid expenses, deposits and the Pre-Sale Agreements (collectively as the “**Property**”). Certain of the Applicant’s liabilities are detailed in the following section.

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<sup>1</sup> A number of the units have been consolidated into single suites. As a result, the total number of suites in the total Project will be less than 93.

## INDEBTEDNESS AND SECURITY OF WELLINGTON CO.

### A. Project Financing

17. As is detailed below, WellingtonCo financed the Project through the following credit facilities:

- (a) Trez Capital Limited Partnership, by its general partner, Trez Capital (2011) Corporation (the “**Construction Lender**”), advanced loans of \$68,000,000 and \$6,000,000, each of which are secured by, among other things, mortgages against the Real Property; and
- (b) Westmount provided deposit insurance in the amount of \$24,000,000, which is secured by, among other things, a mortgage against the Real Property.

#### 1. The First Lien Loan Commitment

18. The Construction Lender, as lender, and the Applicant, as borrower, entered into a Commitment Letter dated October 2, 2019, as has been amended, supplemented and/or renewed from time to time, including by a renewal letter dated October 24, 2022, a second renewal letter dated April 10, 2023, a third renewal letter dated July 1, 2023, an amendment letter dated September 12, 2023 and a fourth renewal letter dated December 22, 2023 (collectively, the “**First Lien Commitment Letter**”). Pursuant to the terms of the Commitment Letter, the Construction Lender agreed to extend the following loan facilities to the Debtor:

- (a) a Construction Loan Facility with a maximum principal amount of the lesser of: (i) \$67,000,000; and (ii) 73.6% of eligible project costs, as determined by the Construction Lender (the “**Construction Loan**”); and
- (b) a Letter of Credit Facility with a maximum principal amount of \$1,000,000 (the “**LOC Facility**”, and together with the Construction Loan, the “**First Lien Loan Facilities**”).

19. Together, the First Lien Loan Facilities have a maximum aggregate principal amount of \$68,000,000. A copy of the First Lien Commitment Letter is attached hereto as **Exhibit “E”**.

20. As of October 1, 2024, there was in aggregate approximately \$73,146,752.97 outstanding under the First Lien Loan Facilities (the “**First Lien Indebtedness**”) with interest, fees and costs continuing to accrue.

21. The payment and performance of all of the obligations under the First Lien Loan Facilities have been guaranteed by: (i) myself pursuant to a Guarantee and Postponement of Claim dated October 29, 2019; and (ii) Mizrahi Developments Inc.<sup>2</sup> (“**MDI**”) pursuant to a Limited Recourse Guarantee and Postponement of Claim dated October 29, 2019.

22. Pursuant to the First Commitment Letter, the Term (as defined in the First Commitment Letter) was extended on a number of occasions by the Construction Lender (the “**Maturity Date Extensions**”). As a result of the Maturity Date Extensions, the Loan Facilities matured on July 1, 2024.

23. As general and continuing security for the payment and performance of the First Lien Indebtedness, the Applicant, among others, granted certain security (the “**First Lien Security**”) including, *inter alia*, a first mortgage in favor of Computershare Trust Company of Canada (“**Computershare**”) who holds the interest on behalf of the Construction Lender<sup>3</sup>, which was registered against the Real Property on October 29, 2019 and was amended by a mortgage amending agreement increasing the principal amount to CAD \$70,000,000.00 (collectively as the “**First Mortgage**”). A true copy of the First Mortgage is attached hereto as **Exhibit “F”**.

24. Section 9.02 of the First Loan Commitment provides that WellingtonCo cannot permit the registration of any other encumbrances against the Property without the consent of the Construction Lender.

25. On October 15, 2024, the Construction Lender and Computershare entered into an Assignment and Assumption Agreement (the “**First Lien AA Agreement**”) with TCC wherein the Construction Lender and Computershare agreed to assign their rights under the First Lien Commitment Letter and First Lien Security to TCC.

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<sup>2</sup> MDI is an affiliate of the Applicant and the General Contractor.

<sup>3</sup> Computershare, among other things, acts as an agent, nominee and bare trustee for the Construction Lender, from time to time, in respect of certain mortgage loans and security.

## 2. The Second Lien Loan Commitment

26. The Construction Lender, as lender, and the Applicant, as borrower, entered into a further Commitment Letter dated October 18, 2021, as has been amended, supplemented and/or renewed from time to time, including by a side letter agreement dated October 27, 2021, a renewal letter dated October 24, 2022, a second renewal letter dated April 10, 2023, a third renewal letter dated July 21, 2023 and a fourth renewal letter date December 22, 2023 (collectively, the “**Second Lien Commitment Letter**”). Pursuant to the terms of the Second Commitment Letter, the Construction Lender agreed to extend a further loan facility to the Applicant with a principal amount of \$6,000,000 (the “**Second Lien Loan Facility**” and together with the First Lien Loan Facilities, the “**Construction Loan Facilities**”). A copy of the Second Lien Commitment Letter is attached hereto as **Exhibit “G”**.

27. As of October 1, 2024, there was in aggregate approximately \$7,908,211.34 outstanding under the Second Lien Loan Facility (the “**Second Lien Indebtedness**”) with interest, fees and costs continuing to accrue.

28. As general and continuing security for the payment and performance of the First Lien Indebtedness, the Applicant, among others, granted certain security (the “**Second Lien Security**” and together with the First Lien Security, the “**Security**”) including, *inter alia*, a second mortgage in favor of Computershare which was registered against the Real Property on December 1, 2021 (the “**Second Mortgage**”). A true copy of the Second Mortgage is attached hereto as **Exhibit “H”**.

29. On October 15, 2024, the Construction Lender and Computershare entered into an Assignment and Assumption Agreement (the “**Second Lien AA Agreement**”) with TCC wherein the Construction Lender and Computershare agreed to assign their rights under the Second Lien Commitment Letter and Second Lien Security to TCC.

## 3. The Westmount Deposit Insurance

30. Westmount Guarantee Services Inc. (“**Westmount**”) made available to the Applicant a surety facility in the amount of \$24,000,000 (the “**Surety Facility**”) pursuant to a Commitment Letter Agreement dated December 5, 2018 (the “**Deposit Insuring Agreement**”). The Deposit Insuring Agreement was entered into in connection with the insurance of deposits paid by the

Purchasers (as defined below). A true copy of the Deposit Insuring Agreement is attached hereto as **Exhibit “I”**.

31. In order to secure the Surety Facility, Westmount was granted certain security including, among other things, a mortgage in favor of Westmount which was registered against the Real Property on October 29, 2019 (the “**Westmount Security**”). A true copy of the Westmount Security is attached hereto as **Exhibit “J”**.

32. Pursuant to a Priority Agreement dated October 24, 2019, as amended and restated by the Amended and Restated Priority Agreement dated April 22, 2021, and a priority agreement dated December 1, 2021, by and between Westmount and Computershare (together, the “**Westmount Priority Agreement**”), the Westmount Security is subordinated and postponed, save and except for the deposit monies received from time to time from Purchasers and accrued interest thereon, in favor of the Security. A copy of the Westmount Priority Agreement is attached hereto as **Exhibit “K”**.

33. As of the date hereof, all of the Pre-Sale Agreement deposits totaling approximately \$14,800,000 have been released to the Borrower.

## **B. Additional Indebtedness and Encumbrances**

### **1. The V2 Investments Loan**

34. On October 31, 2019, I, as borrower in my personal capacity, entered into a Loan Agreement (the “**V2I Loan Agreement**”) with V2 Investment Holdings Inc. (“**V2I**”), as lender, pursuant to which V2I advanced a loan in the principal amount of \$12,900,000 (the “**V2I Loan**”). A true copy of the V2I Loan Agreement is attached hereto as **Exhibit “L”**.

35. The rate of interest applicable to the V2I Loan is ten percent (10%), compounded annually.

36. As of October 10, 2024, there was in aggregate \$13,300,000.00 outstanding under the V2I Loan with interest, fees and costs continuing to accrue.

37. The maturity date for the V2I Loan was extended to December 31, 2023 by way of an Amending Agreement dated March 31, 2023 (the “**V2I Amending Agreement**”), which also set

out a new schedule for interest payments. It provided that I, as borrower, would use best efforts to catch up on interest payments from July 1, 2022 to March 1, 2023 and in the interim, no monthly interest payments were payable for the months from July 2022 to and including March 2023 and that interest from July 1, 2022 to December 1, 2023 would accrue and be paid in accordance with the schedule appended to the V2I Amending Agreement.. A true copy of the V2I Amending Agreement is attached hereto as **Exhibit “M”**.

38. WellingtonCo is a guarantor of the V2I Loan, pursuant to section 9.01 of the V2I Loan Agreement where WellingtonCo guaranteed, among other things, payment of the obligations under the V2I Loan Agreement.

39. The security granted to V2I in respect of the V2I Loan includes a demand debenture granted by WellingtonCo in favor of V2I (the “**V2I Debenture**”). A true copy of the V2I Debenture is attached hereto as **Exhibit “N”**.

40. The V2I Debenture granted, among things, the following:

- (a) a charge over the Real Property in favor of V2I (the “**V2I Mortgage**”); and
- (b) a charge over WellingtonCo’s present and future personal property.

41. Section 8.02 of the V2I Loan Agreement provides that the V2I Mortgage was not be registered on title to the Real Property until there was a default to the V2I Loan Agreement. As is further detailed below, on April 15, 2024, V2I registered the V2I Mortgage.

## **2. The CWB Maxium Loan**

42. WellingtonCo undertook environmental remediation of certain aspects of the Real Property and applied for a tax credit under the municipal Brownfield Financial Tax Incentive Program (the “**Brownfield Credit**”) with the City of Ottawa.

43. Pursuant to a Promissory Note (the “**CWB Note**”), CWB Maxium Financial Inc. (“**CWB**”) advanced a loan to the Applicant in the principal amount of \$675,930.46 in connection with WellingtonCo’s remediation efforts and the underlying Brownfield Credit. A true copy of the CWB Note is attached hereto as **Exhibit “O”**.



44. Currently, \$564,400.20 plus accrued interest is owing pursuant to the CWB Note.

45. The CWB Note was secured by a General Security Agreement dated December 1, 2022 (the “**CWB GSA**”) granting CWB a security interest in WellingtonCo’s present and after acquired personal property and undertakings, all tangible and intangible intellectual property and all real and immovable property, both freehold and leasehold. A true copy of the CWB GSA is attached hereto as **Exhibit “P”**.

46. The CWB GSA was registered by way of a *Personal Property and Security Act* (Ontario) (“**PPSA**”) financing statement. A true copy of a PPSA search showing all registrations against WellingtonCo as of October 4, 2024 is attached hereto as **Exhibit “Q”**.

### **3. The Berry Loan**

47. By way of a Term Sheet dated June 6, 2016 and subsequent Loan Agreement dated June 29, 2016 (collectively as the “**Berry Loan Agreement**”), David Berry (“**Berry**”) advanced a loan to MDI in the original principal amount of \$10,000,000, through two (2) loan facilities of: (i) \$4,000,000.00 (“**Berry Loan #1**”); and (ii) \$6,000,000.00 (“**Berry Loan #2**” and together with Berry Loan #1, the “**Berry Loan**”). A true copy of the Berry Loan Agreement is attached hereto as **Exhibit “R”**.

48. The applicable rate of interest on the Berry Loan was fourteen percent (14%) annually.

49. As general and continuing security for the payment and performance under the Berry Loan Agreement, Berry was provided with, among other things:

- (a) guarantees by WellingtonCo and myself personally, for all indebtedness of MDI under the Berry Loan (together, the “**Berry Loan Guarantees**”);
- (b) a General Security Agreement securing all present and after acquired personal property of MDI and WellingtonCo (the “**Berry GSA**”); and
- (c) an Acknowledgment and Direction (the “**Berry A&D**”) annexing a mortgage against the Real Property setting out the amounts due under Berry Loan #1, which is held in escrow by Berry’s solicitors and not to be registered unless Berry Loan

#1 is not repaid in full by the two (2) year deadline provided for in the Berry Loan Agreement;

50. Section 2.3 of the Berry Loan Agreement provides that Berry Loan #1 shall mature on the earlier of: (i) two (2) years from the date of the initial advance of Berry Loan #1; (ii) issuance of the above-grade building permit in connection with the Project; and (iii) the receipt of proceeds or funds from a credit facility obtained to finance the Project.

51. Berry Loan #1 was repaid in full.

52. Section 2.4 of the Berry Loan Agreement provides that Berry Loan #2 shall mature on the earlier of: (i) forty-five (45) days following the registration of the condominium corporation resulting from the Project; and (b) December 31, 2021.

53. The Berry Loan Agreement was subject to an Amending Agreement dated October 12, 2021. A true copy of the Amending Agreement is attached hereto as **Exhibit “S”**.

54. Berry and I, in my personal capacity, entered into a Supplementary Agreement dated June 28, 2016 (the “**Supplementary Agreement**”) in connection with the Berry Loan Agreement and the Berry Loan. A true copy of the Supplementary Agreement is attached hereto as **Exhibit “T”**.

55. Berry entered into an Agreement of Purchase and Sale (the “**Berry APS**”) to purchase Suite PH 901, a condominium unit in a development project (the “**Hazelton Project**”) located at 128 Hazelton Avenue, Toronto, Ontario (the “**Berry Unit**”). The Supplementary Agreement provides that, in the event that the closing of the Berry Unit occurs prior to the full repayment of the Berry Loan, then I, in my personal capacity, agreed to pay to Mizrahi (128 Hazelton) Inc. (the developer of the Hazelton Project and hereinafter referred to as “**Mizrahi Hazelton**”), any amounts due by Berry for the Berry Unit pursuant to the Berry APS (the “**Berry Balance**”), up to a maximum amount of the principal that remains outstanding under the Berry Loan, plus all accrued interest (the “**Mizrahi Bridge Payment**”). I, in my personal capacity and in accordance with the Supplementary Agreement, effected the Mizrahi Bridge Payment to Mizrahi Hazelton in satisfaction of the Berry Balance.

56. In satisfaction of the remaining amounts owing to Berry under the Berry Loan Agreement following the Mizrahi Bridge Payment, Berry was: (i) assigned corporate shares in 2659100 Ontario Inc.; and (ii) provided with two (2) units in the Project and two (2) units in a separate development at One Bloor Street, Toronto, Ontario. In light of the foregoing, it is the Applicant's position that there remains no amounts outstanding under the Berry Loan, and specifically, Berry Loan #2. A true copy of spreadsheet detailing the satisfaction of the amounts owing under the Berry Loan Agreement is attached at **Exhibit "U"**.

57. Despite the foregoing, it is my understanding that Berry takes the position that amounts remain outstanding under the Berry Loan. A true copy of a letter from Berry's Counsel dated September 13, 2024 setting out his position is attached at **Exhibit "V"**.

#### **4. Consideration Owing to Seller of the 1445 Parcel**

58. The 1445 Parcel was acquired by way of an Agreement of Purchase and Sale dated April 17, 2013 (the "**1445 Purchase Agreement**") by and between the Applicant and Alfredo Giannuzzi, Mario Giannuzzi and Eugenio Milito (collectively, the "**1445 Seller**"). A true copy of the 1445 Purchase Agreement is attached hereto as **Exhibit "W"**.

59. The consideration contemplated under the 1445 Purchase Agreement included the 1445 Seller receiving 4,027 square feet of space in the Project (the "**Conveyed Project Space**"). The 1445 Purchase Agreement contemplates that approximately 2,080 square feet of the Conveyed Project Space shall be commercial ready space on the ground floor of the Project, nearest the corner of Island Park Drive and Wellington Street, fronting on Wellington Street. The remaining approximately 1,947 square feet of the Conveyed Project Space is to be a residential Unit(s).

#### **5. Additional Liabilities**

60. In addition to the amounts detailed in the preceding paragraphs, the Applicant is also indebted to certain trades, suppliers and related parties supplying goods and services in connection with the Project. As of September 30, 2024, the Applicant has approximately \$5,051,684.37 in amounts outstanding to such parties. A true copy of a Supplier Balance/AP Summary dated as of September 30, 2024 detailing these liabilities is attached hereto as **Exhibit "X"**.

61. On September 19, 2024, Alenfrage Designer Paint Inc. o/a Alenfrage Painting Services (“**Alenfrage**”) registered a construction lien in the amount of \$107,293.50 (the “**Alenfrage Claim**”) against title the Real Property. A true copy of the construction lien registered by Alenfrage is attached hereto as **Exhibit “Y”**.

62. On the same day, September 19, 2024, WellingtonCo received a letter from counsel to Alenfrage enclosing a copy of the construction lien and demanding payment of the Alenfrage Claim. A true copy of this letter is attached hereto as **Exhibit “Z”**.

### **ENFORCEMENT ACTIONS AGAINST THE APPLICANT**

63. Beginning in January 2024, V2I and I began discussing amending the V2I Loan Agreement a second time to further extend the maturity date.

64. On February 28, 2024, V2I delivered a Notice of Default to WellingtonCo, MDI and myself in my personal capacity (the “**V2I Notice of Default**”), which alleged a default under the V2I Loan Agreement by, on account of, among other things:

- (a) failure to pay the principal and all other amounts due by the maturity date of December 31, 2023 provided for in the V2I Amending Agreement; and
- (b) the incurrence of debt by WellingtonCo, in its capacity as a guarantor of the V2I Loan, to finance the Project through the Second Commitment Letter and the grant of the Second Mortgage on the Real Property without V2I’s consent.

65. A true copy of the V2I Notice of Default is attached hereto as **Exhibit “AA”**.

66. My discussions concerning the extension of the maturity date of the V2I Loan Agreement continued with V2I into March and April of 2024. The discussions took place via in person conversations, telephone calls, texts and emails. True copies of my text messages with Henry Wolfond (“**Wolfond**”), the President of V2I, are attached as **Exhibit “BB”**.

67. On March 3, 2024, during an in-person meeting, I advised V2I that I intended to repay the amounts owing for the V2I Loan from the proceeds of the Unit sales from the Project. We also discussed the following items:

- (a) an agreement to contact the Construction Lender about registering a mortgage against the Real Property in respect of the V2I Loan behind the existing Security, namely the First Mortgage and Second Mortgage; and
- (b) that I would continue to make monthly interest payments for the term of the V2I Loan.

A true copy of my email to V2I in which I memorialized the discussion which occurred during our March 3, 2024 meeting is attached hereto as **Exhibit “CC”**.

68. During the March 3, 2024 meeting, Wolfond also expressed his intention to register a charge against the Real Property. I advised him that if he did so, this would cause WellingtonCo to be in default of the First Mortgage and Second Mortgage. Wolfond advised me that any such registration would not create any issues as it was his intention to enter into a standstill and intercreditor agreement with the Construction Lender to avoid default on the part of WellingtonCo.

69. While these negotiations were ongoing, I continued to make payments against the V2I Loan, our lawyers exchanged several drafts of the second amending agreement.

70. In early April 2024, V2I was advised by the Construction Lender that it was prepared to continue funding if V2I entered into a fulsome subordination and standstill agreement, in the form of an intercreditor agreement, which, among other things, would subordinate V2I’s interest to any further financing taken out by the Construction Lender to continue funding the Project. V2I was further advised that registering a mortgage in its favor would result in a default under the First Mortgage and the Second Mortgage. A true copy of the email from my corporate counsel advising V2I’s counsel of the Construction Lender’s position along with certain correspondence as between my corporate counsel and that of V2I regarding an intercreditor agreement are attached hereto as **Exhibit “DD”**.

71. I understand that the Construction Lender’s primary concern was, absent an intercreditor agreement that would subordinate V2I to any further advances by the Construction Lender under the existing Security, those fresh advances would likely result in recovery of those funds being subordinate to V2I’s recovery. An intercreditor agreement was becoming increasingly critical in

light of the potential default under the First Mortgage and the Second Mortgage and the imminent need for additional funding to continue moving to Project towards completion.

72. The Applicant's corporate counsel provided a draft intercreditor agreement to V2I's counsel, however, V2I refused to sign it. A true copy of this correspondence is attached hereto as".

73. On April 6, 2024, V2I, through counsel, indicated its willingness to enter into the intercreditor agreement and the second amending agreement. On April 11, 2024, the Applicant sent a draft of the second amending agreement to V2I. V2I refused to execute it in its current form and insisted on more security. In particular, V2I requested a pledge of shares.

74. On April 15, 2024, V2I served a Notice of Intention to Enforce Security (the "**V2I NITES**") under section 244 of the *Bankruptcy and Insolvency Act* (R.S.C., 1985, c. B-3) (the "**BIA**"). A true copy of the V2I NITES is attached hereto as Exhibit "**EE**". On the same date, V2I registered the V2I Mortgage against the Real Property. A true copy of the V2I Mortgage is attached hereto as **Exhibit "FF"**. On May 6, 2024, V2I commenced an Application in the Ontario Superior Court of Justice requesting certain relief including, *inter alia*: (i) judgment against WellingtonCo, MDI and me, in my personal capacity, for the amounts owing in connection with the V2I Loan; and (ii) the appointment of a receiver over the Project and the Property (collectively as the "**V2I Receivership Application**"). A true copy of the Application Record (without exhibits) filed by V2I in connection with the V2I Receivership Application is attached hereto as **Exhibit "GG"**.

75. On April 15, 2024, on no notice to the Construction Lender, V2I registered the V2I Mortgage.

76. On May 28, 2024, the Construction Lender advised that in order for it to provide additional funding to complete the Project, the Construction Lender required V2I to agree to a priority and standstill agreement to ensure that the V2I Loan was subordinated to any financing taken out to replace the existing debts owed to the Construction Lender under the First Commitment Letter and the Second Commitment Letter.

77. Negotiations with V2I towards a second amending agreement continued, however, on April 18, 2024, corporate counsel to the Applicant emailed a revised draft of the second amending

agreement to counsel to V2I advising that the draft "...incorporates the terms that our respective clients agreed to last evening". A true copy of this email is attached hereto as **Exhibit "HH"**.

78. The draft second amending agreement, which is attached hereto as **Exhibit "II"**, supplemented the V2I Loan Agreement with the following provision:

*7.04 The Lender covenants to execute and deliver any intercreditor agreements (including but not limited to subordination and standstill agreements) with the Construction Lender and/or DBC as required by the Construction Lender and/or DBC forthwith upon request.*

79. Ultimately, no second amendment agreement was ever signed by V2I.

80. V2I did agree to an Acknowledgement of Subordination and Postponement (the "SSA") dated May 23, 2024, to facilitate an advance by the Construction Lender to WellingtonCo in the amount of \$2,806,559. A true copy of the SSA is attached hereto as **Exhibit "JJ"**.

81. Following the registration of the V2I Mortgage, the Construction Lender advised the Applicant that it was unwilling to advance further funds under the existing Security given its ongoing concern that any fresh advances, in the present circumstances, would likely be subordinate to V2I.

82. On May 31, 2024, counsel for the Construction Lender sent a letter to counsel for V2I, advising of, among other things, the following:

- (a) V2I had registered the V2I Mortgage without the Construction Lender's consent against the Property, which was prohibited under the First Commitment Letter, the Second Commitment Letter and the balance of the Security. However, notwithstanding the foregoing, the Construction Lender was willing to work with V2I and the Applicant by continuing to make advances to WellingtonCo to ensure construction continued for the Project for the benefit of all stakeholders, including V2I;

- (b) V2I, through Counsel on May 30, 2024, had advised that it was not prepared to sign a subordination and standstill agreement in favor of the Construction Lender unless the Construction Lender bought some or all of the debt outstanding under the V2I Loan and that the Construction Lender was not prepared to make any payment to V2I in this respect;
- (c) the Construction Lender was not prepared to provide any more funding to WellingtonCo outside of a formal insolvency proceeding if there was no subordination or standstill agreement in place with V2I; and
- (d) if V2I did not provide its agreement to the proposed subordination and standstill agreement by June 3, 2024, the Construction Lender intended to prepare a demand and Notice of Intention to Enforce Security under section 244 of the BIA and would proceed with a receivership application against WellingtonCo in respect of the Project and Real Property.

83. On June 6, 2024, counsel for WellingtonCo sent a letter to counsel for V2I stating, among other things, the following:

- (a) the subordination and standstill agreement proposed by the Construction Lender, which had been refused by V2I, would enable the Construction Lender to advance the approximately \$15,000,000 in funds needed to complete the Project;
- (b) upon the Project's completion, the total construction debt to be paid out was expected to be less than \$80 Million with sale of the Units expected to yield approximately \$117 Million (i.e., the expected \$37 million surplus would likely be available to satisfy the obligations owing under the V2I Loan);
- (c) it was in V2I's interest to enter into the Construction Lender's proposed subordination and standstill agreement because it would enable the Project to be completed and remaining Units to be sold, which would provide the requisite revenue to repay the V2I Loan; and



- (d) if V2I continued to withhold its agreement to the subordination and standstill agreement with the Construction Lender, the costs to be incurred by the Construction Lender in connection with its proposed appointment of a receiver would make it more difficult to sell unsold Units, thus impacting the timing and ability to repay the V2I Loan.

A true copy of this letter from the WellingtonCo's counsel is attached hereto as **Exhibit "KK"**.

84. V2I and the Construction Lender exchanged drafts of a further Acknowledgment of Subordination and Postponement in August of 2024, however, V2I did not agree to a subordination for further advances from the Construction Lender.

85. On June 6, 2024, the Construction Lender delivered a demand letter and a Notice of Intention to Enforce Security under section 244 of the BIA with respect to the First Commitment Letter (the "**Construction Lender Demand**"). A true copy of the Construction Lender Demand is attached hereto as **Exhibit "LL"**.

86. The V2I Receivership Application is currently scheduled for a hearing on November 26, 2024. However, by way of an email dated August 14, 2024, counsel for V2I indicated that V2I was no longer seeking the appointment of a receiver and was simply seeking a judgment against the respondents to the V2I Receivership Application. A true copy of this email correspondence is attached hereto as **Exhibit "MM"**.

87. TCC has advised the Applicant that it is only willing to advance further funds to advance and complete the Project if any such advance is in priority to V2I. While TCC is aware that this option is available to it following the appointment of a receiver, which is provided for under the Security, TCC has agreed to support the Applicant's CCAA proceedings subject to the terms of the DIP Agreement.

## **DEBTOR-IN-POSSESSION FINANCING**

88. As is detailed below, in order to fund the remaining costs and to complete the Project, the Applicant has arranged for the DIP Facility to be provided by the DIP Lender.

89. By way of a DIP Loan Agreement dated October 15, 2024 (the “**DIP Agreement**”), the DIP Lender has agreed to provide financing to the Applicant by way of a super-priority, debtor in possession, non-revolving loan to the maximum principal amount of \$25,000,000 (the “**Maximum Amount**”). A true copy of the DIP Agreement is attached hereto as **Exhibit “NN”**.

90. Pursuant to the DIP Agreement, funds will be advanced as draws against the Maximum Amount as follows:

- (a) a first advance in the amount of \$2,345,000 (the “**First DIP Advance**”) by the DIP Lender to the Applicant in accordance with section 9 of the DIP Agreement; and
- (b) one or more subsequent advances (each a “**Subsequent Draw**” and together with the First DIP Advance a “**DIP Advance**”) up to the Maximum Amount.

91. All obligations of the Applicant, as are further detailed in the DIP Agreement, owing to the DIP Lender under or in connection with the DIP Facility, the DIP Agreement or these CCAA proceedings (collectively, the “**DIP Obligations**”) are secured by a super-priority charge (the “**DIP Lender’s Charge**”) over all present and after-acquired property, assets and undertakings of the Applicant, including, among other things, the Project, including all proceeds therefrom.

92. The First DIP Advance under the DIP Facility is conditional upon, among other things, the Court issuing the Initial Order providing for authorization and approval of the DIP Facility on the terms and conditions set out in the DIP Agreement, which terms include, *inter alia*, the granting of the DIP Lender’s Charge.

93. Any Subsequent Draws under the DIP Facility are conditional upon, among other things: (i) the ARIO and any subsequent Court Orders being issued and in full force and effect; and (ii) delivery to the DIP Lender of a drawdown certificate certifying that proceeds of the Subsequent DIP Draw requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection (as defined in the DIP Agreement), that the Applicant is in compliance with Court Orders and that no Default or Event of Default has occurred or is continuing.

94. The DIP Agreement provides that the outstanding principal amount of all DIP Advances shall bear interest from the date of advance at a rate per annum equal to 10%.

95. The DIP Facility includes a commitment fee (the “**Commitment Fee**”), which the Applicant is required to pay to the DIP Lender for making the DIP Facility available, in an amount equal to 1.5% of the Maximum Amount. The Commitment Fee is payable upon execution and delivery of the DIP Agreement to the DIP Lender, approval of the DIP Agreement and issuance of the ARIO.

96. The DIP Obligations are required to be repaid to the DIP Lender in full by the earliest of:

- (a) the occurrence of any Event of Default as defined under the DIP Agreement that has not been cured or waived in writing by the DIP Lender;
- (b) the closing of one or more sale transactions for all or substantially all of the assets or shares in the capital of the Applicant approved by an order of the Court;
- (c) the implementation of a plan of compromise or arrangement in accordance with the CCAA and Court Orders;
- (d) conversion of these CCAA proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada); and
- (e) April 15, 2026, being the Maturity Date (as defined in the DIP Agreement).

97. I understand that the Proposed Monitor is supportive of the DIP Agreement and believes the terms contemplated thereunder are market and appropriate in the circumstances.

## **THE NEED CCAA PROTECTION AND PROPOSED NEXT STEPS**

### **A. Events Leading to this Application**

98. The Applicant is no longer able to meet its financial obligations as they become due. As discussed below, absent protections afforded by the CCAA and approval of the proposed DIP Facility, the Applicant faces immediate liquidity challenges and is at risk of the Project becoming subject to various enforcement proceedings. Any alternative other than the proposed CCAA

proceedings will create increased costs, delay and uncertainty for the completion of the Project. Any such alternative would undoubtedly impact all stakeholders including, among others, suppliers, trades and subtrades and the Purchasers who have already entered into a Pre-Sale Agreement for a Unit.

99. While significant progress has been made towards completing the Project, a combination of factors, including increases to and unanticipated construction costs and delays have made it necessary for the Applicant to seek additional credit facilities to fund construction costs to ensure completion of the Project.

100. Based on current pre-sales of the Units, the anticipated costs to complete the Project and the financing costs, the Project, in its current state, is not profitable and will result in substantial losses for some of the secured lenders as well as WellingtonCo.

101. WellingtonCo has been subject to several enforcement actions. These include enforcement proceedings, or the threat of such proceedings. Repayment of the Applicant's indebtedness is dependent on the successful completion of the Project and closing of the sales of the Units. As previously noted, if CCAA protection is not granted and the Project cannot be completed by WellingtonCo, the Project is likely at risk of falling into receivership. Any option other than the proposed CCAA proceedings risks driving up the costs of construction, delays to completion, the sale of the remaining Units and general uncertainty for the Applicant's stakeholders at large

102. Given that the General Contractor has entered into contracts with, among others, suppliers, trades and subtrades for the supply of goods and services for the Project, the Applicant is also seeking a limited stay of proceedings in favour of Mizrahi Inc. The proposed extension of the Stay of Proceedings to the General Contractor will ensure it will not be subject to potential actions from suppliers, trades and subtrades, or any others, any of which would risk completion of the Project in a timely fashion or at all.

## **B. The Applicant's Restructuring**

103. The Applicant's proposed restructuring involves initiating these CCAA proceedings to provide the breathing room and urgently needed liquidity to overcome the financial difficulties it

has encountered and to ensure the Project's completion occurs in a supervised, organized and stable environment. This proposed restructuring includes, among others, the following measures:

- (a) continuing construction under the monitoring of the Proposed Monitor, the Project Monitor and the DIP Lender's Cost Consultant (as defined in the DIP Agreement), each of whom will ensure proper oversight during the proposed restructuring; and
- (b) securing interim financing through the DIP Facility, which will allow the Applicant to resume construction and complete the Project.

## **RELIEF REQUESTED**

### **A. Stay of Proceedings**

104. The Applicant urgently requires a stay of proceedings in order to prevent further enforcement action by certain contractual counterparties and to provide the Applicant with breathing space while it attempts to effect a restructuring, all the while permitting the Project to progress towards completion. Given that the General Contractor entered into most agreements on behalf of the Applicant, a limited stay of proceedings is being proposed in respect of the General Contractor as well.

105. With the benefit of the protections afforded by the CCAA, the Applicant and the General Contractor will be able to ensure completion of the Project and maintain the value of the Property for the benefit of its stakeholders, including the Purchasers, trades, subtrades and suppliers for the Project.

106. The Applicant understands that TCC, in light of current circumstances and V2I's unwillingness to enter into an intercreditor agreement, is unwilling to provide further financing outside of a restructuring proceeding. It would be detrimental to the Applicant and the Project if proceedings were commenced or continued, or rights and remedies were executed, against the Applicant. Absent the proposed Stay of Proceedings, the Applicant will not be able to continue construction and the Project will likely fall into receivership.

107. In light of the foregoing, the Stay of Proceedings is in the best interests of the Applicant, the General Contractor, the Purchasers, trades and the Applicant's other stakeholders. I understand that the Proposed Monitor believes that the Stay of Proceedings is appropriate in the circumstances.

**B. The Proposed Monitor**

108. The proposed Initial Order contemplates that MNP will act as Monitor of the Applicant in these CCAA proceedings. I understand that MNP has consented to act as Monitor of the Applicant in these CCAA proceedings if the proposed Initial Order is granted. A true copy of the signed MNP's consent to act as WellingtonCo's monitor is attached hereto as **Exhibit "OO"**.

**C. Administration Charge**

109. The Initial Order provides for a Court-ordered charge in favour of the Proposed Monitor, as well as counsel to the Proposed Monitor and the Applicant, over the Property, to secure payment of their respective fees and disbursements incurred in connection with services rendered in respect of the Applicant up to a maximum amount of **\$100,000.00** (the "**Administration Charge**"). The Administration Charge is proposed to rank ahead of and have priority over all of the other Charges.

110. The Applicant requires the expertise, knowledge, and continued participation of the proposed beneficiaries of the Administration Charge during the CCAA Proceedings in order to complete a successful restructuring. Each of the beneficiaries of the Administration Charge will have distinct roles in the Applicant's restructuring.

111. The Applicant and the Proposed Monitor worked collaboratively to estimate the quantum of the Administration Charge required, which takes into account the limited retainers the professionals currently have and their outstanding fees. I believe that the Administration Charge is fair and reasonable in the circumstances. I understand that the Proposed Monitor is also of the view that the Administration Charge is fair and reasonable in the circumstances, and that the proposed DIP Lender supports the Administration Charge.

112. The Applicant intends to seek an increase to the Administration Charge to **\$300,000.00** at the Comeback Hearing.

#### **D. DIP Lender's Charge**

113. The DIP Agreement provides, among other things, that the DIP Facility is contingent on the granting of the DIP Lender's Charge subordinate to the Administration Charge, but in priority to all other claims (except any secured creditors who did not receive notice of this application).

114. Pursuant to the proposed Initial Order, the DIP Lender's Charge will secure all of the funds advanced under the DIP Facility. The DIP Lender's Charge will not secure obligations incurred prior to the CCAA Proceedings.

115. The amount to be funded under the DIP Facility during the initial Stay of Proceedings is limited to the amount necessary to ensure the continued operations of the Applicant's business and the progression of the Project. Correspondingly, the DIP Lender's Charge under the proposed Initial Order is limited to the amount to be funded during the initial Stay of Proceedings. The Applicant intends to seek an increase to the DIP Lender's Charge at the Comeback Hearing to the full principal amount available under the DIP Facility.

#### **E. Continued Supply of Goods and Services to the Project**

116. The Project is at the substantial completion stage. Trades, sub-trades and suppliers, among others, are needed in order to see the Project to completion. The Applicant requires these parties to the Project to continue providing the goods and services required by their contracts and subcontracts to ensure completion of the Project (the "**Goods and Services Providers**").

117. The Applicant and the General Contractor require the Initial Order to restrain the Goods and Services Providers from discontinuing, altering, interfering or otherwise terminating the supply of such goods and services required from the Project, provided that in each case, the normal prices or charges for all such goods or services received after the date of the Initial Order are paid by the Applicant and/or the General Contractor, in accordance with normal payment practices of the Applicant and/or the General Contractor, as applicable.

#### **F. Approval of the Forbearance Agreement**

118. On October 15, 2024, in advance of filing the within application, the Applicant and TCC entered into a forbearance agreement (the "**Forbearance Agreement**") in connection with the

First Commitment Letter and the Second Commitment Letter. A true copy of the Forbearance Agreement is attached hereto as **Exhibit “PP”**.

119. Among other things, the Forbearance Agreement: (i) reduces the applicable interest rate under each of the First Lien Commitment Letter and the Second Lien Commitment Letter; and (ii) incorporates by reference certain sections from the DIP Agreement so that the Applicant will be required to comply with such terms after the DIP Facility is repaid in full but before TCC is repaid in full. It is of note that with respect to point (i), the interest rate is being reduced given increased interest rates that occurred as a result of the Applicant’s defaults.

120. The proposed Initial Order seeks approval of the Forbearance Agreement.

#### **G. Cash Flow Forecast**

121. With the assistance of the Proposed Monitor, the Applicant has undertaken a cash flow analysis to determine the quantum of funding required to finance their operations, assuming the Initial Order is granted, over the 13-week period through to the week ending January 12, 2025 (the “**Cash Flow Forecast**”). I understand that the Cash Flow Forecast will be attached to the pre-filing report of the Proposed Monitor.

#### **CONCLUSION**

122. In consultation with the Applicant’s professional advisors, I believe that the proposed Initial Order is in the best interests of the Applicant and its stakeholders. The Stay of Proceedings and the DIP Facility will allow the Applicant to continue ordinary course operations with the breathing space and stability necessary to ensure the most efficient, cost-effective and timely completion of the Project while also preserving its value in light of the current challenges it faces.

123. In the circumstances, I believe that the CCAA Proceedings are the only viable means of restructuring and completing the Project for the benefit of the Applicant's stakeholders and that the relief sought in the Initial Order is limited to what is reasonably necessary to stabilize the Applicant’s business and the Project in the initial ten (10) day period.



124. I swear this affidavit in support of this Application, and for no other, or improper purpose.

SWORN remotely by Sam Mizrahi, in the )  
City of Toronto, before me, in the City of )  
Toronto, Ontario on this 15<sup>th</sup> day of October, )  
2023, in accordance with O. Reg. 431.20, )  
Administering Oath or Declaration Remotely. )  
)



---

**Robert Sottile (68587E)**  
Commissioner for Taking Affidavits  
(or as may be)



---

**SAM MIZRAHI**

This is Exhibit A to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits



## Profile Report

MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC. as of October 15, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.
Ontario Corporation Number (OCN)	1894852
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	April 23, 2013
Registered or Head Office Address	133 Hazelton Avenue, Toronto, Ontario, M5R 0A6, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

This report sets out the most recent information filed on or after June 27, 1992 in respect of corporations and April 1, 1994 in respect of Business Names Act and Limited Partnerships Act filings and recorded in the electronic records maintained by the Ministry as of the date and time the report is generated, unless the report is generated for a previous date. If this report is generated for a previous date, the report sets out the most recent information filed and recorded in the electronic records maintained by the Ministry up to the "as of" date indicated on the report. Additional historical information may exist in paper or microfiche format.

**Active Director(s)**

Minimum Number of Directors 1  
Maximum Number of Directors 10

Name AMANDA BROWN  
Address for Service 133 Hazelton Avenue, Toronto, Ontario, M5R 0A6, Canada  
Resident Canadian Yes  
Date Began October 11, 2024

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Active Officer(s)**

**Name**

AMANDA BROWN

**Position**

President

**Address for Service**

133 Hazelton Avenue, Toronto, Ontario, M5R 0A6, Canada

**Date Began**

October 11, 2024

**Name**

AMANDA BROWN

**Position**

Secretary

**Address for Service**

133 Hazelton Avenue, Toronto, Ontario, M5R 0A6, Canada

**Date Began**

October 11, 2024

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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Additional historical information may exist in paper or microfiche format.

### Corporate Name History

Name

MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

Effective Date

April 23, 2013

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Active Business Names**

<b>Name</b>	MIZRAHI DEVELOPMENTS
<b>Business Identification Number (BIN)</b>	1000464850
<b>Registration Date</b>	March 06, 2023
<b>Expiry Date</b>	March 05, 2028

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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### Expired or Cancelled Business Names

This corporation does not have any expired or cancelled business names registered under the Business Names Act in Ontario.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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## Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: AMANDA BROWN	October 11, 2024
CIA - Notice of Change PAF: AMANDA BROWN	October 11, 2024
CIA - Notice of Change PAF: SAM MIZRAHI - DIRECTOR	December 02, 2019
CIA - Notice of Change PAF: SAM MIZRAHI - DIRECTOR	November 12, 2019
Annual Return - 2017 PAF: RENNY DELBA - DIRECTOR	June 13, 2018
Annual Return - 2016 PAF: SAM MIZRAHI - DIRECTOR	July 10, 2017
Annual Return - 2014 PAF: REMY DERBER - DIRECTOR	August 10, 2015
Annual Return - 2013 PAF: REMY DELBEL - OTHER	March 26, 2015
CIA - Initial Return PAF: JEFFREY A. HALMAN - OTHER	June 10, 2013
BCA - Articles of Incorporation	April 23, 2013

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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This is Exhibit B to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. J. H. a".

A Commissioner for taking affidavits



## Profile Report

MIZRAHI INC. as of October 11, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	MIZRAHI INC.
Ontario Corporation Number (OCN)	1713728
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	October 16, 2006
Registered or Head Office Address	189 Forest Hill Road, Toronto, Ontario, M5P 2N3, Canada

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Active Director(s)**

Minimum Number of Directors 1  
Maximum Number of Directors 10

Name SAM MIZRAHI  
Address for Service 189 Forest Hill Road, Toronto, Ontario, M5P 2N3, Canada  
Resident Canadian Yes  
Date Began October 16, 2006

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Active Officer(s)**

**Name** SAM MIZRAHI  
**Position** President  
**Address for Service** 189 Forest Hill Road, Toronto, Ontario, M5P 2N3, Canada  
**Date Began** October 16, 2006

**Name** SAM MIZRAHI  
**Position** Secretary  
**Address for Service** 189 Forest Hill Road, Toronto, Ontario, M5P 2N3, Canada  
**Date Began** October 16, 2006

**Name** SAM MIZRAHI  
**Position** Treasurer  
**Address for Service** 189 Forest Hill Road, Toronto, Ontario, M5P 2N3, Canada  
**Date Began** October 16, 2006

**Name** SAM MIZRAHI  
**Position** Vice-President  
**Address for Service** 189 Forest Hill Road, Toronto, Ontario, M5P 2N3, Canada  
**Date Began** October 18, 2007

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Corporate Name History**

**Name**

MIZRAHI INC.

**Effective Date**

October 16, 2006

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*V. Quintanilla W.*

Director/Registrar

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**Active Business Names**

<b>Name</b>	THE ONE
<b>Business Identification Number (BIN)</b>	291125573
<b>Registration Date</b>	October 21, 2019
<b>Expiry Date</b>	October 20, 2024

<b>Name</b>	MIZRAHI DEVELOPMENTS
<b>Business Identification Number (BIN)</b>	1000464849
<b>Registration Date</b>	March 06, 2023
<b>Expiry Date</b>	March 05, 2028

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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**Expired or Cancelled Business Names**

**Name** MIZRAHICORP  
**Business Identification Number (BIN)** 220179741  
**Status** Inactive - Expired  
**Registration Date** February 16, 2012  
**Expired Date** February 15, 2017

**Name** MIZRAHI DEVELOPMENTS  
**Business Identification Number (BIN)** 260117254  
**Status** Inactive - Expired  
**Registration Date** February 02, 2016  
**Expired Date** February 01, 2021

**Name** MIZRAHI METAL  
**Business Identification Number (BIN)** 180612061  
**Status** Inactive - Expired  
**Registration Date** June 04, 2008  
**Expired Date** June 03, 2013

**Name** MIZRAHI DESIGN/BUILD  
**Business Identification Number (BIN)** 170073191  
**Status** Inactive - Expired  
**Registration Date** January 18, 2007  
**Expired Date** January 16, 2017

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*V. Quintanilla W.*

Director/Registrar

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## Document List

Filing Name	Effective Date
Archive Document Package	December 24, 2021
Annual Return - 2020 PAF: SAM MIZRAHI - DIRECTOR	May 16, 2021
Annual Return - 2019 PAF: SAM MIZRAHI - DIRECTOR	June 14, 2020
Annual Return - 2018 PAF: SAM MIZRAHI - DIRECTOR	May 26, 2019
Annual Return - 2017 PAF: SAM MIZRAHI - DIRECTOR	May 20, 2018
Annual Return - 2016 PAF: SAM MIZRAHI - DIRECTOR	May 21, 2017
CIA - Notice of Change PAF: SAM MIZRAHI - DIRECTOR	December 09, 2016
Annual Return - 2015 PAF: SAM MIZRAHI - DIRECTOR	May 22, 2016
Annual Return - 2014 PAF: SAM MIZRAHI - DIRECTOR	April 18, 2015
Annual Return - 2013 PAF: SAM MIZRAHI - DIRECTOR	May 03, 2014
Annual Return - 2012 PAF: SAM MIZRAHI - DIRECTOR	April 27, 2013
Annual Return - 2011 PAF: SAM MIZRAHI - DIRECTOR	May 02, 2012
Annual Return - 2010 PAF: SAM MIZRAHI - DIRECTOR	April 30, 2011

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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Annual Return - 2009 PAF: SAM MIZRAHI - DIRECTOR	May 08, 2010
Annual Return - 2008 PAF: SAM MIZRAHI - DIRECTOR	July 11, 2009
Annual Return - 2006 PAF: SAM MIZRAHI - DIRECTOR	March 16, 2008
Annual Return - 2007 PAF: SAM MIZRAHI - DIRECTOR	March 16, 2008
CIA - Notice of Change PAF: JEFFREY A. HALMAN - OTHER	November 21, 2007
CIA - Initial Return PAF: JEFFREY A. HALMAN - OTHER	December 09, 2006
BCA - Articles of Incorporation	October 16, 2006

All "PAF" (person authorizing filing) information is displayed exactly as recorded in the Ontario Business Registry. Where PAF is not shown against a document, the information has not been recorded in the Ontario Business Registry.

Certified a true copy of the record of the Ministry of Public and Business Service Delivery.

*V. Quintanilla W.*

Director/Registrar

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## Rapport de profil

MIZRAHI INC. en date du 11 octobre 2024

Loi	Loi sur les sociétés par actions
Type	Société par actions de l'Ontario
Dénomination	MIZRAHI INC.
Numéro de société de l'Ontario	1713728
Autorité législative responsable	Canada - Ontario
Statut	Active
Date de constitution	16 octobre 2006
Adresse légale ou du siège social	189 Forest Hill Road, Toronto, Ontario, M5P 2N3, Canada

Copie certifiée conforme du dossier du ministère des Services au public et aux entreprises.

*V. Quintanilla W.*

Directeur ou registrateur

Ce rapport présente les renseignements les plus récents déposés à compter du 27 juin 1992 à l'égard des sociétés, et le 1er avril 1994, à l'égard des dépôts en vertu de la Loi sur les noms commerciaux et de la Loi sur les sociétés en commandite et enregistrés dans les dossiers électroniques tenus par le Ministère à la date et à l'heure auxquelles le rapport est généré, sauf si le rapport est généré pour une date antérieure. Si ce rapport est produit pour une date antérieure, le rapport contient les renseignements les plus récents déposés et enregistrés dans les dossiers électroniques tenus par le Ministère jusqu'à la date « en date du » indiquée sur le rapport. Des renseignements historiques supplémentaires peuvent exister au format papier ou microfiche.

**Administrateurs en fonction**

Nombre minimal d'administrateurs 1  
Nombre maximal d'administrateurs 10

Dénomination SAM MIZRAHI  
Adresse aux fins de signification 189 Forest Hill Road, Toronto, Ontario, M5P 2N3, Canada  
Résident canadien Oui  
Date d'entrée en fonction 16 octobre 2006

Copie certifiée conforme du dossier du ministère des Services au public et aux entreprises.

*V. Quintanilla W.*

Directeur ou registrateur

Ce rapport présente les renseignements les plus récents déposés à compter du 27 juin 1992 à l'égard des sociétés, et le 1er avril 1994, à l'égard des dépôts en vertu de la Loi sur les noms commerciaux et de la Loi sur les sociétés en commandite et enregistrés dans les dossiers électroniques tenus par le Ministère à la date et à l'heure auxquelles le rapport est généré, sauf si le rapport est généré pour une date antérieure. Si ce rapport est produit pour une date antérieure, le rapport contient les renseignements les plus récents déposés et enregistrés dans les dossiers électroniques tenus par le Ministère jusqu'à la date « en date du » indiquée sur le rapport. Des renseignements historiques supplémentaires peuvent exister au format papier ou microfiche.

#### Dirigeants en fonction

**Dénomination** SAM MIZRAHI  
**Poste** Président de la société  
**Adresse aux fins de signification** 189 Forest Hill Road, Toronto, Ontario, M5P 2N3, Canada  
**Date d'entrée en fonction** 16 octobre 2006

**Dénomination** SAM MIZRAHI  
**Poste** Secrétaire  
**Adresse aux fins de signification** 189 Forest Hill Road, Toronto, Ontario, M5P 2N3, Canada  
**Date d'entrée en fonction** 16 octobre 2006

**Dénomination** SAM MIZRAHI  
**Poste** Trésorier  
**Adresse aux fins de signification** 189 Forest Hill Road, Toronto, Ontario, M5P 2N3, Canada  
**Date d'entrée en fonction** 16 octobre 2006

**Dénomination** SAM MIZRAHI  
**Poste** Vice-président de la société  
**Adresse aux fins de signification** 189 Forest Hill Road, Toronto, Ontario, M5P 2N3, Canada  
**Date d'entrée en fonction** 18 octobre 2007

Copie certifiée conforme du dossier du ministère des Services au public et aux entreprises.

*V. Quintanilla W.*

Directeur ou registrateur

Ce rapport présente les renseignements les plus récents déposés à compter du 27 juin 1992 à l'égard des sociétés, et le 1<sup>er</sup> avril 1994, à l'égard des dépôts en vertu de la Loi sur les noms commerciaux et de la Loi sur les sociétés en commandite et enregistrés dans les dossiers électroniques tenus par le Ministère à la date et à l'heure auxquelles le rapport est généré, sauf si le rapport est généré pour une date antérieure. Si ce rapport est produit pour une date antérieure, le rapport contient les renseignements les plus récents déposés et enregistrés dans les dossiers électroniques tenus par le Ministère jusqu'à la date « en date du » indiquée sur le rapport. Des renseignements historiques supplémentaires peuvent exister au format papier ou microfiche.

## Historique des dénominations sociales

Nom	Date d'entrée en vigueur
MIZRAHI INC.	16 octobre 2006

Copie certifiée conforme du dossier du ministère des Services au public et aux entreprises.

*V. Quintanilla W.*

Directeur ou registrateur

Ce rapport présente les renseignements les plus récents déposés à compter du 27 juin 1992 à l'égard des sociétés, et le 1er avril 1994, à l'égard des dépôts en vertu de la Loi sur les noms commerciaux et de la Loi sur les sociétés en commandite et enregistrés dans les dossiers électroniques tenus par le Ministère à la date et à l'heure auxquelles le rapport est généré, sauf si le rapport est généré pour une date antérieure. Si ce rapport est produit pour une date antérieure, le rapport contient les renseignements les plus récents déposés et enregistrés dans les dossiers électroniques tenus par le Ministère jusqu'à la date « en date du » indiquée sur le rapport. Des renseignements historiques supplémentaires peuvent exister au format papier ou microfiche.

**Noms commerciaux en vigueur**

Dénomination	THE ONE
Numéro d'identification d'entreprise (NIE)	291125573
Date d'enregistrement	21 octobre 2019
Date d'expiration	20 octobre 2024

Dénomination	MIZRAHI DEVELOPMENTS
Numéro d'identification d'entreprise (NIE)	1000464849
Date d'enregistrement	06 mars 2023
Date d'expiration	05 mars 2028

Copie certifiée conforme du dossier du ministère des Services au public et aux entreprises.

*V. Quintanilla W.*

Directeur ou registrateur

Ce rapport présente les renseignements les plus récents déposés à compter du 27 juin 1992 à l'égard des sociétés, et le 1er avril 1994, à l'égard des dépôts en vertu de la Loi sur les noms commerciaux et de la Loi sur les sociétés en commandite et enregistrés dans les dossiers électroniques tenus par le Ministère à la date et à l'heure auxquelles le rapport est généré, sauf si le rapport est généré pour une date antérieure. Si ce rapport est produit pour une date antérieure, le rapport contient les renseignements les plus récents déposés et enregistrés dans les dossiers électroniques tenus par le Ministère jusqu'à la date « en date du » indiquée sur le rapport. Des renseignements historiques supplémentaires peuvent exister au format papier ou microfiche.

**Noms commerciaux expirés ou révoqués**

Dénomination	MIZRAHICORP
Numéro d'identification d'entreprise (NIE)	220179741
Statut	Inactive - Expiré
Date d'enregistrement	16 février 2012
Date d'expiration	15 février 2017

Dénomination	MIZRAHI DEVELOPMENTS
Numéro d'identification d'entreprise (NIE)	260117254
Statut	Inactive - Expiré
Date d'enregistrement	02 février 2016
Date d'expiration	01 février 2021

Dénomination	MIZRAHI METAL
Numéro d'identification d'entreprise (NIE)	180612061
Statut	Inactive - Expiré
Date d'enregistrement	04 juin 2008
Date d'expiration	03 juin 2013

Dénomination	MIZRAHI DESIGN/BUILD
Numéro d'identification d'entreprise (NIE)	170073191
Statut	Inactive - Expiré
Date d'enregistrement	18 janvier 2007
Date d'expiration	16 janvier 2017

Copie certifiée conforme du dossier du ministère des Services au public et aux entreprises.

*V. Quintanilla W.*

Directeur ou registrateur

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## Liste de documents

Nom du dépôt	Date d'entrée en vigueur
Trousse de documents archivés	24 décembre 2021
Rapport annuel - 2020 PRE: SAM MIZRAHI - DIRECTOR	16 mai 2021
Rapport annuel - 2019 PRE: SAM MIZRAHI - DIRECTOR	14 juin 2020
Rapport annuel - 2018 PRE: SAM MIZRAHI - DIRECTOR	26 mai 2019
Rapport annuel - 2017 PRE: SAM MIZRAHI - DIRECTOR	20 mai 2018
Rapport annuel - 2016 PRE: SAM MIZRAHI - DIRECTOR	21 mai 2017
CIA - Avis de modification PRE: SAM MIZRAHI - DIRECTOR	09 décembre 2016
Rapport annuel - 2015 PRE: SAM MIZRAHI - DIRECTOR	22 mai 2016
Rapport annuel - 2014 PRE: SAM MIZRAHI - DIRECTOR	18 avril 2015
Rapport annuel - 2013 PRE: SAM MIZRAHI - DIRECTOR	03 mai 2014
Rapport annuel - 2012 PRE: SAM MIZRAHI - DIRECTOR	27 avril 2013
Rapport annuel - 2011 PRE: SAM MIZRAHI - DIRECTOR	02 mai 2012
Rapport annuel - 2010 PRE: SAM MIZRAHI - DIRECTOR	30 avril 2011

Copie certifiée conforme du dossier du ministère des Services au public et aux entreprises.

*V. Quintanilla W.*

Directeur ou registrateur

Ce rapport présente les renseignements les plus récents déposés à compter du 27 juin 1992 à l'égard des sociétés, et le 1er avril 1994, à l'égard des dépôts en vertu de la Loi sur les noms commerciaux et de la Loi sur les sociétés en commandite et enregistrés dans les dossiers électroniques tenus par le Ministère à la date et à l'heure auxquelles le rapport est généré, sauf si le rapport est généré pour une date antérieure. Si ce rapport est produit pour une date antérieure, le rapport contient les renseignements les plus récents déposés et enregistrés dans les dossiers électroniques tenus par le Ministère jusqu'à la date « en date du » indiquée sur le rapport. Des renseignements historiques supplémentaires peuvent exister au format papier ou microfiche.

Rapport annuel - 2009 PRE: SAM MIZRAHI - DIRECTOR	08 mai 2010
Rapport annuel - 2008 PRE: SAM MIZRAHI - DIRECTOR	11 juillet 2009
Rapport annuel - 2006 PRE: SAM MIZRAHI - DIRECTOR	16 mars 2008
Rapport annuel - 2007 PRE: SAM MIZRAHI - DIRECTOR	16 mars 2008
CIA - Avis de modification PRE: JEFFREY A. HALMAN - OTHER	21 novembre 2007
CIA - Rapport initial PRE: JEFFREY A. HALMAN - OTHER	09 décembre 2006
BCA - Statuts constitutifs	16 octobre 2006

Tous les renseignements de la « PRE » (personne autorisant le dépôt) sont affichés exactement tels qu'ils sont enregistrés dans le Registre des entreprises de l'Ontario. Lorsque la PRE ne figure pas sur un document, les renseignements n'ont pas été enregistrés dans le Registre des entreprises de l'Ontario.

Copie certifiée conforme du dossier du ministère des Services au public et aux entreprises.

*V. Quintanilla W.*

Directeur ou registrateur

Ce rapport présente les renseignements les plus récents déposés à compter du 27 juin 1992 à l'égard des sociétés, et le 1<sup>er</sup> avril 1994, à l'égard des dépôts en vertu de la Loi sur les noms commerciaux et de la Loi sur les sociétés en commandite et enregistrés dans les dossiers électroniques tenus par le Ministère à la date et à l'heure auxquelles le rapport est généré, sauf si le rapport est généré pour une date antérieure. Si ce rapport est produit pour une date antérieure, le rapport contient les renseignements les plus récents déposés et enregistrés dans les dossiers électroniques tenus par le Ministère jusqu'à la date « en date du » indiquée sur le rapport. Des renseignements historiques supplémentaires peuvent exister au format papier ou microfiche.

This is Exhibit C to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. Ha", is centered within the upper portion of the box.

A Commissioner for taking affidavits

**PROPERTY DESCRIPTION:** LOTS 1, 2 & 3 & PART LOT 4, PLAN 145, N/S RICHMOND ROAD (NOW WELLINGTON STREET), PARTS 1 & 2 PLAN 4R35696; SUBJECT TO AN EASEMENT AS IN OC2360765; SUBJECT TO AN EASEMENT AS IN OC2671330; CITY OF OTTAWA

**PROPERTY REMARKS:** FOR THE PURPOSE OF THE QUALIFIER THE DATE OF REGISTRATION OF ABSOLUTE TITLE IS 2023/09/25.

**ESTATE/QUALIFIER:**

FEE SIMPLE  
LT ABSOLUTE PLUS

**RECENTLY:**

CONSOLIDATION FROM 04030-0259, 04030-0260

**PIN CREATION DATE:**

2023/11/27

**OWNERS' NAMES**

MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

**CAPACITY SHARE**

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES (DELETED INSTRUMENTS NOT INCLUDED) **						
**SUBJECT TO SUBSECTION 44(1) OF THE LAND TITLES ACT, EXCEPT PARAGRAPHS 3 AND 14 AND *						
** PROVINCIAL SUCCESSION DUTIES AND EXCEPT PARAGRAPH 11 AND ESCHEATS OR FORFEITURE **						
** TO THE CROWN UP TO THE DATE OF REGISTRATION WITH AN ABSOLUTE TITLE. **						
OC1484154	2013/06/06	TRANSFER	\$1,950,000	6830854 CANADA INC.	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
OC2064674	2018/12/14	TRANSFER	\$3,000,000	1230517 ONTARIO INC.	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	C
REMARKS: PLANNING ACT STATEMENTS.						
OC2158856	2019/10/29	CHARGE	\$68,000,000	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
OC2158857	2019/10/29	NO ASSGN RENT GEN		MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
REMARKS: OC2158856 RENTS						
OC2158858	2019/10/29	CHARGE	\$24,000,000	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	WESTMOUNT GUARANTEE SERVICES INC.	C
OC2222639	2020/06/04	NOTICE	\$1	CITY OF OTTAWA	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	C
OC2222640	2020/06/04	NOTICE	\$1	CITY OF OTTAWA	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	C
OC2222642	2020/06/04	NOTICE	\$1	CITY OF OTTAWA	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	C
OC2222742	2020/06/04	POSTPONEMENT		COMPUTERSHARE TRUST COMPANY OF CANADA	CITY OF OTTAWA	C
REMARKS: OC2158856 AND OC2158857 TO OC2222640						
OC2222743	2020/06/04	POSTPONEMENT		COMPUTERSHARE TRUST COMPANY OF CANADA	CITY OF OTTAWA	C
REMARKS: OC2158856 AND OC2158857 TO OC2222642						
OC2222744	2020/06/04	POSTPONEMENT		COMPUTERSHARE TRUST COMPANY OF CANADA	CITY OF OTTAWA	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.

NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
		REMARKS: OC2158856 AND OC2158857 TO OC2222639				
OC2222745	2020/06/04	POSTPONEMENT		WESTMOUNT GUARANTEE SERVICES INC.	CITY OF OTTAWA	C
		REMARKS: OC2158858 TO OC2222640				
OC2222746	2020/06/04	POSTPONEMENT		WESTMOUNT GUARANTEE SERVICES INC.	CITY OF OTTAWA	C
		REMARKS: OC2158858 TO OC2222642				
OC2222747	2020/06/04	POSTPONEMENT		WESTMOUNT GUARANTEE SERVICES INC.	CITY OF OTTAWA	C
		REMARKS: OC2158858 TO OC2222639				
OC2273786	2020/10/28	NOTICE	\$1	CITY OF OTTAWA	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	C
OC2273826	2020/10/28	POSTPONEMENT		COMPUTERSHARE TRUST COMPANY OF CANADA	CITY OF OTTAWA	C
		REMARKS: OC2158856 TO OC2273786				
OC2273827	2020/10/28	POSTPONEMENT		WESTMOUNT GUARANTEE SERVICES INC.	CITY OF OTTAWA	C
		REMARKS: OC2158858 TO OC2273786				
OC2339182	2021/04/23	NOTICE		MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
		REMARKS: OC2158856				
OC2339183	2021/04/23	POSTPONEMENT		WESTMOUNT GUARANTEE SERVICES INC.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
		REMARKS: OC2158858 TO OC2339182				
OC2360765	2021/06/16	TRANSFER EASEMENT	\$2	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	ROGERS COMMUNICATIONS INC.	C
OC2430519	2021/12/01	CHARGE	\$6,000,000	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
OC2430520	2021/12/01	NO ASSGN RENT GEN		MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC	COMPUTERSHARE TRUST COMPANY OF CANADA	C
		REMARKS: OC2430519.				
OC2430521	2021/12/01	POSTPONEMENT		WESTMOUNT GUARANTEE SERVICES INC.	COMPUTERSHARE TRUST COMPANY OF CANADA	C
		REMARKS: OC2158858 TO OC2430519				
OC2524903	2022/08/15	NOTICE	\$1	CITY OF OTTAWA	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	C
4R35696	2023/09/25	PLAN REFERENCE				C
OC2636400	2023/09/25	APL ABSOLUTE TITLE		MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	C
		REMARKS: RE: NOTICE OC2603701				

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/ CHKD
OC2645091	2023/10/26	APL CONSOLIDATE		MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.		C
4R35930	2024/01/17	PLAN REFERENCE				C
		REMARKS: OC2663666. STRATA				
OC2671330	2024/02/23	TRANSFER EASEMENT	\$2	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	BELL CANADA	C
OC2671331	2024/02/23	POSTPONEMENT		COMPUTERSHARE TRUST COMPANY OF CANADA	BELL CANADA	C
		REMARKS: OC2158856 TO OC2671330				
OC2671332	2024/02/23	POSTPONEMENT		WESTMOUNT GUARANTEE SERVICES INC.	BELL CANADA	C
		REMARKS: OC2158858 TO OC2671330				
OC2682295	2024/04/15	CHARGE	\$12,900,000	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.	V2 INVESTMENT HOLDINGS INC.	C
OC2727027	2024/09/19	CONSTRUCTION LIEN	\$107,293	ALENFRAGE DESIGNER PAINT INC.		C

This is Exhibit D to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. Ha", is centered within the upper portion of the box.

A Commissioner for taking affidavits

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

**FINANCIAL INFORMATION**

**31 DECEMBER 2023**



**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

**FINANCIAL INFORMATION  
31 DECEMBER 2023**

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<b>Statement of Income and Retained Earnings</b>	<b>3</b>
<b>Statement of Cash Flows</b>	<b>4</b>
<b>Notes to Compiled Financial Information</b>	<b>5</b>

330 Highway 7 East, Suite PH7  
HSBC Bank Building  
Richmond Hill, Ontario  
Canada L4B 3P8  
Tel: (905) 882-0188  
Fax: (905) 889-2170



**Geraldein Tang, CPA,  
Professional Corporation**

## **COMPILATION ENGAGEMENT REPORT**

On the basis of information provided by management, I have compiled the statement of financial position of Mizrahi Development Group (1451 Wellington) Inc. as at 31 December 2023, the statements of income and retained earnings, and the statement of cash flows for the year then ended and Note 2 describes the basis of accounting applied in the preparation of the compiled financial information (“financial information”).

Management is responsible for the accompanying financial information, including the accuracy and completeness of the underlying information used to compile it and the selection of the basis of accounting.

I performed this engagement in accordance with Canadian Standard on Related Services (CSRS) 4200, Compilation Engagements, which requires me to comply with relevant ethical requirements. My responsibility is to assist management in the preparation of the financial information

I did not perform an audit engagement or a review engagement, nor was I required to perform procedures to verify the accuracy or completeness of the information provided by management. Accordingly, I do not express an audit opinion or a review conclusion, or provide any form of assurance on the financial information.

Readers are cautioned that the financial information may not be appropriate for their purposes.

*Geraldein Tang, CPA, CA*  
*(Authorized to practise under)*


Richmond Hill, Ontario  
June 17, 2024

GERALDEIN TANG CPA PROFESSIONAL CORPORATION

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.  
STATEMENT OF FINANCIAL POSITION  
AS AT 31 DECEMBER 2023**

	<u>2023</u>	<u>2022</u>
<b>ASSETS</b>		
<b>CURRENT</b>		
Bank and cash	\$ 427,213	\$ 14,403
GST/HST refundable	160,955	137,196
Other Receivable	675,930	0
Prepaid expenses and sundry deposits	970,850	965,834
	<u>2,234,948</u>	<u>1,117,433</u>
<b>CAPITAL</b>		
Land Cost	4,950,000	4,950,000
Land and Building development costs	80,016,582	70,232,202
	<u>84,966,582</u>	<u>75,182,202</u>
	<u>\$87,201,530</u>	<u>\$76,299,635</u>
<b>LIABILITIES</b>		
<b>CURRENT</b>		
Accounts payable and accruals	\$ 2,834,877	\$ 2,624,318
<b>LONG TERM</b>		
Advances from shareholder	11,621,508	8,386,308
Line of Credit	753,100	753,100
Loans Payable	1,519,930	1,635,930
Mortgages Payable	67,991,747	60,046,300
Other liability	2,995,000	2,995,000
	<u>84,881,285</u>	<u>73,816,638</u>
	<u>87,716,162</u>	<u>76,440,956</u>
<b>SHAREHOLDER'S EQUITY</b>		
<b>SHARE CAPITAL</b>		
Authorized - unlimited Common shares		
Issued - 100 common shares	100	100
<b>RETAINED EARNINGS</b>		
	(514,732)	(141,421)
	<u>(514,632)</u>	<u>(141,321)</u>
	<u>\$87,201,530</u>	<u>\$76,299,635</u>

APPROVED ON BEHALF OF THE BOARD:

 \_\_\_\_\_, DIRECTOR  
DATE

(Unaudited - see Compilation Engagement Report & Notes to Compiled Financial Information)

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

**STATEMENT OF INCOME and RETAINED EARNINGS  
FOR THE YEAR ENDED 31 DECEMBER 2023**

	<u>2023</u>	<u>2022</u>
REVENUE	<u>\$ 0</u>	<u>\$ 0</u>
EXPENSES		
Loan interests & Fees	338,201	131,437
Professional fees	<u>35,110</u>	<u>9,984</u>
	<u>373,311</u>	<u>141,421</u>
NET INCOME (LOSS)	(373,311)	(141,421)
RETAINED EARNINGS, Beginning of Year	<u>(141,421)</u>	<u>0</u>
RETAINED EARNINGS, End of Year	<u>\$ (514,732)</u>	<u>\$ (141,421)</u>

(Unaudited - see Compilation Engagement Report & Notes to Compiled Financial Information)

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

**STATEMENT OF CASH FLOWS  
FOR THE YEAR ENDED 31 DECEMBER 2023**

	<u>2023</u>	<u>2022</u>
CASH PROVIDED BY (USED) IN:		
OPERATING ACITIVIES		
Net income (loss) for the year	\$ (373,311)	\$ (141,421)
Add items not involving cash:		
Depreciation and amortization	0	0
	<u>(373,311)</u>	<u>(141,421)</u>
Changes in non-cash working capital items:		
Decrease (increase) in receivables	(699,689)	105,599
Decrease (increase) in prepaid expense	(5,016)	(768,766)
Increase (decrease) in accounts payable	210,559	(456,159)
Increase (decrease) in Corp tax payable	0	0
	<u>(867,457)</u>	<u>(1,260,747)</u>
CASH PROVIDED BY OPERATING ACTIVITIES		
CASH USED IN FINANCING ACTIVITIES		
Increase (decrease) in Loans payable	(116,000)	1,459,030
Increase (decrease) in Mortgages payable	7,945,447	11,256,145
Increase (decrease) in Shareholder's loan	3,235,200	3,798,273
Increase (decrease) in Other liability	0	0
Dividends	0	0
Paid up capital	0	0
	<u>11,064,647</u>	<u>16,513,448</u>
CASH USED IN INVESTING ACTIVITIES		
Purchase of capital assets & other assets	<u>(9,784,380)</u>	<u>(15,432,617)</u>
INCREASE (DECREASE) IN CASH	412,810	(179,916)
CASH (BANK INDEBTEDNESS), BEGINNING OF YEAR	<u>14,403</u>	<u>194,319</u>
CASH (BANK INDEBTEDNESS), END OF YEAR	<u>\$ 427,213</u>	<u>\$ 14,403</u>

(Unaudited - see Compilation Engagement Report & Notes to Compiled Financial Information)

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.  
NOTES TO COMPILED FINANCIAL INFORMATION  
FOR THE YEAR ENDED 31 DECEMBER 2023**

**1. ORGANIZATION**

The company was incorporated on April 23, 2013 under the Ontario Business Corporation Act. The company's principal activities are in real estate development.

**2. BASIS of ACCOUNTING and SIGNIFICANT ACCOUNTING POLICIES**

The basis of accounting applied in the preparation of the statement of financial position of Mizrahi Development Group (1451 Wellington) Inc. as at 31 December 2023, the statements of income and retained earnings, and the statement of cash flows for the year then ended is the historical cost basis and reflects cash transactions with the addition of:

- Accounts Receivables
- Other receivables & Loan Receivable
- Prepaid expenses and deposits
- Capital Assets (Land and Building Developments)
- Accounts payable, accruals and accrued liabilities
- Mortgages Payable
- Other payables & Loans Payable

**3. SHAREHOLDER LOAN PAYABLE / RECEIVABLE**

Advances from/to shareholder are non-interest bearing, with no specific terms of repayment.

**4. LOANS PAYABLE to / RECEIVABLE**

	<b>2023</b>	<b>2022</b>
Loans payable (receivable) – Arm's length	\$ 589,930	\$ 675,930
Loans payable – Related parties	<u>930,000</u>	<u>960,000</u>
	<u><b>\$ 1,519,930</b></u>	<u><b>\$ 1,635,930</b></u>

Loans from/to related parties are non-interest bearing, with no specific terms of repayment.

**5. Comparative figures**

Certain comparative figures for 2022 have been reclassified to conform with current year's financial statement presentation.

This is Exhibit E to the Initial  
Order, sworn on October 15, 2024

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A Commissioner for taking affidavits



October 2, 2019

**Mizrahi Development Group (1451 Wellington) Inc.**  
c/o: Yvan Repka  
Canada ICI Capital Corporation  
430, 2020 - 4th Street SW  
Calgary, AB, T2S 1W3

**Attention: Sam Mizrahi & Yvan Repka**

Dear Sirs:

**RE: Construction financing in the amount of \$67,000,000 and a Letter of Credit Facility in the amount of \$1,000,000 to be secured by a \$68,000,000 1<sup>st</sup> priority mortgage on a 19,833 square foot site to be improved with a 93-unit residential condominium building with 5,268 square feet of ground floor retail space located at 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "Subject Property") [Mizrahi – 1451 Wellington Street West]**

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We are pleased to advise that we have approved a \$67,000,000 construction loan facility and a letter of credit Facility in the amount of \$1,000,000 (the "Loan") to Mizrahi Development Group (1451 Wellington) Inc. (the "Borrower"), which shall be secured by a \$68,000,000 first mortgage charge on the Subject Property (the "Mortgage") on the terms described in this commitment letter (the "Commitment Letter"), which upon execution by the Borrower, Guarantor and Lender shall constitute an agreement which shall bind the Borrower and Guarantor with respect to the Loan. The Loan has been approved subject to the following terms and conditions.

**LOAN TERMS**

1. **Lender** Trez Capital Limited Partnership or its nominee (the "Lender").
2. **Borrower** Mizrahi Development Group (1451 Wellington) Inc. ( the "Borrower").
3. **Guarantor** The unlimited guarantee of Sam Mizrahi shall be provided for the full Loan Amount (as hereinafter defined) outstanding from time to time including interest arising therefrom and any other monies which may now or hereafter become due and owing (the "Guarantor").
4. **Subject Property** **Civic Address:** 1451 & 1445 Wellington Street West, Ottawa, Ontario  
**Site & Property Description:** The 19,833 square foot site is currently improved with a single storey commercial building being used as a sales centre for the proposed development and a two-storey brick residential building that has been converted to a full service restaurant. The site is to be developed with a 12 storey concrete frame, condominium building featuring 93 residential units with 5,268 square feet of retail space at grade, 100 storage lockers and 130 underground parking spaces. (the "Subject Property" or the "Project")
5. **Purpose & Use** The Loan funds shall be used to assist the Borrower with development costs, net of HST, for the Subject Property and shall at all times be used for this said purpose and



for no other purpose, without the prior written consent of the Lender.

6. **Expiry of Loan Offer** It is a condition of this Commitment Letter that if the Security (as hereinafter defined) is not registered and in place, and the Initial Advance (as hereinafter defined) has not occurred on or before **October 31<sup>st</sup>, 2019**, the Lender shall no longer have any obligation to advance any funds to the Borrower pursuant to the terms of this Commitment Letter. All other terms and conditions of this Commitment Letter shall remain in full force and effect.
7. **Loan Amount** The Loan Amount shall include a Construction Loan Facility and a Letter of Credit Facility
8. **Construction Loan Facility** The lessor of \$67,000,000 and 73.6% of eligible project costs as determined by the Lender.
9. **Letter of Credit Facility** Amount: maximum \$1,000,000  
 Purpose: The Facility shall be available for items in the approved budget as a security for performance required by the City of Ottawa, any other municipal bodies or warranty provider in connection with the completion of the Subject Property.  
 Fees: the Letter of Credit Facility is subject to full Syndication by the Lender, fees are to be determined based on the Syndicate Lender's per annum rates and fees (set up fees are estimated at \$10,000).  
 Repayment: Upon completion and repayment of the Construction Loan, any remaining outstanding Letters of Credit must be fully secured with cash deposits prior to any discharge being provided by the Lender.  
 Issuance: Letter(s) of Credit issued shall not constitute advances under the Construction Loan Facility. Fees will be charges in accordance with the terms of the Syndicate Lender's Letter of Credit Facility (estimated to be 2.5% annually).  
 Draw: Any amount drawn against the Letter(s) of Credit by the Letter of Credit beneficiary may result in an equivalent reduction in the un-advanced portion of the Construction Loan Facility or the Borrower having to inject additional equity, at the Lender's sole discretion.
10. **Term** 36 months commencing from the Interest Adjustment Date (as hereinafter defined).
11. **Interest Adjustment Date** Shall be the 1<sup>st</sup> day of the month immediately following the Initial advance of funds, or such other date as shall be determined by the Lender.
12. **Interest Rate** Interest shall be charged at the greater of:  
 (a) 6.75% per annum (the "Minimum Rate"); and  
 (b) a variable rate per annum (in either case, both before and after maturity, default and judgment) equal to the rate established by the HSBC from time to time as HSBC's prime lending rate for Canadian Dollar Loans ("Prime Rate") plus 2.80%  
 on the outstanding balance of the principal sum owing from time to time for the first 35 months of the Term and 15.0% per annum thereafter. Interest shall be calculated daily and compounded and payable monthly. Overdue interest shall bear interest at the same rate as principal.

Such interest rate shall be set with respect to amounts advanced on the day of each advance and thereafter monthly on the first day of each month. Interest shall be calculated daily on the daily balance outstanding from time to time, before as well as after maturity, default or judgment, from the date of each advance. Such Interest Rate shall be determined upon the basis of a three hundred and sixty-five (365) day year for common years and a three hundred and sixty-six (366) day year for leap years. Interest shall be calculated in accordance with the Lender's usual practice (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower.

All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. All interest payable hereunder bears interest from the date of advance of any portion of the Loan to the Lender's Solicitor (as hereinafter defined), whether or not such advance of the Loan is released to the Borrower or the Borrower's Solicitor (as hereinafter defined).

- 13. **Amortization** Interest only.
  
- 14. **Interest Accrual Budget** \$5,601,795. The interest accrual budget (the "Interest Accrual Budget") represents the maximum amount of interest that the Lender will allow to accrue on the principal Loan Amount outstanding. If at any time during the Term the accrued interest exceeds the Interest Accrual Budget, the Borrower must pay the overage to the Lender on the next Monthly Payment. The registered Loan Amount will include the principal amount advanced, as well as the Interest Accrual Budget.
  
- 15. **Monthly Payments** Monthly mortgage payments (the "Monthly Payments") shall be computed in accordance with the Interest Rate and Amortization sections above and will be due and payable on the 1<sup>st</sup> day of each and every month following the Interest Adjustment Date.  
  
Monthly Payments shall be advanced from the Interest Accrual Budget. Interest from the date of first Advance (as hereinafter defined) until the Interest Adjustment Date shall be deducted from the first Advance or, at the option of the Lender, may be advanced from Interest Accrual Budget. Each month, during the term hereof, the Lender shall advance the Monthly Payments due until the Interest Accrual Budget is exhausted and thereafter the Borrower shall be required to make the Monthly Payments from its own resources.
  
- 16. **Commitment Fee** \$1,172,500. The Commitment Fee shall be deemed to be fully earned upon issuance of this Commitment Letter, and payable on the earlier of the date of Initial Advance (as hereinafter defined) and the date of expiry of this Commitment Letter.
  
- 17. **Broker's Fee** \$670,000 to be deducted from the Initial Advance under the Loan and paid to Canada ICI Capital Corporation. Although the fee is being advanced under the Loan, the Borrower shall be responsible for any brokerage or finder's fees, commissions or other compensation payable to any person not affiliated with or contracted by the Lender in connection with this transaction and shall indemnify and hold the Lender and all related entities harmless in respect of same.
  
- 18. **Deposit** A non-refundable deposit in the amount of \$100,000 has been received by the Lender (the "Deposit").  
  
The Deposit is non-refundable upon the issuance of a Commitment Letter by the

Lender, regardless of whether the Borrower accepts the Commitment Letter and the Deposit, less any expenses incurred during the due diligence process, shall be applied towards the Commitment Fee. The Lender shall not pay any interest to the Borrower on Deposit monies held.

#### 19. Prepayment

The Borrower, not being in default of the Loan, may at any time after a minimum of \$1,200,000 interest has been earned by the Lender and paid to the Lender and after the provision of no less than 30 days written notice, which notice must contain evidence, satisfactory to the Lender, of the source of funds to be used for repayment and must contain a date certain for the repayment ("Date Certain"), repay the whole of the obligations hereby secured hereunder to the Date Certain. Should the repayment be delayed past the Date Certain, a new minimum 30 day written notice must be provided as set out herein. If prepayment occurs prior to the Date Certain, interest must be paid to Date Certain. The Date Certain must be a business day that banks in the Province of British Columbia are open for business.

#### 20. Partial Discharges

*This section does not apply to prepayments by reason of the sale of condominium units after registration of the condominium form.*

Provided that the Borrower is not in default of the Loan, the Lender shall provide a partial discharge of the Security (as hereinafter defined) for the Loan only upon receipt of 100% of the Net Sale Proceeds. Net Sale Proceeds shall be defined as the gross sale price less real estate commissions, legal fees and closing costs, but explicitly exclusive of HST, which collectively shall not exceed 5% of the gross sale price less any amounts payable to prior mortgagees, as listed in Representation and Warranties section below, if any. In order to ensure the foregoing discharge parameters, a sales price list for each subdivided parcel or condominium unit comprising the Subject Property is agreed to by the Borrower and Lender and attached herein as Schedule 'B' (the "Sales Price List"), and no sale can take place at less than 95% of the Sales Price List without the Lender's written consent.

#### 21. Additional Fee(s)

**Administration Fee:** There shall be an administration fee (the "Administration Fee") of \$400 for each land title document, certificate, confirmation, returned cheque, settlement (other than a payout statement or balance confirmation issued to the Borrower), or similar document required to be issued or executed by the Lender at the Borrower request.

**Partial Discharge Fee:** Should there be partial discharges permitted by the Lender, there shall be a partial discharge fee (the "Partial Discharge Fee") of \$400 for each partial discharge requested. The Partial Discharge Fee shall be instead of the Administration Fee, and not in addition to it.

**Inspection Fee:** After the initial site visit, there shall be an inspection fee (the "Inspection Fee") of \$500 for each inspection of the Subject Property done by the Lender. The Inspection Fee shall be in addition to any out of pocket expenses associated with the inspection. The Lender may inspect the Subject Property from time to time and prior to any disbursement of funds.

**Processing Fee:** There shall be a processing fee (the "Processing Fee") of \$400 for each Construction Advance (as hereinafter defined), as well as the final advance, or for any advance which is less than the minimum amount set out within the Funding section below.

#### 22. Sources & Uses

Project Balance Sheet			Assets		
Equity & Liabilities	%	\$		%	\$
Trez 1st	73.6%	67,000,000	Payout VTB		600,000
Insured Purchaser Deposits	12.0%	10,900,000	Cash Equity		1,750,000
Cash Equity To Date (Land)	1.8%	1,750,000	Condo Units In Lieu of cash		2,300,000
Deferred Equity for Land Purchase	2.6%	2,300,000	Land Surplus		619,500
Land Surplus	0.7%	619,000	Land Value	6.1%	5,589,500
Cash Equity Required	9.3%	8,498,023	Hard Costs	58.5%	51,258,520
			Soft Costs	23.2%	21,102,238
			Contingency	6.1%	5,570,961
			Interest Budget	8.2%	5,601,795
			Trez Commitment Fee	1.3%	1,172,500
			Broker Fee	0.7%	670,000
			Legal & Closing, etc.	0.1%	60,000
<b>Total</b>	<b>100%</b>	<b>91,005,623</b>	<b>Total</b>	<b>100%</b>	<b>91,005,623</b>

Initial Advance			Assets		
Equity & Liabilities	%	\$		%	\$
Trez 1st	21.1%	3,946,318	Payout VTB		600,000
Insured Purchaser Deposits	21.1%	3,946,318	Cash Equity		1,750,000
Cash Equity To Date (Land)	8.4%	1,750,000	Land Surplus		619,500
Land Surplus	3.3%	619,000	Land Value	17.6%	3,289,500
Cash Equity Injected to Date	72.3%	13,528,156	Hard Costs	1.1%	205,174
(Equity Repatriation)*	-27.2%	(5,090,135)	Soft Costs	71.2%	13,320,964
			Trez Commitment Fee	6.8%	1,172,500
			Broker Fee	3.6%	670,000
			Legal & Closing, etc.	0.3%	60,000
<b>Total</b>	<b>100%</b>	<b>18,688,156</b>	<b>Total</b>	<b>100%</b>	<b>18,688,156</b>

\*Availability is subject to confirmation by the CS of a minimum of \$1,000,000 in "Design Assesst Contract Savings" being realized in the budget prior to the Initial Advance to the satisfaction of the Lender.

Subsequent Advances			Assets		
Equity & Liabilities	%	\$		%	\$
Trez 1st	87.2%	63,053,683	Hard Costs	70.6%	61,068,366
Insured Purchaser Deposits	9.6%	8,683,683	Soft Costs	10.5%	7,781,254
Deferred Equity for Land Purchase	3.2%	2,300,000	Land Value (Condo In Lieu of Cash)	3.2%	2,300,000
			Contingency	7.7%	5,570,961
			Interest Budget	7.7%	5,601,795
<b>Total</b>	<b>100%</b>	<b>72,307,366</b>	<b>Total</b>	<b>100%</b>	<b>72,307,366</b>

Subject to the Project Monitor's Budget review, additional cash equity may be required to pay for legal & closing costs. Subject to the minimum \$10,900,000 deposit requirement detailed herein, the Borrower shall be permitted to utilize as and when available all additional Insured Purchaser Deposits ("Excess Deposits") in the Project to fund qualified project costs. Any use of Excess Deposits to fund qualified Project costs (including cost overruns to a maximum of \$2,000,000 subject to the presale condition precedents 24(v) of this letter) shall be used to pay down and reduce the Lender's available Construction Loan Facility of a dollar-for-dollar basis. Any reduction of the Loan Amount may not be re-advanced under any circumstances.

23. Security

The Loan shall be secured by the following security (collectively, the "Security"), all of which must be in form and content satisfactory to the Lender and its Solicitor (as hereinafter defined):

- a) A \$68,000,000 real property mortgage creating a charge in 1st priority over the Subject Property, which shall be cross-defaulted with all other loans, present and future, between the Lender and the Borrower or Guarantor, either individually or collectively, and with all other loans, present and future, between the Lender and entities owned or controlled by the principals of the Borrower or Guarantor.
- b) A subordination and postponement of all claims from Mizrahi Developments Inc. *except for funds which are specifically permitted to be repatriated under this Commitment letter.*
- c) A guarantee and postponement of claims from the Guarantor.
- d) A completion guarantee from the Guarantor, which shall include, but not be limited to (i) completion of the Subject Property to the satisfaction of the

Lender; (ii) the settlement of all liens registered from time to time against the Subject Property; and (iii) the injection of sufficient additional equity in the Subject Property if, at the Lender's sole discretion, there exists a cost-overflow.

- e) A pledge of shares of the Borrower in favour of the Lender.
- f) A general security agreement over all the site-specific present and after-acquired personal property of the Borrower related to the Subject Property 1<sup>st</sup> priority.
- g) A full Lender's policy of title insurance underwritten by a company satisfactory to the Lender in its sole, unfettered and absolute discretion.
- h) Syndicate Lender's standard Letter of Credit documentation.
- i) A hazardous substance indemnity from the Borrower and Guarantor on the Subject Property.
- j) A specific assignment of all the Borrower right, title and interest in, to and under, all material contracts affecting, or with respect to, the Subject Property as required by the Lender, including without limitation all building and construction contracts, plans, permits, refundable cash deposits and/or letters of credit to the City of Ottawa and insurance policies with respect to the Subject Property, with all necessary consents of the other parties thereto. *(Being contracts in excess of \$1,000,000)*
- k) Acknowledgement of the status and terms of any contracts affecting, or with respect to, the Subject Property, including without limitation, any pertaining to ownership, insurance, shared facilities, passageway agreements or other similar matters specifically, and without limitation, confirming the good standing of such contracts and the rights of the Lender under its Security.
- l) If registered title is held by a nominee or trustee, a beneficial owners agreement by which all beneficial owners charge their respective beneficial interests in the Subject Property in favour of the Lender and authorize the nominee or trustee to execute all documentation as required pursuant to the Commitment Letter and agree to be bound thereby as if they executed same themselves, provided that any recourse against the beneficial owners pursuant to any covenants contained in such documents shall at all times be limited to the specific obligations as herein or in their guarantees set out and required of them.
- m) Such other security as the Lender or Lender's Solicitor (as hereinafter defined) may deem necessary, acting reasonably.

**24. Conditions  
Precedent to the  
Disbursement  
of Funds**

The conditions precedent to the disbursement of the Initial Advance (as hereinafter defined) shall include, but not be limited to the items set out in the remainder of this section, all of which must be satisfactory to the Lender in its sole, unfettered and absolute discretion, and all of which collectively comprise the Lender's due diligence. The Lender may require any additional information as it deems necessary in its sole, unfettered and absolute discretion for the Initial Advance and for any other advances (if applicable).

- a) Completion and registration of the Security, as required by the Lender. Title must be acceptable to the Lender and all Security documents must be registered, the Lender's Solicitor (as hereinafter defined) must provide a satisfactory report on registration of the Security, the Lender's Solicitor (as hereinafter defined) must confirm that no adverse filings concerning the Borrower have been registered in any department or agency of government

which, in the Solicitor's (as hereinafter defined) opinion, could affect the security or priority of the Security, and all other terms and conditions of this Commitment Letter must be satisfied.

- b) Inspection of the Subject Property by the Lender.

The Lender's receipt and satisfactory review of the following materials:

- c) An appraisal report, no more than six (6) months old, valuing the Subject Property at no less than \$98,814,351 (net of HST) as-complete, and Land Value of no less than \$6,000,000 with a transmittal letter from the author of the report addressed to "Trez Capital Limited Partnership or its nominee".
- d) All required environmental reports for the Subject Property, no more than twelve (12) months old and a transmittal letter from the author of the report(s) addressed to "Trez Capital Limited Partnership or its nominee" and disclosing the amount of liability insurance that the author carries.
- e) A geotechnical report for the Subject Property, no more than twelve (12) months old, and a transmittal letter from the author of the report(s) addressed to "Trez Capital Limited Partnership or its nominee" and disclosing the amount of liability insurance that the author carries.
- f) Land purchase contracts for the Subject Property (1445 & 1451 Wellington Street West); all amendments (if any), and the associated statements of adjustments for the Subject Property.
- g) Payout statements for all loans to be repaid from the loan proceeds.
- h) The Borrower's bank statements for the past three months.
- i) Architectural drawings, site plans, cross sections, floor layouts and building plans showing the gross square footage of the Subject Property as well as delineating any unit divisions or strata lots within the Subject Property along with net square footage for each such sub-unit.
- j) A current certified survey for the Subject Property.
- k) Proposed strata / condominium corporation bylaws and realtor listing agreement(s) for the Subject Property.
- l) Confirmation of the engagement of Altus Group (the "Project Monitor") to act on behalf of the Lender throughout the duration of the intended work on the Subject Property at the Borrower's expense. The Lender reserves the right to retain the Project Monitor to perform work at a level to be determined satisfactory by the Lender and to change the level of work required by the Project Monitor from time to time.
- m) A report by the Project Monitor confirming that the Development Budget is sufficient to complete the Subject Property, the work completed to date, any applicable holdbacks, the value of any change orders, the amount of the draw request, and the cost-to-complete for the Subject Property. The Report will need to evidence a minimum of \$5,570,961 in contingency and The Report shall be accompanied with a transmittal letter from the author of the report(s) addressed to "Trez Capital Limited Partnership or its nominee" and disclosing the amount of liability insurance that the author carries.

- n) A statutory declaration and evidence, as verified by the Lender and the Project Monitor, confirming that the Borrower, inclusive of the land, has: (i) a minimum of \$10,186,023 of cash equity invested in the development of the Subject Property, and (ii) the work in place and materials purchased comprising this cash equity of \$10,186,023 was required for the development of the Subject Property; and (iii) such work and materials are useable for the said development with such equity to stay in place throughout the term of the loan. It is understood that any cash equity in excess of \$10,186,023 as confirmed by the Project Monitor and approved by the Lender having funded eligible project costs, will be advanced on the Initial Advance to the Borrower and the Borrower shall be permitted to pay such amount to Mizrahi Developments Inc. or any affiliated entity ("MDI"). At the present time it is estimated that the cash equity is approximately \$15,276,158 and, accordingly, the Initial Advance would include the amount of \$5,090,135 which may be paid to MDI. This equity repatriation is subject to confirmation by the Project Monitor of a minimum \$1,000,000 of the \$3,750,000 in Design Assist Contract Savings being realized in the budget to the satisfaction of the Lender.
- o) Confirmation that fixed price contracts on terms and conditions satisfactory to the Lender are in place for a minimum of 65% of the hard construction costs of the Subject Property or such other higher amount as recommended by the Lender's cost consultant. The Lender requires labour & material bonds and performance bonds of the hard construction costs, in an amount to be determined at the sole discretion of the Lender. The Lender will consider recommendations of its cost consultant in determining the bonding requirements.
- p) The Borrower's detailed project / development budget and schedule, indicating individual costs per line item broken out on a monthly basis.
- q) A certified pro-forma profit statement.
- r) An approved site plan and building permit for the Subject Property, it being understood that the Initial Advance will be required in order to obtain release of the building permit required to begin construction.
- s) Evidence from TARION that the Borrower, or related entity that will be constructing on the Subject Property, is a registered multi-family builder in the Province of Ontario.
- t) The letter of credit requirements and associated release requirements from the City of Ottawa.
- u) A signed and dated sales price list and presales summary.
- v) All presale contracts for the Subject Property totaling no less than \$56,135,045 in revenue (Net of HST) prior to the initial advance. All presale contracts for the Subject Property totaling no less than \$65,191,577 (Net of HST) in order to make available the \$2,000,000 in "Excess Deposits" to fund Project cost overruns. All presales must be to arm's-length purchasers and include deposits of not less than 15% of the purchase price for the respective unit. Confirmation of a minimum of \$10,900,000 of contractual deposits (not including deposits due upon occupancy) based on the above noted presales.
- w) A deposit protection insurance contract permitting the use of the deposit funds as a source of construction financing.

- x) Written confirmation from the realtor/lawyer holding the presale deposits of the following information: unit number, date of contract, name of purchaser, purchase price, deposit received, and whether the contract is firm or conditional.
- y) Resumes/bios for the Borrower, Guarantor and key members of the development team.
- z) Statutory Declaration from the Guarantor attesting to the following regarding The One at 1 Bloor West:
  - i. The construction lender provides a cost overrun facility and completion guarantee;
  - ii. Each of the partners in The One including the Coco Group entity provide joint and several guarantees for the construction financing;
  - iii. The project is currently on budget and on schedule and possesses a full capital stack.

The Lender hereby confirms that upon receipt of the Statutory Declaration, it will not disclose a copy thereof or details of the contents thereto to any Person. Notwithstanding the foregoing, the Lender may disclose a copy of the Statutory Declaration or the contents thereof to; (a) its counsel; (b) any Person to whom disclosure is required to be made by applicable law or court order or pursuant to the rules or regulations of any supervisory or regulatory body; (C) any Person in connection with any actual or potential judicial proceedings relating to the Loan; and (D) syndicate partner, participant or assignee of the Loan.

- aa) An organizational chart and a copy of the current shareholder registry for the Borrower and all corporate Guarantors, signed and dated by the respective company's authorized signatory.
- bb) Certified financial statements from the Borrower and Guarantor. If an individual then a personal net worth statement, on the Trez Capital form, dated no more than four (4) months prior, are required, if a corporate entity then most recent financial statements is required. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency. All Personal Net Worth Statements must include the individuals' full name, full-time occupation, Social Insurance Number, Birth date and current address.
- cc) Satisfactory results, in the Lender's sole discretion, of due diligence investigations conducted pursuant to the *Proceeds of Crime Money Laundering and Terrorist Financing Act (Canada)* and Regulations (collectively the "Act") thereunder including but not limited to the following:
  - i. One piece of satisfactory identification for all *Borrower/Guarantor/Signing Officer(s)* (up to three Signing Officers, if borrowing under a corporate entity) prior to closing;
  - ii. If the Borrower is a corporate entity, the name and address of all individuals who own or control (directly or indirectly) 25% or more of that corporate entity or the assets being held by that corporate entity, together with confirmation/evidence of the accuracy of all such information;
  - iii. The Borrower's bank statements for the last three months and/or such other information as may be required to verify the source of equity funds;
  - iv. Satisfactory verification of employment, income and assets;
  - v. Third Party Declaration/Statement;



- vi. Politically Exposed (Foreign and Domestic) Persons Declaration;
  - vii. Director's resolutions, certificates of officers and opinions of counsel to the Lender and Borrower, confirming corporate capacity and the due authorization, execution, delivery, enforceability and priority of Security, as may be required by the Lender; and
  - viii. Any other documentation that may be requested by the Lender in order to fulfill its obligations under the Act.
- dd) Confirmation that the Subject Property and the proposed improvement to be constructed thereon are in compliance with current zoning and that there are no outstanding work or fire orders, or that any such orders shall be paid from the proceeds of the Mortgage.
  - ee) Confirmation that all property taxes owing on the Subject Property have been paid or will be paid from the proceeds of the Mortgage and the Borrower is registered in the appropriate monthly property tax payment program in the appropriate city, county or jurisdiction.
  - ff) Insurance of the Subject Property which has been reviewed and approved by the Lender's Insurance Consultant or as otherwise required by the Lender in consultation with its Insurance Consultant.
  - gg) Confirmation that the Borrower is in compliance with each of the terms and conditions of this commitment letter. In the case of any advance, all conditions precedent pertaining to the advance must be performed no less than five business days prior to the scheduled date of the advance or the Lender shall be under no obligation to make the advance.
  - hh) A Bring Down Certificate, signed by the Borrower and Guarantor, confirming that all representations and warranties set out in the Commitment Letter are true at the time of closing.
  - ii) Such other materials and completion of such other reasonable requirements as may be deemed necessary by the Lender.

The conditions precedent, all of which must be satisfactory to the Lender in its sole and unfettered discretion, to the disbursement of each subsequent Construction Advance shall include:

- jj) A periodic report by the Project Monitor, dated no earlier than 2 weeks prior to the requested advance date, confirming that the Development Budget is sufficient to complete the Subject Property, the work completed to date, any applicable holdbacks, the value of any change orders, the amount of the draw request, and the cost-to-complete the Subject Property.
- kk) Certification by the Project Monitor that there are no cost over runs, and that the requirements of the plans have been respected.
- ll) Receipt of an architect's certificate and/or an engineer's certificate for the Subject Property.
- mm) Certification by the Lender's solicitor that there have been no liens registered against the Subject Property.
- nn) Satisfactory workers compensation board clearances.
- oo) A satisfactory inspection of the Subject Property by the Lender.
- pp) Such other materials and completion of such other reasonable requirements as

may be deemed necessary by the Lender.

The conditions precedent, all of which must be satisfactory to the Lender in its sole and unfettered discretion, to the disbursement of the final Construction Advance (as hereinafter defined) shall include all of the conditions precedent to the disbursement of a Construction Advance (as hereinafter defined), plus:

- qq) The applicable lien period shall have expired.
- rr) The Project Monitor shall have certified that the Subject Property is substantially complete and conforms in all respects to the plans and permits.
- ss) A final report from Lender's solicitor certifying that no other charges including liens have been registered against title.
- tt) Such other reasonable requirements as may be deemed necessary by the Lender.

Notwithstanding any other provision of this Commitment Letter, the Lender shall only advance funds to the extent that the remaining unfunded balance shall be sufficient to cover the remaining costs to complete the Subject Property.

**25. Real Property Taxes**

All property tax payments, utilities and like amounts due and owing in relation to the Subject Property, or any other taxes charged against the Subject Property, shall be paid prior to or coincide with the Advance (as hereinafter defined). The Borrower shall make arrangements to have the taxes paid by monthly installments to the appropriate taxing authority in order to have them paid in full on their due date. The Borrower is to provide evidence of same to the Lender on a quarterly basis.

In the Event of a Default (as hereinafter defined) under the Mortgage Security, the Lender shall have the right to require the establishment of a tax reserve by way of monthly payments representing 1/12 of the estimated taxes payable. The Lender shall not be responsible for the payment of any tax arrears.

**26. Statutory Declaration**

The Lender shall receive a satisfactory statutory declaration from an officer or director of the Borrower as to the representations and warranties of the Borrower, whether contained in this Commitment Letter or in any of the Security, including: accuracy of financial statements and that there has been no material adverse change in the Borrower financial conditions or operations as reflected in the financial statements used to evaluate this credit; satisfactory title to the Subject Property charged by the Mortgage; power and authority to execute and deliver documents; accuracy of documents delivered and representations made to the Lender; no pending adverse claims; no outstanding judgments; no defaults under other agreements relating to the Subject Property; preservation of assets; payment of all taxes; no other consents, approvals or authorizations necessary in connection with documentation; compliance of the Subject Property with all laws; no other charges against the Subject Property except permitted encumbrances; all necessary services available to the Subject Property; and such other matters as the Lender or its Solicitor (as hereinafter defined) may require.

**27. Further Documents**

Notwithstanding anything contained in this Commitment Letter, the Lender may request other documents containing such other assurances, information and covenants as the Lender's Solicitor (as hereinafter defined) may require with regard to the Loan and Security.

**28. Funding**

All fundings shall require five (5) business days' notice.

The Loan shall be funded in a multiple advances as follows, but to be updated to the first Project Monitor's report:

\$3,946,318 Upon completion of all legal work in form and content satisfactory to Lender and its Solicitor and registration of all Security, including, but not limited to, a valid 1<sup>st</sup> mortgage (the "Initial Advance").

\$57,451,887 On progress draws, on a cost-to-complete basis net of HST, as supported by a Project Monitor's report, in amounts not less than \$250,000 with such advances not to occur more frequently than once per month, and such that at all times there remains sufficient funds to complete the Subject Property (the "Construction Advances").

\$5,601,795 Monthly payments due will be accrued onto the Loan Amount outstanding in accordance with the Interest Accrual Budget

Loan proceeds shall only be advanced for eligible costs, as determined by the Lender in its sole discretion, and shall specifically exclude any amounts required for deposits, offsite work, or retainage/holdback accounts. Lien holdback requirements are ten percent (10%) in the Province of Ontario. The funding of all ineligible costs shall remain the sole responsibility of the Borrower.

The Lender shall record the principal amount of each advance of the Loan and the payment of principal, interest and fees and all other amounts becoming due to the Lender under this agreement. The Lender's accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower for the Loan to the Lender pursuant to this agreement.

All fees that are payable to the Lender and expenses that are incurred by the Lender during the due diligence process shall be deducted from the Initial Advance or the Deposit.

**REPRESENTATIONS & WARRANTIES**

**29. The Borrower warrant and represent that:**

- a) **Description of Properties**      **Subject Property:**  
Civic Address: 1451 & 1445 Wellington Street West, Ottawa, Ontario  
Site and Property Description: The 19,833 square foot site is currently improved with a single storey commercial building being used as a sales centre for the proposed development and a two-storey brick residential building that has been converted to a full service restaurants. The site is to be developed with a 12 storey concrete frame, condominium building featuring 93 residential units with 5,268 square feet of retail space at grade, 100 storage lockers and 130 underground parking spaces. (the "Subject Property" or the "Project")
- b) **Appraised Value**      \$98,814,351 (Net of HST). The Subject Property was appraised by Julianne Wright, B. Arch, MBA, AACI, of Altus Group with an effective date of April 16, 2019.
- c) **Ownership**      At the time of the Initial Advance of the Loan, the legal owner of the Subject Property will be Mizrahi Development Group (1451 Wellington) Inc. and the <sup>and beneficial</sup> ~~and the~~

~~Beneficial owner of the Subject Property will be Mizrahi Developments Inc.~~

**d) Share Capital**

The Borrower declares and represents that its authorized share of capital is as follows:

Number of Shares	Class	Shareholder's Name
		Mizrahi Developments Inc.

**e) Priority of Financing**

The mortgages registered against the Subject Property as at the funding date will be as follows:

Rank	Lender	Amount
1 <sup>st</sup> Position	Trez Capital Limited Partnership or its Nominee	\$68,000,000
Total		\$68,000,000

**f) Repayment**

This Loan will be repaid from the proceeds of sale of the Subject Property.

**g) Financial**

All financial information provided by the Borrower and Guarantor to the Lender, including but not limited to, financial information provided in respect of the values and other matters pertaining to the Subject Property is true and accurate and may be relied upon by the Lender in executing this Commitment Letter and making the Loan.

**h) Development Schedule & Budget**

Should the Borrower be required by the Lender to provide either a development schedule or a development budget, the Subject Property shall proceed in accordance with the said Lender approved development schedule and/or Lender approved development budget. The Borrower shall not permit the events set out in the approved development schedule to be delayed more than 45 days from the approved schedule date and shall, within 10 days of notice of any cost over-run above and beyond the approved budget amount, pay said cost over-run from its own resources.

**i) Legal Compliance**

The Subject Property and the use and occupancy thereof, and revenues therefrom, are and shall be at the time of each disbursement, authorized and in accordance with all applicable legislation and there are, and shall be at the time of each disbursement, no work orders or liens outstanding against the Subject Property.

**j) Hazardous Materials**

The Borrower and Guarantor warrant and represent that to the best of their knowledge the Subject Property and existing prior uses comply and have at all times complied with all laws, regulations, orders and approvals of all governmental authorities having jurisdiction with respect to environmental matters applicable to the ownership, use, maintenance, and operation thereof (collectively, the "Environmental Laws") and, without limiting the generality of the foregoing:

- (i) The Subject Property has never been used as a land fill site or to store hazardous substances either above or below ground, in storage tanks or otherwise;
- (ii) All hazardous substances used in connection with the business conducted on the Subject Property has at all times been received, handled, used, stored,

treated, shipped and disposed of in strict compliance with all Environmental Laws;

- (iii) No hazardous substances have been released into the environment or deposited, discharged, placed or disposed of at, on or near the Subject Property as a result of the conduct of the business on the Subject Property; and
- (iv) No notices of any violation of any matters referred to above relating to the Subject Property or its use have been received by the Borrower and there are no directions, writs, injunctions, orders or judgments outstanding, no law suits, claims, proceedings, or investigations being instituted or filed.

For the purposes of this Commitment Letter, a hazardous substance includes but is not limited to contaminants, pollutants, dangerous substances, gasoline, oil, liquid wastes, industrial wastes, whole liquid wastes, toxic substances, hazardous wastes, hazardous materials and hazardous substances as defined in or pursuant to any applicable Environmental Laws. Further, the Borrower shall indemnify and save harmless the Lender from any loss or liability whatsoever arising from any violation whatsoever of any law, regulation, ordinance, judgment, appraisal or decision in connection with hazardous risks or environmental risks.

#### GENERAL CONDITIONS

- 30. Repayment of the Loan**            The Loan shall be repayable on demand by the Lender following the occurrence of an Event of Default (as hereinafter defined), and shall in any event be repaid in full at the end of the Term. Any payment of any amount due to the Lender hereunder or in the Security documents must be received by the Lender at the Lender's address by 1:00pm Pacific Standard Time on a business day, failing which such payment will be deemed to be received on the next business day.
- 31. Management**            The Subject Property is to be managed at all times by a property manager satisfactory to the Lender, and on terms satisfactory to the Lender. A change in the property manager without the Lender's approval shall constitute an Event of Default (as hereinafter defined).
- 32. Abandonment**            In the event of abandonment of the Subject Property for a period in excess of fifteen (15) consecutive days, the Lender shall be entitled, after giving the Borrower written notice of any abandonment and provided the Borrower fails to rectify same within ten (10) days after such notice has been given, to forthwith withdraw and cancel its obligations hereunder and/or decline to advance further funds as the case may be and in addition to declare any funds advanced to forthwith become due and payable plus interest, all at the Lender's option.
- 33. Liens**                    At all times, and in particular on each disbursement date, there shall have been full and complete compliance with all requirements of federal and provincial legislation which may give rise to a lien or other charge in priority to the Lender. The Lender may retain from any disbursement such amounts as it considers advisable to protect its interest from subordination under such legislation. The Borrower shall provide additional security, information and documentation as may be required by the Lender to preserve and ensure, in all respects, the absolute priority of the Mortgage over any rights of any existing or potential lien claimants. The Lender reserves the right to hold back additional amounts due to suppliers, contractors, government or other agencies, which may be due under the terms of any legislation giving rise to a

claim of lien or other charge. Furthermore, the Lender shall have the right to make payments directly to suppliers, contractors, government or other agencies for the Borrower account as if advanced directly to the Borrower, as the Lender may deem necessary.

**34. Environmental Concerns**

At the time of any disbursement of the Loan, the Lender shall be satisfied that there are not in, on, under or about the Subject Property, or any part thereof, any contaminants, toxic, dangerous or hazardous substances (collectively, the "Dangerous Substances") including, without limitation, UFFI (Urea Formaldehyde Foam Insulation), asbestos fireproofing insulation, PCB's (Polychlorinated Biphenyl's) or radioactive materials and, to the best of the Borrower knowledge, neither the Subject Property, nor any adjacent lands, have ever been used as or for a waste disposal or coal gasification site, nor have they ever contained any underground storage tanks, and further, the use of the Subject Property has not involved, and will not involve, during the Term, the handling of Dangerous Substances or will such use result in any environmental damage. In addition to any liability imposed on the Borrower and Guarantor under any instrument evidencing or securing the Loan indebtedness, the Borrower and Guarantor shall be liable for any and all of the costs, expenses, damages or liabilities of the Lender, its Directors and Officers (including, without limitation, all reasonable legal fees) directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Subject Property of any hazardous or noxious substances and such liabilities shall survive foreclosure of the Security for the Loan and any other existing obligations of the Borrower and Guarantor to the Lender in respect of the Loan and any other exercise by the Lender of any remedies available to the Lender for any default of the Loan.

**35. Restriction on Further Financing**

*except for security in favour of the Surety,*  
The Borrower agrees not to enter into any further financing of the Subject Property and not to further encumber the Subject Property in any manner without the prior written approval of the Lender, which approval may be withheld in the Lender's sole discretion. The Borrower will provide evidence, satisfactory to the Lender, as to the source of the Borrower required equity in the Subject Property. The Borrower shall disclose to the Lender all existing or proposed financing related to the Subject Property or any Security used in connection therewith and shall not further pledge, charge or otherwise encumber its interest in the Subject Property, nor any of the Security used in connection with the Subject Property to any party other than the Lender, without the prior written consent of the Lender.

**36. Sale**

Except as provided in Partial Discharges section above, the Borrower shall not sell, assign, lease in its entirety or otherwise dispose of the legal ownership or title to the Subject Property, or its beneficial interest therein, or of the personal property related thereto or which is necessary to the use and operation of the Subject Property, without the prior written consent of the Lender. The Borrower shall not make any changes to the authorized share capital or allocation or ownership thereof, which would result in a change of voting control or beneficial ownership thereof without the prior written consent of the Lender.

**37. Proceedings**

The Borrower shall provide the Lender with evidence that it has taken all of the necessary corporate proceedings relating to the transactions contemplated herein.

**38. Default**

At the time of the disbursement of any part of the Loan, no default shall have occurred and be continuing, nor any state of affairs or event shall be existing

which, with the passage of time or the giving of notice or both, would constitute a default hereunder or in the instruments evidencing or securing the Loan or incidental thereto and neither the Borrower or Guarantor shall be deceased or insolvent or be the subject of any bankruptcy, arrangement with creditors, proposal, amalgamation, reorganization, liquidation, winding-up, dissolution, receivership or material litigation or continuation under the laws of any other jurisdiction. Any default under the Security shall be deemed to be a default hereunder.

**39. Costs & Expenses**

Whether or not the Loan is disbursed, and notwithstanding retention of the Commitment Fee by the Lender, all of the Lender's costs and expenses relating to the Loan, including legal costs and travel costs, in addition to any costs and expenses incurred by the Lender due to proceedings under the Bankruptcy and Insolvency Act relating to the Borrower, shall be borne in full by the Borrower. Such costs and expenses may be added to the then outstanding principal balance of the Mortgage and shall bear interest at the Interest Rate under the Mortgage. If requested by the Lender, the Borrower shall deposit with the Lender's Solicitor (as hereinafter defined) an amount equal to the estimated fees and expenses of the Lender's Solicitor (as hereinafter defined) prior to such Solicitor (as hereinafter defined) commencing preparation of the Security.

In the event of the occurrence of an Event of Default (as hereinafter defined), then the Lender shall, notwithstanding anything contained herein to the contrary, be entitled to receive in addition to all other fees, charges and disbursements, an administration and management fee in the amount of (and not to exceed) \$5,000 for each month or part thereof for which the Borrower remains in default. This administration and management fee is intended to reimburse the Lender for time and trouble in the management and administration of the Security and the Subject Property. The said sum or sums are agreed to be a liquidated amount to cover the Lender's administration and management costs and are not intended nor shall be construed to be a penalty. All such sums payable to the Lender shall be a charge upon the Subject Property and shall bear interest at the Interest Rate until paid.

**40. Marketing**

From time to time, the Lender publishes advertisements or announcements of completed transactions. The advertisements or announcements include, but are not limited to, press releases, paid advertisements, internally displayed tombstones, investor brochures or information displayed on the internet or on the Lender's intranet. The Borrower and Guarantors consent to the publication of an advertisement or announcement of the transaction contemplated by this Commitment Letter. The Borrower and Guarantor agree to allow the Lender to photograph or utilize existing photographs or artistic renderings (for unfinished projects) of the Subject Property for possible use in internal or external marketing programs.

During the Term, the Lender may require a sign to be erected on the Subject Property and maintained by the Borrower evidencing the financing of same. The design of the sign is to be approved by the Lender prior to being erected on the Subject Property.

**41. Further Assurances**

The Borrower and Guarantor shall, at the Lender's request, execute or deliver such further documentation and enter into such other agreements as are necessary for the securing of the Loan and the fulfilling of the terms contained herein, and deliver such financial information concerning the Borrower as the Lender may require, and

satisfy the terms and conditions herein to permit the disbursement of the entire Loan Amount.

**42. Financial Information**

Until the repayment of the Loan, the Borrower shall provide the Lender, within 120 days after the end of each fiscal year of the Borrower or more often if requested by the Lender, a detailed financial statement of the Borrower including a separate income and expense statement for the Subject Property, an operating statement and an updated rent roll containing relevant lease terms for the Subject Property, all satisfactory to the Lender in form and content.

The financial statement is to be prepared by a chartered accountant licensed under the applicable legislation in the province where the Subject Property is located.

The Borrower and Guarantor authorize the Lender to obtain such financial information as the Lender may require. Specifically, the Borrower and Guarantor consent to the Lender obtaining credit reports from the appropriate credit reporting agencies and relying on these reports when making decisions regarding advances under this Loan.

**43. Information Updates**

Until the repayment of the Loan, the Borrower shall supply the Lender with such updated information relating to any of the condition precedent requirements as the Lender may request from time to time. Such information shall be provided to the Lender within 14 days from the date of the Lender's request.

**44. Survival of Commitment**

The terms, conditions, representations and warranties expressed herein shall continue in effect as long as any part of the Loan remains outstanding and shall bind the personal representatives, heirs, successors and assigns of the Lender and the Borrower, shall ensure to the benefit of the successors and assigns of the Lender and the Borrower, and shall not merge on the execution or registration of the Security. In the event of conflict between this Commitment Letter and the Security delivered hereunder, the Lender shall determine which shall prevail.

**45. Communication**

All communications provided for hereunder shall be in writing, personally delivered or sent by prepaid first class mail or telecommunications, and if to the Lender addressed to the address above noted, to the attention of the President, and if to the Borrower to the address noted above. The date of receipt of any such communication shall be deemed to be the date of delivery, if delivered as aforesaid, or on the third business day following the date of mailing, as aforesaid. Any party hereto may change its address for service from time to time by notice in the manner herein provided. In the event of a postal disruption or an anticipated postal disruption, prepaid first class mail will not be an acceptable means of communication.

**46. Governing Law**

This Commitment Letter shall be governed by and constituted in accordance with the laws of the province in which the Subject Property is situated.

**47. Waivers**

Except as otherwise expressly provided herein, this Commitment Letter cannot be waived, changed, amended, discharged or terminated other than by an agreement in writing signed by the party against whom enforcement of any waiver, change, amendment, discharge or termination is sought.

**48. Other Agreements**

This Commitment Letter, when accepted by the Borrower and Guarantor, will constitute the entire agreement and understanding between the parties hereto with respect to the Loan and supersedes all other prior agreements, understandings or



commitments, oral or written. This Commitment Letter shall assume the accuracy of information previously supplied by the Borrower and will presuppose no material adverse change in the Borrower prior to any disbursement. Any approvals or consents required to be made or given by the Lender hereunder must be expressly given pursuant hereto and shall not be construed by the delivery or receipt of documents.

**49. Time of the Essence**

Time shall be of the essence in all respects herein.

**50. Privacy Act Consent**

With regard to any personal information that is provided during this application process, the Borrower and Guarantor consent to the collection, use, and disclosure of that information for the following purposes: to understand their financial status in order to approve the Loan; to meet regulatory requirements; to enable the Lender to manage and enforce the credit facility; to verify their identities. The Lender may from time to time give this personal information to credit bureaus and other financial institutions. The Lender may also share this personal information with anyone who works with or for the Lender or any individual or group investing in the Loan, and any other potential sources of business, but only as needed for the provision and enforcement of the credit facility requested.

**51. Assignment, Sale or Syndication**

Neither this Commitment Letter, nor any of the Loan proceeds, may be assigned by the Borrower, but this Commitment Letter and attendant Security may be assigned by the Lender without the consent of the Borrower. The Loan terms, representations and warranties herein contained shall enure to the benefit of each assignee of the Lender. The Lender shall have the right to assign, sell, syndicate or transfer all or any portion of the Loan, and as part of any such transaction, the Lender is hereby authorized to provide to prospective participants in such transactions all information received by the Lender regarding the Borrower and the Subject Property. This information will be held in strict confidence between the Lender and any prospective participant in the Loan.

**52. Interpretation**

- a) The headings of all provisions herein are inserted as a matter of convenience only and not to define the intent of this document. The necessary grammatical changes required to apply to the parties hereto shall be assumed as though expressed.
- b) "Business Day" means a day of the week, other than Saturday, Sunday or any other day which is a statutory or a municipal holiday in the municipality in which the Subject Property is situated.
- c) "Event of Default" shall mean the breach of any of the terms, conditions, representations or warranties contained in this Commitment Letter, as it pertains to both the Borrower and Guarantor.
- d) "Lender" shall mean Trez Capital Limited Partnership or its nominee.
- e) "Person" includes any individual, partnership, joint venture, trust, unincorporated organization or any other association, corporation and government or any department or agency thereof.
- f) The words "hereto", "herein", "hereunder", "hereby", "Commitment Letter", "this agreement", and similar expressions used in this Commitment Letter, including the schedules attached hereto, mean or refer to this Commitment Letter and not to any particular provision, section or paragraph

estate and interest in the said Subject Property and Security. This Commitment Letter supersedes all previous correspondence between the parties hereto.

Please set out below the name and phone number (including area code) of the solicitor representing you:

Lawyer Phil Draper  
(PLEASE PRINT)  
Firm Harris Shaeffer LLP  
(PLEASE PRINT)  
Phone Number 416-250-2855  
(PLEASE PRINT)

Please set out below the name and phone number (including area code) of the insurance agent representing you:

Insurance Agent \_\_\_\_\_  
(PLEASE PRINT)  
Firm \_\_\_\_\_  
(PLEASE PRINT)  
Phone Number \_\_\_\_\_  
(PLEASE PRINT)

Yours Truly,

**TREZ CAPITAL LIMITED PARTNERSHIP  
BY ITS GENERAL PARTNER  
TREZ CAPITAL (2011) CORPORATION**

Peter Dimakarakos  
Peter Dimakarakos [E.C.H.]  
Senior Vice President  
Lic. #: M17001016

Eric Horie  
Eric Horie  
Senior Vice President

Greg Vorwaller  
Greg Vorwaller  
President

or other portion of this Commitment Letter and include any instrument supplemental or ancillary hereto.

- g) The word "satisfactory" shall mean acceptable to the Lender in its absolute, sole and unfettered discretion.

**53. Advance**

Notwithstanding anything contained in this Commitment Letter, the advance of the Loan or any part thereof is subject to the Lender's sole, absolute, unfettered and unqualified discretion not to advance notwithstanding any and all steps taken by you or your legal counsel, including, without limitation, the registration of Security documents.

**54. Counterparts, Facsimile & Electronic Transmission**

This agreement may be executed in any number of counterparts and by facsimile, electronic transmission or .pdf copy, each of which when so executed is deemed to be an original and all of which together shall constitute one and the same agreement.

**55. Professional Advisors**

- a) **Solicitor:** The title report, Security and all other documents relating to this financing and the processing of all legal steps with respect to advances of funds shall be prepared and carried out by John D. van Gent of the law firm of Bennett Jones LLP, located at 3400 One First Canadian Place, in the City of Toronto, Province of Ontario (Telephone: 416-777-6522).
- b) **Insurance Consultant:** All insurance and bonding matters shall be reviewed and approved at the cost of the Borrower by David Truscott of the consulting firm Risk Review Inc., located at Suite #3 94 Graham Street, (PO Box 20137), in the City of Woodstock, Province of Ontario (Telephone: 416-607-7251).
- c) **Project Monitor:** The preliminary report and monthly inspections certifying each monthly claim shall be prepared by Andrew Driver of the consulting firm Altus Group, located at 33 Yonge Street Suite 500, in the City of Toronto, Province of Ontario (Telephone: 416-641-9630), who shall act as the Project Monitor on behalf of the Lender.

The Lender reserves the right to appoint such other Solicitor, Project Monitor, Insurance Consultant or Environmental Consultant from time to time without the consent of the Borrower.

**ACCEPTANCE**

This Commitment Letter shall not become effective until the Borrower, Guarantor and Lender have signed it and a copy is returned to the Lender's office by no later than **12:00 noon Eastern Time on October 10, 2019**. The Borrower and Guarantor hereby acknowledge and agree to the terms and conditions of this Commitment Letter and authorize Trez Capital Limited Partnership to instruct its Solicitor to prepare the Security documentation. The Borrower and Guarantor further acknowledge that the Commitment Fee set forth herein is a reasonable estimate of the cost incurred in granting the Loan and of holding monies available to fund same, and that the Commitment Fee shall be forfeited and payable to Trez Capital Limited Partnership as liquidated damages, and not as a penalty, if the Initial Advance under the Loan is not taken down within the time limit herein. This Commitment Letter and any fees earned as a result of this Commitment Letter, together with any expenses or costs incurred by Trez Capital Limited Partnership including, but not limited to, appraisal, re-appraisal, inspections, re-inspections, title searches, plan reviews, soil tests, survey, environmental assessments, and legal costs on a solicitor and its client basis, are deemed to be a charge on the Subject Property referred to herein and Trez Capital Limited Partnership may file and maintain a caveat on the title to the Subject Property to protect that charge and the Borrower and Guarantor do hereby mortgage to Trez Capital Limited Partnership all its

We hereby agree to the terms and conditions contained in this Commitment Letter and agree to be bound by the terms hereof.

Dated at the City of Toronto, in the Province of Ont, this 5 day of November, 2019.

*OCTOBER*

**BORROWER**

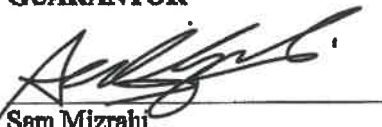
Mizrahi Development Group (1451 Wellington) Inc.



Sam Mizrahi

I/We have the authority to bind the Corporation.

**GUARANTOR**



Sam Mizrahi



Witness

**SCHEDULE 'A'  
INSURANCE**

The Borrower shall obtain and maintain during the Term the following insurance coverage with respect to the Subject Property and the property related thereto or used for its operation, which insurance shall be reviewed by the Lender's Insurance Consultant as set out in the Commitment Letter, prior to any advance of funds.

**1. Upon substantial completion of the Subject Property**

- (i) **Fire Insurance:** A fire insurance policy with extended coverage for all other risks and perils for an amount equal to one hundred percent (100%) of the gross replacement cost for the building erected on the Subject Property, without deduction for foundation and footings; said policy shall inter alia provide for replacement cost endorsement, deletion from the policy of any provision requiring reconstruction on same or adjacent sites, coverage of direct and indirect damage resulting from leakage of fire protection equipment, an endorsement to the effect that the policy will cover any additional costs of reconstruction as a result of enforcement of current building by-laws and regulations, and loss to be payable to the Lender as a first-ranking mortgage creditor on the Subject Property in accordance with the IBC 3000 mortgage clause approved by the Insurance Bureau of Canada including, without limitation, that such policy will not be cancelled, terminated or permitted to expire unless the Lender shall first receive a thirty (30) days prior written notice of the same. Such policy of insurance shall not contain a percentage co-insurance endorsement other than a one hundred percent (100%) stated amount co-insurance endorsement.
- (ii) **Boiler and Machinery Insurance:** A broad form boiler insurance policy with coverage on all electrical and mechanical equipment, as well as all pressure vessels; such policy shall contain a rider with the standard mortgage clause approved by the Canadian Boiler and Machinery Underwriters' Association, with proceeds payable to the Lender as first-ranking mortgage creditor on the Subject Property and such policy shall provide inter alia for the same terms and conditions as set out in paragraph 1(i) above.
- (iii) **Liability Insurance:** A general liability insurance policy covering corporeal and material damages in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence. The Policy shall include limited pollution coverage.
- (iv) **Rental Insurance:** A rental income insurance policy for a period of indemnity of, at minimum, twenty-four (24) months for an amount equal to, at minimum, one hundred per cent (100%) of the actual or projected gross annual rents (or the net rents plus the amount of the operating expenses from the Subject Property).

**2. For Properties Under Construction**

- (i) **All Risks Builders Course of Construction including flood and earthquake on:**
  - a. One hundred percent (100%) of the estimated final construction cost of the Subject Property, including reasonable soft costs;
  - b. One hundred percent (100%) of the anticipated annual rents (assuming full occupancy) written on a delayed income basis.
  - c. The policy shall allow for partial or full occupancy. All other terms and conditions shall apply as if there were a fire with extended coverage policy in force as described above in paragraph 1(i).
- (ii) The liability coverage as described more fully in paragraph 1(iii) above. However, if the construction cost is in excess of Ten Million Dollars (\$10,000,000), then a wrap-up liability is required with a limit of not less than Ten Million Dollars (\$10,000,000) and must include all contractors, subcontractors and trades.
- (iii) **Engineers' errors and omission insurance** for at least Five Hundred Thousand Dollars (\$500,000) or such greater amount as the Lender may reasonably require.

**3. Additional Insurance**

In addition to any of the forgoing, the Lender shall be entitled to request that the Borrower obtain any other insurance coverage it deems necessary, useful or appropriate.

The provisions relating to cancellation of the insurance policies or alteration clauses in the policies, including the mortgage clause, shall provide that a prior written notice of not less than thirty (30) days must, in such event, be given to the Lender.

All proceeds of insurance from insurance policies maintained, other than liability insurance, shall be paid to the Lender and at the option of the Lender may either be applied on account of the Loan, whether or not the same may be due and payable, and interest thereon and any other sums payable in respect thereof, or held by it as part of the Lender's Security and, so long as the Borrower is not in default, may be subject to withdrawal by the Borrower in instalments on a cost-to-complete basis, as the repair or replacement progresses, subject to the Lender's receipt of appropriate certificates, opinions and other documents as required by it and Lender's Solicitor.

If the Lender's Security is by way of a leasehold mortgage, then notwithstanding the provisions of the immediately preceding paragraph, but provided that the Lender, its Insurance Consultant and its Solicitor are satisfied that the proceeds of insurance shall be applied to rebuilding and are otherwise completely satisfied with the provisions of all arrangements made with the ground lessor and an insurance trustee in respect thereof, the proceeds payable under the policies referred to above, other than liability insurance may be payable to the insurance trustee under and in accordance with an insurance trust agreement, satisfactory to the Lender, its Insurance Consultant and its Solicitor.

The Borrower shall provide to the Lender such evidence as the Lender may request that all of the above required insurance is in place prior to any advance of the Loan being made.

All required insurance policies shall be forwarded to the Lender's Insurance Consultant for verification and approval, at the expense of the Borrower, prior to the disbursement of the Initial Advance of the Loan.

**SCHEDULE 'B'  
SALES PRICE LIST**

The following sales price list is agreed upon by the Borrower and the Lender.

Suite	Status	Size	Type	Unit Price	Parking Price	Parking (1) One or (0) Nil	Locker Price	Locker (1) One or (0) Nil	Total Price	PSF	Total Price Net of HST
201	Firm	688	1 Bed	\$474,990	\$40,000.00	ONE	\$0	NIL	\$514,990	\$744.50	\$476,982.30
202	Available	1,543	2 Bed+Den	\$1,314,990					\$1,314,990	\$852.29	\$1,184,946.90
203	Available	776	1 Bed+Den	\$659,990					\$659,990	\$850.50	\$605,800.88
204	Available	819	1 Bed+Den	\$704,990					\$704,990	\$860.79	\$645,123.89
205	Available	711	1 Bed+Den	\$614,990					\$614,990	\$864.96	\$565,477.88
206	Firm	930	2 Bed+Den	\$689,990	\$40,000.00	ONE	\$10,000	ONE	\$739,990	\$741.92	\$676,097.35
207	Firm	1,660	2 Bed+Den	\$1,284,990	\$40,000.00	ONE	\$10,000	ONE	\$1,384,990	\$774.08	\$1,202,646.02
208	Available	1,102	2 Bed+Den	\$969,990					\$969,990	\$880.21	\$879,697.17
301	Firm	921	2 Bed+Den	\$709,990	\$40,000.00	ONE	\$20,000	TWO	\$769,990	\$770.88	\$702,646.02
302	Available	681	1 Bed+Den	\$609,990					\$609,990	\$895.73	\$561,063.10
303	Firm	1,251	2 Bed+Den	\$959,990	\$80,000.00	TWO	\$10,000	ONE	\$1,049,990	\$767.38	\$950,433.63
304	Available	1,543	2 Bed+Den	\$1,349,990					\$1,349,990	\$874.01	\$1,215,920.95
305	Available	1,276	2 Bed+Den	\$1,109,990					\$1,109,990	\$869.90	\$1,003,530.57
306	Firm	1,080	2 Bed+Den	\$819,990	\$40,000.00	ONE	\$0	NIL	\$859,990	\$759.25	\$782,292.04
307	Available	809	1 Bed+Den	\$709,990					\$709,990	\$877.61	\$649,548.67
308	Firm	1,775	2 Bed+Den	\$1,324,990	\$80,000.00	TWO	\$10,000	ONE	\$1,414,990	\$746.47	\$1,273,442.48
309	Available	1,102	2 Bed+Den	\$979,990					\$979,990	\$889.28	\$888,486.73
310	Available	1,489	2 Bed+Den	\$1,299,990					\$1,299,990	\$903.40	\$1,171,672.57
311	Firm	1,020	2 Bed+Den	\$777,990	\$40,000.00	ONE	\$0	NIL	\$817,990	\$762.74	\$745,123.89
401	Firm	921	2 Bed+Den	\$694,990	\$40,000.00	ONE	\$10,000	ONE	\$744,990	\$754.60	\$680,522.12
402	Firm	681	1 Bed+Den	\$526,990	\$40,000.00	ONE	\$10,000	ONE	\$576,990	\$773.85	\$531,849.56
403	Firm	1,251	2 Bed+Den	\$969,990	\$80,000.00	TWO	\$10,000	TWO	\$1,059,990	\$775.37	\$959,283.19
404	Available	1543	2 Bed+Den	\$1,359,990					\$1,359,990	\$881.39	\$1,224,769.91
405	Available	1,276	2 Bed+Den	\$1,119,990					\$1,119,990	\$877.74	\$1,012,380.53
406	Available	1,080	2 Bed+Den	\$959,990					\$959,990	\$888.88	\$870,787.61
407	Available	809	1 Bed+Den	\$719,990					\$719,990	\$899.98	\$658,398.23
408	Firm	1,775	2 Bed+Den	\$1,331,990	\$40,000.00	ONE	\$10,000	ONE	\$1,381,990	\$750.42	\$1,244,238.94
409	Firm	1,102	2 Bed+Den	\$852,990	\$40,000.00	ONE	\$10,000	ONE	\$902,990	\$774.04	\$820,345.13
410	Firm	1,439	2 Bed+Den	\$1,106,990	\$40,000.00	ONE	\$10,000	ONE	\$1,156,990	\$769.28	\$1,045,123.89
411	Firm	1,020	2 Bed+Den	\$819,990	\$40,000.00	ONE	\$10,000	ONE	\$869,990	\$803.91	\$791,141.59
501	Firm	250	Partial	\$239,000	\$0.00	NIL	\$0	NIL	\$239,000	\$956.00	\$227,186.31
502	Firm	1,238	2 Bed+Den	\$1,014,990	\$80,000.00	TWO	\$20,000	TWO	\$1,114,990	\$819.86	\$1,007,955.75
503	Firm	686	1 Bed	\$579,990	\$40,000.00	ONE	\$10,000	ONE	\$629,990	\$845.47	\$578,752.21
504	Firm	1,215	2 Bed+Den	\$1,029,990	\$40,000.00	ONE	\$0	NIL	\$1,069,990	\$847.73	\$968,132.74
505	Firm	699	1 Bed	\$572,990	\$40,000.00	ONE	\$0	NIL	\$612,990	\$819.73	\$563,707.96
506	Available	621	1 Bed	\$624,990					\$624,990	\$1,006.43	\$574,327.43
507	Available	710	1 Bed+Den	\$709,990					\$709,990	\$999.09	\$640,548.67
508	Firm	1,424	2 Bed+Den	\$1,299,990	\$80,000.00	TWO	\$10,000	ONE	\$1,389,990	\$912.91	\$1,251,318.58
509	Firm	965	2 Bed+Den	\$795,990	\$40,000.00	ONE	\$10,000	ONE	\$845,990	\$824.86	\$769,902.65
510	Firm	1,069	2 Bed+Den	\$879,990	\$40,000.00	ONE	\$10,000	ONE	\$929,990	\$823.19	\$844,238.94
511	Firm	1,237	2 Bed+Den	\$1,159,990	\$40,000.00	ONE	\$10,000	ONE	\$1,209,990	\$937.74	\$1,092,026.55
601	Firm	732	1 Bed+Den	\$619,990	\$80,000.00	TWO	\$10,000	ONE	\$709,990	\$846.98	\$649,548.67
602	Firm	1,238	2 Bed+Den	\$1,024,990	\$80,000.00	TWO	\$10,000	ONE	\$1,114,990	\$827.94	\$1,007,955.75
603	Available	632	1 Bed	\$589,990					\$589,990	\$933.53	\$543,353.98
604	Firm	1,113	2 Bed+Den	\$916,490	\$80,000.00	TWO	\$0	NIL	\$996,490	\$823.44	\$903,088.50
605	Firm	659	1 Bed	\$548,000					\$548,000	\$831.56	\$506,194.69
606	Firm	578	1 Bed	\$479,990	\$40,000.00	ONE	\$10,000	ONE	\$529,990	\$830.43	\$490,256.64
607	Firm	658	1 Bed	\$545,990	\$0.00	NIL	\$0	NIL	\$545,990	\$829.77	\$504,415.99
608	Firm	1,424	2 Bed+Den	\$1,199,990	\$80,000.00	TWO	\$20,000	TWO	\$1,299,990	\$942.69	\$1,171,672.57

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10/05/19



Suite	Status	Size	Type	Unit Price	Parking Price	Parking (1) One or (0) Nil	Locker Price	Locker (1) One or (0) Nil	Total Price	#57	Total Price Net of HST
609	Firm	914	2 Bed	\$759,990	\$40,000.00	ONE	\$10,000	ONE	\$809,990	\$881.50	\$738,044.25
610	Firm	1,079	2 Bed+Den	\$917,990	\$80,000.00	TWO	\$0	ONE	\$997,990	\$855.54	\$804,415.93
611	Firm	841	1 Bed+Den	\$711,990					\$711,990	\$846.60	\$651,318.58
701	Firm	792	1 Bed+Den	\$629,990	\$40,000.00	ONE	\$10,000	ONE	\$679,990	\$860.64	\$623,000.00
702	Firm	1,238	2 Bed+Den	\$1,034,990	\$40,000.00	ONE	\$0	NIL	\$1,074,990	\$836.02	\$872,557.52
703	Available	692	1 Bed	\$599,990					\$599,990	\$949.35	\$552,209.54
704	Firm	1,113	2 Bed+Den	\$924,990	\$80,000.00	TWO	\$0	NIL	\$1,004,990	\$831.08	\$910,610.62
705	Available	659	1 Bed	\$624,990					\$624,990	\$948.39	\$574,327.43
706	Available	578	1 Bed	\$549,990					\$549,990	\$951.54	\$507,955.75
707	Firm	658	1 Bed	\$555,990	\$40,000.00	ONE	\$0	ONE	\$595,990	\$844.97	\$548,663.72
708	Firm	1,424	2 Bed+Den	\$1,184,990	\$80,000.00	TWO	\$10,000	ONE	\$1,274,990	\$832.16	\$1,149,548.67
709	Firm	914	2 Bed	\$779,990	\$80,000.00	TWO	\$0	NIL	\$859,990	\$853.38	\$782,292.04
710	Firm	1,073	2 Bed+Den	\$918,990	\$80,000.00	TWO	\$10,000	ONE	\$1,008,990	\$856.47	\$914,150.44
711	Firm	841	1 Bed+Den	\$712,990	\$0.00	NIL	\$0	NIL	\$712,990	\$847.79	\$652,209.54
801	Firm	250	Partial	\$215,000	\$0.00	NIL	\$0	NIL	\$215,000	\$860.00	\$204,372.62
802	Firm	1,238	2 Bed+Den	\$1,669,990	\$80,000.00	TWO	\$20,000	TWO	\$1,769,990	\$1,348.94	\$1,587,601.77
803	Available	692	1 Bed	\$619,990					\$619,990	\$981.00	\$569,902.65
804	Firm	1,113	2 Bed+Den	\$964,990	\$80,000.00	TWO	\$30,000	THREE	\$1,074,990	\$867.02	\$972,557.52
805	Firm	659	1 Bed	\$577,990	\$0.00	NIL	\$0	NIL	\$577,990	\$877.07	\$532,784.51
806	Available	578	1 Bed	\$569,990					\$569,990	\$986.14	\$525,654.87
807	Available	658	1 Bed	\$644,990					\$644,990	\$980.23	\$592,026.55
808	Firm	1,424	2 Bed+Den	\$1,219,990	\$40,000.00	ONE	\$10,000	ONE	\$1,269,990	\$856.73	\$1,145,123.89
809	Firm	914	2 Bed	\$799,990					\$799,990	\$875.26	\$729,194.68
810	Firm	1,591	2 Bed+Den	\$1,498,990	\$80,000.00	TWO	\$10,000	ONE	\$1,588,990	\$942.17	\$1,427,424.78
811	Available	726	1 Bed+Den	\$769,990					\$769,990	\$1,060.59	\$702,646.02
901	Firm	792	1 Bed+Den	\$639,990	\$80,000.00	TWO	\$20,000	TWO	\$739,990	\$874.30	\$676,097.95
902	Firm	1,238	2 Bed+Den	\$1,054,990	\$80,000.00	TWO	\$20,000	TWO	\$1,154,990	\$852.17	\$1,043,353.98
903	Available	692	1 Bed	\$689,990					\$689,990	\$1,012.64	\$587,601.77
904	Firm	1,113	2 Bed+Den	\$984,990	\$40,000.00	ONE	\$10,000	ONE	\$1,034,990	\$884.99	\$937,159.29
905	Firm	659	1 Bed	\$597,990					\$597,990	\$907.42	\$550,433.63
906	Available	578	1 Bed	\$589,990					\$589,990	\$1,020.74	\$543,353.98
907	Available	658	1 Bed	\$664,990					\$664,990	\$1,010.62	\$609,725.66
908	Firm	1,424	2 Bed+Den	\$1,209,990	\$80,000.00	TWO	\$10,000	ONE	\$1,299,990	\$849.71	\$1,171,672.57
909	Firm	914	2 Bed	\$785,000	\$0.00	NIL	\$10,000	ONE	\$795,000	\$838.86	\$724,778.76
910	Firm	1,073	2 Bed+Den	\$928,990	\$40,000.00	ONE	\$10,000	ONE	\$978,990	\$865.79	\$887,601.77
911	Firm	841	1 Bed+Den	\$732,990	\$0.00	NIL	\$0	NIL	\$732,990	\$871.57	\$669,902.65
1001	Firm	1,714	2 Bed+Den	\$1,949,999	\$40,000.00	ONE	\$10,000	ONE	\$1,999,999	\$1,137.69	\$1,791,149.56
1002	Available	1,938	2 Bed+Den	\$2,599,990					\$2,599,990	\$1,341.58	\$2,322,115.04
1003	Available	2,388	2 Bed+Den	\$3,249,990					\$3,249,990	\$1,360.97	\$2,897,336.28
1004	Firm	1,889	2 Bed+Den	\$2,379,990	\$120,000.00	THREE	\$20,000	TWO	\$2,519,990	\$1,259.92	\$2,251,318.58
1101	Firm	3,563	3 Bed+Den	\$4,275,990	\$120,000.00	THREE	\$10,000	ONE	\$4,405,990	\$1,200.11	\$3,920,345.13
1102	Available	3,577	3 Bed+Den	\$5,019,990					\$5,019,990	\$1,409.41	\$4,469,707.96
1103	Available	4,801	3 Bed+Den	\$6,459,990					\$6,459,990	\$1,404.04	\$5,798,044.25
1104	Available	3,533	3 Bed+Den	\$4,999,990					\$4,999,990	\$1,416.03	\$4,446,008.25
<b>Total</b>		<b>106,657</b>		<b>202,890,619</b>					<b>106,260,619</b>	<b>\$764.09</b>	<b>96,026,077.7</b>

	<b>Parking</b>	<b>Locker</b>
Number of Remaining Units	55	44
Each must be sold at (Net of HST and Rebates)	\$40,000	\$10,000
<b>Total</b>	<b>\$2,200,000</b>	<b>\$440,000</b>



10/05/19







October 24, 2022

**Mizrahi Development Group (1451 Wellington) Inc.**  
125 Hazelton Ave  
Toronto, ON  
M5R 2E4

**Attention: Mr. Mark Kilfoyle**

Dear Sir:

**RE: Renewal of financing in the amount of \$67,531,718 secured by a \$70,000,000 1<sup>st</sup> priority mortgage on a 19,833 square foot site being improved with a 82-unit residential condominium building with 5,268 square feet of ground floor retail space located at 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "Subject Property") [Mizrahi – 1451 Wellington Street West, Trez Loan # 1995/19].**

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We are pleased to advise that we have approved a renewal (the "Renewal") of the 1<sup>st</sup> mortgage loan (the "Loan") to Mizrahi Development Group (1451 Wellington) Inc. (the "Borrower") on the terms described in this letter (this "Renewal Letter"), which upon execution by the Borrower, Guarantor and Lender shall constitute an agreement which shall bind the Borrower and Guarantor with respect to the Renewal. This Renewal Letter is an amendment of the Commitment Letter dated October 2<sup>nd</sup>, 2019. The Renewal has been approved subject to the following terms and conditions.

**1. Expiry of Renewal Offer**

It is a condition of this Renewal Letter that if the Security is not registered and in place, and the renewal is not completed on or before **November 1, 2022**, this Renewal Letter shall, at the option of the Lender, expire and be of no force and effect.

**2. Renewal Amount**

\$67,531,718; composed of a \$66,531,718 Construction Loan Facility and a \$1,000,000 Letter of Credit Facility; plus interest, fees, costs and expenses as set out in the Commitment Letter and this Renewal Letter.

The current Construction Loan Facility balance is \$45,067,272 and the Letter of Credit Facility balance is \$753,163 as at October 1, 2022.

**3. Renewal Term**

7 months commencing from the renewal date of October 1<sup>st</sup>, 2022 (the "Renewal Date") and maturing on May 1<sup>st</sup>, 2023.

**4. Interest Rate**

Interest will be charged on the outstanding balance under the Loan at the greater of 9.65% per annum and HSBC Prime + 4.20 %, compounded and payable monthly, for the initial 6 months of the Renewal Term, and 15.0% per annum, compounded and payable monthly, for the final month of the Renewal Term and thereafter. Overdue interest shall bear interest at the same rate as principal.

Such interest rate shall be set with respect to amounts advanced on the day of each advance and thereafter monthly on the first day of each month. Interest shall be calculated daily on the daily balance outstanding

from time to time, before as well as after maturity, default or judgment, from the date of each advance. Such Interest Rate shall be determined upon the basis of a three hundred and sixty-five (365) day year for common years and a three hundred and sixty-six (366) day year for leap years. Interest shall be calculated in accordance with the Lender's usual practice (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower. All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. All interest payable hereunder bears interest from the date of advance of any portion of the Loan to the Lender's solicitor, whether or not such advance of the Loan is released to the Borrower or the Borrower's solicitor.

**5. Amortization**

Interest only

**6. Renewal Interest Budget**

\$7,100,638 (an increase of \$1,498,843 from the existing budget). The interest budget (the "Interest Budget") represents the maximum amount of interest that the Lender will allow to accrue on the principal Loan Amount outstanding. Total interest accrued was \$4,433,273.25 as at October 1, 2022. If at any time during the Renewal Term the accrued interest exceeds the Interest Budget, the Borrower must pay the overage to the Lender on the next Monthly Payment. The registered Loan Amount will include the principal amount advanced, as well as the Interest Budget.

**7. Monthly Payments**


Monthly Payments shall be advanced from the Interest Budget until the Interest Budget is exhausted and thereafter the Borrower shall be required to make the Monthly Payments from its own resources.

**8. Renewal Fee**

\$335,000. The renewal fee (the "Renewal Fee") shall be deemed to be fully earned upon acceptance of this Renewal Letter. The Renewal Fee shall be payable on the earlier of the date on which the Lender confirms that all Conditions Precedent to the Renewal have been satisfied and the date of expiry of this Renewal offer.

The Renewal Fee shall be advanced by Trez and shall earn interest as of the date of the advance. The Borrower shall contribute \$335,000 towards eligible project costs prior to the December 2022 Construction Advance.

**9. Prepayment**

 The Borrower, not being in default of the Loan, may, at any time after the provision of 30 days written notice, ~~which notice shall contain evidence of the source of funds to be used for repayment,~~ repay the whole of the Renewal Amount hereby secured upon payment to the Lender of the Renewal Amount outstanding, together with all interest to date of such prepayment plus costs and other charges, including without limitation, any Periodic Renewal Fees, accrued to the date of payment, up to and including the date of such.

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## 10. Updated Project Balance Sheet

Project Balance Sheet Equity & Liabilities		Assets	
Trez 1st Construction Loan Facility*	66,531,718	Payout VTB	900,000
Cash Equity - Original	11,018,073 <sup>†</sup>	Cash Equity	1,750,000
Deferred Equity for Land Purchase**	2,300,000	Condo Units in lieu of cash	2,300,000
Land Surplus	619,500	Land Surplus	619,500
<b>Total Equity</b>	<b>13,937,573</b>	Land Value	5,569,500
Insured Purchaser Deposits*	11,368,282	Hard Costs	53,827,113
		Soft Costs	22,889,878
		Contingency	2,106,787
		Trez 1st Interest Budget (original)	5,601,795
		Trez 1st Commitment Fee	1,172,500
		Broker Fee	670,000
Cash Equity - Cost Overruns (Dec 2021 to present)	1,662,426 <sup>†</sup>	Hard Cost Increases (Dec 2021 to present)	2,475,509
		Soft Cost Increase (Dec 2021 to present)	583,412
		Contingency Reduction (Dec 2021 to present)	(895,338)
Cash Equity - Required (Subject Renewal)	335,000	Trez 1st Interest Budget (Increase)	1,498,843
Cash Equity - Brownfield Credit (City Payment)	1,516,250	Trez 1st Renewal Fee	335,000
Cash Equity - Brownfield Credit (Proceeds of CWB)	524,749	Other Misc. Costs	40,998
<b>Sub Total 1st</b>	<b>95,875,997</b>	<b>Sub Total 1st</b>	<b>95,875,997</b>
Insured Purchaser Deposits ("Excess Deposits")***	2,000,000	Potential future cost overruns	2,000,000
Trez 1st Letter of Credit Facility	1,000,000	Letter(s) of Credit in favour of City of Ottawa	1,000,000
<b>Total 1st</b>	<b>96,875,997</b>	<b>Total 1st</b>	<b>96,875,997</b>
Trez 2nd (Dec 2021)	6,000,000	Trez 2nd - Commitment Fee (Dec 2021)	120,000
Equity Repatriation (Dec 2021)	(5,070,000)	Trez 2nd - Interest Budget (Dec 2021)	810,000
Cash Equity - At Renewal	121,398	Trez 2nd Renewal Fee	60,000
Cash Equity - Monthly during the Renewal Term****	338,602	Trez 2nd Interest Reserve Payments****	400,000
<b>Total 1st + 2nd</b>	<b>98,265,997</b>	<b>Total 1st + 2nd</b>	<b>98,265,997</b>

<sup>†</sup>Prior approval was granted to allow \$486K in Insured Purchaser Deposits to fund a materials deposit (increasing the permissible DPI from \$10.9 million to \$11.368 million in the process), which is offset against a reduction in the Construction Loan Facility availability.

\*\*Condo in lieu of cash

\*\*\*The Borrower is permitted to use the balance of the "Excess Deposits" to a maximum amount of \$2 million to fund qualified project costs, including potential future overruns. Any of the \$2 million "Excess Deposits" used towards project costs which are not overruns, will be offset against a reduction in the Construction Loan Facility Availability.

\*\*\*\*Subject to change based on changes to the HSBC Prime rate

## 11. Conditions Precedent to the Renewal

The conditions precedent to the Renewal shall include, but not be limited to the items set out in the remainder of this section, all of which must be satisfactory to the Lender in its sole, unfettered and absolute discretion, and all of which collectively comprise the Lender's due diligence. The Lender may require any additional information as it deems necessary in its sole, unfettered and absolute discretion.

- Completion of all security amendments as required by the Lender.
- Syndicate partner approval for the Renewal.
- Satisfactory inspection of the Subject Property by the Lender.

The Lender's receipt of the following:

- The Borrower's updated development schedule for the Subject Property.
- The Borrower's updated development budget for the Subject Property.
- A signed and dated sales price list and presales summary.
- All presale contracts for the Subject Project.

- h) Written confirmation from the law firm holding the presale deposits of the following information: lot number, date of contract, name of purchaser, purchase price, deposit received, and whether the contract is firm or conditional.
- i) Certified financial statements from the Borrower and Guarantor. If an individual then a personal net worth statement, on the Trez Capital form, dated no more than **four (4)** months prior, is required, if a corporate entity then most recent financial statements is required. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency.
- j) Confirmation that the Subject Property is in compliance with current zoning and that there are no outstanding work or fire orders, or that any such orders shall be paid from the proceeds of the Mortgage.
- k) Confirmation that all property taxes owing on the Subject Property have been paid or will be paid from the proceeds of the Loan.
- l) Insurance of the Subject Property which has been reviewed and approved by the Lender's Insurance Consultant which insurance shall include the coverage set out in Schedule A of the Commitment Letter, or as otherwise required by the Lender in consultation with its Insurance Consultant.
- m) Such other materials and completion of such other reasonable requirements a may be deemed necessary by the Lender.

## 12. Conditions Precedent to the Advance of the Excess Deposits

\$11,369,282 in Insured Purchaser Deposits are currently released to fund project costs as of October 1, 2022. The Borrower shall be permitted to use \$2,000,000 in additional insured purchaser deposits (the "Excess Deposits") to fund qualified project costs including cost overruns / budget increases, of which \$785,000 are permissible to fund budget increases attributable to the subject Renewal. Any "Excess Deposits" used towards eligible project costs which are not overruns / budget increases shall be offset against a dollar-for-dollar reduction in the Lender's Construction Loan Facility availability. Any reduction of the Loan Amount may not be re-advanced under any circumstances. The conditions precedent, all of which must be satisfactory to the Lender in its sole and unfettered discretion, to the disbursement of the "Excess Deposits" shall include all of the conditions precedent to the Renewal, plus:

- a) All presale contracts for the Subject Property totaling no less than \$64,864,699 (Net of HST). All presales must be to arm's-length purchasers and include contractual deposits of not less than 15% of the purchase price for the respective unit (not including deposits due upon occupancy).
- b) Written confirmation from the law firm holding the presale deposits in trust of a minimum of \$13,105,786 of contractual deposits received to date in trust.
- c) Written approval from the Deposit Insurer to advance the "Excess Deposits".

This Renewal Letter and the Commitment Letter shall be read together as one and the same document and may be executed in counterpart and delivered via facsimile or other electronic transmission. Other than as expressly set out herein, all of the terms and conditions of the Commitment Letter shall continue in full force and effect, unamended.

This Renewal shall not become effective until 1) the Borrower, Guarantor and Lender have signed this letter and a copy is returned to the Lender's office ~~along with a cheque for the Deposit of \$337,500~~ by no later than 5:00pm Pacific Time on **November 30, 2022**; and 2) the Lender has confirmed that all Conditions Precedent to the Renewal have been satisfied.


The Borrower and Guarantor hereby acknowledge and agree to the terms and conditions of this Renewal Letter and authorize Trez Capital Limited Partnership to instruct its solicitor to prepare the documentation required to give effect to this Renewal. The Borrower and Guarantor further acknowledge that the Renewal Fee set forth herein is a reasonable estimate of the cost incurred in granting the Renewal and of holding monies available for

same, and that the Renewal Fee shall be forfeited and payable to Trez Capital Limited Partnership as liquidated damages, and not as a penalty, if the Renewal is not completed within the time limit herein. This Renewal and any fees earned as a result of this Renewal Letter, together with any expenses or costs incurred by Trez Capital Limited Partnership including, but not limited to, appraisal, re-appraisal, inspections, re-inspections, title searches, plan reviews, soil tests, survey, environmental assessments, and legal costs on a solicitor and its client basis, are deemed to be a charge on the Subject Property referred to herein and Trez Capital Limited Partnership may file and maintain a caveat on the title to the Subject Property to protect that charge and the Borrower and Guarantor do hereby mortgage to Trez Capital Limited Partnership all its estate and interest in the said Subject Property and Security. This Renewal Letter supersedes all previous correspondence between the parties hereto save and except for the amendment letter(s) (if any) and the Commitment Letter.

Yours truly,

**Trez Capital Limited Partnership**  
by its general partner,  
**Trez Capital (2011) Corporation**

Per:   
Eric Horie  
Senior Managing Director, Head of  
Origination Canada  
Agent#: M2001785

Per:   
Chris Worthington  
Vice President, Head of Credit Risk &  
Underwriting, Canada  
Broker#: M17000400

We hereby agree to the Terms and Conditions contained in this Renewal Letter and agree to be bound by the terms hereof.

Acknowledged and agreed at Toronto this 11 day of January, 2022.

**BORROWER:**

**Mizrahi Development Group (1451 Wellington) Inc.**

Per:   
Authorized Signature

**GUARANTOR:**



Sam Mizrahi



April 10, 2023

**Mizrahi Development Group (1451 Wellington) Inc.**  
125 Hazelton Ave  
Toronto, ON  
M5R 2E4

**Attention: Mr. Sam Mizrahi, Mr. Mark Kilfoyle,**

Dear Sirs:

**RE: Renewal of financing in the amount of \$66,934,881 secured by a \$70,000,000 1<sup>st</sup> priority mortgage on a 19,833 square foot site being improved with a 82-unit residential condominium building with 5,268 square feet of ground floor retail space located at 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "Subject Property") [Mizrahi – 1451 Wellington Street West, Trez Loan # 1995/19].**

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We, Trez Capital Limited Partnership by its general partner, Trez Capital (2011) Corporation ( the "**Lender**"), are pleased to advise that we have approved a second renewal (the "**Second Renewal**") of the 1<sup>st</sup> mortgage loan (the "**Loan**") to Mizrahi Development Group (1451 Wellington) Inc. (the "**Borrower**") on the terms described in this letter (this "**Second Renewal Letter**"), which upon execution by the Borrower, Guarantor and Lender shall constitute an agreement which shall bind the Borrower, Guarantor, with respect to the Second Renewal. This Second Renewal Letter is an amendment of the Commitment Letter dated October 2<sup>nd</sup>, 2019, (the "**Commitment**") and the Renewal Letter dated October 24, 2022. The Second Renewal has been approved subject to the following terms and conditions.

### **1. Acknowledgments**

- a) The Borrower and the Guarantor acknowledge that as at April 1, 2023, the Borrower was indebted to the Lender in the amount of \$49,198,984.42 plus accrued and ongoing interest and reasonable costs accruing after April 1, 2023 (collectively, the "**Indebtedness**"), without the right of set-off or defense or equity which would reduce the amounts currently owing, and notwithstanding the provisions of the *Limitations Act, 2002*, based on their current knowledge or what they ought to know in the circumstances.
- b) The Borrower and the Guarantor acknowledge that the security for the Indebtedness provided by each of them as set out in Schedule "A" ( the "**Security**"), is valid and enforceable by the Lender in accordance with its respective terms without defence or right of set-off or equity, as of the date hereof, and that the Lender shall be free to exercise its rights under the Security at the end of the Renewal Period (defined below) or upon termination of the Loan without interference, objection or action by the Borrower or the Guarantor in respect of the validity or enforceability of the security and that the Lender is relying upon this acknowledgement in providing its agreement as set forth herein.
- c) The Borrower and the Guarantor hereby consent to the terms of the Lender's renewal and other accommodations as set out herein. The Borrower and the Guarantor specifically acknowledge that they have, as of the date hereof, no defences, counterclaims or rights of set-off or reduction to any claims which might be brought by the Lender under the Security granted by the Borrower or the Guarantor to the Lender or in respect of the Loan, notwithstanding the provisions of the *Limitations Act, 2002*.

A handwritten signature in blue ink, appearing to be 'A' or 'R', located in the bottom right corner of the page.

- d) The Borrower and the Guarantor hereby agree that, upon the execution of this Agreement, they shall each absolutely and irrevocably release the Lender, its officers, directors, employees, solicitors and agents (the "Releasees"), of and from any and all claims which they may have in respect of the Loan against the Releasees up to and including the date hereof including, without limitation, any actions taken by the Lender in dealing with the Borrower, the Guarantor, the Subject Property or with the administration of the Borrower's accounts with the Lender.

## 2. Expiry of Renewal Offer

It is a condition of this Second Renewal Letter that if the Security is not registered and in place, and the renewal is not completed on or before **May 9, 2023**, this Second Renewal Letter shall, at the option of the Lender, expire and be of no force and effect.

## 3. Renewal Amount

\$66,934,881; composed of a \$66,181,718 Construction Loan Facility and a \$753,163 Letter of Credit Facility; plus interest, fees, costs and expenses as set out in the Commitment Letter and this Second Renewal Letter.

The current Construction Loan Facility balance is \$48,445,821.42 and the Letter of Credit Facility balance is \$753,163 as at April 1, 2023.

## 4. Renewal Term

4 months commencing from the second renewal date of April 1<sup>st</sup>, 2023 (the "Second Renewal Date") and maturing on August 1<sup>st</sup>, 2023 (the "**Renewal Period**").

## 5. Interest Rate

Interest will be charged on the outstanding balance under the Loan at the greater of 9.65% per annum and HSBC Prime + 4.20 %, compounded and payable monthly, for the initial 3 months of the Second Renewal Term, and 15.0% per annum, compounded and payable monthly, for the final month of the Second Renewal Term and thereafter. Overdue interest shall bear interest at the same rate as principal.

Such interest rate shall be set with respect to amounts advanced on the day of each advance and thereafter monthly on the first day of each month. Interest shall be calculated daily on the daily balance outstanding from time to time, before as well as after maturity, default or judgment, from the date of each advance. Such Interest Rate shall be determined upon the basis of a three hundred and sixty-five (365) day year for common years and a three hundred and sixty-six (366) day year for leap years. Interest shall be calculated in accordance with the Lender's usual practice (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower. All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. All interest payable hereunder bears interest from the date of advance of any portion of the Loan to the Lender's solicitor, whether or not such advance of the Loan is released to the Borrower or the Borrower's solicitor.

## 6. Amortization

Interest only

## 7. Renewal Interest Budget

\$9,552,268 (an increase of \$2,451,630 from the existing budget). The interest budget (the "**Interest Budget**") represents the maximum amount of interest that the Lender will allow to accrue on the principal Loan Amount outstanding. Total interest accrued was \$6,881,961.77 as at April 1, 2023. If at any time during the Second Renewal Term the accrued interest exceeds the Interest Budget, the Borrower must pay the overage to the



Lender on the next Monthly Payment. The registered Loan Amount will include the principal amount advanced, as well as the Interest Budget.'

**8. Monthly Payments**

Monthly Payments shall be advanced from the Interest Budget until the Interest Budget is exhausted and thereafter the Borrower shall be required to make the Monthly Payments from its own resources.

**9. Monthly Equity Injections**

The Borrower shall be responsible for monthly cash equity injections (the "**Monthly Cash Equity Injection**") in the minimum amount of **\$270,000** per month to be invested into the project to fund eligible project costs as determined by the Project Monitor. This equity is in addition to any cash equity requirements required by the Lender to service the Trez 2<sup>nd</sup> mortgage loan over the subject property. The Borrower will provide monthly bank statements and/or such other information as may be required by the Lender and the Project Monitor to verify the Monthly Cash Equity Injection. The Borrower will provide a monthly statutory declaration confirming that they have met the minimum of **\$270,000** cash equity invested in the project, with such equity to stay in place throughout the term of the Loan. For added clarity, the injection of the first **\$270,000** Monthly Cash Injection will be identified on the next Project Monitor's report #39 and the second and subsequent payments shall be paid each month thereafter.

**10. Renewal Fee**

\$170,000. The second renewal fee (the "Second Renewal Fee") shall be deemed to be fully earned upon acceptance of this Second Renewal Letter. The Second Renewal Fee shall be payable on the earlier of the date on which the Lender confirms that all Conditions Precedent to the Second Renewal have been satisfied and the date of expiry of this Second Renewal offer.

The Second Renewal Fee shall be advanced by Trez and shall earn interest as of the date of the advance.

**11. Prepayment**

The Borrower may, at any time after the provision of 30 days written notice, repay within 45 days of such written notice, the whole of the Second Renewal Amount hereby secured upon payment to the Lender of the Second Renewal Amount outstanding, together with all interest to date of such prepayment plus costs and other charges, including without limitation, any Periodic Renewal Fees, accrued to the date of payment, up to and including the date of such.

This section intentionally left blank



## 12. Updated Project Balance Sheet

Project Balance Sheet		Assets	
<b>Equity &amp; Liabilities</b>		<b>\$</b>	
Trez 1st Construction Loan Facility*	66,181,718	Payout VTB	900,000
Cash Equity - Original	11,018,073	Cash Equity	1,750,000
Deferred Equity for Land Purchase**	2,300,000	Condo Units in lieu of cash	2,300,000
Land Surplus	619,500	Land Surplus	619,500
Total Equity (Initial Advance)	13,937,573	<b>Land Value</b>	<b>5,569,500</b>
Insured Purchaser Deposits	11,368,282	Hard Costs	53,827,114
Cash Equity - Cost Overruns	1,620,065	Soft Costs	22,889,878
Cash Equity - Brownfield Credit (City Payment)	1,516,250	Contingency (base)	2,106,787
Cash Equity - Brownfield Credit (Proceeds of CWB)	524,749	Contingency (design assist)	3,661,063
Total Cash Equity Increase (prior to Nov 2022 renewal)	3,661,064	Trez 1st Interest Budget (original)	5,601,795
Cash Equity - Cost overruns (Nov 2022 renewal)	572,210	Trez 1st Commitment Fee	1,172,500
Insured Purchaser Deposit increase (Nov 2022 renewal)**	2,000,000	Broker Fee	670,000
		<b>Original Budget (to Dec 2021)</b>	<b>89,929,137</b>
		Hard Cost Increases (Dec 2021 to Nov 2022)	3,364,565
		Soft Cost Increase (Dec 2021 to Nov 2022)	1,112,023
		Contingency Reduction (Dec 2021 to Nov 2022)	(3,661,063)
		Trez 1st Interest Budget Increase #1	1,498,843
		Trez 1st Renewal #1 Fee	335,000
		Other Misc. Costs (plug)	(77,158)
		<b>1st Renewal (Nov 2022)</b>	<b>2,572,210</b>
Cash Equity - deferred (\$270K per month May to Sept 2023)	1,350,000	Hard Costs increase	2,898,184
Cash Equity - deferred (net proceeds of 180 SAW sale)	1,714,153	Soft Cost Increase	1,298,807
Total Equity (Deferred)	3,064,153	Contingency (Reduction)	(1,129,844)
Insured Purchaser Deposit Increase (March 2023 renewal)**	3,000,000	Trez 1st Interest Budget Increase #2	2,451,630
		Trez 1st Renewal Fee #2	170,000
		Other Misc. Costs (plug)	25,376
		<b>Subject Renewal (March 2023)</b>	<b>5,714,153</b>
<b>Sub Total 1st</b>	<b>103,785,000</b>	<b>Sub Total 1st</b>	<b>103,785,000</b>
Trez 1st Letter of Credit Facility	753,163	Letter(s) of Credit in favour of City of Ottawa	753,163
<b>Total 1st</b>	<b>104,538,163</b>	<b>Total 1st</b>	<b>104,538,163</b>
Trez 2nd (Dec 2021)	6,000,000	Trez 2nd - Commitment Fee (Dec 2021)	120,000
Equity Repatriation (Dec 2021)	(5,070,000)	Trez 2nd - Interest Budget (Dec 2021)	810,000
Cash Equity - At Renewal (Nov 2022 renewal)	296,814	Trez 2nd Renewal Fee	60,000
Cash Equity - at Renewal (April 1st)	70,000	Trez 2nd Interest Budget Top Up Payments to date	236,814
Trez 2nd - Interest Accrual****	366,275	Trez 2nd - 2nd Renewal Fee	70,000
<b>Total 2nd</b>	<b>1,296,814</b>	Trez 2nd - Interest Accrual	366,275
<b>Grand Total 1st + 2nd</b>	<b>105,834,977</b>	<b>Total 2nd</b>	<b>1,663,089</b>
		<b>Grand Total 1st + 2nd</b>	<b>106,201,252</b>

\*Prior approval was granted to allow \$486K in Insured Purchaser Deposits to fund a materials deposit (increasing the permissible DPI), which was offset against a reduction in the Construction Loan Facility availability. The Construction Loan Facility availability is being further reduced by \$350K as at the Second Renewal Term, offset against the deferred Monthly Cash Equity contributions.

\*\*Condo in lieu of cash

\*\*\*final 5% "occupancy" deposits which are triggered upon issuance of the occupancy permits (approx 60 days prior to closing)

\*\*\*\*estimated interest accrual over the renewal term

## 13. Additional Covenants

During the Renewal Period, the Borrower and the Guarantor shall:

- forthwith provide the Lender with notice of the occurrence of any litigation proceeding or dispute affecting it or the Subject Property, and if the result of such litigation might have a material adverse effect on the Borrower or the Guarantor, financial or otherwise, perform its obligations under the Second Renewal Letter and/or the Security herein, and shall from time to time, as requested by the Lender, provide the Lender with all reasonable information requested by the Lender concerning any such litigation, proceeding or dispute;
- not make a proposal, or apply for, or seek, relief from its creditors, under the *Bankruptcy and Insolvency Act* (the "BIA"), the *Companies' Creditors Arrangement Act* (the "CCAA"), or any other legislation granting relief from creditors unless the prior written consent of the Lender is obtained. In the event that the Borrower or Guarantor, or any of them, are the subject of any voluntary or involuntary proceeding

under bankruptcy and insolvency laws including the BIA, CCAA or any other applicable legislation, the Borrower and the Guarantor hereby unconditionally and irrevocably agree that the Lender is immediately entitled, without notice, demand or any other action, to relief from the automatic stay so as to allow the Lender to realize on the Security and enforce its other rights and remedies under the Loan, or at law and in equity under applicable provincial and federal laws. The Borrower and Guarantor hereby consent to the immediate lifting, without notice, demand or any other action, of any such automatic stay and agree that they shall not, in any manner, contest or otherwise delay any motion filed by the Lender for relief from the automatic stay. The Lender's enforcement of this stay waiver is subject to the discretion and approval of the bankruptcy court;

- c) further to paragraph 13 (b) above, in the event of the Borrower's intention to apply for, or seek, relief from its creditors, under the BIA, the CCAA, or any other legislation granting relief from creditors, the Borrower and the Guarantor shall deliver to the Lender fourteen (14) business days prior written notice of any such proposed action, in order to provide the Lender sufficient time to consider the request to provide its consent to the proposed action.

#### 14. Additional Security

The Loan shall be secured by the following additional and or revised security (the "**Additional Security**") which together with the existing security as outlined in the Original Commitment Letter and the Renewal Letter shall collectively form the "Security":

- a) An Assignment Of Net Proceeds Agreement in the form attached hereto as Schedule "C"; and
- b) An Undertaking To Deliver an Assignment of Net Proceeds Agreement in the form attached hereto as Schedule "D".

#### 15. Conditions Precedent to the Renewal

The conditions precedent to the Second Renewal shall include, but not be limited to the items set out in the remainder of this section, all of which must be satisfactory to the Lender in its sole, unfettered and absolute discretion, and all of which collectively comprise the Lender's due diligence. The Lender may require any additional information as it deems necessary in its sole, unfettered and absolute discretion.

- a) Completion of all security amendments as required by the Lender.
- b) Delivery of a Certificate of Independent Legal Advice ("**Certificate of Independent Legal Advice**") in the form attached hereto as **Schedule "B"** upon execution of this Agreement.
- c) Syndicate partner approval for the Second Renewal.
- d) Satisfactory inspection of the Subject Property by the Lender.

The Lender's receipt of the following:

- e) The Borrower's updated development schedule for the Subject Property.
- f) The Borrower's updated development budget for the Subject Property.
- g) A ledger from the Borrower illustrating the payment waterfall and the net proceeds of sale, if any, to the Mizrahi beneficial ownership entities from the sale of 180 Steeles Avenue West property.
- h) A signed and dated sales price list and presales summary.
- i) All presale contracts for the Subject Project.
- j) All Tarion amendments to disclosure (notice of "Unavoidable Delay") sent to all presale purchasers.

- k) Written confirmation from the law firm holding the presale deposits of the following information: lot number, date of contract, name of purchaser, purchase price, deposit received, and whether the contract is firm or conditional.
- l) Written confirmation from the law firm holding the presale deposits in trust that a minimum of \$3,000,000 of "Occupancy Deposits" are contractually due upon partial occupancy.
- m) Written approval from the Deposit Insurer that they will agree to advance the "Occupancy Deposits" once received in trust.
- n) Certified financial statements from the Borrower and Guarantor. If an individual then a personal net worth statement, on the Trez Capital form, dated no more than **four (4)** months prior, is required, if a corporate entity then most recent financial statements is required. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency. Corporate financial statements and Notices of Assessment for the fiscal years ending in 2022 shall be provided within ninety (90) days.
- o) Confirmation that the Subject Property is in compliance with current zoning and that there are no outstanding work or fire orders, or that any such orders shall be paid from the proceeds of the Mortgage.
- p) Confirmation that all property taxes owing on the Subject Property have been paid or will be paid from the proceeds of the Loan.
- q) Insurance of the Subject Property which has been reviewed and approved by the Lender's Insurance Consultant which insurance shall include the coverage set out in Schedule A of the Commitment Letter, or as otherwise required by the Lender in consultation with its Insurance Consultant.
- r) Such other materials and completion of such other reasonable requirements a may be deemed necessary by the Lender.

#### **16. Revised Development Schedule and Budget**

The Borrower shall proceed to complete the construction of the Subject Property in accordance with the schedule and development budget as set out in Quantity Surveyor Report Number 38 of Altus Group Limited (the Project Monitor) made in respect of the Subject Property dated April 4, 2023, or other Lender approved schedule and development budget. The Borrower shall not permit the events set out in the approved development schedule to be delayed more than 45 days from the approved schedule date and shall, within 10 days of notice of any cost over-run above and beyond the approved budget amount, pay said cost over-run from its own resources.

#### **17. Conditions Precedent to the Advance of the Occupancy Deposits**

\$13,368,282 in Insured Purchaser Deposits are currently released to fund project costs as of April 1, 2023. The Borrower shall be permitted to use \$3,500,000 in additional insured purchaser deposits (the "Occupancy Deposits") to fund qualified project costs, of which \$3,000,000 are to complete the capital stack. Any "Occupancy Deposits" in excess of \$3,000,000 used to fund eligible project costs shall be offset against a dollar-for-dollar reduction in the Lender's Construction Loan Facility availability. Any reduction of the Loan Amount may not be re-advanced under any circumstances. The conditions precedent, all of which must be satisfactory to the Lender in its sole and unfettered discretion, to the disbursement of the "Occupancy Deposits" shall include all of the conditions precedent to the Second Renewal, plus:

- a) All presale contracts for the Subject Property totaling no less than \$64,864,699 (Net of HST). All presales must be to arm's-length purchasers and include contractual deposits of not less than 25%% of the purchase price for the respective unit, of which no less than 5% of the purchase price of for the respective unit is due upon partial occupancy.

This Second Renewal Letter, the Renewal Letter and the Commitment Letter shall be read together as one and the same document and may be executed in counterpart and delivered via facsimile or other electronic

transmission. Other than as expressly set out herein, all of the terms and conditions of the Commitment Letter shall continue in full force and effect, unamended.

In the event that one or more of the provisions of the Second Renewal Letter, the Renewal Letter and the Commitment Letter are found to be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

This Second Renewal shall not become effective until 1) the Borrower, Guarantor and Lender have signed this letter and a copy is returned to the Lender's office by no later than 5:00pm Pacific Time on **May 9, 2023**; and 2) the Lender has confirmed that all Conditions Precedent to the Second Renewal have been satisfied.

The Borrower and Guarantor hereby acknowledge and agree to the terms and conditions of this Second Renewal Letter and authorize Trez Capital Limited Partnership to instruct its solicitor to prepare the documentation required to give effect to this Second Renewal. The Borrower and Guarantor further acknowledge that the Second Renewal Fee set forth herein is a reasonable estimate of the cost incurred in granting the Second Renewal and of holding monies available for same, and that the Second Renewal Fee shall be forfeited and payable to Trez Capital Limited Partnership as liquidated damages, and not as a penalty, if the Second Renewal is not completed within the time limit herein. This Second Renewal and any fees earned as a result of this Second Renewal Letter, together with any expenses or costs incurred by Trez Capital Limited Partnership including, but not limited to, appraisal, re-appraisal, inspections, re-inspections, title searches, plan reviews, soil tests, survey, environmental assessments, and legal costs on a solicitor and its client basis, are deemed to be a charge on the Subject Property referred to herein and Trez Capital Limited Partnership may file and maintain a caveat on the title to the Subject Property to protect that charge and the Borrower and Guarantor do hereby mortgage to Trez Capital Limited Partnership all its estate and interest in the said Subject Property and Security. This Second Renewal Letter supersedes all previous correspondence between the parties hereto save and except for the amendment letter(s) (if any), the Renewal Letter and the Commitment Letter.

Yours truly,

**Trez Capital Limited Partnership**  
**by its general partner,**  
**Trez Capital (2011) Corporation**

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

Eric Horie  
Senior Managing Director, Head of  
Origination Canada  
Agent#: M2001785

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


Chris Worthington  
Vice President, Head of Credit Risk &  
Underwriting, Canada  
Broker#: M17000400

We hereby agree to the Terms and Conditions contained in this Second Renewal Letter and agree to be bound by the terms hereof.


Acknowledged and agreed at Toronto this 9 day of May, 2023.

***BORROWER:***

**Mizrahi Development Group (1451 Wellington) Inc.**

Per:   
\_\_\_\_\_  
Authorized Signature

***GUARANTOR:***

  
\_\_\_\_\_  
Sam Mizrahi

**SCHEDULE "A"**  
**THE SECURITY**

1. Charge/Mortgage on the Subject Property as defined in the Commitment dated October 29, 2019 and received as instrument number OC2158856;
2. General Security Agreement dated October 29, 2019;
3. Notice of Assignment of Rents dated October 29, 2019 and received as instrument no. OC2158857;
4. Limited Recourse Guarantee and Postponement of Claim dated October 29, 2019;
5. Guarantee and Postponement of Claim dated October 29, 2019;
6. Completion and Cost-Overrun Guarantee dated October 29, 2019;
7. Environmental Indemnity dated October 29, 2019;
8. Bring-down Certificate dated October 29, 2019;
9. General Assignment of Material Project Agreements dated October 29, 2019;
10. General Assignment of Agreements of Purchase and Sale and Deposits dated October 29, 2019;
11. Specific Assignment of CDC2 dated October 29, 2019;
12. Assignment of Insurance dated October 29, 2019;
13. Statutory Declaration as to Material Facts;
14. Priority Agreement dated October 24, 2019;
15. Share Pledge Agreement dated October 29, 2019;
16. Irrevocable Stock Transfer and Power of Attorney dated October 29, 2019;
17. Acknowledgment and Direction dated October 24, 2019;
18. PPSA Registration under Reference File No. 756919458;
19. PPSA Registration under Reference File No. 756919377;
20. Syndicate Lender's Letter of Credit documentation.



**SCHEDULE "B"**  
**CERTIFICATE OF INDEPENDENT LEGAL ADVICE**

**TO: TREZ CAPITAL LIMITED PARTNERSHIP**

I, Sam Mizrahi, hereby declare that I have been consulted with Mizrahi Development Group (1451 Wellington) Inc. (the "**Borrower**") and Sam Mizrahi (the "**Guarantor**") as to the liability which the Borrower and the Guarantor would incur by signing the Second Renewal Letter and have also been consulted by the Borrower and the Guarantor in respect of breaching the Second Renewal Letter and that I have advised the Borrower and the Guarantor fully as to the effect of the aforementioned and the liability which the Borrower and the Guarantor would incur in entering into the Second Renewal Letter, the manner in which such liability could be enforced and the possible consequences and ramifications if the Borrower and the Guarantor fail to enter into the terms of the Second Renewal Letter; and that the Borrower and the Guarantor understand the nature and effect of the liability which would arise from the taking by the Borrower and the Guarantor of the said actions, or the failure of taking such actions; and I hereby further declare that:

1. I have given this advice to the Borrower and the Guarantor, as solicitor for the Borrower and the Guarantor and in the Borrower and Guarantor's interest only and without regard to or consideration for the interests of the Lender,
2. I have never given any legal advice to the Lender in connection with this matter;
3. the Borrower and the Guarantor have executed the Second Renewal Letter in my presence only and no other person was present; and
4. the Borrower and the Guarantor appear to have executed the Second Renewal Letter without any threat of compulsion, or any undue influence from third parties.

DATED at Toronto, Ontario, this 9 day of May, 2023

  
\_\_\_\_\_



**SCHEDULE "C"**  
**ASSIGNMENT OF NET SALES PROCEEDS AGREEMENT**

THIS ASSIGNMENT made as of the 9 day of May, 2023,

**BY:**

**SAM M (180 SAW) INC.**  
**SAM MIZRAHI**  
(collectively, the "Assignor")

**IN FAVOUR OF:**

**TREZ CAPITAL LIMITED PARTNERSHIP and/or its nominee**  
(the "Assignee")

**WHEREAS** pursuant to a credit agreement with respect to construction financing for the properties known municipally as 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "**Wellington Property**") dated October 2, 2019 among, *inter alia*, Mizrahi Development Group (1451 Wellington) Inc. (the "**Wellington Borrower**"), as borrower and the Assignee, as lender, as the same may be amended, supplemented, extended, renewed, restated, replaced or superseded from time to time, including, without limitation, a certain renewal letter dated April 10, 2023 (collectively, the "**1<sup>st</sup> Credit Agreement**") certain credit facilities have been established in respect of the construction of the a 93 unit residential condominium building to be located on the Wellington Property (the "**1<sup>st</sup> Wellington Obligations**");

**AND WHEREAS** pursuant to a further credit agreement with respect to mezzanine financing for the Wellington Property dated October 18, 2021 among the Wellington Borrower, as borrower and the Assignee, as lender, as the same may be amended, supplemented, extended, renewed, restated, replaced or superseded from time to time, including, without limitation, a certain renewal letter dated April 10, 2023 (collectively, the "**2<sup>nd</sup> Credit Agreement**") certain further credit facilities have been established for general working capital purposes of the Wellington Borrower (the "**2<sup>nd</sup> Wellington Obligations**");

**AND WHEREAS** each of the 1<sup>st</sup> Credit Agreement and 2<sup>nd</sup> Credit Agreement now provide that, as additional security for the obligations of the Wellington Borrower thereunder, the Assignor would assign the certain of the net sale proceeds payable to the Assignor with respect to the sale of the property municipally known as 180 Steeles Avenue West, Vaughan, Ontario (the "**180 Steeles Property**");

**AND WHEREAS** the Assignee has a mortgage and other security registered on the 180 Steeles Property in connection with a loan made to the owner(s) of the 180 Steeles Property (collectively the "**180 Security**");

**AND WHEREAS** the 180 Steeles Property is legally owned by Mizrahi Constantine (180 SAW) Inc. (the "**180 Steeles Registered Owner**") and beneficially owned by Mizrahi Constantine (180 SAW) LP (the "**180 Steeles Beneficial Owner**");



**AND WHEREAS** the Assignor has an indirect but no direct interest in the 180 Steeles Registered Owner and the 180 Steeles Beneficial Owner or is an affiliate of entities which have such interest, and are thereby entitled to a portion of the net sales proceeds payable in connection with the 180 Steeles Property;

**AND WHEREAS** in order to further secure the performance of the obligations of the Wellington Borrower under each of the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> Credit Agreement the Assignor has entered into this Agreement.

**NOW THEREFORE WITNESSETH** that in consideration of the mutual covenants hereinafter contained, payment of \$2.00 by the Assignee to the Assignor and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

## 1. **ASSIGNMENT**

The Assignor hereby assigns and sets over to the Assignee as continuing and collateral security for the due payment of all sums and liabilities and the performance of all obligations and covenants of the Wellington Borrower under the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> Credit Agreement, the first portion of its right, title, benefits and interest in and to its share of the net sales proceeds to the Maximum Amount (as defined in section 2 below) arising from the sale of the 180 Steeles Property after the payment of all amounts owed to Constantine Enterprises Inc. (“**Constantine**”) as is required to satisfy the amounts set out in Section 3A, 3B and 3C hereof (the “**Collateral**”). The Assignee acknowledges:

- a) that there is no intention under this Agreement to “Transfer” a “Partnership Interest” as those terms are defined in the Amended and Restated LP Agreement dated December 3, 2021 between Sam M (180 Saw) LP Inc., Sam M (180 Saw) LP Inc. and Constantine Enterprises Inc. a copy of which the Assignee acknowledges having received; and
- b) that i) there are amounts owed to Constantine which shall be first repaid prior to any payment of any amount to the Assignee, ii) this assignment does not include the amounts owed to Constantine, and iii) the security interest created herein does not attach to any amounts owed to Constantine.

The Assignee is hereby informed that i) the sale price for the 180 Steeles Property is uncertain as the 180 Steeles Property has not yet been sold but is being made available in the market, ii) any sale of the 180 Steeles Property requires the approval of Constantine and iii) the Assignor’s arrangements with Constantine are complex making any example of available proceeds to the Assignor on the completion of a sale uncertain and difficult to estimate. Given the foregoing the Assignor provided an example of net sales summary which is attached to this Agreement as Schedule “A” which example assumes, inter alia, a sales price of \$205,000,000 and that the amount owed to Constantine at the time of such sale is \$19,710,435. The Collateral in such example excludes the estimated amount payable to Constantine of \$19,710,435 first to be repaid and includes only the Maximum Amount. The example contained in Schedule “A” is intended to set out how the net sale proceeds will be calculated only, and the Assignor does not provide any representations or warranties with respect to the amount of net sale proceeds which will be available from the sale of 180 Steeles Property.

Notwithstanding the security interest created herein the Assignee agrees that no registrations shall be permitted in connection therewith.

## 2. DIRECTIONS

The Assignor hereby irrevocably directs the 180 Steeles Registered Owner, the 180 Steeles Beneficial Owner and Constantine to abide by the assignment of the Collateral contemplated herein to the maximum amount of \$8,714,153.00 reduced from time to time as applicable such that the amount directed shall be the amount then determined under Sections 3A, 3B, and 3C (the “**Maximum Amount**”) and to pay the Collateral to the Assignee (or as it may further direct) promptly upon their respective receipt of the Collateral from time to time. This Direction is coupled with an interest. For clarity, neither this Agreement nor the Maximum Amount as set out herein shall in any way reduce the liability of the Borrower to the Lender pursuant to the 1<sup>st</sup> Credit Agreement, 2<sup>nd</sup> Credit Agreement or any security granted in connection therewith, including, without limitation, any provisions which require the Borrower to inject further equity except to the extent that any amounts actually paid to the Lender pursuant hereto.

This Direction shall remain in effect until the earliest of i) the 1st Wellington Obligations and the 2nd Wellington Obligations being satisfied and paid in full and shall be automatically released without the need for a re-assignment upon such payment, ii) the Assignee has advised otherwise, or iii) the Assignee has specifically released this Agreement. The Assignee agrees that neither Constantine nor the lawyers acting on any sale of the 180 Steeles Property shall be notified of the assignment contained in this Agreement nor the direction contained herein (a “**Notice of Assignment**”) until all of the following have occurred:

- a) the Assignee has received a request for a discharge of the 180 Security for a pending sale;
- b) the Assignee, acting reasonably, does not have assurances that the Maximum Amount shall be paid to it forthwith after completion of a sale of the 180 Steeles Property; and
- c) the Assignee has first given the Assignor written notice at least 2 business days prior to delivery of a Notice of Assignment to afford the Assignor the opportunity to continue to obtain such assurances.

## 3. APPLICATION OF COLLATERAL

The Assignor acknowledges that the Collateral shall be used by the Assignee in the following order of priority:

- A. Firstly, to satisfy \$1,714,153 of required deferred equity contributions to be made by the Wellington Borrower pursuant to the 1st Credit Agreement;
- B. Secondly, to satisfy any unpaid monthly deferred equity contributions (to a maximum of \$1,350,000) which were to be made by the Wellington Borrower pursuant to the 1st Credit Agreement;
- C. Thirdly, the sum of \$6,000,000 to be used to repay all or the remaining portion of the 2<sup>nd</sup> Wellington Obligation; and
- D. Fourthly, any remaining amounts (which is acknowledged is not part of the Collateral) to be made available for the use of the Assignor, or any of them.

4. **FURTHER ASSIGNMENTS**

The Collateral shall not be further assigned by the parties hereto except as provided for under the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement.

5. **NOTICES**

Any demand, notice or communication to be made or given hereunder shall be in the manner provided for in the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement.

6. **ENUREMENT**

This Agreement shall be binding upon the parties hereto and enure to the benefit of the Assignee and its successors and assigns and shall be binding upon and enure to the benefit of the Assignor and its successors and permitted assigns. The rights of the Assignee under this Agreement may be assigned by the Assignee to the same extent, and on and subject to the same terms and conditions, as the Assignee may assign its rights under the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement. The Assignor may not assign its obligations under this Agreement except in accordance with the provisions of the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement.

7. **AFTER ACQUIRED PROPERTY**

The Assignor covenants and agrees that if and to the extent that its right, title and interest in any Collateral is not acquired until after delivery of this Agreement, this Agreement shall nonetheless apply thereto and the security interest of the Assignee hereby created shall attach to any such Collateral at the same time as the Assignor acquires rights therein, without the necessity of any further assignment or other assurance, and thereafter the security interests created hereby in respect of such condominium sales agreement shall be absolute, fixed and specific, subject only to permitted encumbrances (if any).

8. **ATTACHMENT**

The Assignor acknowledges and agrees that there is no agreement between the parties hereto, express or implied, to postpone the attachment of the security interests created hereby.

9. **CONFLICT**

This Agreement has been entered into pursuant to the provisions of the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> 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 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement, the rights and obligations of the parties will be governed by the provisions of this Agreement and the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> Credit 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 1<sup>st</sup> Credit Agreement and 2<sup>nd</sup> Credit Agreement, the existence of such remedies shall not constitute a conflict with the terms of this Agreement.



10. **HEADINGS**

The headings and captions in this Agreement have been inserted for convenience only and are not a part hereof.

11. **GOVERNING LAW**

This Agreement shall in all respects be governed by and construed in accordance with the laws of Ontario and the Laws of Canada applicable therein.

12. **COUNTERPARTS AND ELECTRONIC SIGNATURE/DELIVERY**

This document may be executed and delivered in counterparts and by electronic means and shall be binding upon the undersigned notwithstanding such execution and/or delivery.

A handwritten signature in blue ink, appearing to be the initials 'R' or 'P' with a flourish, located in the bottom right corner of the page.

**SCHEDULE A TO ASSIGNMENT OF NET SALES PROCEEDS AGREEMENT**

**Mizrahi 180 SAW**

**Waterfall**

**REVENUE**

Sale Price Anticipated	205,000,000
Commissions - 1.25%	2,562,500
Net Price	<u>202,437,500</u>

**DEBT REPAYMENT**

CWB Mortgage	78,000,000
Trez	20,000,000
	<u>98,000,000</u>

Anticipated Partnership Distributions	<u>104,437,500</u>
---------------------------------------	--------------------

**Anticipated Mizrahi Portion (33.3%)                      34,812,500**

Equity Distributions	
Amount Owed to Constantine	19,710,435
Amount Owed to Mizrahi before Mizrahi's share of disposition costs	15,102,065
	<u>34,812,500</u>

**SCHEDULE “D”**  
**UNDERTAKING TO DELIVER AN ASSIGNMENT OF NET SALES PROCEEDS**  
**AGREEMENT**

**THIS ASSIGNMENT** made as of the 9 day of May, 2023,

**BY:**

**SAM M (180 SAW) INC.**  
**SAM MIZRAHI**  
(collectively, the “**Covenantors**”)

**IN FAVOUR OF:**

**TREZ CAPITAL LIMITED PARTNERSHIP and/or its nominee**  
(the “**Trez**”)

**WHEREAS** pursuant to a credit agreement with respect to construction financing for the properties known municipally as 1451 & 1445 Wellington Street West, Ottawa, Ontario (the “**Wellington Property**”) dated October 2, 2019 among, *inter alia*, Mizrahi Development Group (1451 Wellington) Inc. (the “**Wellington Borrower**”), as borrower and Trez, as lender, as the same may be amended, supplemented, extended, renewed, restated, replaced or superseded from time to time, including, without limitation, a certain renewal letter dated April 10, 2023 (collectively, the “**1<sup>st</sup> Credit Agreement**”) certain credit facilities have been established in respect of the construction of the a 93 unit residential condominium building to be located on the Wellington Property (the “**1<sup>st</sup> Wellington Obligations**”);

**AND WHEREAS** pursuant to a further credit agreement with respect to mezzanine financing for the Wellington Property dated October 18, 2021 among the Wellington Borrower, as borrower and Trez, as lender, as the same may be amended, supplemented, extended, renewed, restated, replaced or superseded from time to time, including, without limitation, a certain renewal letter dated April 10, 2023 (collectively, the “**2<sup>nd</sup> Credit Agreement**”) certain further credit facilities have been established for general working capital purposes of the Wellington Borrower (the “**2<sup>nd</sup> Wellington Obligations**”);

**AND WHEREAS** each of the 1<sup>st</sup> Credit Agreement and 2<sup>nd</sup> Credit Agreement now provide that, as additional security for the obligations of the Wellington Borrower thereunder, the Covenantors would assign the certain of the net sale proceeds payable to the Covenantors with respect to the sale of the property municipally known as 180 Steeles Avenue West, Vaughan, Ontario (the “**180 Steeles Property**”);

**AND WHEREAS** Trez has a mortgage and other security registered on the 180 Steeles Property in connection with a loan made to the owner(s) of the 180 Steeles Property (collectively the “**180 Security**”);

**AND WHEREAS** the 180 Steeles Property is legally owned by Mizrahi Constantine (180 SAW) Inc. (the “**180 Steeles Registered Owner**”) and beneficially owned by Mizrahi Constantine (180 SAW) LP (the “**180 Steeles Beneficial Owner**”);



**AND WHEREAS** the Covenantors have an indirect but no direct interest in the 180 Steeles Registered Owner and the 180 Steeles Beneficial Owner or is an affiliate of entities which have such interest, and are thereby entitled to a portion of the net sales proceeds payable in connection with the 180 Steeles Property;

**AND WHEREAS** the Covenantors have entered into an Assignment of Net Sales Proceeds Agreement made as of the \_\_\_ day of May, 2023 (the “**Executed Assignment of Net Sales Proceeds Agreement**”);

**AND WHEREAS** in order to further secure the performance of the obligations of the Wellington Borrower under each of the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> Credit Agreement the Covenantors have entered into this Agreement.

**NOW THEREFORE WITNESSETH** that in consideration of the mutual covenants hereinafter contained, payment of \$2.00 by Trez to each of the Covenantors and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

1. The Covenantors hereby agree to cause Sam M(180 SAW) LP Inc. to execute and deliver an Assignment of Net Sales Proceeds Agreement in the same form as the Executed Assignment of Net Sales Proceeds Agreement with the following amendments, once all of its liabilities, obligations and indebtedness to Constantine Enterprises Inc. have been satisfied and paid in full:
  - a. The date shall be the date of execution by the parties;
  - b. Sam M (180 SAW) LP Inc. shall be added as and additional “Assignor”; and
  - c. The recital that reads as follows:

“AND WHEREAS the Assignor has an indirect but no direct interest in the 180 Steeles Registered Owner and the 180 Steeles Beneficial Owner or is an affiliate of entities which have such interest, and are thereby entitled to a portion of the net sales proceeds payable in connection with the 180 Steeles Property;”

shall be changed to:

“AND WHEREAS the Assignor has a direct or indirect interest in the 180 Steeles Registered Owner and the 180 Steeles Beneficial Owner or is an affiliate of entities which have such interest, and are thereby entitled to a portion of the net sales proceeds payable in connection with the 180 Steeles Property;”

2. Notwithstanding that this Agreement is not intended to create a security interest herein Trez agrees that no registrations shall be permitted in connection therewith.
3. This Agreement shall remain in effect until the earliest of i) the 1st Wellington Obligations and the 2nd Wellington Obligations being satisfied and paid in full, ii) Trez has advised otherwise, or iii) Trez has specifically released this Agreement. Trez agrees that neither Constantine nor the lawyers acting on any sale of the 180 Steeles Property shall be notified of the undertaking contained in this Agreement (a “**Notice of Assignment**”) until all of the following have occurred:
  - d) Trez has received a request for a discharge of the 180 Security for a pending sale;





- e) Trez, acting reasonably, does not have assurances that the Maximum Amount (as defined in the Executed Assignment of Net Sales Proceeds Agreement) shall be paid to it forthwith after completion of a sale of the 180 Steeles Property; and
  - f) Trez has first given the Covenantors written notice at least 2 business days prior to delivery of a Notice of Assignment to afford the Assignor the opportunity to continue to obtain such assurances.
4. Any demand, notice or communication to be made or given hereunder shall be in the manner provided for in the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement.
  5. This Agreement shall be binding upon the parties hereto and enure to the benefit of Trez and its successors and assigns and shall be binding upon and enure to the benefit of the Covenantors and its successors and permitted assigns. The rights of Trez under this Agreement may be assigned by Trez to the same extent, and on and subject to the same terms and conditions, as Trez may assign its rights under the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement. The Covenantors may not assign its obligations under this Agreement except in accordance with the provisions of the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement.
  6. This Agreement has been entered into pursuant to the provisions of the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> 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 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement, the rights and obligations of the parties will be governed by the provisions of this Agreement and the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> Credit 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 1<sup>st</sup> Credit Agreement and 2<sup>nd</sup> Credit Agreement, the existence of such remedies shall not constitute a conflict with the terms of this Agreement.
  7. This Agreement shall in all respects be governed by and construed in accordance with the laws of Ontario and the Laws of Canada applicable therein.
  8. This document may be executed and delivered in counterparts and by electronic means and shall be binding upon the undersigned notwithstanding such execution and/or delivery.

*m:\19\190399\renewal - 2023\renewal\_#2\_letter\_mizrahi\_1451\_wellington\_1st\_(may 3 2023) - ra pd changes may 5 v2.docx*

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July 1, 2023

**Mizrahi Development Group (1451 Wellington) Inc.**  
125 Hazelton Ave  
Toronto, ON  
M5R 2E4

**Attention: Mr. Sam Mizrahi, Mr. Mark Kilfoyle.**

Dear Sirs:

**RE: Renewal of financing in the amount of \$66,934,881 secured by a \$70,000,000 1<sup>st</sup> priority mortgage on a 19,833 square foot site being improved with a 82-unit residential condominium building with 5,268 square feet of ground floor retail space located at 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "Subject Property") [Mizrahi – 1451 Wellington Street West, Trez Loan # 1995/19].**

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We, Trez Capital Limited Partnership by its general partner, Trez Capital (2011) Corporation ( the "Lender"), are pleased to advise that we have approved a third renewal (the "Third Renewal") of the 1<sup>st</sup> mortgage loan (the "Loan") to Mizrahi Development Group (1451 Wellington) Inc. (the "Borrower") on the terms described in this letter (this "Third Renewal Letter"), which upon execution by the Borrower, Guarantor and Lender shall constitute an agreement which shall bind the Borrower, Guarantor, with respect to the Third Renewal. This Third Renewal Letter is an amendment of the Commitment Letter dated October 2<sup>nd</sup>, 2019, (the "Commitment"), the Renewal Letter dated October 24, 2022, and the Second Renewal Letter dated April 10, 2023. The Third Renewal has been approved subject to the following terms and conditions.

#### **1. Acknowledgments**

- a) The Borrower and the Guarantor acknowledge that as at July 1, 2023, the Borrower was indebted to the Lender in the amount of \$54,111,018.19 plus accrued and ongoing interest and reasonable costs accruing after July 1, 2023 (collectively, the "Indebtedness"), without the right of set-off or defense or equity which would reduce the amounts currently owing, and notwithstanding the provisions of the *Limitations Act, 2002*, based on their current knowledge or what they ought to know in the circumstances.
- b) The Borrower and the Guarantor acknowledge that the security for the Indebtedness provided by each of them as set out in Schedule "A" ( the "Security"), is valid and enforceable by the Lender in accordance with its respective terms without defence or right of set-off or equity, as of the date hereof, and that the Lender shall be free to exercise its rights under the Security at the end of the Renewal Period (defined below) or upon termination of the Loan without interference, objection or action by the Borrower or the Guarantor in respect of the validity or enforceability of the security and that the Lender is relying upon this acknowledgement in providing its agreement as set forth herein.
- c) The Borrower and the Guarantor hereby consent to the terms of the Lender's renewal and other accommodations as set out herein. The Borrower and the Guarantor specifically acknowledge that they have, as of the date hereof, no defences, counterclaims or rights of set-off or reduction to any claims which might be brought by the Lender under the Security granted by the Borrower or the Guarantor to the Lender or in respect of the Loan, notwithstanding the provisions of the *Limitations Act, 2002*.

- d) The Borrower and the Guarantor hereby agree that, upon the execution of this Agreement, they shall each absolutely and irrevocably release the Lender, its officers, directors, employees, solicitors and agents (the "Releasees"), of and from any and all claims which they may have in respect of the Loan against the Releasees up to and including the date hereof including, without limitation, any actions taken by the Lender in dealing with the Borrower, the Guarantor, the Subject Property or with the administration of the Borrower's accounts with the Lender.

## 2. Expiry of Renewal Offer

It is a condition of this Third Renewal Letter that if the Security is not registered and in place, and the renewal is not completed on or before **July 31, 2023**, this Third Renewal Letter shall, at the option of the Lender, expire and be of no force and effect.

## 3. Renewal Amount

\$66,934,881; composed of a \$66,181,718 Construction Loan Facility and a \$753,163 Letter of Credit Facility; plus interest, fees, costs and expenses as set out in the Commitment Letter and this Third Renewal Letter.

The current Construction Loan Facility balance is \$53,357,855.19 and the Letter of Credit Facility balance is \$753,163 as at July 1, 2023.

## 4. Renewal Term

6 months commencing from the third renewal date of July 1<sup>st</sup>, 2023 (the "Third Renewal Date") and maturing on January 1<sup>st</sup>, 2024 (the "Renewal Period").

## 5. Interest Rate

Interest will be charged on the outstanding balance under the Loan at the greater of 9.65% per annum and HSBC Prime + 4.20 %, compounded and payable monthly, for the initial 5 months of the Third Renewal Term, and 15.0% per annum, compounded and payable monthly, for the final month of the Third Renewal Term and thereafter. Overdue interest shall bear interest at the same rate as principal.

Such interest rate shall be set with respect to amounts advanced on the day of each advance and thereafter monthly on the first day of each month. Interest shall be calculated daily on the daily balance outstanding from time to time, before as well as after maturity, default or judgment, from the date of each advance. Such Interest Rate shall be determined upon the basis of a three hundred and sixty-five (365) day year for common years and a three hundred and sixty-six (366) day year for leap years. Interest shall be calculated in accordance with the Lender's usual practice (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower. All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. All interest payable hereunder bears interest from the date of advance of any portion of the Loan to the Lender's solicitor, whether or not such advance of the Loan is released to the Borrower or the Borrower's solicitor.

## 6. Amortization

Interest only

## 7. Renewal Interest Budget

\$9,552,268. The interest budget (the "Interest Budget") represents the maximum amount of interest that the Lender will allow to accrue on the principal Loan Amount outstanding. Total interest accrued was \$8,233,481.17 as at July 1, 2023. If at any time during the Third Renewal Term the accrued interest exceeds the Interest Budget, the Borrower must pay the overage to the Lender on the next Monthly Payment. The registered Loan Amount will include the principal amount advanced, as well as the Interest Budget.

- m) Written approval from the Deposit Insurer that they continue to agree to advance the "Occupancy Deposits" once received in trust.
- n) Certified financial statements from the Borrower and Guarantor. If an individual then a personal net worth statement, on the Trez Capital form, dated no more than **four (4)** months prior, is required, if a corporate entity then most recent financial statements is required. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency.
- o) Confirmation that the Subject Property is in compliance with current zoning and that there are no outstanding work or fire orders, or that any such orders shall be paid from the proceeds of the Mortgage.
- p) Confirmation that all property taxes owing on the Subject Property have been paid or will be paid from the proceeds of the Loan.
- q) Insurance of the Subject Property which has been reviewed and approved by the Lender's Insurance Consultant which insurance shall include the coverage set out in Schedule A of the Commitment Letter, or as otherwise required by the Lender in consultation with its Insurance Consultant.
- r) Such other materials and completion of such other reasonable requirements a may be deemed necessary by the Lender.

#### **15. Revised Development Schedule and Budget**

The Borrower shall proceed to complete the construction of the Subject Property in accordance with the schedule and development budget as set out in Quantity Surveyor Report Number 41 of Altus Group Limited (the Project Monitor) made in respect of the Subject Property dated June 28, 2023, or other Lender approved schedule and development budget. The Borrower shall not permit the events set out in the approved development schedule to be delayed more than 45 days from the approved schedule date and shall, within 10 days of notice of any cost over-run above and beyond the approved budget amount, pay said cost over-run from its own resources.

#### **16. Conditions Precedent to the Advance of the Occupancy Deposits**

\$13,675,000 in Insured Purchaser Deposits are currently released to fund project costs as of July 1, 2023. The Borrower shall be permitted to use \$3,193,282 in additional insured purchaser deposits (the "Occupancy Deposits") to fund qualified project costs, of which \$2,693,282 are to complete the capital stack. Any "Occupancy Deposits" in excess of \$2,693,282 used to fund eligible project costs shall be offset against a dollar-for-dollar reduction in the Lender's Construction Loan Facility availability. Any reduction of the Loan Amount may not be re-advanced under any circumstances. The conditions precedent, all of which must be satisfactory to the Lender in its sole and unfettered discretion, to the disbursement of the "Occupancy Deposits" shall include all of the conditions precedent to the Third Renewal, plus:

- a) All presale contracts for the Subject Property totaling no less than \$65,536,389 (Net of HST). All presales must be to arm's-length purchasers and include contractual deposits of not less than 25% of the purchase price for the respective unit, of which no less than 5% of the purchase price of for the respective unit is due upon partial occupancy.

This Third Renewal Letter, the Second Renewal Letter, the Renewal Letter and the Commitment Letter shall be read together as one and the same document and may be executed in counterpart and delivered via facsimile or other electronic transmission. Other than as expressly set out herein, all of the terms and conditions of the Commitment Letter shall continue in full force and effect, unamended.

In the event that one or more of the provisions of the Third Renewal Letter, the Second Renewal Letter, the Renewal Letter and the Commitment Letter are found to be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

the Borrower or Guarantor, or any of them, are the subject of any voluntary or involuntary proceeding under bankruptcy and insolvency laws including the BIA, CCAA or any other applicable legislation, the Borrower and the Guarantor hereby unconditionally and irrevocably agree that the Lender is immediately entitled, without notice, demand or any other action, to relief from the automatic stay so as to allow the Lender to realize on the Security and enforce its other rights and remedies under the Loan, or at law and in equity under applicable provincial and federal laws. The Borrower and Guarantor hereby consent to the immediate lifting, without notice, demand or any other action, of any such automatic stay and agree that they shall not, in any manner, contest or otherwise delay any motion filed by the Lender for relief from the automatic stay. The Lender's enforcement of this stay waiver is subject to the discretion and approval of the bankruptcy court.

- c) further to paragraph 13 (b) above, in the event of the Borrower's intention to apply for, or seek, relief from its creditors, under the BIA, the CCAA, or any other legislation granting relief from creditors, the Borrower and the Guarantor shall deliver to the Lender fourteen (14) business days prior written notice of any such proposed action, in order to provide the Lender sufficient time to consider the request to provide its consent to the proposed action.

#### 14. Conditions Precedent to the Renewal

The conditions precedent to the Third Renewal shall include, but not be limited to the items set out in the remainder of this section, all of which must be satisfactory to the Lender in its sole, unfettered and absolute discretion, and all of which collectively comprise the Lender's due diligence. The Lender may require any additional information as it deems necessary in its sole, unfettered and absolute discretion.

- a) Completion of all security amendments as required by the Lender.
- b) Delivery of a Certificate of Independent Legal Advice ("**Certificate of Independent Legal Advice**") in the form attached hereto as **Schedule "B"** upon execution of this Agreement.
- c) Syndicate partner approval for the Third Renewal.
- d) Satisfactory inspection of the Subject Property by the Lender.

The Lender's receipt of the following:

- e) The Borrower's updated development schedule for the Subject Property.
- f) The Borrower's updated development budget for the Subject Property.
- g) A ledger from the Borrower illustrating the payment waterfall and the net proceeds of sale, if any, to the Mizrahi beneficial ownership entities from the sale of 180 Steeles Avenue West property.
- h) A signed and dated sales price list and presales summary.
- i) All presale contracts for the Subject Project.
- j) All Tarion amendments to disclosure (notice of "Unavoidable Delay") sent to all presale purchasers.
- k) Written confirmation from the law firm holding the presale deposits of the following information: lot number, date of contract, name of purchaser, purchase price, deposit received, and whether the contract is firm or conditional.
- l) Written confirmation from the law firm holding the presale deposits in trust confirming; (i) the deposits received to date into trust; (ii) the deposits released to date to fund project costs; (iii) the remaining deposits contractually due prior to project completion including all "Occupancy Deposits" due upon partial occupancy. It is a condition of the renewal that a minimum of \$3,000,000 in remaining deposits be contractually due prior to project completion.

### 12. Updated Project Balance Sheet

Project Balance Sheet		Assets	
Equity & Liabilities			
Trez 1st Construction Loan Facility*	66,181,718	Payout VTB	900,000
Cash Equity - Original	11,018,073	Cash Equity	1,750,000
Deferred Equity for Land Purchase**	2,300,000	Condo Units in lieu of cash	2,300,000
Land Surplus	619,500	Land Surplus	619,500
<b>Total Equity (Initial Advance)</b>	<b>13,937,573</b>	<b>Land Value</b>	<b>5,569,500</b>
Insured Purchaser Deposits	11,368,282	Hard Costs	53,827,114
Cash Equity - Cost Overruns	1,620,065	Soft Costs	22,889,878
Cash Equity - Brownfield Credit (City Payment)	1,516,250	Contingency (base)	2,106,787
Cash Equity - Brownfield Credit (Proceeds of CWB)	524,749	Contingency (design assist)	3,661,063
<b>Total Cash Equity Increase (prior to Nov 2022 renewal)</b>	<b>3,681,064</b>	Trez 1st Interest Budget (original)	5,601,795
		Trez 1st Commitment Fee	1,172,500
		Broker Fee	670,000
		<b>Original Budget (to Dec 2021)</b>	<b>89,929,137</b>
Cash Equity - Cost overruns (Nov 2022 renewal)	572,210	Hard Cost Increases (Dec 2021 to Nov 2022)	3,364,565
Insured Purchaser Deposit Increase (Nov 2022 renewal)**	2,000,000	Soft Cost Increase (Dec 2021 to Nov 2022)	1,112,023
		Contingency Reduction (Dec 2021 to Nov 2022)	(3,661,063)
		Trez 1st Interest Budget Increase #1	1,498,843
		Trez 1st Renewal #1 Fee	335,000
		Other Misc. Costs (plug)	(77,158)
		<b>1st Renewal (Nov 2022)</b>	<b>2,572,210</b>
		Hard Costs Increase	2,888,184
		Soft Cost Increase	1,288,807
		Contingency (Reduction)	(1,129,844)
		Trez 1st Interest Budget Increase #2	2,451,630
		Trez 1st Renewal Fee #2	170,000
		Other Misc. Costs (plug)	25,376
		<b>2nd Renewal (March 2023)</b>	<b>5,714,153</b>
		Trez 1st Renewal Fee #3	276,000
		<b>Sub Total 1st</b>	<b>104,061,000</b>
		Letters of Credit in favour of City of Ottawa	753,163
		<b>Total 1st</b>	<b>104,814,163</b>
Trez 2nd (Dec 2021)	6,000,000	Trez 2nd - Commitment Fee (Dec 2021)	120,000
Equity Repatriation (Dec 2021)	(5,070,000)	Trez 2nd - Interest Budget (Dec 2021)	810,000
Cash Equity - At Renewal (Nov 2022 renewal)	296,814	Trez 2nd Renewal Fee	60,000
Cash Equity - at Renewal (April 1st - June 30)	70,000	Trez 2nd Interest Budget Top Up Payments to date	236,814
Trez 2nd - Interest Accrual	273,398	Trez 2nd - 2nd Renewal Fee	70,000
Cash Equity - renewal fee	50,000	Trez 2nd - Interest	273,398
Trez 2nd Interest Accrual***	484,527	Trez 2nd - 3rd Renewal Fee	50,000
<b>Total 2nd</b>	<b>2,104,739</b>	Trez 2nd - Interest	484,527
<b>Grand Total 1st + 2nd</b>	<b>106,918,902</b>	<b>Total 2nd</b>	<b>2,104,739</b>
		<b>Grand Total 1st + 2nd</b>	<b>106,918,902</b>

\*Prior approval was granted to allow \$486K in Insured Purchaser Deposits to fund a materials deposit (increasing the permissible DPI), which was offset against a reduction in the Construction Loan Facility availability. The Construction Loan Facility availability was further reduced by \$350K as at the Second Renewal Term, offset against the deferred Monthly Cash Equity contributions.

\*\*Condo in lieu of cash

\*\*\*final 5% "occupancy" deposits which are triggered upon issuance of the occupancy permits (approx 60 days prior to closing)

\*\*\*\*estimated interest accrual over the renewal term

### 13. Additional Covenants

During the Renewal Period, the Borrower and the Guarantor shall:

- forthwith provide the Lender with notice of the occurrence of any litigation proceeding or dispute affecting it or the Subject Property, and if the result of such litigation might have a material adverse effect on the Borrower or the Guarantor, financial or otherwise, perform its obligations under the Third Renewal Letter and/or the Security herein, and shall from time to time, as requested by the Lender, provide the Lender with all reasonable information requested by the Lender concerning any such litigation, proceeding or dispute;
- not make a proposal, or apply for, or seek, relief from its creditors, under the *Bankruptcy and Insolvency Act* (the "BIA"), the *Companies' Creditors Arrangement Act* (the "CCAA"), or any other legislation granting relief from creditors unless the prior written consent of the Lender is obtained. In the event that

**8. Monthly Payments**

Monthly Payments shall be advanced from the Interest Budget until the Interest Budget is exhausted and thereafter the Borrower shall be required to make the Monthly Payments from its own resources.

**9. Monthly Equity Injections**

*# 325,200*

The Borrower shall be responsible for monthly cash equity injections (the "Monthly Cash Equity Injection") in the minimum amount of ~~\$270,000~~ per month to be invested into the project to fund eligible project costs as determined by the Project Monitor. This equity is in addition to any cash equity requirements required by the Lender to service the Trez 2<sup>nd</sup> mortgage loan over the subject property. The Borrower will provide monthly bank statements and/or such other information as may be required by the Lender and the Project Monitor to verify the Monthly Cash Equity Injection. The Borrower will provide a monthly statutory declaration confirming that they have met the minimum of ~~\$270,000~~ cash equity invested in the project, with such equity to stay in place throughout the term of the Loan. *# 325,200*

*JW*

*JW*

**10. Renewal Fee**

\$276,000. The third renewal fee (the "Third Renewal Fee") shall be deemed to be fully earned upon acceptance of this Third Renewal Letter. The Third Renewal Fee shall be payable on the earlier of the date on which the Lender confirms that all Conditions Precedent to the Third Renewal have been satisfied and the date of expiry of this Third Renewal offer.

The Third Renewal Fee shall be payable from Borrower resources.

**11. Prepayment**

The Borrower may, at any time after the provision of 30 days written notice, repay within 45 days of such written notice, the whole of the Third Renewal Amount hereby secured upon payment to the Lender of the Third Renewal Amount outstanding, together with all interest to date of such prepayment plus costs and other charges, including without limitation, any Periodic Renewal Fees, accrued to the date of payment, up to and including the date of such.

This section intentionally left blank

This Third Renewal shall not become effective until 1) the Borrower, Guarantor and Lender have signed this letter and a copy is returned to the Lender's office by no later than 5:00pm Pacific Time on **July 17, 2023**; and 2) the Lender has confirmed that all Conditions Precedent to the Third Renewal have been satisfied.

The Borrower and Guarantor hereby acknowledge and agree to the terms and conditions of this Third Renewal Letter and authorize Trez Capital Limited Partnership to instruct its solicitor to prepare the documentation required to give effect to this Third Renewal. The Borrower and Guarantor further acknowledge that the Third Renewal Fee set forth herein is a reasonable estimate of the cost incurred in granting the Third Renewal and of holding monies available for same, and that the Third Renewal Fee shall be forfeited and payable to Trez Capital Limited Partnership as liquidated damages, and not as a penalty, if the Third Renewal is not completed within the time limit herein. This Third Renewal and any fees earned as a result of this Third Renewal Letter, together with any expenses or costs incurred by Trez Capital Limited Partnership including, but not limited to, appraisal, re-appraisal, inspections, re-inspections, title searches, plan reviews, soil tests, survey, environmental assessments, and legal costs on a solicitor and its client basis, are deemed to be a charge on the Subject Property referred to herein and Trez Capital Limited Partnership may file and maintain a caveat on the title to the Subject Property to protect that charge and the Borrower and Guarantor do hereby mortgage to Trez Capital Limited Partnership all its estate and interest in the said Subject Property and Security. This Third Renewal Letter supersedes all previous correspondence between the parties hereto save and except for the amendment letter(s) (if any), the Second Renewal Letter, the Renewal Letter and the Commitment Letter.

Yours truly,

**Trez Capital Limited Partnership**  
by its general partner,  
**Trez Capital (2011) Corporation**

Per: 

Eric Horie  
Senior Managing Director, Head of  
Origination Canada  
Agent#: M2001785

Per: 

Chris Worthington  
Vice President, Head of Credit Risk &  
Underwriting, Canada  
Broker#: M17000400



We hereby agree to the Terms and Conditions contained in this Third Renewal Letter and agree to be bound by the terms hereof.

Acknowledged and agreed at Toronto this 31 day of July, 2023.

***BORROWER:***

**Mizrahi Development Group (1451 Wellington) Inc.**

Per:   
Authorized Signature

***GUARANTOR:***

  
Sam Mizrahi

**SCHEDULE "A"**  
**THE SECURITY**

1. Charge/Mortgage on the Subject Property as defined in the Commitment dated October 29, 2019 and received as instrument number OC2158856;
2. General Security Agreement dated October 29, 2019;
3. Notice of Assignment of Rents dated October 29, 2019 and received as instrument no. OC2158857;
4. Limited Recourse Guarantee and Postponement of Claim dated October 29, 2019;
5. Guarantee and Postponement of Claim dated October 29, 2019;
6. Completion and Cost-Overrun Guarantee dated October 29, 2019;
7. Environmental Indemnity dated October 29, 2019;
8. Bring-down Certificate dated October 29, 2019;
9. General Assignment of Material Project Agreements dated October 29, 2019;
10. General Assignment of Agreements of Purchase and Sale and Deposits dated October 29, 2019;
11. Specific Assignment of CDC2 dated October 29, 2019;
12. Assignment of Insurance dated October 29, 2019;
13. Statutory Declaration as to Material Facts;
14. Priority Agreement dated October 24, 2019;
15. Share Pledge Agreement dated October 29, 2019;
16. Irrevocable Stock Transfer and Power of Attorney dated October 29, 2019;
17. Acknowledgment and Direction dated October 24, 2019;
18. PPSA Registration under Reference File No. 756919458;
19. PPSA Registration under Reference File No. 756919377;
20. Syndicate Lender's Letter of Credit documentation;
21. Assignment of Net Sales Proceeds Agreement from SAM M (180 SAW) INC. and SAM MIZRAHI dated May 9, 2023;
22. Undertaking to Deliver an Assignment of Net Sales Proceeds Agreement from SAM M (180 SAW) INC. and SAM MIZRAHI dated May 9, 2023.

**SCHEDULE "B"**  
**CERTIFICATE OF INDEPENDENT LEGAL ADVICE**

**TO: TREZ CAPITAL LIMITED PARTNERSHIP**

I, \_\_\_\_\_, hereby declare that I have been consulted with Mizrahi Development Group (1451 Wellington) Inc. (the "**Borrower**") and Sam Mizrahi (the "**Guarantor**") as to the liability which the Borrower and the Guarantor would incur by signing the Third Renewal Letter and have also been consulted by the Borrower and the Guarantor in respect of breaching the Third Renewal Letter and that I have advised the Borrower and the Guarantor fully as to the effect of the aforementioned and the liability which the Borrower and the Guarantor would incur in entering into the Third Renewal Letter, the manner in which such liability could be enforced and the possible consequences and ramifications if the Borrower and the Guarantor fail to enter into the terms of the Third Renewal Letter; and that the Borrower and the Guarantor understand the nature and effect of the liability which would arise from the taking by the Borrower and the Guarantor of the said actions, or the failure of taking such actions; and I hereby further declare that:

1. I have given this advice to the Borrower and the Guarantor, as solicitor for the Borrower and the Guarantor and in the Borrower and Guarantor's interest only and without regard to or consideration for the interests of the Lender,
2. I have never given any legal advice to the Lender in connection with this matter;
3. the Borrower and the Guarantor have executed the Third Renewal Letter in my presence only and no other person was present; and
4. the Borrower and the Guarantor appear to have executed the Third Renewal Letter without any threat of compulsion, or any undue influence from third parties.

DATED at \_\_\_\_\_, Ontario, this \_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_



September 12, 2023

**Mizrahi Development Group (1451 Wellington) Inc.**

125 Hazelton Ave  
Toronto, ON  
M5R 2E4

**Attention: Mr. Sam Mizrahi, Mr. Mark Kilfoyle,**

Dear Sirs:

**RE: Amendment to the financing in the amount of \$66,934,881 secured by a \$70,000,000 1<sup>st</sup> priority mortgage on a 19,833 square foot site being improved with a 82-unit residential condominium building with 5,268 square feet of ground floor retail space located at 1451 & 1445 Wellington Street West, Ottawa, Ontario (the “Subject Property”) [Mizrahi – 1451 Wellington Street West, Trez Loan # 1995/19].**

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Further to the Commitment Letter dated October 2<sup>nd</sup>, 2019, (the “Commitment”), the Renewal Letter dated October 24, 2022, the Second Renewal Letter dated April 10, 2023, and the Third Renewal Letter dated July 1<sup>st</sup>, 2023, we provide you with the following amendments to the terms of the 1<sup>st</sup> mortgage loan (the “Loan”), which upon execution by the Borrower(s), Guarantor(s), and Lender shall constitute an agreement which shall bind the Borrower(s) and Guarantor(s) with respect to the Loan effective as of the date of the of this Amendment Letter. The Third Renewal Letter dated July 1<sup>st</sup>, 2023, is hereby amended as follows:

<b>Section</b>	<b>Replaced in its entirety with:</b>
<b>7 Renewal Interest Budget</b>	\$11,287,809. The interest budget (the “Interest Budget”) represents the maximum amount of interest that the Lender will allow to accrue on the principal Loan Amount outstanding. Total interest accrued was \$9,274,707.92 as at September 1, 2023. If at any time during the Third Renewal Term the accrued interest exceeds the Interest Budget, the Borrower must pay the overage to the Lender on the next Monthly Payment. The registered Loan Amount will include the principal amount advanced, as well as the Interest Budget.
<b>9 Monthly Equity Injections</b>	The Borrower shall be responsible for monthly cash equity injections (the “ <b>Monthly Cash Equity Injection</b> ”) in the minimum amount of <b>\$325,200</b> per month to be invested into the project to fund eligible project costs as determined by the Project Monitor. This equity is in addition to any cash equity requirements required by the Lender to service the Trez 2 <sup>nd</sup> mortgage loan over the subject property. The Borrower will provide monthly bank statements and/or such other information as may be required by the Lender and the Project Monitor to verify the Monthly Cash Equity Injection. The Borrower will provide a monthly statutory declaration confirming that they have met the minimum of <b>\$325,200</b> cash equity invested in the project, with such equity to stay in place throughout the term of the Loan.
<b>10 Renewal Fee</b>	\$276,000. The third renewal fee (the “Third Renewal Fee”) was fully earned upon

acceptance of the Third Renewal Letter. The Third Renewal Fee is payable from the ongoing Monthly Cash Injections.

An amendment fee (the “Third Renewal Amendment Fee”) of \$25,000 shall be deemed to be fully earned upon acceptance of this Amendment Letter and payable on the earlier of maturity or full repayment of this Loan. The Third Renewal Amendment Fee shall be secured by the Security.

**12 Updated Project Balance Sheet**

Project Balance Sheet		Assets	
Equity & Liabilities		\$	
Trez 1st Construction Loan Facility**	66,181,718	Payout VTB	900,000
Cash Equity - Original	11,018,073	Cash Equity	1,750,000
Deferred Equity for Land Purchase**	2,300,000	Condo Units in lieu of cash	2,300,000
Land Surplus	819,500	Land Surplus	819,500
Total Equity (Initial Advance)	13,037,573	Land Value	5,569,500
Insured Purchaser Deposits	11,368,282	Hard Costs	53,827,114
Cash Equity - Cost Overruns	1,620,065	Soft Costs	22,869,878
Cash Equity - Brownfield Credit (City Payment)	1,516,250	Contingency (base)	2,106,787
Cash Equity - Brownfield Credit (Proceeds of CWB)	524,749	Contingency (design assist)	3,601,063
Total Cash Equity Increase (prior to Nov 2022 renewal)	3,661,094	Trez 1st Interest Budget (original)	5,801,765
		Trez 1st Commitment Fee	1,172,500
		Broker Fee	670,000
		<b>Original Budget (to Dec 2021)</b>	<b>89,926,137</b>
Cash Equity - Cost overruns (Nov 2022 renewal)	572,210	Hard Cost Increases (Dec 2021 to Nov 2022)	3,384,565
Insured Purchaser Deposit Increase (Nov 2022 renewal)**	2,000,000	Soft Cost Increase (Dec 2021 to Nov 2022)	1,112,023
		Contingency Reduction (Dec 2021 to Nov 2022)	(3,081,063)
		Trez 1st Interest Budget Increase #1	1,498,843
		Trez 1st Renewal #1 Fee	335,000
		Other Misc. Costs (plug)	(77,158)
		<b>1st Renewal (Nov 2022)</b>	<b>2,572,210</b>
		Hard Costs Increase	2,868,184
		Soft Cost Increase	1,288,807
		Contingency (Reduction)	(1,129,844)
		Trez 1st Interest Budget Increase #2	2,451,630
		Trez 1st Renewal Fee #2	170,000
		Other Misc. Costs (plug)	25,376
		<b>2nd Renewal (March 2023)</b>	<b>5,714,153</b>
		Hard Costs Increase	(76,288)
		Soft Cost Increase	688,047
		Contingency (increase) + plug	127,790
		Trez 1st Interest Budget	1,735,541
		Trez 1st Renewal Fee #3	270,000
			<b>2,750,000</b>
<b>Sub Total 1st</b>	<b>106,535,000</b>	<b>Sub Total 1st</b>	<b>106,535,000</b>
Trez 1st Letter of Credit Facility	753,183	Letter(s) of Credit in favour of City of Ottawa	753,183
<b>Total 1st</b>	<b>107,288,183</b>	<b>Total 1st</b>	<b>107,288,183</b>
Trez 2nd (Dec 2021)	6,000,000	Trez 2nd - Commitment Fee (Dec 2021)	120,000
Equity Repatriation (Dec 2021)	(5,070,000)	Trez 2nd - Interest Budget (Dec 2021)	810,000
Cash Equity - At Renewal (Nov 2022 renewal)	296,814	Trez 2nd Renewal Fee #1	60,000
Cash Equity - at Renewal (April 1st - June 30)	70,000	Trez 2nd Interest Budget Top Up Payments to date	236,814
Trez 2nd - Interest Accrual	273,398	Trez 2nd Renewal Fee #2	70,000
Cash Equity	50,000	Trez 2nd - Interest	273,398
Trez 2nd Interest Accrual****	484,527	Trez 2nd - Renewal Fee #3	50,000
<b>Total 2nd</b>	<b>2,104,739</b>	Trez 2nd - Interest	484,527
<b>Grand Total 1st + 2nd</b>	<b>109,392,902</b>	<b>Total 2nd</b>	<b>2,104,739</b>
		<b>Grand Total 1st + 2nd</b>	<b>109,392,902</b>

\*\*Prior approval was granted to allow \$488K in Insured Purchaser Deposits to fund a materials deposit (increasing the permissible DPI), which was offset against a reduction in the Construction Loan  
 \*\*\*Condo in lieu of cash  
 \*\*\*\*estimated interest accrual over the renewal term

**16 Conditions Precedent to the Advance of the Occupancy Deposits**

\$13,675,000 in Insured Purchaser Deposits are currently released to fund project costs as of September 1, 2023. The Borrower shall be permitted to use \$4,093,282 in additional insured purchaser deposits (the “Occupancy Deposits”) to fund qualified project costs, all of which are required to complete the capital stack. Any “Occupancy Deposits” in excess of \$4,093,282 used to fund eligible project costs shall be offset against a dollar-for-dollar reduction in the Lender’s Construction Loan Facility availability. Any reduction of the Loan Amount may not be re-advanced under any circumstances. The conditions precedent, all of which must be satisfactory to the Lender in its sole and unfettered discretion, to the disbursement of the “Occupancy Deposits” shall include all of the conditions precedent to the Third Renewal, plus:

- a) All presale contracts for the Subject Property totaling no less than \$69,250,539 (Net of HST). All presales must be to arm’s-length purchasers and include contractual deposits of not less than 25% of the purchase price for the respective unit, of which no less than 5% of the purchase price of for the respective unit is due upon partial

occupancy.


**Schedule "A"** Replaced in its entirety with Schedule "A" to this Amendment Letter.

This Amendment Letter, the Commitment Letter dated October 2<sup>nd</sup>, 2019, (the "Commitment"), the Renewal Letter dated October 24, 2022, the Second Renewal Letter dated April 10, 2023, and the Third Renewal Letter dated July 1<sup>st</sup>, 2023, shall be read together as one and the same document and may be executed in counterpart and delivered via facsimile or other electronic transmission. Other than as expressly set out herein, all of the terms and conditions of the Commitment Letter shall continue in full force and effect, unamended. This Amendment Letter shall not become effective until the Borrower(s), Guarantor(s) and Lender have signed it and a copy is returned to the Lender's office by no later than 5:00pm Pacific Time on **September 15, 2023**.

Yours truly,

**Trez Capital Limited Partnership**  
**by its general partner,**  
**Trez Capital (2011) Corporation**

Per:   
Eric Horie  
Senior Managing Director, Head of  
Origination Canada  
Agent#: M2001785

Per:   
Keiju Yamasaki  
Global Head, Credit Risk & Underwriting  
Agent#: M23006793

We hereby agree to the Terms and Conditions contained in this Amendment and agree to be bound by the terms hereof.

Acknowledged and agreed at Toronto this 6 day of October, 2023.

**Mizrahi Development Group (1451 Wellington) Inc.**

Per:   
Authorized Signature

**GUARANTOR:**

  
Sam Mizrahi

## **SCHEDULE “A”**

### **THE SECURITY**

1. Charge/Mortgage on the Subject Property as defined in the Commitment dated October 29, 2019 and received as instrument number OC2158856;
2. General Security Agreement dated October 29, 2019;
3. Notice of Assignment of Rents dated October 29, 2019 and received as instrument no. OC2158857;
4. Limited Recourse Guarantee and Postponement of Claim dated October 29, 2019;
5. Guarantee and Postponement of Claim dated October 29, 2019;
6. Completion and Cost-Overrun Guarantee dated October 29, 2019;
7. Environmental Indemnity dated October 29, 2019;
8. Bring-down Certificate dated October 29, 2019;
9. General Assignment of Material Project Agreements dated October 29, 2019;
10. General Assignment of Agreements of Purchase and Sale and Deposits dated October 29, 2019;
11. Specific Assignment of CDC2 dated October 29, 2019;
12. Assignment of Insurance dated October 29, 2019;
13. Statutory Declaration as to Material Facts;
14. Priority Agreement dated October 24, 2019;
15. Share Pledge Agreement dated October 29, 2019;
16. Irrevocable Stock Transfer and Power of Attorney dated October 29, 2019;
17. Acknowledgment and Direction dated October 24, 2019;
18. PPSA Registration under Reference File No. 756919458;
19. PPSA Registration under Reference File No. 756919377;
20. Syndicate Lender’s Letter of Credit documentation;
21. Amended and Restated Assignment of Net Sales Proceeds Agreement from SAM M (180 SAW) INC. and SAM MIZRAHI dated as of September 12, 2023;
22. Amended and Restated Undertaking to Deliver an Assignment of Net Sales Proceeds Agreement from SAM M (180 SAW) INC. and SAM MIZRAHI dated September 12, 2023.



December 22, 2023

**Mizrahi Development Group (1451 Wellington) Inc.**  
125 Hazelton Ave  
Toronto, ON  
M5R 2E4

**Attention: Mr. Sam Mizrahi, Mr. Mark Kilfoyle.**

Dear Sirs:

**RE: Renewal of financing in the amount of \$66,934,881 secured by a \$70,000,000 1<sup>st</sup> priority mortgage on a 19,833 square foot site being improved with an 82-unit residential condominium building with 5,268 square feet of ground floor retail space located at 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "Subject Property") [Mizrahi – 1451 Wellington Street West, Trez Loan # 1995/19].**

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We, Trez Capital Limited Partnership by its general partner, Trez Capital (2011) Corporation (the "Lender"), are pleased to advise that we have approved a fourth renewal (the "Fourth Renewal") of the 1<sup>st</sup> mortgage loan (the "Loan") to Mizrahi Development Group (1451 Wellington) Inc. (the "Borrower") on the terms described in this letter (this "Fourth Renewal Letter"), which upon execution by the Borrower, Guarantor and Lender shall constitute an agreement which shall bind the Borrower, Guarantor, with respect to the Fourth Renewal. This Fourth Renewal Letter is an amendment of the Commitment Letter dated October 2<sup>nd</sup>, 2019, (the "Commitment"), the Renewal Letter dated October 24, 2022, the Second Renewal Letter dated April 10, 2023, the Third Renewal Letter dated July 1, 2023, and the Amendment Letter dated September 12, 2023. The Fourth Renewal has been approved subject to the following terms and conditions.

**1. Acknowledgments**

- a) The Borrower and the Guarantor acknowledge that as at December 1, 2023, the Borrower was indebted to the Lender in the amount of \$58,484,644.72 plus accrued and ongoing interest and reasonable costs accruing after December 1, 2023 (collectively, the "Indebtedness"), without the right of set-off or defense or equity which would reduce the amounts currently owing, and notwithstanding the provisions of the *Limitations Act, 2002*, based on their current knowledge or what they ought to know in the circumstances.
- b) The Borrower and the Guarantor acknowledge that the security for the Indebtedness provided by each of them as set out in Schedule "A" (the "Security"), is valid and enforceable by the Lender in accordance with its respective terms without defence or right of set-off or equity, as of the date hereof, and that the Lender shall be free to exercise its rights under the Security at the end of the Renewal Period (defined below) or upon termination of the Loan without interference, objection or action by the Borrower or the Guarantor in respect of the validity or enforceability of the security and that the Lender is relying upon this acknowledgement in providing its agreement as set forth herein.
- c) The Borrower and the Guarantor hereby consent to the terms of the Lender's renewal and other accommodations as set out herein. The Borrower and the Guarantor specifically acknowledge that they have, as of the date hereof, no defences, counterclaims or rights of set-off or reduction to any claims which might be brought by the Lender under the Security granted by the Borrower or the Guarantor to the Lender or in respect of the Loan, notwithstanding the provisions of the *Limitations Act, 2002*.



d) The Borrower and the Guarantor hereby agree that, upon the execution of this Agreement, they shall each absolutely and irrevocably release the Lender, its officers, directors, employees, solicitors and agents (the "Releasees"), of and from any and all claims which they may have in respect of the Loan against the Releasees up to and including the date hereof including, without limitation, any actions taken by the Lender in dealing with the Borrower, the Guarantor, the Subject Property or with the administration of the Borrower's accounts with the Lender.

**2. Expiry of Renewal Offer**

February 7<sup>th</sup>, 2024



It is a condition of this Fourth Renewal Letter that if the Security is not registered and in place, and the renewal is not completed on or before ~~January 31, 2024~~, this Fourth Renewal Letter shall, at the option of the Lender, expire and be of no force and effect.

**3. Renewal Amount**

\$66,934,881; composed of a \$66,181,718 Construction Loan Facility and a \$753,163 Letter of Credit Facility; plus interest, fees, costs and expenses as set out in the Commitment Letter and this Fourth Renewal Letter.

The current Construction Loan Facility balance is \$58,484,644.72 and the Letter of Credit Facility balance is \$753,163 as at December 1, 2023.

**4. Renewal Term**

7 months commencing from the fourth renewal date of December 1<sup>st</sup>, 2023 (the "Fourth Renewal Date") and maturing on July 1<sup>st</sup>, 2024 (the "Renewal Period").

**5. Interest Rate**

Interest will be charged on the outstanding balance under the Loan at the greater of 9.65% per annum and HSBC Prime + 4.20 %, compounded and payable monthly, for the initial 6 months of the Fourth Renewal Term, and 15.0% per annum, compounded and payable monthly, for the final month of the Fourth Renewal Term and thereafter. Overdue interest shall bear interest at the same rate as principal.

Such interest rate shall be set with respect to amounts advanced on the day of each advance and thereafter monthly on the first day of each month. Interest shall be calculated daily on the daily balance outstanding from time to time, before as well as after maturity, default or judgment, from the date of each advance. Such Interest Rate shall be determined upon the basis of a three hundred and sixty-five (365) day year for common years and a three hundred and sixty-six (366) day year for leap years. Interest shall be calculated in accordance with the Lender's usual practice (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower. All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. All interest payable hereunder bears interest from the date of advance of any portion of the Loan to the Lender's solicitor, whether or not such advance of the Loan is released to the Borrower or the Borrower's solicitor.

**6. Amortization**

Interest only

**7. Renewal Interest Budget**

\$14,609,325. The interest budget (the "Interest Budget") represents the maximum amount of interest that the Lender will allow to accrue on the principal Loan Amount outstanding. Total interest accrued was \$10,879,809.71 as at December 1, 2023. If at any time during the Fourth Renewal Term the accrued interest exceeds the Interest Budget, the Borrower must pay the overage to the Lender on the next Monthly Payment. The registered Loan Amount will include the principal amount advanced, as well as the Interest Budget.

**8. Monthly Payments**

Monthly Payments shall be advanced from the Interest Budget until the Interest Budget is exhausted and thereafter the Borrower shall be required to make the Monthly Payments from its own resources.

**9. Monthly Equity Injections**

The Borrower shall be responsible for monthly cash equity injections (the “**Monthly Cash Equity Injection**”) in the minimum amount of **\$325,200** per month to be invested into the project to fund eligible project costs as determined by the Project Monitor. This equity is in addition to any cash equity requirements required by the Lender to service the Trez 2<sup>nd</sup> mortgage loan over the subject property. The Borrower will provide monthly bank statements and/or such other information as may be required by the Lender and the Project Monitor to verify the Monthly Cash Equity Injection. The Borrower will provide a monthly statutory declaration confirming that they have met the minimum of **\$325,200** cash equity invested in the project, with such equity to stay in place throughout the term of the Loan.

For clarity, the total amount of equity injections is \$1,951,200 (6 x \$325,200) during the Renewal Period. The Borrower may inject a lump sum payment in lieu of the \$325,200 monthly injection if Borrower would like to pay the \$1,951,200 equity requirement earlier than contemplated in the preceding paragraph.

**10. Renewal Fee**

\$330,000. The fourth renewal fee (the “**Fourth Renewal Fee**”) shall be deemed to be fully earned upon acceptance of this Fourth Renewal Letter. The Fourth Renewal Fee shall be payable on the earlier of the date on which the Lender confirms that all Conditions Precedent to the Fourth Renewal have been satisfied and the date of expiry of this Fourth Renewal offer.

The Fourth Renewal Fee shall be advanced in full by the Lender on the next Construction Advance under the Loan. The Fourth Renewal Fee is an approved project cost increase per the current budget (as outlined in clause 12 of this subject letter and in the Project Monitor’s report), all approved cost increases in the current budget are funded from deferred equity, including from the Monthly Cash Injections.

**11. Prepayment**

The Borrower may, at any time after the provision of 30 days written notice, repay within 45 days of such written notice, the whole of the Fourth Renewal Amount hereby secured upon payment to the Lender of the Fourth Renewal Amount outstanding, together with all interest to date of such prepayment plus costs and other charges, including without limitation, any Periodic Renewal Fees, accrued to the date of payment, up to and including the date of such.

This section intentionally left blank

## 12. Updated Project Balance Sheet

Project Balance Sheet		Assets	
<b>Equity &amp; Liabilities</b>		<b>Assets</b>	
Trez 1st Construction Loan Facility*	66,181,718	Payout VTB	900,000
Cash Equity - Original	11,018,073	Cash Equity	1,750,000
Deferred Equity for Land Purchase**	2,300,000	Condo Units in lieu of cash	2,300,000
Land Surplus	619,500	Land Surplus	619,500
<b>Total Equity (Initial Advance)</b>	<b>13,937,573</b>	<b>Land Value</b>	<b>5,569,500</b>
Insured Purchaser Deposits	11,368,282	Hard Costs	53,827,114
Cash Equity - Cost Overruns	1,620,065	Soft Costs	22,899,878
Cash Equity - Brownfield Credit (City Payment)	1,516,250	Contingency (base)	2,106,787
Cash Equity - Brownfield Credit (Proceeds of CWB)	524,749	Contingency (design assist)	3,661,063 <sup>†</sup>
<b>Total Cash Equity increase (prior to Nov 2022 renewal)</b>	<b>3,661,064</b>	Trez 1st Interest Budget (original)	5,601,795 <sup>‡</sup>
		Trez 1st Commitment Fee	1,172,500
		Broker Fee	670,000
		<b>Original Budget (to Dec 2021)</b>	<b>89,929,137</b>
Cash Equity - Cost overruns (Nov 2022 renewal)	572,210	Hard Cost Increases (Dec 2021 to Nov 2022)	3,364,565
Insured Purchaser Deposit Increase (Nov 2022 renewal)	2,000,000	Soft Cost Increase (Dec 2021 to Nov 2022)	1,112,023
		Contingency Reduction (Dec 2021 to Nov 2022)	(3,661,063) <sup>†</sup>
		Trez 1st Interest Budget Increase #1	1,498,843 <sup>‡</sup>
		Trez 1st Renewal #1 Fee	335,000 <sup>‡</sup>
		Other Misc. Costs (plug)	(77,168) <sup>‡</sup>
		<b>1st Renewal (Nov 2022)</b>	<b>2,572,210</b>
Cash Equity - deferred (\$270K May & June, \$325.2K July to Nov 2023)	2,166,000 <sup>†</sup>	Hard Costs Increase	2,898,184
Cash Equity - deferred (net proceeds of 180 SAW sale)	2,248,153	Soft Cost Increase	1,298,807
<b>Total Equity (Deferred)</b>	<b>4,414,153</b>	Contingency (Reduction)	(1,129,844)
Insured Purchaser Deposit Increase (March 2023 renewal)	4,400,000	Trez 1st Interest Budget Increase #2	2,451,630 <sup>‡</sup>
		Trez 1st Renewal Fee #2	170,000
		Other Misc. Costs (plug)	25,376
		<b>2nd Renewal (March 2023)</b>	<b>5,714,153<sup>‡</sup></b>
		Hard Costs Increase	(76,268)
		Soft Cost Increase	686,947
		Contingency (increase) + plug	127,780
		Trez 1st Interest Budget	1,735,541
		Trez 1st Renewal Fee #3	276,000
		<b>3rd Renewal / Amendment (September 2023)</b>	<b>2,760,000</b>
Cash Equity - deferred December 2023 through May 2024	1,861,200	Hard Costs Increase	1,140,346
Deferred Sales Commissions	1,628,304	Soft Cost Increase	(180,027)
Additional Deferred Equity	1,234,446	Contingency (increase) + plug	182,256
	<b>4,723,950</b>	Trez 1st Interest Budget	3,321,516
		Trez 1st Renewal Fee #3	330,609
		<b>4th Renewal (December 2023)</b>	<b>4,815,690</b>
<b>Sub Total 1st</b>	<b>111,350,009</b>	<b>Sub Total 1st</b>	<b>111,350,000</b>
Trez 1st Letter of Credit Facility	753,163	Letter(s) of Credit in favour of City of Ottawa	753,163
<b>Total 1st</b>	<b>112,103,163</b>	<b>Total 1st</b>	<b>112,103,163</b>
Trez 2nd (Dec 2021)	6,000,000	Trez 2nd - Commitment Fee (Dec 2021)	120,000
Equity Repatriation (Dec 2021)	(5,070,000)	Trez 2nd - Interest Budget (Dec 2021)	810,000
Cash Equity - At Renewal (Nov 2022 renewal)	389,549	Trez 2nd Renewal Fee #1	60,000
Cash Equity - at Renewal (April 1st - June 30)	70,000	Trez 2nd Interest Budget Top Up Payments to date	329,549
Trez 2nd - interest Accrual	273,398	Trez 2nd Renewal Fee #2	70,000
Cash Equity	50,000	Trez 2nd - interest	273,398
Trez 2nd Interest Accrual	484,527	Trez 2nd - Renewal Fee #3	50,000
Cash Equity	11,500	Trez 2nd - interest	484,527
Trez 2nd Interest Accrual***	134,374	Trez 2nd - Renewal Fee #4	11,500
		Trez 2nd - interest	134,374
<b>Total 2nd</b>	<b>2,343,349</b>	<b>Total 2nd</b>	<b>2,343,349</b>
<b>Grand Total 1st + 2nd</b>	<b>114,446,511</b>	<b>Grand Total 1st + 2nd</b>	<b>114,446,511</b>

\*Prior approval was granted to allow \$488K in Insured Purchaser Deposits to fund a materials deposit (increasing the permissible DPI), which was offset against a reduction in the Construction Loan Facility availability. The Construction Loan Facility availability was further reduced by \$350K as at the Second Renewal Term, offset against the deferred Monthly Cash Equity contributions.

\*\*Condo in lieu of cash

\*\*\*estimated interest accrual over the renewal term

## 13. Additional Covenants

During the Renewal Period, the Borrower and the Guarantor shall:

- forthwith provide the Lender with notice of the occurrence of any litigation proceeding or dispute affecting it or the Subject Property, and if the result of such litigation might have a material adverse effect on the Borrower or the Guarantor, financial or otherwise, perform its obligations under the Fourth

Renewal Letter and/or the Security herein, and shall from time to time, as requested by the Lender, provide the Lender with all reasonable information requested by the Lender concerning any such litigation, proceeding or dispute;

- b) not make a proposal, or apply for, or seek, relief from its creditors, under the *Bankruptcy and Insolvency Act* (the "BIA"), the *Companies' Creditors Arrangement Act* (the "CCAA"), or any other legislation granting relief from creditors unless the prior written consent of the Lender is obtained. In the event that the Borrower or Guarantor, or any of them, are the subject of any voluntary or involuntary proceeding under bankruptcy and insolvency laws including the BIA, CCAA or any other applicable legislation, the Borrower and the Guarantor hereby unconditionally and irrevocably agree that the Lender is immediately entitled, without notice, demand or any other action, to relief from the automatic stay so as to allow the Lender to realize on the Security and enforce its other rights and remedies under the Loan, or at law and in equity under applicable provincial and federal laws. The Borrower and Guarantor hereby consent to the immediate lifting, without notice, demand or any other action, of any such automatic stay and agree that they shall not, in any manner, contest or otherwise delay any motion filed by the Lender for relief from the automatic stay. The Lender's enforcement of this stay waiver is subject to the discretion and approval of the bankruptcy court.
- c) further to paragraph 13 (b) above, in the event of the Borrower's intention to apply for, or seek, relief from its creditors, under the BIA, the CCAA, or any other legislation granting relief from creditors, the Borrower and the Guarantor shall deliver to the Lender fourteen (14) business days prior written notice of any such proposed action, in order to provide the Lender sufficient time to consider the request to provide its consent to the proposed action.
- d) ensure that Mr. Sam Mizrahi and/or Mr. Esteban Yanquelevech are on site at the Project in a management capacity at minimum on a bi-weekly basis until full repayment of the Loan.
- e) provide copies of Binding Letter(s) of Interest to refinance the balance of unsold units (take out inventory loan(s)) to be presented to the Lender for approval on or before March 15, 2024 (the "**Binding Letter(s) of Interest**").
- f) provide copies of Binding Commitment Letter(s) to refinance the balance of unsold units (take out inventory loan(s)) to be presented to the Lender for approval on or before June 1, 2024 (the "**Binding Commitment Letter(s)**").
- \* which, together with the net proceeds of the sold units, is enough to discharge \*\* the Indebtedness \*
- g) defer payment of all sales commissions payable on unit closings (estimated at \$1,629,353) until full repayment of the Loan. \*\* the Indebtedness
- h) pay for all costs and expenses related to the engagement of Toddglen by the Lender as the additional project monitor (the "**Additional Project Monitor**") to the maximum amount of \$20,000 per month plus reasonable travel expenses in the City of Ottawa plus HST (the "**Maximum Amount**"). Their engagement is separate to and supplements the existing Project Monitor, Altus Group Limited. The Additional Project Monitor is to be given unfettered and full access to the site and all contracts, purchase orders, construction schedules, permits and other documentation required to complete their scope of work:
- i. Assess the project status in conjunction with the schedule;
  - ii. Assess the schedule feasibility;
  - iii. Assess the project team in conjunction with the project needs;
  - iv. Assess the trades' performance in conjunction with the agreements in place;
  - v. Assess the resources allocated for ensuring minimum industry standards for the quality assurance;

- vi. Assess the procurement status;
- vii. Identify risks and opportunities related to the above 6 assessments;
- viii. Propose strategy to secure successful project delivery;
- ix. Monitor monthly the progress and the implementation of the proposed/approved strategy.

- i) repay the Trez 2<sup>nd</sup> priority loan (Mizrahi – 1451 Wellington Street West 2<sup>nd</sup> Mortgage, Trez Loan #2272/21) in full by ~~February 28, 2024~~ *on the earlier of i) the closing of the 180 Steeles Avenue West property and ii) July 1st, 2024*, or such other date mutually agreed upon in writing by the Lender and Borrower.

#### 14. Conditions Precedent to the Renewal

The conditions precedent to the Fourth Renewal shall include, but not be limited to the items set out in the remainder of this section, all of which must be satisfactory to the Lender in its sole, unfettered and absolute discretion, and all of which collectively comprise the Lender's due diligence. The Lender may require any additional information as it deems necessary in its sole, unfettered and absolute discretion.

- a) Completion of all security amendments as required by the Lender.
- b) Delivery of a Certificate of Independent Legal Advice ("Certificate of Independent Legal Advice") in the form attached hereto as Schedule "B" upon execution of this Agreement.
- c) Syndicate partner approval for the Fourth Renewal.
- d) Satisfactory inspection of the Subject Property by the Lender.

The Lender's receipt of the following:

- e) The Borrower's updated development schedule for the Subject Property.
- f) The Borrower's updated development budget for the Subject Property.
- g) A ledger from the Borrower illustrating the payment waterfall and the net proceeds of sale, if any, to the Mizrahi beneficial ownership entities from the sale of 180 Steeles Avenue West property.
- h) A signed and dated sales price list and presales summary.
- i) All presale contracts for the Subject Project.
- j) All Tarion amendments to disclosure (notice of "Unavoidable Delay") sent to all presale purchasers.
- k) Written confirmation from the law firm holding the presale deposits of the following information: lot number, date of contract, name of purchaser, purchase price, deposit received, and whether the contract is firm or conditional.
- l) Written confirmation from the law firm holding the presale deposits in trust confirming; (i) the deposits received to date into trust; (ii) the deposits released to date to fund project costs; (iii) the remaining deposits contractually due prior to project completion including all "Occupancy Deposits" due upon partial occupancy. It is a condition of the renewal that a minimum of \$3,000,000 in remaining deposits be contractually due prior to project completion.
- m) Written approval from the Deposit Insurer that they continue to agree to advance the "Occupancy Deposits" once received in trust.
- n) Certified financial statements from the Borrower and Guarantor. If an individual then a personal net worth statement, on the Trez Capital form, dated no more than **four (4)** months prior, is required, if a corporate entity then most recent financial statements is required. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency.
- o) Confirmation that the Subject Property is in compliance with current zoning and that there are no outstanding work or fire orders, or that any such orders shall be paid from the proceeds of the Mortgage.

- p) Confirmation that all property taxes owing on the Subject Property have been paid or will be paid from the proceeds of the Loan.
- q) Insurance of the Subject Property which has been reviewed and approved by the Lender's Insurance Consultant which insurance shall include the coverage set out in Schedule A of the Commitment Letter, or as otherwise required by the Lender in consultation with its Insurance Consultant.
- r) Such other materials and completion of such other reasonable requirements a may be deemed necessary by the Lender.

#### **15. Revised Development Schedule and Budget**

The Borrower shall proceed to complete the construction of the Subject Property in accordance with the schedule and development budget as set out in Quantity Surveyor Report Number 46 of Altus Group Limited (the Project Monitor) made in respect of the Subject Property dated December 04, 2023, or other Lender approved schedule and development budget. The Borrower shall not permit the events set out in the approved development schedule to be delayed more than 45 days from the approved schedule date and shall, within 10 days of notice of any cost over-run above and beyond the approved budget amount, pay said cost over-run from its own resources.

#### **16. Conditions Precedent to the Advance of the Occupancy Deposits**

\$14,089,751 in Insured Purchaser Deposits are currently released to fund project costs as of December 1, 2023. The Borrower shall be permitted to use \$3,678,531 in additional insured purchaser deposits (the "Occupancy Deposits") to fund qualified project costs. Any "Occupancy Deposits" in excess of \$3,678,531 used to fund eligible project costs shall be offset against a dollar-for-dollar reduction in the Lender's Construction Loan Facility availability. Any reduction of the Loan Amount may not be re-advanced under any circumstances. The conditions precedent, all of which must be satisfactory to the Lender in its sole and unfettered discretion, to the disbursement of the "Occupancy Deposits" shall include all of the conditions precedent to the Fourth Renewal, plus:

- a) All presale contracts for the Subject Property totaling no less than \$69,250,539 (Net of HST). All presales must be to arm's-length purchasers and include contractual deposits of not less than 25% of the purchase price for the respective unit, of which no less than 5% of the purchase price of for the respective unit is due upon partial occupancy.

#### **17. Partial Discharges**

Provided that the Borrower is not in default of the Loan, the Lender shall provide a partial discharge of the Security (as hereinafter defined) for the Loan only upon receipt of 100% of the Net Sale Proceeds. Net Sale Proceeds shall be defined as the gross sale price less legal fees and closing costs, but explicitly exclusive of HST, which collectively shall not exceed 5% of the gross sale price less any amounts payable to prior mortgagees, approved by the Lender, if any. In order to ensure the foregoing discharge parameters, a sales price list for each subdivided parcel or condominium unit comprising the Subject Property is agreed to by the Borrower(s) and Lender and attached herein as Schedule 'C' (the "Sales Price List"), and no sale can take place at less than 95% of the Sales Price List without the Lender's written consent.

For clarity, given the deferral in payment of sales commission, in calculating the Net Sale Proceeds, the amount of any sales commissions shall not be deducted from the gross sale price.

Notwithstanding the above, the Lender shall have no obligation to provide a partial discharge until such time as i) all of the deferred equity requirements to complete the capital stack has been satisfied and ii) the Binding Commitment Letter(s) has(have) been secured.

This Fourth Renewal Letter, the Third Renewal Letter, the Second Renewal Letter, the Renewal Letter, the Amendment Letter and the Commitment Letter shall be read together as one and the same document and may be executed in counterpart and delivered via facsimile or other electronic transmission. Other than as expressly set

out herein, all of the terms and conditions of the Commitment Letter shall continue in full force and effect, unamended.

In the event that one or more of the provisions of the Fourth Renewal Letter, the Third Renewal Letter, the Second Renewal Letter, the Renewal Letter and the Commitment Letter are found to be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby.


This Fourth Renewal shall not become effective until 1) the Borrower, Guarantor and Lender have signed this letter and a copy is returned to the Lender's office by no later than 5:00pm Pacific Time on ~~January 24, 2024~~ <sup>February 7<sup>th</sup></sup>; and 2) the Lender has confirmed that all Conditions Precedent to the Fourth Renewal have been satisfied.


(20)

The Borrower and Guarantor hereby acknowledge and agree to the terms and conditions of this Fourth Renewal Letter and authorize Trez Capital Limited Partnership to instruct its solicitor to prepare the documentation required to give effect to this Fourth Renewal. The Borrower and Guarantor further acknowledge that the Fourth Renewal Fee set forth herein is a reasonable estimate of the cost incurred in granting the Fourth Renewal and of holding monies available for same, and that the Fourth Renewal Fee shall be forfeited and payable to Trez Capital Limited Partnership as liquidated damages, and not as a penalty, if the Fourth Renewal is not completed within the time limit herein. This Fourth Renewal and any fees earned as a result of this Fourth Renewal Letter, together with any expenses or costs incurred by Trez Capital Limited Partnership including, but not limited to, appraisal, re-appraisal, inspections, re-inspections, title searches, plan reviews, soil tests, survey, environmental assessments, and legal costs on a solicitor and its client basis, are deemed to be a charge on the Subject Property referred to herein and Trez Capital Limited Partnership may file and maintain a caveat on the title to the Subject Property to protect that charge and the Borrower and Guarantor do hereby mortgage to Trez Capital Limited Partnership all its estate and interest in the said Subject Property and Security. This Fourth Renewal Letter supersedes all previous correspondence between the parties hereto save and except for the Amendment Letter, the Third Renewal Letter, the Second Renewal Letter, the Renewal Letter and the Commitment Letter.

Yours truly,

**Trez Capital Limited Partnership**  
by its general partner,  
**Trez Capital (2011) Corporation**

Per:   
Eric Horie  
Senior Managing Director, Head of  
Origination Canada  
Agent#: M20001785

Per:   
Colin Philpotts  
Director, Credit Risk & Underwriting

We hereby agree to the Terms and Conditions contained in this Fourth Renewal Letter and agree to be bound by the terms hereof.

Acknowledged and agreed at Toronto this 5<sup>th</sup> day of February, 2024.

***BORROWER:***

**Mizrahi Development Group (1451 Wellington) Inc.**

Per:   
Authorized Signature

***GUARANTOR:***

  
Sam Mizrahi



**SCHEDULE "A"**

**THE SECURITY**

1. Charge/Mortgage on the Subject Property as defined in the Commitment dated October 29, 2019 and received as instrument number OC2158856;
2. General Security Agreement dated October 29, 2019;
3. Notice of Assignment of Rents dated October 29, 2019 and received as instrument no. OC2158857;
4. Limited Recourse Guarantee and Postponement of Claim dated October 29, 2019;
5. Guarantee and Postponement of Claim dated October 29, 2019;
6. Completion and Cost-Overrun Guarantee dated October 29, 2019;
7. Environmental Indemnity dated October 29, 2019;
8. Bring-down Certificate dated October 29, 2019;
9. General Assignment of Material Project Agreements dated October 29, 2019;
10. General Assignment of Agreements of Purchase and Sale and Deposits dated October 29, 2019;
11. Specific Assignment of CDC2 dated October 29, 2019;
12. Assignment of Insurance dated October 29, 2019;
13. Statutory Declaration as to Material Facts;
14. Priority Agreement dated October 24, 2019;
15. Share Pledge Agreement dated October 29, 2019;
16. Irrevocable Stock Transfer and Power of Attorney dated October 29, 2019;
17. Acknowledgment and Direction dated October 24, 2019;
18. PPSA Registration under Reference File No. 756919458;
19. PPSA Registration under Reference File No. 756919377;
20. Syndicate Lender's Letter of Credit documentation;
21. Amended and Restated Assignment of Net Sales Proceeds Agreement from SAM M (180 SAW) INC. and SAM MIZRAHI dated September 12, 2023;
22. Amended and Restated Undertaking to Deliver an Assignment of Net Sales Proceeds Agreement from SAM M (180 SAW) INC. and SAM MIZRAHI dated September 12, 2023.

**SCHEDULE "B"**  
**CERTIFICATE OF INDEPENDENT LEGAL ADVICE**

**TO: TREZ CAPITAL LIMITED PARTNERSHIP**

I, \_\_\_\_\_, hereby declare that I have been consulted with Mizrahi Development Group (1451 Wellington) Inc. (the "**Borrower**") and Sam Mizrahi (the "**Guarantor**") as to the liability which the Borrower and the Guarantor would incur by signing the Fourth Renewal Letter and have also been consulted by the Borrower and the Guarantor in respect of breaching the Fourth Renewal Letter and that I have advised the Borrower and the Guarantor fully as to the effect of the aforementioned and the liability which the Borrower and the Guarantor would incur in entering into the Fourth Renewal Letter, the manner in which such liability could be enforced and the possible consequences and ramifications if the Borrower and the Guarantor fail to enter into the terms of the Fourth Renewal Letter; and that the Borrower and the Guarantor understand the nature and effect of the liability which would arise from the taking by the Borrower and the Guarantor of the said actions, or the failure of taking such actions; and I hereby further declare that:

1. I have given this advice to the Borrower and the Guarantor, as solicitor for the Borrower and the Guarantor and in the Borrower and Guarantor's interest only and without regard to or consideration for the interests of the Lender,
2. I have never given any legal advice to the Lender in connection with this matter;
3. the Borrower and the Guarantor have executed the Fourth Renewal Letter in my presence only and no other person was present; and
4. the Borrower and the Guarantor appear to have executed the Fourth Renewal Letter without any threat of compulsion, or any undue influence from third parties.

DATED at \_\_\_\_\_, Ontario, this \_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_

**SCHEDULE "C"**  
**SALES PRICE LIST**

No.	Suite	Status	Unit	Level	Size	Type	Exposure	Unit Price	Unit Price Net of HST	Total Price Net of HST
1	201	F	01	2	638	1 Bed	North/East	\$474,990	\$442,028	\$476,982
2	202	A	02	2	1,543	2 Bed+Den	South/East	\$1,549,990	\$1,392,912	\$1,392,912
3	203	A	03	2	776	1 Bed+Den	South	\$779,990	\$711,496	\$711,496
4	204	F	04	2	819	1 Bed+Den	South	\$704,990	\$645,124	\$689,372
5	205	A	05	2	711	1 Bed+Den	South	\$724,990	\$662,823	\$662,823
6	206	F	06	2	930	2 Bed+Den	South	\$689,990	\$631,850	\$676,097
7	207	F	07	2	1,660	2 Bed+Den	South/West	\$1,325,000	\$1,193,805	\$1,280,088
8	208	A	08	2	1,102	2 Bed+Den	West	\$1,124,990	\$1,016,805	\$1,016,805
9	301	F	01	3	921	2 Bed+Den	North	\$709,990	\$649,549	\$702,646
10	302	A	02	3	681	1 Bed+Den	North	\$719,990	\$658,398	\$658,398
11	303	F	03	3	1,251	2 Bed+Den	North/East	\$959,990	\$870,788	\$950,434
12	304	A	04	3	1,543	2 Bed+Den	South/East	\$1,589,990	\$1,428,310	\$1,428,310
13	305	A	05	3	1,276	2 Bed+Den	South	\$1,399,990	\$1,260,168	\$1,260,168
14	306	F	06	3	1,080	2 Bed+Den	South	\$819,990	\$746,894	\$782,292
15	307	F	07	3	809	1 Bed+Den	South	\$799,990	\$729,195	\$729,195
16	308	F	08	3	1,775	2 Bed+Den	South/West	\$1,324,990	\$1,193,796	\$1,273,442
17	309	F	09	3	1,102	2 Bed+Den	West	\$1,029,990	\$932,735	\$976,982
18	310	F	10	3	1,439	2 Bed+Den	North/West	\$1,625,000	\$1,459,292	\$1,614,159
19	311	F	11	3	1,020	2 Bed+Den	North	\$777,990	\$709,726	\$745,124
20	401	F	01	4	921	2 Bed+Den	North	\$694,990	\$636,274	\$680,522
21	402	F	02	4	681	1 Bed+Den	North	\$526,990	\$487,602	\$531,850
22	403	F	03	4	1,251	2 Bed+Den	North/East	\$969,990	\$879,637	\$959,283
23	404	A	04	4	1,543	2 Bed+Den	South/East	\$1,599,990	\$1,437,159	\$1,437,159
24	405	A	05	4	1,276	2 Bed+Den	South	\$1,409,990	\$1,269,018	\$1,269,018
25	406	F	06	4	1,080	2 Bed+Den	South	\$959,990	\$870,788	\$950,434
26	407	F	07	4	809	1 Bed+Den	South	\$719,990	\$658,398	\$658,398
27	408	F	08	4	1,775	2 Bed+Den	South/West	\$1,331,990	\$1,199,991	\$1,244,239
28	409	F	09	4	1,102	2 Bed+Den	West	\$852,990	\$776,097	\$820,345
29	410	F	10	4	1,439	2 Bed+Den	North/West	\$1,106,990	\$1,000,876	\$1,045,124
30	411	F	11	4	1,020	2 Bed+Den	North	\$819,990	\$746,894	\$791,142
31	501	F	01	5	250	Partial	North	\$239,000	\$227,186	\$227,186
32	502	F	02	5	1,238	2 Bed+Den	North/East	\$1,014,990	\$919,460	\$1,007,956
33	503	F	03	5	686	1 Bed	East	\$579,990	\$534,504	\$578,752
34	504	F	04	5	1,215	2 Bed+Den	South/East	\$1,029,990	\$932,735	\$968,133
35	505	F	05	5	699	1 Bed	South	\$572,990	\$528,310	\$563,708
36	506	F	06	5	621	1 Bed	South	\$809,990	\$738,044	\$892,912
37	507	F	07	5	710	1 Bed+Den	South	\$980,000	\$888,496	\$888,496
38	508	F	08	5	1,424	2 Bed+Den	South/West	\$1,299,990	\$1,171,673	\$1,251,319
39	509	F	09	5	965	2 Bed+Den	West	\$795,990	\$725,655	\$769,903
40	510	F	10	5	1,069	2 Bed+Den	North/West	\$879,990	\$799,991	\$844,239
41	511	F	11	5	1,237	2 Bed+Den	North	\$1,159,990	\$1,047,779	\$1,092,027
42	601	F	01	6	732	1 Bed+Den	North	\$619,990	\$569,903	\$649,549
43	602	F	02	6	1,238	2 Bed+Den	North/East	\$1,024,990	\$928,310	\$1,007,956
44	603	A	03	6	632	1 Bed	East	\$739,990	\$676,097	\$676,097
45	604	F	04	6	1,113	2 Bed+Den	South/East	\$916,490	\$832,292	\$903,088

46	605	F	05	6	659	1 Bed	South	\$548,000	\$506,195	\$506,195
47	606	F	06	6	578	1 Bed	South	\$479,990	\$446,220	\$490,257
48	607	F	07	6	658	1 Bed	South	\$545,990	\$504,416	\$495,566
49	608	F	08	6	1,424	2 Bed+Den	South/West	\$1,199,990	\$1,083,177	\$1,171,673
50	609	F	09	6	914	2 Bed	West	\$759,990	\$693,796	\$738,044
51	610	F	10	6	1,073	2 Bed+Den	North/West	\$917,990	\$833,619	\$904,416
52	611	F	11	6	841	1 Bed+Den	North	\$711,990	\$651,319	\$629,204
53	701	F	01	7	732	1 Bed+Den	North	\$629,990	\$578,752	\$623,000
54	702	F	02	7	1,238	2 Bed+Den	North/East	\$1,034,990	\$937,159	\$972,558
55	703	A	03	7	632	1 Bed	East	\$749,990	\$684,947	\$684,947
56	704	F	04	7	1,113	2 Bed+Den	South/East	\$924,990	\$839,814	\$910,611
57	705	A	05	7	659	1 Bed	South	\$722,990	\$661,053	\$661,053
58	706	F	06	7	578	1 Bed	South	\$629,000	\$577,876	\$577,876
59	707	F	07	7	658	1 Bed	South	\$555,990	\$513,265	\$548,664
60	708	F	08	7	1,424	2 Bed+Den	South/West	\$1,184,990	\$1,069,903	\$1,149,549
61	709	F	09	7	914	2 Bed	West	\$779,990	\$711,496	\$782,292
62	710	F	10	7	1,073	2 Bed+Den	North/West	\$918,990	\$834,504	\$914,150
63	711	F	11	7	841	1 Bed+Den	North	\$712,990	\$652,204	\$652,204
64	801	F	01	8		Partial		\$0	\$0	\$0
65	802	F	02	8	1,574	2 Bed+Den	North/East	\$1,669,990	\$1,499,106	\$1,587,602
66	803	A	03	8	632	1 Bed	East	\$769,990	\$702,646	\$702,646
67	804	F	04	8	1,113	2 Bed+Den	South/East	\$964,990	\$875,212	\$972,558
68	805	F	05	8	659	1 Bed	South	\$577,990	\$532,735	\$532,735
69	806	A	06	8	578	1 Bed	South	\$704,990	\$645,124	\$645,124
70	807	A	07	8	658	1 Bed	South	\$804,990	\$733,619	\$733,619
71	808	F	08	8	1,424	2 Bed+Den	South/West	\$1,219,990	\$1,100,876	\$1,145,124
72	809	F	09	8	914	2 Bed	West	\$799,990	\$729,195	\$729,195
73	810	F	10	8	1,591	2 Bed+Den	North/West	\$1,498,990	\$1,347,779	\$1,427,425
74	811	F	11	8	726	1 Bed+Den	North	\$889,990	\$808,841	\$808,841
75	901	F	01	9	732	1 Bed+Den	North	\$639,990	\$587,602	\$669,912
76	902	F	02	9	1,238	2 Bed+Den	North/East	\$1,054,990	\$954,858	\$1,043,354
77	903	A	03	9	632	1 Bed	East	\$789,990	\$720,345	\$720,345
78	904	F	04	9	1,113	2 Bed+Den	South/East	\$984,990	\$892,912	\$937,159
79	905	F	05	9	659	1 Bed	South	\$597,990	\$550,434	\$550,434
80	906	F	06	9	578	1 Bed	South	\$1,599,990	\$1,437,159	\$1,525,655
81	907	F	07	9	658	1 Bed	South	\$0	\$0	\$0
82	908	F	08	9	1,424	2 Bed+Den	South/West	\$1,209,990	\$1,092,027	\$1,171,673
83	909	F	09	9	914	2 Bed	West	\$785,000	\$715,929	\$724,779
84	910	F	10	9	1,073	2 Bed+Den	North/West	\$928,990	\$843,354	\$887,602
85	911	F	11	9	841	1 Bed+Den	North	\$732,990	\$669,903	\$669,903
86	1001	F	01	10	1,714	2 Bed+Den (JR P	North/East	\$1,949,999	\$1,746,902	\$1,791,150
87	1002	A	02	10	1,938	2 Bed+Den (JR P	South/East	\$3,281,990	\$2,925,655	\$2,925,655
88	1003	F	03	10	2,388	2 Bed+Den (JR P	South/West	\$4,259,990	\$3,791,142	\$3,791,142
89	1004	F	04	10	1,889	2 Bed+Den (JR P	North/West	\$2,379,990	\$2,127,425	\$2,251,319
90	1101	F	01	11	3,563	3 Bed+Den (PH)	North/East	\$4,275,990	\$3,805,301	\$3,920,345
91	1102	A	02	11	3,577	3 Bed+Den (PH)	South/East	\$6,439,990	\$5,720,345	\$5,720,345
92	1103	A	03	11	4,601	3 Bed+Den (PH)	South/West	\$8,279,990	\$7,348,664	\$7,348,664
93	1104	A	04	11	3,531	3 Bed+Den (PH)	North/West	\$6,355,990	\$5,646,009	\$5,646,009
3186						CRU		\$1,840,234	\$1,649,765	\$1,649,765
2082						CRU		\$1,202,563	\$1,085,454	\$1,085,454
<b>Total</b>								<b>\$116,293,466</b>	<b>\$104,884,891</b>	<b>\$108,464,342</b>

*m:\19\190399\4th renewal\renewal\_#4\_letter\_mizrahi\_1451\_wellington\_1st\_(december\_2023) pjd changes january 9 md.docx*

This is Exhibit F to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits

**Properties**

*PIN* 04030 - 0154 LT *Interest/Estate* Fee Simple  
*Description* LTS 1 & 2, PL 145 , N/S RICHMOND RD (NOW WELLINGTON ST) ; OTTAWA  
*Address* 1451 WELLINGTON STREET WEST  
 OTTAWA

*PIN* 04030 - 0155 LT *Interest/Estate* Fee Simple  
*Description* LT 3 & PT LT 4, PL 145 , BEING THE W 1/2, N/S RICHMOND RD (NOW WELLINGTON ST) ; OTTAWA  
*Address* 1445 WELLINGTON STREET WEST  
 OTTAWA

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.  
*Address for Service* 125 Hazelton Avenue  
 Toronto, ON  
 M5R 2E4

I, Sam Mizrahi, A.S.O., have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)***Capacity**Share*

*Name* COMPUTERSHARE TRUST COMPANY OF CANADA  
*Address for Service* 100 University Avenue, 9th Floor  
 Toronto, ON  
 M5J 2Y1

**Statements**

Schedule: See Schedules

**Provisions**

*Principal* \$68,000,000.00 *Currency* CDN  
*Calculation Period* See Schedule  
*Balance Due Date* 2022/11/01  
*Interest Rate* See Schedule  
*Payments*  
*Interest Adjustment Date* 2019 11 01  
*Payment Date* 1st day of each and every month  
*First Payment Date* 2019 12 01  
*Last Payment Date* 2022 11 01  
*Standard Charge Terms*  
*Insurance Amount* Full insurable value  
*Guarantor* Sam Mizrahi

**Signed By**

Nasim Akbari-Balderlou 3400-1 First Canadian Place acting for Signed 2019 10 28  
 Toronto  
 M5X 1A4  
 Chargor(s)

Tel 416-863-1200

Fax 416-863-1716

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

BENNETT JONES LLP 3400-1 First Canadian Place  
 Toronto  
 M5X 1A4

2019 10 29

Tel 416-863-1200

**Submitted By**

Fax 416-863-1716

**Fees/Taxes/Payment**

Statutory Registration Fee	\$64.40
Total Paid	\$64.40

**File Number**

Chargor Client File Number :	190399
Chargee Client File Number :	72996.211



## SCHEDULE TO CHARGE/MORTGAGE

### RECITALS

The Lender has agreed to make a loan in favour of the Borrower upon the terms and conditions more particularly contained herein.

The Borrower is the registered and beneficial owner of the lands and premises described in the electronic Charge to which this schedule is attached.

This Charge is given by the Borrower to the Lender as continuing security for the repayment by the Borrower to the Lender of such loan and the performance by the Borrower of its obligations as more particularly described herein.

### **ARTICLE I** **DEFINITIONS**

**1.1** For the purposes of this Charge the following definitions will apply:

"**Applicable Laws**" means, at any time, in respect of any Person, property, transaction, event or other matter, as applicable, all then current laws, rules, statutes, regulations, treaties, orders, judgments and decrees and all official directives, rules, guidelines, orders, policies, decisions and other requirements of any Governmental Authority (whether or not having the force of law) (collectively, the "Law") relating or applicable to such Person, property, transaction, event or other matter and shall also include any interpretation of the Law or any part of the Law by any Person having jurisdiction over it or charged with its administration or interpretation;

"**Applicable Rate**" means the interest rate set out in the electronic Charge to which this schedule is attached or, in the alternative, the interest rate set out in the Commitment;

"**Bills**" has the meaning ascribed thereto in Section 10.1(a);

"**Borrower**" means the party identified as "Chargor" set out in the electronic Charge to which this schedule is attached and its successors and assigns;

"**Business Day**" means a day on which the Lender is open for business but specifically excluding Saturdays, Sundays or statutory holidays pursuant to the laws of Canada or the Province of Ontario and "**Business Days**" means more than one Business Day;

"**Charge**" means this charge/mortgage of land and all instruments supplemental hereto or in amendment, renewal, extension, restatement, replacement or confirmation hereof;

"**Charged Premises**" means, collectively, the Lands and the Improvements;

"**Commitment**" means the letter of commitment between the Borrower and Trez Capital Limited Partnership dated October 2, 2019, as the same has been or may be amended, restated, supplemented, renewed, extended or superseded from time to time;

"**Environmental Approvals**" has the meaning ascribed to it in Section 12.1 hereof;

"**Environmental Laws**" or "**Environmental Law**" has the meaning ascribed to them in Section 12.1 hereof;

"Event of Default" has the meaning ascribed thereto in Section 18.1 hereof;

"Event of Insolvency" means the occurrence of any one of the following events:

- (a) If the Borrower, or the Guarantor(s), shall, other than as expressly permitted hereby:
  - (i) be wound up, dissolved or liquidated, whether pursuant to the provisions of the laws of the Province of Ontario or the federal laws of Canada applicable therein, or any other law or otherwise, or becomes subject to the provisions of the *Winding-Up and Restructuring Act* (Canada), or has its existence terminated or has any resolution passed therefor; or
  - (ii) makes a general assignment for the benefit of its creditors or files a proposal or a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada), shall otherwise acknowledge its insolvency or shall be declared or become bankrupt or insolvent; or
  - (iii) proposes a compromise or arrangement or otherwise brings proceedings under or becomes subject to the provisions of the *Companies' Creditors Arrangement Act* (Canada) or shall file any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or any other relief for itself under, or in any way takes the benefit of, the *Bankruptcy and Insolvency Act* (Canada) or any other present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors; or
  - (iv) be unable, by reason of insolvency or similar circumstances, to pay its trade creditors generally, within one hundred and twenty (120) days of the rendering of trade accounts or admit its inability to pay its debts or perform its obligations as they become due; or
- (b) If a court of competent jurisdiction shall enter an order, judgment or decree against the Borrower in respect of any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency, or similar relief under any present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors, or the Borrower shall acquiesce in the entry of such order, judgment or decree, unless the Borrower is also proceeding forthwith to diligently and in good faith contest the same and, provided that none of the Charged Premises, the Charge or the Security, the value of the Charged Premises or the operation thereof, are adversely affected and there is no prejudice to the Lender in the Lender's reasonable opinion, and such order, judgement or decree is vacated or permanently stayed within fifteen (15) days of its making; or
- (c) If any trustee in bankruptcy, receiver, receiver and manager, monitor or liquidator or any other officer with similar powers shall be appointed for the Charged Premises or any portion thereof, or for the Borrower or the Guarantor(s), or for all or any substantial part of its assets or its interest in the Charged Premises with the consent or acquiescence of the Borrower; or
- (d) If, other than as expressly permitted hereby, an encumbrancer or the holder of any lien or charge or any other creditor takes possession of the Charged Premises or the Borrower's

interest in the Charged Premises, or any part thereof, or if a distress, execution, garnishment or any similar process is levied or enforced upon or against the same;

**"Governmental Authority"** means any federal, provincial, territorial or municipal government and any executive, judicial, regulatory or administrative functions of, or pertaining to, government (including, without limitation, all boards, commissions, agencies, departments and ministries);

**"Guarantor(s)"** means any Person from time to time guaranteeing the Indebtedness;

**"Hazardous Substance"** has the meaning ascribed to it in Section 12.1 hereof;

**"Improvements"** means the buildings, erections, structures, fixed machinery, fixed equipment, plant, and improvements now located on the Lands and all appurtenances pertaining thereto, together with all other buildings, structures, fixtures and improvements hereafter located from time to time in, on or under the Lands and all personal property, equipment and chattels now or hereafter affixed to the Lands or to such buildings, erections, structures, fixed machinery, fixed equipment, plant, and improvements owned by the Borrower;

**"Indebtedness"** means, collectively, the Principal Sum, any debts, liabilities, obligations, covenants and duties owing by the Borrower to the Lender of any kind or nature, present or future and arising under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith, whether or not evidenced by any note, guarantee or other instrument, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guarantee, indemnification, or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired and in all cases arising under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith. The term includes, without limitation, all interest, yield maintenance, charges, expenses, fees, including all processing and commitment fees and all legal fees and disbursements (in each case whether or not allowed), and any other sum chargeable to the Borrower under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith;

**"Insolvency Notice"** has the meaning ascribed to it in Section 9.3 hereof;

**"Inspections"** has the meaning ascribed to it in Section 12.1 hereof;

**"Interest Adjustment Date"** means the interest adjustment date set by the Lender for the purposes of setting a payment schedule;

**"Lands"** means the lands and premises described in the electronic Charge to which this schedule is attached, including all tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, and the reversion or reversions, remainder and remainders, rents, issues and profits therefrom, and all the estate, right, title, interest, property claim and demand whatsoever of the Borrower of, in and to the same and of, in and to every part thereof;

**"Lease Benefits"** means the benefit of all covenants and obligations of tenants, licencees or occupants contained in any of the Leases, including, without limitation, all rights and benefits of any guarantees thereof, the right to demand, sue for, collect, recover and receive all Rents, to enforce the landlord's rights under any Lease and generally any collateral advantage or benefit to be derived from the Leases or any of them;

**"Lease Rights"** means, collectively, the Leases, the Rents and the Lease Benefits;

**"Leases"** means all present and future leases, subleases, licences, agreements to lease, agreements to sublease, options to lease or sublease, rights of renewal or other agreements by which the Borrower, or any predecessor or successor in title thereto, has granted or will grant the right to use or occupy all or part or parts of the Charged Premises, including all agreements collateral thereto, but which, for the purpose of this definition does not include the Property Lease, and "Lease" means any one of them;

**"Lender"** means the party identified as **"Chargee"** in the electronic Charge to which this schedule is attached, and its successors and assigns;

**"Loan"** means the loan extended or to be extended by the Lender to the Borrower in the principal amount set out in the electronic Charge to which this schedule is attached and secured by this Charge and other security given to the Lender by the Borrower and the Guarantor(s), if any;

**"Major Tenant Leases"** means any agreements to lease, offers to lease or leases, subleases or occupancy agreements in respect of premises situate on the Charged Premises and which are determined by the Lender in its discretion to be material to the Charged Premises and the extension and maintenance of the Loan;

**"Maturity Date"** means, subject to early maturity by reason of the occurrence of an Event of Default and the acceleration of repayment at the option of the Lender, the balance due date set out in the electronic Charge to which this schedule is attached;

**"Permitted Encumbrances"** means encumbrances, liens and interests affecting the Charged Premises which are acceptable to the Lender in its sole discretion;

**"Person"** means any natural person, sole proprietorship, partnership, syndicate, trust, joint venture, Governmental Authority or any incorporated or unincorporated or entity or association of any nature;

**"Principal"** or **"Principal Sum"** means the principal amount of the Loan owing from time to time by the Borrower to the Lender;

**"Rents"** means all rents, issues and profits now due or to become due under or derived from the Leases;

**"Security"** means, collectively, all other or additional security, other than this Charge, given by the Borrower or others to the Lender as security for the Loan;

**"Taxes"** means for each year during the term of this Charge all real property taxes, business taxes, rates, duties, charges, assessments, impositions, taxes, levies and charges for local improvements or otherwise, imposed upon or assessed against the Charged Premises or any part or parts thereof by any Governmental Authority including, without limitation, school boards, and paid or payable by the Borrower or any tenant of the Charged Premises, but shall not include franchise, capital levy or transfer tax or any income, excess profits or revenue tax or any other tax or impost of a personal nature charged or levied upon the Borrower or any tenant of the Charged Premises. If the system of real property taxation or business shall be altered or varied and any new tax shall be levied or imposed on all or any portion of the Charged Premises or the revenues therefrom in substitution for, or in addition to, taxes presently levied or imposed, then any such new tax or levy shall be deemed to be and shall be included herein; and

**"Term"** means the term of this Charge and being a period which expires on the Maturity Date.

**ARTICLE II**  
**CHARGING PROVISIONS**

- 2.1** Now therefore witnesseth that the Borrower, being the registered and beneficial owner of a freehold estate in fee simple in possession of the Lands, in consideration of the Loan advanced or to be advanced by the Lender to the Borrower or for its benefit, and as security for the repayment of all Indebtedness and the performance of the obligations of the Borrower hereunder, does hereby grant, mortgage, charge and create a security interest in, to and in favour of the Lender all of its estate, right, title and interest in and to the Charged Premises and covenants and agrees to and with the Lender as hereinafter provided.
- 2.2** The last day of any term reserved by any lease or sublease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Borrower, as lessee, and forming part of the Charged Premises is hereby excepted out of the mortgage, charge, assignment and security interest hereby created or granted or any instrument in implementations hereof, and the same shall be deemed to be a charge by way of sublease. As further security for the payment of the Indebtedness, the Borrower agrees that it will stand possessed of the reversion of such last day of the term and shall hold it in trust for the Lender for the purpose of this Charge and to assign and dispose thereof, without cost or expense to the Lender, in such manner as the Lender shall by notice in writing, for such purpose, direct. Upon any sale, assignment, sublease or other disposition of such leasehold interest or any part thereof, the Lender, for the purpose of vesting the aforesaid one day residue of such term or renewal thereof in any purchaser, assignee, sublessee or other acquirer thereof, shall be entitled by deed or writing to appoint such party or parties as a new trustee or trustees of the aforesaid residue of any such term or renewal thereof in the place of the Borrower and to vest the same accordingly in the new trustee or trustees so appointed freed and discharged from any obligation respecting the same.

**ARTICLE III**  
**REPAYMENT AND INTEREST**

- 3.1** The Borrower covenants to pay to or to the order of the Lender at its offices as set out in Article XXIII hereof or at such other address as the Lender may from time to time designate in writing, without set-off, compensation or deduction, and without deduction for bank service or any other charges, the Principal Sum together with all other Indebtedness with interest thereon at the Applicable Rate, as well after as before maturity and both before and after default, demand and judgment. Such interest at the Applicable Rate shall be computed from the date of advance to become due and be paid initially on the Interest Adjustment Date and thereafter to be paid in equal instalments of interest, commencing on the first payment date set out in the Commitment or in the electronic Charge to which this schedule is attached and continuing each month during the Term, to and including the last payment date set out in the Commitment or the electronic Charge to which this schedule is attached, each such instalment to be in the amount stipulated in the Commitment or in the electronic Charge to which this schedule is attached and the last instalment, in the amount of the then remaining balance of the Principal Sum, other Indebtedness and accrued interest thereon, to be paid on the Maturity Date.
- 3.2** The Borrower acknowledges and agrees that monthly instalments for interest described in Section 3.1 together with all payments for Taxes as set out in Section 10.1 hereof must pass through a single bank account on which the Borrower will have provided post-dated cheques (as required by the Lender) or have pre-authorized the Lender to withdraw the monthly payments under this Charge plus any Taxes payable in respect of the Charged Premises if not otherwise paid by the Borrower.

In addition, the Borrower must maintain at all times in such account a minimum balance equal to the sum of the monthly payment of principal, interest and Taxes (as such Taxes become due).

- 3.3** It is hereby agreed that if default should occur in payment of any sum due at the time appointed for payment thereof as herein provided, compound interest at the Applicable Rate shall be payable on the sum in arrears from time to time, as well after as before maturity, and if interest as compounded is not paid within one (1) month from the time of default, a rest shall be made, and compound interest at the Applicable Rate shall be payable on the aggregate then due, as well after as before maturity, both before and after default, demand and judgement and so on from time to time and all such interest and compound interest shall be a charge on the Charged Premises.
- 3.4** All interest in arrears shall be treated (as to payment of interest thereon) as Principal and shall bear compound interest, as well after as before maturity, default and judgement as provided in Section 3.3 hereof.
- 3.5** The Borrower will pay interest, including interest on overdue interest, at the Applicable Rate on any arrears of instalments of interest, and any payment by the Borrower shall be applied by the Lender first on account of interest and then on account of principal.
- 3.6** All payments of principal and interest pursuant to Section 3.1 shall be made to and received by the Lender prior to 3:00 p.m. Toronto time on the date due, failing which such payment shall be deemed received on the next succeeding Business Day provided that in such case, such extension of time shall be included for the purpose of computation for interest; provided further that in the event any payment is due on a day which is not a Business Day, it shall be payable prior to 3:00 p.m. Toronto time on the next succeeding Business Day and provided such payment is received by such date and such time, then, save in respect of repayment of the Indebtedness at the Maturity Date where interest shall be charged for extensions to the next succeeding Business Day, interest shall not be charged for such extension.

**ARTICLE IV**  
**CRIMINAL RATE OF INTEREST**

- 4.1** Notwithstanding any other provisions of this Charge, in no event shall the aggregate "interest" (as defined in Section 347 of the *Criminal Code* (Canada), as the same shall be amended, replaced or re-enacted from time to time) payable to the Lender under this Charge exceed the effective annual rate of interest on the "credit advances" (as defined in that section) under this Charge lawfully permitted under that section and, if any payment, collection or demand pursuant to this Charge in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection, or demand shall be deemed to have been made by mutual mistake of the Lender and the Borrower and the amount of such payment or collection in excess of that lawfully permitted shall be refunded by the Lender to the Borrower.

**ARTICLE V**  
**INTEREST ACT (CANADA)**

- 5.1** For the purposes of this Charge, whenever interest is payable or stated not on the basis of a yearly rate, such rate of interest may be determined by multiplying the Applicable Rate by a fraction the numerator of which is the actual number of days in the calendar year in which the same is to be

ascertained and the denominator of which is the number of days in the period for which such rate is determined to be payable.

- 5.2 All calculations of interest or fees under this Charge are to be made on the basis of the stated rates set out herein and not on any basis which gives effect to the principle of deemed re-investment.

#### **ARTICLE VI PREPAYMENT**

- 6.1 Subject to prepayment provisions provided for in the Commitment, if any, or early maturity by reason of the acceleration of the repayment of the Indebtedness at the option of the Lender upon the occurrence of an Event of Default, the Borrower shall not be entitled to prepay all or any portion of the Principal under this Charge prior to the Maturity Date.

#### **ARTICLE VII NO OBLIGATION TO ADVANCE**

- 7.1 The Borrower acknowledges and agrees that the Lender is not bound to make any advance of any of the Principal Sum or any unadvanced portion thereof by reason of the registration of this Charge in any place or registry office or the advance of any part of the said Principal Sum, it being acknowledged by the Borrower that any advance hereunder is subject, *inter alia*, to: (a) the representations and warranties contained herein being true and correct as of the date of any advance of the Loan; (b) no default having occurred hereunder, under any of the Security or under the Commitment; and (c) the conditions precedent contained in the Commitment having been satisfied.
- 7.2 In the event this Charge is registered and either no advance whatsoever is made hereunder by the Lender or the Borrower's ability to draw down funds is terminated by the Lender before any funds are advanced, the Lender will, at the expense of the Borrower and upon payment of all monies, costs, fees and disbursements then due to the Lender, promptly upon request by the Borrower execute and deliver to the Borrower, or any agent thereof, registrable discharges of this Charge and of the Security, for use in every registry office where they or notices thereof have been recorded or filed; provided that the Borrower acknowledges that this Section 7.2 shall be of no effect once any advance of the funds is made hereunder by the Lender.

#### **ARTICLE VIII REPRESENTATIONS AND WARRANTIES**

- 8.1 The Borrower represents and warrants in favour of the Lender, acknowledging that the Lender is relying on such representations and warranties in extending the Loan:
- (a) The Borrower is a corporation duly organized, validly subsisting and in good standing under the laws of its incorporating jurisdiction and has all necessary corporate power and authority to enter into this Charge and the Security and to perform or cause to be performed its obligations contained herein and therein, to own and operate the Charged Premises and to carry on its business pertaining thereto as presently carried on;
  - (b) There are no provisions in the articles or bylaws of the Borrower or any unanimous shareholders agreement of or with respect to the Borrower or to which the Borrower is a party which restrict, limit or regulate in any way the powers of the Borrower to borrow on credit or to issue, sell or pledge any of the property or assets now or hereafter owned by it to secure its debt obligations, save and except any provisions which have been complied

with. No steps or proceedings have been taken or are pending to amend or supersede the articles or bylaws of the Borrower in a manner which would impair or limit the Borrower's ability to perform its obligations hereunder or under the Security;

- (c) The Borrower has taken all necessary corporate action to authorize the execution and delivery of this Charge and the Security, and performance of the provisions of each in accordance with its terms;
- (d) The authorization, creation, execution or delivery of this Charge or the Security or the Borrower's performance of its obligations hereunder or thereunder does not require any approval or consent of any Governmental Authority having jurisdiction nor will any such action be in conflict with or contravene any of the Borrower's articles, bylaws, unanimous shareholders agreement, if any, or resolutions of directors or shareholders, or the provisions of any indenture, instrument, agreement or undertaking to which the Borrower is a party or by which it or its properties or assets are bound, or result in the creation, imposition or crystallization of any hypothec, title retention, charge, pledge, lien, encumbrance or security interest of any kind upon any of its property or assets subject to the Charge or security interest created thereby or by the Security other than in accordance with the provisions of this Charge and the Security. This Charge and the Security when executed and delivered will constitute valid and legally binding obligations of the Borrower, enforceable against it in accordance with its terms;
- (e) There is not now pending or, to the best of the Borrower's knowledge or belief after due inquiry, threatened against the Borrower, any litigation, action, suit, investigation or other proceeding by or before any court, tribunal or other competent Governmental Authority which would materially adversely affect the present or prospective ability of the Borrower to perform its obligations under this Charge or the Security, as the case may be, or which calls into question the validity or enforceability of this Charge or the Security;
- (f) No Event of Insolvency has occurred or is threatened or pending;
- (g) The Borrower is the registered and beneficial owner of and has a good and marketable title in fee simple to the Lands, free and clear of all security interests, charges, liens and other encumbrances whatsoever except for the Permitted Encumbrances, which Permitted Encumbrances are in good standing;
- (h) The Borrower has the right to charge the Charged Premises to the Lender;
- (i) The Borrower has not received any notice of or threat of a lien under the *Construction Act* (Ontario), as amended, against the Charged Premises nor has any lien been registered against the Charged Premises in respect of labour, materials or services furnished with respect to any improvement thereon which has not been discharged;
- (j) All accounts for labour, contracts, subcontracts, products, materials, services, and construction machinery and equipment have been paid in full or will be paid from the proceeds of the initial advance of the Loan secured hereby;
- (k) Unless expressly stipulated in the Commitment, the Charge is not being given with the intention to use the proceeds thereof to finance any alterations, additions or repairs to, or any construction, erection, demolition or installation on the Charged Premises or any structure thereon;



- (l) Unless expressly stipulated in the Commitment, the Charge is not a building mortgage, within the meaning of the *Construction Act* (Ontario), as amended, and the funds to be advanced by the Lender are not being used to repay a building mortgage;
- (m) Except as disclosed to the Lender in writing, the existing and proposed uses, the operation of the Charged Premises and the business conducted thereon comply and, to the best of the Borrower's knowledge and belief, have (including all prior uses) at all times complied with all Applicable Laws, including all Environmental Laws, and the Borrower is not in violation of, and does not violate, by virtue of the ownership, use, maintenance or operation of the Charged Premises or the conduct of any business related thereto, any Applicable Laws, including all Environmental Laws;
- (n) The Charged Premises may be charged by the Borrower in compliance with the *Planning Act* (Ontario), and no severance of any adjoining lands owned by the Borrower is required;
- (o) All financial statements and data delivered or presented to the Lender by the Borrower pursuant to the Commitment or any of the Security up to and including the date hereof are true and correct in all material respects as at the dates and for the periods indicated and have been prepared in accordance with Canadian generally accepted accounting principles and disclose to the Lender all financial information relevant to the Lender in respect of making the Loan and there is no information, financial or otherwise, which has not been disclosed to the Lender which would be material to the Lender in its decision to advance the Loan, and, without limiting the foregoing, neither the Guarantor(s) nor the Borrower has failed to disclose to the Lender any facts or information material to the making of the Loan;
- (p) No Event of Default, or an event which with the giving of notice, lapse of time or otherwise, would constitute an Event of Default exists;
- (q) Each Permitted Encumbrance is in good standing and all obligations and covenants required to be met or complied with thereunder on the part of the Borrower have been complied with and, in respect to any other party thereto to the best of the Borrower's knowledge and belief, have been met or complied with;
- (r) All Leases entered into as of the date hereof are valid, subsisting and enforceable leases and are in good standing as of the date hereof without right of set-off or abatement;
- (s) The Borrower is not bound by any indenture, agreement, lease or other instrument, nor is it subject to any trust agreement, charter, by-law, unanimous shareholders agreement or other corporate restriction or any of the Applicable Laws, which materially adversely affects its business operations in respect of the Charged Premises or the performance of its obligations under this Charge or the Security;
- (t) The Borrower has complied with all Applicable Laws in respect of any residential unit located on the Charged Premises, including in respect of any conversion, demolition, rentals charged or filings or applications to be made and there are no outstanding orders, decisions or directives made or pending which are or would be adverse to the Borrower or the Charged Premises in respect of any residential unit located on the Charged Premises;
- (u) The Borrower is not a non-resident of Canada for the purposes of Section 116 of the *Income Tax Act* (Canada); and

- (v) The Borrower shall not, without the prior written consent of the Lender, execute or deliver any mortgage, charge, lien or other encumbrance of the Lands intended to rank subordinate to this Charge.
- 8.2 The representations and warranties set out in this Article VIII shall speak as of the date made, survive the execution and delivery of this Charge and the making of any advance hereunder and continue to be true and accurate during the Term of this Charge, notwithstanding any investigations or examinations which may be made by the Lender or the Lender's solicitors and the Lender shall be deemed to have relied on such representations and warranties in making advances under the Loan.
- 8.3 The Borrower shall indemnify and save harmless the Lender from and against all losses, damages, claims and expenses directly or indirectly incurred or suffered by the Lender resulting from any omission, inaccuracy or misrepresentation of the Borrower herein relating to or concerning the Charged Premises and with respect to all losses, charges, claims and expenses directly or indirectly incurred or suffered by the Lender resulting from or arising in connection with environmental matters relating to, arising from, in connection with or concerning the Charged Premises, whether referred to or contemplated herein or hereby.

#### **ARTICLE IX** **COVENANTS**

- 9.1 The Borrower covenants with the Lender that upon the occurrence of an Event of Default, the Lender shall have quiet possession of the Charged Premises, free from any encumbrances, save and except for the Permitted Encumbrances.
- 9.2 The Borrower shall not without the prior written consent of the Lender, which may be withheld in the sole discretion of the Lender permit or suffer to exist any charges, liens, security interests or other encumbrances against the Charged Premises, save and except for the Permitted Encumbrances; and the Borrower shall maintain the Permitted Encumbrances in good standing and provide notice to the Lender forthwith of any default under any of the Permitted Encumbrances.
- 9.3 The Borrower shall not initiate, permit or suffer to exist any Event of Insolvency, in respect of itself or, to the extent that the Loan, this Charge or the Security is affected by the occurrence of any such event, of any related person or corporation, including without limitation, any parent corporation of the Borrower. The Borrower covenants and agrees: (a) to provide two (2) Business Days' notice prior to the occurrence of an Event of Insolvency (an "**Insolvency Notice**"), and agrees that the receipt of an Insolvency Notice by the Lender shall constitute an immediate Event of Default if the Borrower or any Guarantor(s) is an applicant or takes the benefit of such statute or proceeding or if any of these proceedings otherwise affect the rights or entitlements of the Lender under the Loan, this Charge or the Security or the Lender's ability to enforce this Charge or the Security; and (b) prior to the commencement of any such proceedings, to deliver to the Lender copies of all relevant filing materials, including, without limitation, copies of draft court orders, plans of compromise, proposals and notices of intention, it being intended by the Borrower that the Lender be entitled during the period after receipt of an Insolvency Notice to enforce this Charge and the Security for the purpose of, among other things, taking possession and control of the Charged Premises, in the Lender's sole discretion.
- 9.4 The Borrower shall not, without the prior written consent of the Lender, initiate, join in or consent to any change to or modification in any private restrictive covenant, municipal or other governmental law, rule or regulation, by-law, or any other public or private restrictions, limiting or

defining the uses which may be made of the Charged Premises, or any part thereof and which could adversely affect the Charge, the Security, the day-to-day operations of the Charged Premises, the income derived therefrom or the value of the Charged Premises.

- 9.5** The Borrower shall comply in all respects with all covenants, deed restrictions, easements and Applicable Laws which pertain to the ownership, use or operation of the Charged Premises or the performance by the Borrower of its obligations under this Charge and shall ensure that all representations and warranties contained herein continue to be true and accurate at all times during the Term.
- 9.6** The Borrower shall permit the Lender, or cause to be made available to the Lender, access to all records, both written and electronic, pertaining to the Charged Premises and upon request shall make copies of such information for the Lender. For such purposes, the Lender shall have reasonable access to the Charged Premises or such other place as such records are kept upon reasonable prior written notice to the Borrower.
- 9.7** The Borrower shall fulfil on a timely basis any undertaking provided by it to the Lender at the time of the advance of the Loan.
- 9.8** The Borrower covenants to ensure that this Charge will remain a valid and enforceable mortgage of the Charged Premises with first priority subject only to the Permitted Encumbrances and the Borrower will fully and effectively maintain and keep the Security as valid and effective security during the currency hereof.
- 9.9** The Borrower shall promptly give written notice to the Lender of any litigation, proceeding or dispute affecting the Charged Premises if the result thereof might have a material adverse effect on the Charged Premises, the financial condition or operations of the Borrower or any Guarantor(s) or its ability to perform its obligations hereunder and shall, from time to time, furnish to the Lender all reasonable information requested by the Lender concerning the status of such litigation, proceeding or dispute and shall in all such cases diligently and in good faith proceed to defend, settle or otherwise deal with any such litigation, proceeding or dispute in a commercially reasonable manner.
- 9.10** The Borrower shall promptly give notice to the Lender upon becoming aware of and provide particulars in respect of:
- (a) an Event of Default or any event which with the passage of time or giving of notice would constitute an Event of Default;
  - (b) any default under a Lease;
  - (c) details of material renovations to the Charged Premises when the Borrower intends to or reasonably anticipates that it will renovate the Charged Premises;
  - (d) any default under any Permitted Encumbrance;
  - (e) any notice of expropriation, action or proceeding materially affecting the Charged Premises or the violation of any Applicable Law which may have a material adverse affect on the Charged Premises; and

- (f) any matter which may have a material adverse affect upon the Borrower or the Guarantor(s) or Charged Premises or the operations conducted thereon, or the security constituted by this Charge and the Security.

**9.11** The Borrower covenants at all times:

- (a) to perform or cause to be performed all of the covenants and obligations on the part of lessor contained in the Leases (except the extent the same have been expressly waived by the other parties to such Leases and except in circumstances where the tenant is in default and the Borrower is acting prudently and in the best interests of the Charged Premises);
- (b) to maintain or cause to be maintained the Lease Rights in good standing and not to do, permit to be done or omit to do anything which may impair the enforceability of the Lease Rights;
- (c) save for the deposits for the first and last month rentals, not to accept Rents more than one (1) month in advance of the dates when Rents fall due;
- (d) not to enter into Leases which are not at arm's length unless the terms thereof are at least equal to current market terms;
- (e) not to enter into any Lease which does not constitute a Major Tenant Lease unless such Leases are substantially on Lender pre-approved standard lease forms and not to enter into Major Tenant Leases without the Lender's approval as hereafter provided;
- (f) not to or to permit termination, alteration or amendment or waiver of rights or remedies or otherwise take any action with respect to any of the Leases which in the aggregate would create a material reduction in Rents from those payable as of the date hereof, without the prior approval of the Lender;
- (g) not to further assign, mortgage or pledge or permit the assignment, mortgaging or pledging of any Lease or the rents thereunder; and
- (h) to ensure in respect of all Leases now or hereafter entered into that: (i) the tenant thereunder, at the option of the Lender, subordinates its Lease to the security of this Charge and attorns to and becomes a tenant of the Lender or any purchaser from the Lender in the event of the exercise of a sale remedy by the Lender, for the unexpired residue of the term and upon the terms and conditions of said Lease, provided that the Lender will agree to enter into non-disturbance agreements on commercially reasonable terms with all such tenants; and (ii) at the request of the Lender, provide as further Security specific assignments of any Lease hereinafter entered into.

**9.12** The Borrower shall not, without the prior written consent of the Lender, acting reasonably and promptly, enter into any agreement or document in respect of the Charged Premises (except for leases in accordance with the terms hereof and the Security) which is material to the ownership,

value, operation, or use of the Charged Premises unless the same is in the ordinary course of business.

- 9.13** With respect to any Major Tenant Lease, the Borrower shall not and shall not permit without the prior written consent of the Lender:
- (a) cancel or modify any Major Tenant Lease, release the obligations of any lessee thereunder, accept a surrender of a Major Tenant Lease, accept any prepayment of Rents thereunder or consent to any sublet or assignment by the lessee under any Major Tenant lease (except where the provisions of such Major Tenant Lease require the landlord to do so);
  - (b) enter into any Major Tenant Lease unless the terms, form and substance of such Major Lease is satisfactory to the Lender, acting reasonably; or
  - (c) to further assign, mortgage, pledge, hypothecate or otherwise deal with any Major Tenant Lease.
- 9.14** The Borrower shall do or cause to be done all things necessary to keep in full force and effect all rights, franchises, licences and qualifications necessary or incidental to perform or cause to be performed its obligations contained in this Charge and the Security and to carry on its business pertaining thereto as presently carried on.
- 9.15** The Borrower shall from time to time to pay or cause to be paid all amounts related to taxes, wages, workers compensation obligations, government royalties, and any other similar amounts relating to the business conducted on the Charged Premises if non-payment thereof may result in an encumbrance (other than a Permitted Encumbrance) against the Charged Premises or any of the assets secured in favour of the Lender by the Security.
- 9.16** The Borrower shall not, without the prior written consent of the Lender, acting reasonably and promptly, cause or permit any change in the status of the Borrower that results in the representation contained in Section 8.1(u) ceasing to be accurate.
- 9.17** The Borrower covenants, subject to the rights of reorganization herein contained, to continue as a corporation duly organized, validly subsisting and in good standing under the laws of its incorporating jurisdiction and maintain all necessary corporate power and authority to perform or cause to be performed its obligations contained herein and in the Security, to own and operate the Charged Premises and to carry on its business pertaining thereto as presently carried on.
- 9.18** The Borrower covenants that, unless in respect of a reorganization of the Borrower permitted under Section 18.1(h) or with the consent of the Lender as provided therein, no steps or proceedings will be taken to amend or supersede the articles or bylaws of the Borrower and in any event no steps or proceedings, including any reorganization of the Borrower, will be taken in a manner which would

impair or limit the Borrower's or its successor's ability to perform its obligations hereunder or under the Security.

- 9.19** The Borrower will not enter into any indenture, agreement, lease or other instrument, nor become subject to any trust agreement, charter, by-law, unanimous shareholders agreement or other corporate restriction, which materially adversely affects the Charged Premises.

**ARTICLE X**  
**TAXES/LIENS**

**10.1**

- (a) The Borrower shall pay or cause to be paid, all Taxes together with such other amounts, the failure to pay which would give rise to a lien against the Charged Premises, as and when the same shall fall due and payable (collectively, the "**Bills**").
- (b) The Borrower shall make arrangements to have the Taxes paid by monthly installments to the appropriate taxing authority in order to have them paid in full on their due date, and the Borrower shall provide evidence of such payments to the Lender on a quarterly basis.
- (c) With respect to Taxes, upon and during the continuance of an Event of Default, at the option of the Lender the Borrower shall pay to the Lender in equal monthly instalments on the first day of each month in each calendar year during the Term, commencing on the first day of the month next following the Interest Adjustment Date, one-twelfth (1/12) of the annual Taxes (or such amount as may be required in order to pay the Taxes as they become due) as reasonably estimated by the Lender; said payments of Taxes shall be paid to the Lender in addition to the instalments of interest due and payable under this Charge, to be deposited upon receipt and held by the Lender in an interest-bearing account for the payment of Taxes, with interest to accrue thereon to the benefit of the Borrower and to be credited in reduction of the amount required to be paid to the Lender for Taxes. The Lender agrees that upon and subject to receipt of monies for Taxes it will remit such monies to the proper municipal offices in payment of Taxes as required from time to time; provided that if any Event of Default shall occur and be continuing, then the Lender, at its sole option, may apply all or any part of any funds held in such account to any amount due hereunder, whether principal, interest or otherwise. The Borrower shall also pay, or cause to be paid, to the Lender before the due date for the payment of Taxes (or next periodic instalment date therefor, as the case may be) any sums in addition to the aforesaid monthly instalments which may be required in order that out of such sums held in trust or escrow by the Lender and such additional sums, the Lender may pay the whole amount of Taxes assessed thereto, on the due date for payment thereof. Notwithstanding the foregoing provisions of this Section 10.1(b), the Borrower acknowledges that the Lender is under no obligation to collect from the Borrower monthly instalments on account of Taxes. In addition, the Borrower acknowledges its obligation to pay all Taxes when due, whether or not the payment of all Taxes are the responsibilities of tenants and whether or not such tenants have remitted the same to the Borrower.
- (d) The Lender may, after written notice being given to the Borrower, pay all unpaid and due Taxes, and any amounts, the failure to pay which would give rise to a lien and any amounts so paid by the Lender shall become part of the Principal hereby secured and be a charge on the Charged Premises in favour of the Lender and shall be payable forthwith by the Borrower to the Lender with interest at the Applicable Rate until paid.

- (e) If the Charged Premises or any part thereof are sold or forfeited for nonpayment of Taxes while any sum remains unpaid hereunder, the Lender may acquire the title and rights of the purchaser at any sale, or the rights of any other person or corporation becoming entitled on or under any such forfeiture, or the Lender may pay, either in its own name or in the name of the Borrower and on the Borrower's behalf, any and all sums necessary to be paid to redeem such land so sold or forfeited, and to revest such lands in the Borrower, and the Borrower hereby nominates and appoints the Lender as agent to pay such monies on the Borrower's behalf and in the Borrower's name, and any monies so expended by the Lender shall become part of the Principal Sum hereby secured and be a charge on the Charged Premises in favour of the Lender and shall be payable forthwith by the Borrower to the Lender and until so paid shall bear interest at the Applicable Rate or in the alternative, the Lender may purchase the Charged Premises at any tax sale of the same.
- (f) Notwithstanding anything to the contrary herein contained, the Borrower shall have the right to contest or defend any actions brought to recover, or appeal any judgments recovered against it in respect of any Bills, or other like charges, or any construction or other liens levied or registered against the Charged Premises, by appropriate proceedings diligently conducted in good faith, provided that the Borrower shall have first deposited with the Lender, or otherwise provided to the reasonable satisfaction of the Lender, such security as the Lender acting reasonably may require including, without limitation, security for the payment of such Bills, charges or liens and any costs payable in connection therewith, and further provided that the Lender shall have determined, to its reasonable satisfaction, that any such contest, defence or appeal or any delay or nonpayment of such Bills, charges or liens shall not materially prejudice the prior charge or lien of this Charge or the title of the Borrower to the Charged Premises. Should the Lender at any time thereafter determine, in its reasonable discretion, that any such contest, defence or appeal or any delay or nonpayment of such Bills, charges or liens shall materially prejudice the prior charge or lien of this Charge or the title of the Borrower to the Charged Premises, the Lender may realize upon such security for payment as aforesaid and pay such Bills, charges or liens. Upon termination of such proceedings, the Borrower shall promptly pay or cause to be paid the amount of the Bills, charges or liens and any other costs, fees, interest and penalties as are properly payable upon determination of such proceedings and promptly cause any tax notifications, caveats, liens, certificates of or pertaining litigation or any other form of notice or encumbrance in respect thereof to be promptly discharged from the title to the Charged Premises at the sole expense of the Borrower whereupon all such security deposited or otherwise provided to the Lender and any proceeds from the realization thereof not paid on account of Bills as aforesaid, shall be returned and paid to the Borrower.
- (g) The Borrower agrees to and does hereby indemnify the Lender against all claims, demands, costs, damages and expenses which arise in respect of any default, late payment, omission, act or proceeding by the Borrower, under or in respect of this Section 10.1.
- (h) If the Lender comes into and for as long as it is in possession of the Charged Premises, the Lender, in its sole discretion, shall be entitled to and shall enjoy all the rights of the Borrower set out in Section 10.1(d), to the exclusion of the Borrower.

## **ARTICLE XI** **INSURANCE**

- 11.1** The Borrower shall obtain and maintain at all times the insurance coverage, including without limitation the insurance coverage required for properties under construction, with respect to the

Charged Premises required pursuant to Schedule "A" of the Commitment. Such insurance shall be placed with a company approved by the Lender. Evidence of continuation of all such insurance having been effected shall be produced to the Lender at least thirty (30) days before the expiration thereof; otherwise the Lender may provide therefore and charge the premium paid and interest thereon at the rate provided for in the Charge to the Borrower and the same shall be payable forthwith and shall also be a charge upon the land. It is further agreed that the Lender may at any time require any insurance of the buildings to be cancelled and new insurance effected in a company to be named by the Lender and also of his own accord may effect or maintain any insurance herein provided for, and any amount paid by the Lender therefore shall be payable forthwith by the Borrower with interest at the rate provided for in the Charge and shall also be a charge upon the land. Policies of insurance herein required shall provide that loss, if any, shall be payable to the Lender as his interest may appear, subject to the standard form of mortgage clause approved by the Insurance Bureau of Canada which shall be attached to the policy of insurance.

## **ARTICLE XII**

### **ENVIRONMENTAL**

**12.1** The following capitalized terms shall have the following respective meanings:

**"Environmental Approvals"** means all applicable permits, licences, authorizations, consents, directions or approvals required by Governmental Authorities pursuant to the Environmental Laws with respect to the use, occupation, ownership or operation of the Charged Premises;

**"Environmental Laws"** means all applicable federal, provincial and municipal laws, by-laws, regulations, executory orders, judgments and protocols, relating in whole or in part, to the environment or its protection, and without restricting the generality of the foregoing, includes without limitation, those laws relating to the manufacturing, processing, use, handling, packaging, labelling, sale, storage, recycling, transportation, treatment, destruction, burial or disposal of Hazardous Substances, employee safety, and the emission, discharge, release, deposit, issuance, spraying, dumping, throwing, pouring, spilling, emptying, placing, leaking, seeping, exhausting or abandonment of Hazardous Substances into the atmosphere, air, surface water, ground water, land surface or subsurface strata and, in each such case, as such Environmental Laws may be amended or supplemented from time to time, and "Environmental Law" means any of them;

**"Hazardous Substance"** means any pollutant, contaminant, waste, hazardous waste, toxic substance or dangerous good which is defined or identified in or the object of any Environmental Law, the presence of which in the environment is in contravention of any Environmental Law; and

**"Inspections"** means all inspections, evaluations or tests conducted by the Lender or any agent or consultant thereof for the purpose of determining the environmental condition of the Charged Premises, as the Lender may deem appropriate, acting reasonably.

**12.2** The Borrower represents and warrants (which representations and warranties shall continue throughout the Term of the Loan) that:

- (a) the condition and use of the Charged Premises is and, to the best of the Borrower's knowledge, any prior use of the same was, in compliance in all material respects with all applicable Environmental Laws;
- (b) the Charged Premises is not subject to any judicial or administrative proceedings alleging violation of any Environmental Laws and there are no outstanding orders or proceedings



against the Charged Premises from a Governmental Authority responsible for protecting the environment alleging the violation of any Environmental Laws;

- (c) to the knowledge of the Borrower, the Charged Premises is not the subject of any investigation by Governmental Authorities having jurisdiction evaluating whether any remedial action is needed to respond to a contravention of any Environmental Laws; and
- (d) there is no contingent liability of which the Borrower has knowledge or reasonably should have knowledge in connection with the contravention of any Environmental Laws.

**12.3** The Borrower covenants with the Lender:

- (a) if not already provided, to provide to the Lender within ninety (90) days of the execution of this Charge, an environmental audit with respect to the Lands, and if an event shall have occurred after the date of this Charge, which the Lender, acting reasonably, believes may have resulted or may result in material adverse change in the environmental condition of the Charged Premises or any part thereof, to provide such further environmental audits as the Lender may require;
- (b) to provide notice within fifteen (15) days of either having learned of any enactment or promulgation of any Environmental Laws which may result in any material adverse change in the condition, financial or otherwise, of the Charged Premises;
- (c) to defend, indemnify and hold harmless the Lender, its directors, officers, employees, agents and their respective successors and assigns, against any and all loss, cost, expense, claim, liability or alleged liability arising out of any environmental damage occasioned to the Charged Premises contravention of any Environmental Laws;
- (d) to, at all times and at its own expense, conduct its business and maintain the Charged Premises in compliance with all Environmental Laws and Environmental Approvals including causing all tenants of the Charged Premises to comply with the same;
- (e) if the Borrower:
  - (i) receives notice from any Governmental Authority having jurisdiction that violation of any Environmental Law or Environmental Approval has been committed by the Borrower or any tenant with respect to the Charged Premises;
  - (ii) receives notice that any remedial order or other proceeding has been filed against the Borrower or any tenant alleging in respect of the Charged Premises violations of any Environmental Law or requiring the Borrower to take any action in connection with the release of a Hazardous Substance into the environment; or
  - (iii) receives any notice from a Governmental Authority having jurisdiction in respect of the Charged Premises that the Borrower or any tenant may be liable or responsible for costs associated with a nuisance or a response to, or clean up of, a release of a Hazardous Substance into the environment or any damages caused thereby;

to provide to the Lender a copy of such notice within ten (10) days of the Borrower's receipt thereof, and thereafter shall keep the Lender informed in a timely manner of any

developments in such matters, and shall provide to the Lender such other information in respect thereto as may be reasonably requested by the Lender from time to time and shall proceed to deal with the same diligently and in good faith in order to bring the Charged Premises into compliance to the extent necessary to comply with Environmental Laws;

- (f) unless in existence on the Charged Premises on the date of this Charge, not to use, discharge, transport or install in or upon the Charged Premises any material or equipment containing PCBs or permit any tenant of the Charged Premises to do so and, to the extent in existence on the Charged Premises as of the date of this Charge, to maintain the same in compliance with all Environmental Laws;
- (g) to maintain, and to require all occupants of the Charged Premises to maintain in good leak-proof condition all above- ground and underground storage tanks and drums on the Charged Premises;
- (h) not to install asbestos or permit asbestos to be installed in the Charged Premises. With respect to any asbestos present in the Charged Premises on the date of this Charge, the Borrower shall, at its expense, promptly comply with the requirements of Environmental Laws and Governmental Authorities respecting the use, removal and disposal of asbestos; and
- (i) to obtain or cause to be obtained copies of all relevant environmental studies or assessments of the Charged Premises which the Borrower or its solicitors or agents have commissioned or which are in the possession or control of the Borrower, as of the date of this Charge and, to the extent any such assessments or studies are required by the Lender from time to time, to promptly provide same to the Lender upon request and hereby authorizes and directs its solicitors, agents and consultants to promptly release same to the Lender.

**12.4** Having due regard to the rights of any tenant of the Borrower, the Lender and its employees and agents shall have the right, and are hereby granted permission by the Borrower, to enter the Charged Premises from time to time, and to have access to the Borrowers' relevant documents and records, in order to conduct Inspections, to determine compliance with Environmental Laws as the Lender, acting reasonably, may deem appropriate. Inspections shall be:

- (a) at such times and to such extent as may be reasonable in the circumstances on prior notice to the Borrower if the Lender has reasonable grounds for believing that:
  - (i) there are, contrary to Environmental Laws or Environmental Approvals, Hazardous Substances in or upon the Charged Premises which have not been disclosed to and approved by the Lender and appropriate Government Authorities; or
  - (ii) the Borrower is in breach of any environmental representations in this Charge or its covenants in this Article; or
  - (iii) the Borrower is not in compliance with any Environmental Laws or material Environmental Approvals; and
- (b) at any time without prior notice upon the occurrence of an Event of Default which is continuing.

If the Borrower is found not to be in compliance with the Environmental Laws or Environmental Approvals and such failure to comply becomes an Event of Default that is continuing, the Lender may, at its option (but without any obligation to do so) take such actions as are required, acting reasonably, to bring the Charged Premises into compliance, and the costs thereof shall immediately become due and payable to the Lender by the Borrower and shall be secured by the Security.

- 12.5** The Lender shall not, by virtue of being the chargee under this Charge or the enforcement of its rights contained herein for purposes of the Environmental Laws, be or be deemed to be the owner of, any of the Charged Premises, or to have management, charge, control, occupation or possession of any of the Charged Premises or the businesses of the Borrower, or of any Hazardous Substances located on, upon or within any of the Charged Premises.
- 12.6** The Borrower hereby covenants and agrees to be responsible for, and to indemnify and hold harmless the Lender and each of its officers, directors, employees and agents and their respective successors and assigns (in this Section, collectively referred to as the "**Indemnified Parties**") from and against all claims, demands, liabilities, losses, costs, damages and expenses (including, without limitation, reasonable legal fees and all costs incurred in the investigation, pursuing of any claim, or in any proceeding with respect to, defense and settlement of any item or matter hereinafter set out) that the Indemnified Parties may incur or suffer, directly or indirectly as a result of or in connection with:
- (a) any inaccuracy in or breach of the Borrower's representations and warranties relating to the environmental matters contained herein;
  - (b) the presence of any Hazardous Substance on, upon or within the Charged Premises, or the escape, seepage, leakage, spillage, discharge, emission, release, disposal or transportation away from the Charged Premises of any Hazardous Substance, whether or not there is compliance with all applicable Environmental Laws and Environmental Approvals;
  - (c) the imposition of any remedial order affecting the Lands, or any non-compliance with Environmental Laws or Environmental Approvals pertaining to the Charged Premises by any person, including the Borrower, the Lender or any person acting on behalf of the Lender; and
  - (d) any diminution in the value or any loss on the disposition of the Charged Premises arising directly or indirectly as a result of the presence on the Lands of any Hazardous Substance, or as a result of the imposition of any remedial order or the breach by any person of any Environmental Law or Environmental Approval.

This indemnity shall survive the satisfaction and release of this Charge and the Security and the payment and satisfaction of all indebtedness hereunder. The benefit of this indemnity may be assigned by the Lender to any successor or assign of the Lender and the Borrower hereby consents to any such assignment.

### **ARTICLE XIII** **ASSIGNMENT OF RENTS AND LEASES**

- 13.1** As further security for the payment of all monies owing and the performance of all obligations to be performed hereunder, the Borrower does, as and by way of security, hereby sell, assign, transfer and set over unto to the Lender all of the Borrower's right, title and interest, both at law and equity, in and to the Lease Rights, to hold and receive the same unto the Borrower with full power and

authority to demand, collect, sue for, recover and receive and give receipts for Rents and enforce payments of the same and enforce performance of the obligations of tenants under the Leases, provided, however, that, subject to the terms of this Charge, the Borrower shall have the full right, so long as no Event of Default has occurred and is continuing, to continue to collect Rents, to take or cause to take all actions as it deems necessary with respect to the Lease Rights, acting as a reasonable lessor.

- 13.2** It is expressly acknowledged and agreed by the Borrower that nothing contained in this Charge shall oblige the Lender to assume or perform any obligation of the Borrower to any third party in respect of or arising out of the assigned Lease Rights. The Lender may, however, after the occurrence of an Event of Default and while such Event of Default continues, at its option, assume or perform any such obligation as the Lender considers necessary or desirable to obtain the benefit of the Lease Rights, free of any set-off, reduction or abatement, and any money expended by the Lender in this regard shall form part of or be deemed to form part of the indebtedness secured by this Charge and shall bear interest at the Applicable Rate.

#### **ARTICLE XIV** **MANAGEMENT AND REPAIR**

- 14.1** The Borrower shall cause the Charged Premises at all times to be professionally maintained, managed and operated and fully and continuously operational during customary business hours, including all uses ancillary or incidental to its operations, at all times, by competent managers and staff of proper background and training, in a first class manner consistent with the management and operation of other properties which are of size, location, use, class, age and type comparable to the Charged Premises, and the Borrower shall obtain the Lender's prior written approval of any manager and any management contract with any manager which may be entered into by the Borrower for the management of the Charged Premises. In addition to any other rights hereunder of the Lender, the Lender shall have the right, acting reasonably, to replace the manager at the expense of the Borrower in the event the management standards are not maintained as required hereunder and the situation is not remedied within thirty (30) days after written notice from the Lender. The Lender acknowledges and approves, as of the date hereof, of the Borrower or a company controlled by the Borrower acting as manager of the Charged Premises provided that the Charged Premises are managed and maintained in accordance with the provisions hereof.
- 14.2** The Borrower shall promptly repair, maintain, restore, replace, rebuild, keep, make good, finish, add to and put in order, or cause to be so done, the Charged Premises, so that the same shall, at all times, be in good condition and repair and to pay or cause to be paid when due all claims for labour performed and materials furnished therefor. The Borrower shall not commit or suffer any waste of the Charged Premises nor take any action that might invalidate or give cause for cancellation of any insurance maintained in respect of the Charged Premises. No building or other property now or hereafter charged by this Charge shall be removed, or demolished or nor shall the structure of any building be materially altered, redeveloped, retrofitted or renovated, without the prior written consent of the Lender, except that the Borrower shall have the right, without such consent, to remove and dispose of, free from the lien or charge of this Charge, such fixed equipment as from time to time may become worn out or obsolete, provided that either (a) simultaneously with or prior to such removal, and if necessary for the operation of the Charged Premises such equipment shall be replaced with other equipment of a quality comparable to that of the replaced equipment and free from any lien, title retention agreement, conditional sale contract, security agreement or other encumbrance, and by such removal and replacement the Borrower shall be deemed to have subjected such fixed equipment to the lien or charge of this Charge, or, (b) any net cash proceeds received from such disposition shall, at the option of the Lender, be paid over promptly to the

Lender to be applied in a manner determined by Lender in its sole discretion toward the payment of any amounts owing hereunder or secured hereby. The Borrower shall notify the Lender promptly of any material damage to or defects in any of the Improvements, and thereafter forthwith shall make or cause to be made such repairs thereto as are required to correct any such damage or defects and return the Charged Premises to a state of condition and repair equivalent to the state of condition and repair required by the provisions of this Charge.

- 14.3** The Borrower shall comply with, or cause to be complied with, all statutes including without limitation the provisions of the *Construction Act* (Ontario), ordinances and requirements of any Governmental Authority having jurisdiction with respect to the Charged Premises; the Borrower shall complete and pay for, within a reasonable time, any structure at any time in the process of construction on the Charged Premises.
- 14.4** The Borrower shall permit the Lender or its authorized agents at all reasonable times to enter upon the Charged Premises and inspect same, and if such inspection reveals that any repairs or like actions are necessary, the Lender may give notice to the Borrower requiring the Borrower to repair, rebuild or reinstate the same, or take such other like action within a reasonable time. Any failure by the Borrower to comply with such notice shall constitute an Event of Default hereunder and the Lender may repair, rebuild or reinstate the Charged Premises at the cost of the Borrower and charge all sums of money determined by the Lender to be properly paid therefor and interest thereon at the Applicable Rate until paid.

#### **ARTICLE XV** **INCREASED COSTS**

- 15.1** In the event that as a result of any application of or any change in or enactment of any applicable law, regulation, treaty or official directive after the date hereof (whether or not having the force of law), or in the interpretation of application thereof by any court or by any governmental or other authority or entity charged with the administration thereof which now or hereafter:
- (a) Subjects the Lender to any tax or changes the basis of taxation, or increases any existing tax, on payments of principal, interest or other amounts payable by the Borrower to the Lender under this Charge (except for taxes on the overall net income of the Lender or capital of the Lender imposed by the Government of Canada or any political subdivision thereof or by the jurisdiction in which the principal or lending office of the Lender is located); or
  - (b) Imposes, modifies or deems applicable any special requirements against assets held by, or deposits in or for the account of or any other acquisition of funds by the Lender or imposes on the Lender a requirement to maintain or allocate capital or additional capital in relation to the Loan; or
  - (c) Imposes on the Lender any other condition with respect to this Charge; or
  - (d) Renders any portion of this Charge illegal or unenforceable;

and the result of any of the foregoing is to increase the cost to the Lender, or reduce the amount of principal, interest or other amount received or receivable by the Lender hereunder or its effective return hereunder in respect of making or maintaining the Loan hereunder or to reduce the payments receivable by the Lender in respect of the Loan by an amount which the Lender deems to be material, the Lender shall promptly give written notice thereof to the Borrower setting out in

reasonable detail the facts giving rise to and a summary calculation of such increased costs or reduced payments, and the Borrower shall forthwith pay to the Lender upon receipt of such notice that amount which will compensate the Lender for such additional cost or reduction in income (herein referred to as "**Additional Compensation**"). Upon the Lender having determined that it is entitled to Additional Compensation in accordance with the provisions of this Section, the Lender shall promptly so notify the Borrower. The Borrower shall forthwith pay to the Lender upon receipt of such notice such Additional Compensation calculated on the date of demand. The Lender shall be entitled to be paid such Additional Compensation from time to time to the extent that the provisions of this Section are then applicable notwithstanding that the Lender has previously been paid any Additional Compensation. The Lender shall endeavour to limit the incidence of any such Additional Compensation, including seeking recovery for the account of the Borrower, by appealing any assessment at the expense of the Borrower upon the Borrower's request.

**15.2** All payments made by the Borrower to the Lender will be made free and clear of all present and future taxes, withholdings or deductions of whatever nature arising as a result of such payments. If these taxes, withholdings or deductions arising as a result of such payments are required by Applicable Law and are made, the Borrower shall, as a separate and independent obligation, pay to the Lender all additional amounts as shall fully indemnify the Lender from any such taxes, withholding or deduction arising as a result of such payments. Provided, however, that the Borrower shall have no obligation to pay any taxes, withholdings or deductions arising as a result of payments made by the Borrower to the Lender which may be exigible, incurred or required as a result of the Lender being a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

**15.3** If the result of any law, regulation, treaty or official directive or request or any change in or any introduction thereof or change in the interpretation or application thereof or compliance by the Lender with the same (including, without limitation, those relating to taxation, reserve requirements, capital adequacy or other banking or monetary controls) is such that it is or will become (other than as a result of some positive action of the Lender, including any participation or syndication hereof by the Lender) unlawful for the Lender to make, fund or allow to remain outstanding all or part of the Loan, or to carry out all or any of its other obligations under this Charge and/or the Security or receive interest or any fee at the Applicable Rate, then in such case:

- (a) the Lender may give written notice to the Borrower of such law, regulation, treaty or official directive or request (whether or not having the force of law) or such change in or any introduction thereof or change in the interpretation or application thereof or compliance by the Lender with the same (including, without limitation, those relating to taxation, reserve requirements, capital adequacy or other banking or monetary controls) which such notice shall certify that such law, regulation, treaty, official directive or request is generally applicable to all other borrowers from the Lender with any accommodation similar to that herein provided; and
- (b) the Borrower shall prepay the Indebtedness on such date and to such extent as the Lender shall certify to be necessary to comply with the relevant law or change described above;

provided, however, that should the Loan become unlawful, the Lender, without prejudice to its rights to require repayment and without any obligation on its part, will consider other means of funding the Loan which would not be unlawful, would allow the Lender to carry out its obligations in respect of the Loan and would enable the Lender to receive interest at the Applicable Rate, provided always, notwithstanding the foregoing, the Lender is not obligated to provide alternate funding.

**ARTICLE XVI**  
**OBTAINING AND MAINTAINING SECURITY**

- 16.1** Regardless of whether such sums are advanced or incurred with the knowledge, consent, concurrence or acquiescence of the Borrower or otherwise and in addition to any other amounts provided for herein or otherwise permitted by Applicable Law to be secured hereby, except as herein otherwise provided, the following are to be secured hereby and shall be a charge on the Charged Premises, together with the interest thereon at the Applicable Rate, and all such monies shall be repayable to the Lender, on demand, except as herein otherwise provided:
- (a) all reasonable and properly chargeable solicitor's, inspector's, valuator's, consultant's, architect's, engineer's, surveyor's and appraiser's fees and out-of-pocket expenses:
    - (i) for drawing and registering this Charge and the Security and financing statements in connection therewith, and attending to advances hereunder;
    - (ii) for examining the Charged Premises and the title thereto up to the date hereof;
    - (iii) for making and maintaining this Charge as a registered charge on the Charged Premises and maintaining the Security (including the registration and filing of renewals);
    - (iv) for the preparation of this Charge, the Security and any related documents and in exercising or enforcing or attempting to enforce or advising the Lender in respect of defaults hereunder or in pursuit of any right, power, remedy or purpose hereunder or subsisting at law; and
    - (v) reasonable allowance for the time, work and expenses of the Lender or of any agent of the Lender in connection therewith;
  - (b) all reasonable sums which the Lender may from time to time advance, expend, incur or suffer hereunder:
    - (i) for insurance premiums, Bills, Taxes, rates, or in or toward payment of prior liens, charges, encumbrances or claims charged or to be charged against the Charged Premises;
    - (ii) in maintaining, repairing, restoring or completing construction of the Charged Premise; and
    - (iii) in inspecting, leasing, managing or improving the Charged Premises as permitted hereunder, including the price or value of any goods of any sort or description supplied to be used on the Charged Premises as permitted hereunder; and
  - (c) Without limiting the generality of any of the foregoing, the then current reasonable fee of the Lender and/or its solicitor for the following matters:
    - (i) executing any cessation or discharge of this Charge, notwithstanding that said cessation or discharge may have been prepared by the Borrower;

- (ii) entering into an agreement to amend the interest rate or any other provision in the Charge;
- (iii) handling any dishonored cheque;
- (iv) preparing an amortization schedule showing the principal and interest components of payments due under this Charge;
- (v) the cost of completing a Phase I & II Environmental Audit and such other environmental audits as the Lender may require in its discretion;
- (vi) such other administrative matters as the Lender may perform with regards to the Charge or with regards to any collateral security, as permitted by the Commitment;
- (vii) the fee charged by the Lender's insurance consultant to review the Borrower's policy of insurance for the subject lands including business interruption insurance if required by the Lender; and
- (viii) the execution and delivery of any consents, postponements, acknowledgments or any other documents that may be required from the Lender, whether from the Borrower and/or any governmental authorities and/or public/private utilities.

**16.2** If any action or proceeding be commenced (except an action to foreclose this Charge or to collect the money that is secured hereby) in which the Lender becomes a party or participant by reason of being the holder of this Charge or the indebtedness secured hereby, all sums paid by the Lender for the expense of so becoming a party or participating (including all reasonable and properly chargeable legal costs) shall, on written notice, be paid by the Borrower, together with interest thereon at the Applicable Rate from the dates of payment of such sums by the Lender, and shall be a lien and charge on the Charged Premises, prior to any right or title to, interest in, or claim upon the Charged Premises subordinate to the lien and charge of this Charge, and shall be deemed to be secured by this Charge, and that in any action or proceeding to foreclose this Charge, or to recover or collect the indebtedness secured hereby, provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

## **ARTICLE XVII**

### **CONDEMNATION AWARDS**

**17.1** The Borrower shall notify the Lender promptly upon it being aware of any and all awards or payments ("**Condemnation Award(s)**") including interest thereon, and the right to receive the same (save for any portion of any such Condemnation Award paid for remedial purposes and which is actually used for such purpose) which may be made with respect to the Charged Premises, or any part thereof, as a result of:

- (a) Any condemnation, eminent domain, compulsory acquisition, expropriation or like procedures ("**Condemnation**"), partial or complete, including any sidewalk or lane; or
- (b) The imposition, and enforcement, of any restriction, regulation or condition to meet any building or development guideline for development or restriction of or by any municipality or other competent authority; or



- (c) Any other material injury to or decrease in the value of the Charged Premises by any lawful regulation or any governmental authority having jurisdiction;

(each being hereinafter called an "**Incident of Expropriation**") to the extent of all amounts which may be secured by this Charge at the date of receipt of any such Condemnation Award by the Borrower. Notwithstanding the occurrence of any Incident of Expropriation, the Borrower shall continue to pay interest at the Applicable Rate on the Principal Sum. The Borrower does hereby change, assign, set over as transfer to the Lender, as security for the repayment of all Indebtedness.

- 17.2** Any Condemnation Award received by the Lender shall be held by the Lender as part of the security for the Loan subject to application as provided in this Article 17. Pending such application, such amounts received shall be held and invested by the Lender, acting reasonably. If at any time an Event of Default has occurred and is continuing, the Lender may, at its option, apply such amounts in reduction of the amounts owing hereunder.
- 17.3** Notwithstanding the provisions of Section 17.1 and Section 17.2, in the event that any Incident of Expropriation shall occur which, in the reasonable opinion of the Lender, would materially and adversely affect the security of the Charge or any other Security after the application of any Condemnation Award pursuant to Section 17.1, the Lender may, at its option, declare such Incident of Expropriation to be an Event of Default and be entitled to exercise any and all rights and remedies available to it hereunder at law or in equity.

#### **ARTICLE XVIII** **EVENTS OF DEFAULT**

- 18.1** The whole of the Principal Sum together with interest thereon at the Applicable Rate, interest on overdue interest and any amounts payable pursuant to Article 6, and all other amounts secured hereby shall, at the option of the Lender, subject to Section 18.2, become due and payable and all powers conferred on the Lender herein and hereby shall become exercisable, in like manner to all intents and purposes as if the time herein mentioned for payment of such Principal monies had fully come and expired, if specifically provided for in this Charge, or if any of the following events shall occur (the occurrence of any such event together with the expiry of the applicable cure period, if any, and any other occurrence specifically provided for herein as an Event of Default being collectively referred to as an "**Event of Default**"):
- (a) upon default in payment of any regularly schedule instalment of interest beyond the date such payment is due and payable; or
- (b) upon default in payment of the Indebtedness due and owing on the Maturity Date; or
- (c) upon default in payment of any Indebtedness (other than an instalment of interest and upon maturity) due hereunder within three (3) Business Days after written notice thereof is provided by the Lender; or
- (d) save as otherwise provided for in Section 18.1(a), Section 18.1(b) and Section 18.1(c) or otherwise specifically provided herein, upon any default in the performance of any covenant or obligation of the Borrower hereunder within thirty (30) days after written notice thereof is provided by the Lender, provided that if such default is curable and the nature of such default is such that the exercise of reasonable diligence of more than thirty (30) days is required to cure such default, and if such default in the Lender's reasonable discretion does not jeopardize or adversely effect the security interest of the Lender

hereunder or adversely affect the Borrower or its ability to perform its obligations hereunder or under the Security or adversely affect the Charged Premises, the Lender will not, for such longer period as is reasonably necessary to cure such default and so long as no other Event of Default has occurred, enforce its remedies in respect of such default while and so long as during such time the Borrower is actively continuing to diligently and in good faith cure such default; or

- (e) if at any time during the Term there is a breach of any representation or warranty contained herein or at any time during the Term if any representation or warranty contained herein is no longer true or accurate or becomes untrue or inaccurate for any reason and provided the same can be rectified, and the same is not rectified within thirty (30) days after written notice thereof is provided by the Lender; or
- (f) upon the assignment by the Borrower to any other party of the whole or a part of the rents, income or profits arising from the Charged Premises, without the written consent of the Lender; or
- (g) the occurrence of an Event of Insolvency; or
- (h) if without the prior written consent of the Lender, in its sole and absolute discretion, the Borrower transfers, sells, conveys, or otherwise disposes of all or any part of the Charged Premises, or any interest therein (other than by way of Leases), whether legal or beneficial or enters into any transaction or series of transactions where all or any part of the Charged Premises becomes the property of another person, whether through reorganization, amalgamation, merger, consolidation or otherwise, or if there is any change in the legal or beneficial interest, in whole or in part, of the Charged Premises; or
- (i) if, without the prior written consent of the Lender, in its sole and absolute discretion:
  - (i) there is any change in the Borrower's corporate control or change in the Borrower's effective control existing as of the date of this Charge; or
  - (ii) the Borrower creates, permits or suffers to exist any mortgage, pledge, charge, loan, assignment, hypothecation, security interest or other encumbrance attaching the Charged Premises other than this Charge, the Security and the Permitted Encumbrances; or
- (j) upon default by or non-compliance of the Borrower or any Guarantor(s), or any others bound by or acknowledging to be bound by the terms of this Charge, with respect to any of the provisions of the Security or the Permitted Encumbrances; or
- (k) if the Charged Premises are abandoned; or
- (l) failure by the Borrower to fulfil, complete or comply with any undertakings delivered by the Borrower to Lender in connection with the Loan in accordance with the terms of such undertakings; or
- (m) upon any breach, default, non-observance occurring or being alleged, charged or claimed against the Borrower as lessor under any lease or as sublessor under any sublease of the Charged Premises and the Borrower is not diligently proceeding to rectify any such breach,

default, non-observance or non-performance or defend any allegations, charges or claims of the same; or

- (n) if this Charge, or any of the Security, shall fail to constitute a legal, valid, binding and enforceable first charge, first assignment or first security interest, each enforceable in accordance with its terms, subject only to Permitted Encumbrances; or
- (o) if in the reasonable opinion of the Lender there occurs an event which has a material adverse effect on the financial condition or operation of the Borrower, the Charged Premises, this Charge, the Security or the ability of the Borrower to pay the Indebtedness or to perform its obligations hereunder or under the Security and which cannot be rectified by the Borrower within a reasonable period of time.

**18.2** Save as otherwise specifically provided, an Event of Default hereunder or under any Security shall not have occurred or be deemed to have occurred until the expiration of any applicable notice period, if any, called for in this Charge or in such Security within which the Borrower may remedy such default. In any event, if in the opinion of the Lender, an event has occurred which with the passing of time, the giving of notice or otherwise would constitute an Event of Default and as a result of which the Charged Premises or the property assets and undertaking subject to the Security is materially at risk, the Lender may take such action or exercise such remedies as may be appropriate without notice to the Borrower or the expiry of any cure period.

**18.3** In addition to the security granted hereunder, this Charge is cross-defaulted to all other loans, present and future, or security granted or to be granted, between the Chargee and/or the Lender and the Chargor or any covenantor, either individually or collectively, or with all other loans, present and future, or security granted or to be granted, between the Chargee and/or Lender and entities owned or controlled by the principals of the Chargor or any covenantor (the "**Other Security**"). Default hereunder shall constitute default under the Other Security and default under any or all of the Other Security shall constitute default hereunder.

## **ARTICLE XIX**

### **REMEDIES**

**19.1** If an Event of Default has occurred hereunder and is continuing (or if the Lender exercises its rights pursuant to Section 18.1(d) hereof before the occurrence of an Event of Default), then at any time thereafter, but subject always to the waiver thereof by the Lender, the Lender may:

- (a) declare the Indebtedness to be immediately due and payable and proceed to exercise any and all rights hereunder or under the Security or any other rights available to it under any other document or instrument or at law or in equity including without limitation, the drawdown of any letter of credit held by the Lender;
- (b) commence legal action to enforce payment of the Indebtedness or performance of the obligations by the Borrower to the Lender;
- (c) at the expense of the Borrower, when and to such extent as the Lender deems advisable, observe and perform or cause to be observed and performed any covenant, agreement, proviso or stipulation contained herein or in the Security, and the reasonable cost thereof with interest thereon at the Applicable Rate until paid, shall immediately become due from the Borrower to the Lender after demand by the Lender upon the Borrower therefor;

- (d) pay or discharge any mortgage, encumbrance, lien, adverse claim or charge that may exist or be threatened against the Charged Premises; in any such case, the amounts so paid together with costs, charges and expenses incurred in connection therewith shall be added to the Principal outstanding and shall bear interest at the Applicable Rate;
- (e) send or employ any inspector or agent to inspect and report upon the value, state and condition of the Charged Premises and may employ a lawyer to examine and report upon the title to the same;
- (f) immediately take possession of all of the Charged Premises or any part or parts thereof by action or otherwise, with power, among other things, to exclude the Borrower, to enforce the Borrower's rights, to preserve and maintain the Charged Premises, to repair, alter or extend the Charged Premises, to lease the Charged Premises, to complete construction and development of the Charged Premises, to operate and manage the Charged Premises and to collect or receive rents, income and profits of all kinds (including taking proceedings in the name of the Borrower for that purpose) and pay therefrom all reasonable expenses and charges of maintaining, preserving, protecting and operating the Charged Premises (payment of which may be necessary to preserve or protect the Charged Premises), and to enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including without limitation, power to advance its own moneys and enter into contracts and undertake obligations for the foregoing purposes upon the security hereof, and all sums advanced or expended shall be added to the Principal outstanding and shall bear interest at the Applicable Rate;
- (g) on default of payment for at least fifteen (15) days may, on at least thirty-five (35) days' notice, sell and dispose in the Charged Premises with or without entering into possession of the same and with notice to such persons and in such manner and form and within such terms as provided under Part III of the *Mortgages Act* (Ontario), as amended; and all remedies available may be resorted to and all rights, powers and privileges granted or conferred upon the Lender under and by virtue of any statute or by this Charge may be exercised and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made in the Charged Premises; and the Lender may sell, transfer and convey any part of the Charged Premises on such terms, including on credit for all or part of the consideration, (provided the Borrower shall not be accountable for any default in respect of the credit), secured by contract or agreement for sale, or charge, or otherwise, as shall appear to the Lender most advantageous and for such prices as can reasonably be obtained therefor in the circumstances; and in the event of sale on credit or part cash and part credit, whether by way of contract for sale or by conveyance or transfer, charge, or otherwise, the Lender is not to be accountable for or charged with any monies until the same shall be actually received in cash or received by a take-back charge; and sales may be made from time to time of parts of the Charged Premises to satisfy interest and leaving the Principal or part thereof to run with interest at the Applicable Rate; and the Lender may make any stipulations as to title or evidences or commencement of title or otherwise as the Lender shall deem proper and may buy or rescind or vary any contract for sale; and on any sale or resale, the Lender shall not be answerable for loss occasioned thereby; and for any of such purposes the Lender may make and execute all arrangements and assurances that the Lender shall deem advisable or necessary;
- (h) with respect to the Leases:

- (i) to demand, collect and receive the Rents or any part thereof and to give acquittances therefor, and to take from time to time, in the name of the Borrower, any proceeding which may be, in the opinion of the Lender or its counsel, expedient for the purpose of collecting the Rents or for securing the payment thereof or for enforcing any of the Borrower's rights under the Leases;
  - (ii) to compound, compromise or submit to arbitration any dispute which has arisen or may arise in respect to any amount of Rent and any settlement arrived at shall be binding upon the Borrower;
  - (iii) to enter upon the Lands by its officers, agents or employees for the purpose of collecting the Rents;
  - (iv) to receive, enjoy or otherwise avail itself of the Lease Rights; and
  - (v) on behalf of the Borrower to alter, modify, amend or change the terms of Leases; to terminate Leases, to enter into new Leases; to give consents, concessions or waivers of any rights or provisions of Leases; to accept surrenders of Leases; to give consents to assignment of or subletting under Leases;
- (i) with or without taking possession of all or any part of the Charged Premises, sell, lease or otherwise dispose of the whole or any part of the Charged Premises, as agent for the Borrower and not the Lender, and in exercising the foregoing power, the Lender may, in its absolute discretion:
- (i) sell, lease or otherwise dispose of the whole or any part of the Charged Premises by public auction, public tender with notice, or by private contract (in the name of or on behalf of the Borrower) or otherwise, with such notice, advertisement or other formality as is required by law;
  - (ii) make and deliver to the purchaser good and sufficient deeds, assurances and conveyances of the Charged Premises and give receipts for the purchase money, and any such sale once effected shall be a perpetual bar, both at law and in equity, to the Borrower and all those claiming an interest in the Charged Premises by, from, through or under the Borrower making any claim against the purchaser of the Charged Premises;
  - (iii) grant, rescind, vary or complete any contract for sale, lease or options to purchase or lease, or rights of first refusal to purchase or lease the whole or any part of the Charged Premises, for cash or for credit, with or without security being given therefor, and on terms as shall appear to be most advantageous to the Lender (including a term that a commission be payable to the Lender or a related corporation in respect thereof) and if a sale is on credit, the Lender shall not be accountable for any moneys until actually received;
  - (iv) make any stipulation as to title or conveyance or commencement of title;
  - (v) re-sell or re-lease the Charged Premises or any part thereof without being answerable for any loss occasioned thereby; and

- (vi) make any arrangements or compromises which the Lender shall think expedient in the interest of the Lender and to assent to any modification of this Charge, and to exchange any part or parts of the Charged Premises for any other property suitable for the purposes of the Lender on such terms as the Lender considers expedient, either with or without payment of money for equality or exchange or otherwise;
- (j) take proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;
- (k) to borrow or raise money on the security of the Charged Premises or any part thereof in priority to this Charge or otherwise, for the purpose of the maintenance, preservation or protection of the Charged Premises or any part thereof or for carrying on all or any part of the business of the Borrower relating to the Charged Premises;
- (l) take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term as used in this Charge includes a manager and a receiver and manager, and hereafter, the "Receiver") of all or any part of the Charged Premises;
- (m) by instrument in writing appoint, with or without taking possession, any person to be a Receiver of the Charged Premises or of any part thereof and may remove any Receiver so appointed and appoint another in his stead, with all fees and costs related thereto being the Borrower's obligations; and the following shall apply in respect of any such Receiver so appointed:
  - (i) the Lender may from time to time fix the remuneration of the Receiver who shall be entitled to deduct that same out of the revenue from the Charged Premises or the proceeds thereof;
  - (ii) the Receiver shall, to the fullest extent permitted by law, be deemed the agent or attorney of the Borrower for all purposes and the Lender shall not be in any way responsible for any actions other than as caused by gross negligence, willful misconduct or fraud, of any Receiver, and the Borrower hereby agrees to indemnify and save harmless the Lender from and against any and all claims, demands, actions, costs, damages, expenses or payments which the Lender may hereafter suffer, incur or be required to pay as a result, in whole or in part, of any action taken by the Receiver or any failure of the Receiver to do any act or thing other than as are caused by gross negligence, willful misconduct or fraud;
  - (iii) the appointment of the Receiver by the Lender shall not incur or create any liability on the part of the Lender to the Receiver in any respect and such appointment or anything which may be done by the Receiver or the removal of the Receiver or the termination of any such Receivership shall not have the effect of constituting the Lender a mortgagee in possession in respect of the Lands or any part thereof; and
  - (iv) the Receiver may exercise or pursue any other remedy or proceeding which the Lender is entitled as the holder of the Charge authorized or permitted hereby or by law or in equity in order to enforce the security constituted by this Charge,

and for the purposes above, the Borrower hereby irrevocably empowers the Receiver so appointed as its attorney to execute deeds, transfers, leases, contracts, agreements or other documents on its behalf and in its place (and the same shall bind the Borrower and have

the same effect as if such deeds were executed by the Borrower) and to affix the Borrower's seal, if necessary, or a duplicate thereof to any of the same. On its own account or through a Receiver and whether alone or in conjunction with the exercise of all or any other remedies contemplated hereby, shall have the right, at any time, to notify and direct any account debtor to make all payments whatsoever to the Lender and the Lender shall have the right, at any time, to hold all amounts received from any account debtor and any proceeds as part of the Secured Property; any payments received by the Borrower from and after the security hereby constituted becomes enforceable, shall be held by the Borrower in trust for the Lender in the same medium in which received, shall not be commingled with any assets of the Borrower and shall, at the request of the Lender, be turned over to the Lender not later than the next Business Day following the day of their receipt. Save as to claims for accounting under Section 19.1(o), the Borrower hereby releases and discharges the Lender and the Receiver from every claim of every nature, whether resulting in damages or not, which may arise or be caused to the Borrower by reason or as a result of anything done by the Lender or any successor or assign claiming through or under the Lender or the Receiver under the provisions of this paragraph unless such claim be the direct result of dishonesty or gross neglect;

- (n) the Lender may at any time and from time to time terminate any receivership by notice in writing to the Borrower and to the Receiver;
- (o) the Receiver shall account for all monies received in respect of the Charged Premises or any part thereof, and shall pay, out of such monies received, subject to the further direction of the Lender in its discretion, the following in the order specified:
  - (i) the Receiver's remuneration;
  - (ii) all payments reasonably made or incurred by the Receiver in connection with its receivership;
  - (iii) all payments of interest, Principal and other money which may, from time to time, be or become charged upon the Charged Premises in priority to this Charge, and all Bills, Taxes, insurance premiums and every other proper expenditure reasonably made or incurred by the Receiver in respect to the Charged Premises or any part thereof; and
  - (iv) all payments to the Lender of all interest due or falling due hereunder and the balance to be applied upon Principal due and payable and secured hereby;

and thereafter any surplus remaining in the hands of the Receiver after payments made as aforesaid shall be accountable to the Borrower or other persons entitled thereto; and

- (p) on its own account or through a Receiver and whether alone or in conjunction with the exercise of all or any other remedies contemplated hereby, shall have the right, at any time, to notify and direct any account debtor to make all payments whatsoever to the Lender and the Lender shall have the right, at any time, to hold all amounts received from any account debtor and any proceeds thereof as security for the Indebtedness; any payments received by the Borrower from and after the security hereby constituted becomes enforceable, shall be held by the Borrower in trust for the Lender in the same medium in which received, shall not be commingled with any assets of the Borrower and shall, at the request of the

Lender, be turned over to the Lender not later than the next Business Day following the day of their receipt.

**ARTICLE XX**  
**DEFAULT UNDER SECURITY, PARAMOUNTCY DISCHARGE AND RENEWAL**

- 20.1** Payments of principal and interest made under and pursuant to the terms of the Security shall constitute payment hereunder and vice versa and default in the payment of principal and interest under the Security shall constitute default hereunder and vice versa. Default in compliance with any of the conditions, covenants, undertakings, provisions and stipulations contained in the Security shall entitle the Lender to exercise all or any of the rights or remedies provided herein and the occurrence of and Event of Default hereunder or in compliance with any of the conditions, covenants, undertakings, provisions and stipulations contained herein shall entitle the Lender to exercise all or any of the rights or remedies provided in the Security. The occurrence of an Event of Default hereunder shall constitute an Event of Default under the Security and vice versa.
- 20.2** The cancellation of or any other dealing with any Security (other than foreclosure thereof) shall not release or affect this Charge, and the taking of this Charge, or the cancellation of or any other dealing with, or proceeding under (other than foreclosure hereunder), this Charge, shall not release or affect any Security:
- (a) the Lender may at any time and from time to time release any part or parts of the Charged Premises or any other Security or any surety for payment of all or any part of the monies hereby secured or may release the Borrower or any other person from any covenant or other liability to pay the Principal Sum and interest and all other monies secured hereby, or any part thereof, either with or without any consideration therefor, and without being accountable for the value thereof or for any monies except those actually received by the Lender, and without thereby releasing any other part of the Charged Premises, or any other Security or covenants herein contained, it being especially agreed that notwithstanding any such release, the Charged Premises, the Security and the covenants remaining unreleased shall stand charged with the whole of the monies hereby secured;
  - (b) in the event that the monies advanced hereunder are applied to payment of any charge or encumbrance, the Lender shall be subrogated to all the rights of and stand in the position of and be entitled to all the equities of the party or parties so paid whether such charge or encumbrance has or has not been discharged; and the decision of the Lender as to the validity or amount of any advance or disbursement made under this Charge or of any claims so paid, shall be final and binding on the Borrower; and
  - (c) the Lender shall not be charged with any monies receivable or collectible out of the Charged Premises or otherwise, except those actually received by or on behalf of the Lender and all revenue of the Charged Premises received or collected by the Lender from any source other than payment by the Borrower may, at the option of the Lender, be retained in a separate account to be used in, maintaining, insuring or improving the Charged Premises to the extent required for such purpose, in the opinion of the Lender, acting reasonably, or in payment of Taxes or other liens, charges or encumbrances against the Charged Premises, or applied in reduction of the amounts owing hereunder.
- 20.3** Subject to Section 6.1, upon payment of all amounts secured by this Charge, the Borrower shall be entitled to receive and the Lender shall provide a discharge of this Charge and the Security within a reasonable period of time after the request therefor. The Lender shall have a reasonable time after



such payment within which to prepare and execute such discharge and all reasonable legal and other expenses for the preparation, execution and registration of such discharge and/or documents, as the case may be, shall be borne by the Borrower.

- 20.4** All payments made pursuant to Section 20.3 shall be made to and received by the Lender prior to 1:00 p.m. on the date due or the next succeeding Business Day in the event the date due is not a Business Day; provided such extension of time shall be included for the purposes of computation of interest.

**ARTICLE XXI**  
**NO MERGER OR WAIVER OF LENDER'S RIGHTS**

- 21.1** It is further understood and agreed that this Charge and the Security shall stand as a continuing security for repayment of the Loan, including, all advances made thereunder together with all interest, damages, costs, charges and expenses which may become due and payable to the Lender in respect of or in connection with the Loan or any portion thereof, notwithstanding any fluctuation or change in the amount, nature or form of the Loan or in the obligations now or hereafter representing the Loan or any portion thereof or in the names of the obligors or any of them.
- 21.2** The rights of the Lender arising under this Charge shall be separate, distinct and cumulative and, except as expressly provided herein, none of them shall be in exclusion of the other and no act of the Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.
- 21.3** The giving and taking of this Charge shall in no way merge, waive, prejudice, suspend or affect any of the rights or remedies of the Lender under any Security which may be given or which may have been or may hereafter be given in respect of the Principal Sum hereof, interest and other monies secured by this Charge, or any part thereof, or under the Security and all rights and remedies which the Lender now has or may hereafter have against any one or more persons, are hereby preserved.
- 21.4** The taking of a judgment or judgments under any of the covenants or obligations herein or under any Security shall not operate as a merger of the covenants of the Borrower or affect the Lender's right to interest at the Applicable Rate on any monies due or owing to the Lender during the continuance of this Charge, under any of the covenants herein contained or on any judgment to be recovered thereon.
- 21.5** The covenant of the Borrower to pay interest shall not merge in any judgment in respect of any covenant or obligation of the Borrower under this Charge or any Security and such judgment shall

bear interest at the Applicable Rate until such judgment and all interest thereon have been paid in full.

- 21.6** Any waiver by the Lender of any default by the Borrower or any omission on the Lender's part in respect of any default by the Borrower shall not extend to or be taken in any manner whatsoever to affect any subsequent default by the Borrower or the rights resulting therefrom.
- 21.7** No extension of time given by the Lender to the Borrower or anyone claiming under the Borrower, shall in any way affect or prejudice the rights of the Lender against the Borrower or any person liable for payment of the monies hereby secured.

**ARTICLE XXII**  
**FINANCIAL DATA**

- 22.1** The Borrower shall provide or cause to be provided promptly to the Lender:
- (a) full and complete information about the financial condition and operations of the Charged Premises, including a separate income and expense statement for the Charged Premises, an operating statement and an updated rent roll containing relevant lease terms for the Charged Premises, provided that all operating statements shall contain a certificate by a senior officer of the Borrower as to the contents and preparation thereof; and
  - (b) full and complete information about the financial condition of the Borrower and any Guarantor(s); and
  - (c) such other information which the Lender may reasonably require from time to time,
- and the Lender shall have the right to examine the books and records of the Borrower relating to the Charged Premises at reasonable times and upon reasonable prior notice.
- 22.2** Without limiting the foregoing, until the repayment of the Loan the Borrower covenants and agrees to provide or cause to be provided to the Lender, within 120 days after the end of each fiscal year of the Borrower or more often if requested by the Lender, a detailed financial statement of the Borrower. The financial statements are to be prepared by a chartered accountant licensed in the Province of Ontario and shall include a balance sheet and a detailed statement of income and expenditures all satisfactory to the Lender in form and content. In the event applicable, the Borrower shall provide the Lender with copies of all proxy statements, reports and information circulars that the Borrower makes available to its shareholders and copies of all regular and periodic reports which the Borrower may file with any securities commission or any other Governmental Authority.
- 22.3** The Borrower shall provide or cause to be provided to the Lender, or as the Lender may direct, a comprehensive list of all current tenants and rentals of space in the Charged Premises during the Term, which list shall disclose, without limitation, the name of each tenant, the duration of its term, renewal options, if any, and the term thereof, the rental being paid, the last date on which rental

was paid and whether such tenancy is in good standing. Such list shall contain an endorsement by an officer of the Borrower as to being complete and accurate.

- 22.4** All statements, reports and other documents required to be provided hereunder shall be prepared in a manner acceptable to the Lender, in its reasonable discretion.

### **ARTICLE XXIII NOTICE**

- 23.1** Unless otherwise provided herein, any demand, notice or communication given or required to be given to a party hereunder shall be in writing and shall be personally delivered or given by transmittal by telecopy or facsimile transmission addressed to the respective parties at its address or telecopy or facsimile number set forth below or to such other address or telecopy or facsimile number as such party may designate by notice in writing to the other party hereto:

- (a) If to the Borrower, at the address for service set out in the electronic Charge to which this schedule is attached; and
- (b) If to the Lender, at the address for service set out in the electronic Charge to which this schedule is attached.

Any demand, notice or communication made by or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, and, if made or given by telecopy or by facsimile, on the first day other than a Saturday, Sunday or a statutory holiday in Ontario, on which Schedule I banks are open for commercial business in Toronto, Ontario, following the transmittal thereof.

### **ARTICLE XXIV GENERAL**

- 24.1** If any provision of this Charge or the application thereof to any circumstances shall be held to be invalid or unenforceable, it shall be deemed severed herefrom and the remaining provisions of this Charge, or the application thereof to other circumstances, shall not be affected thereby and shall be held valid and enforceable to the full extent permitted by law. In particular, and without limiting the generality of the foregoing, to the extent any and all amounts due pursuant to Article 6 hereof may be deemed to be in excess of what is permissible by law, any such excess shall be deemed not to be due under this Charge.
- 24.2** Wherever used in this Charge, unless the context clearly indicates a contrary intent as unless or otherwise specifically provided herein, the word "Borrower" shall mean "Borrower and/or subsequent owner or owners of the Charged Premises", the word "Lender" shall mean "Lender or any subsequent holder or holders of this Charge".
- 24.3** The descriptive headings of the several subparagraphs or paragraphs or sections or articles of this Charge are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- 24.4** Wherever the singular number or masculine gender is used in this Charge, the same shall be construed as including the plural and feminine or a body corporate, respectively, and vice versa, where the fact or context so requires; and the successors and assigns of any party executing this Charge are bound by the covenants, agreements stipulations and provisos herein contained. The

covenants, agreements stipulations and provisos herein stated shall, except as otherwise limited hereby, be in addition to those granted or implied by statutory law.

- 24.5** This Charge shall be construed and enforceable under and in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and the Borrower hereby irrevocably attorns to the non-exclusive jurisdiction of the courts sitting at Toronto, Ontario.
- 24.6** The Borrower shall at all times, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, transfers, assignments, security agreements and assurances as the Lender may reasonably require in order to give effect to the provisions hereof and for the better granting, transferring, assigning, charging, setting over, assuring, confirming or perfecting the Charge and the priority accorded to them by law or under this Charge.
- 24.7** If any of the forms of words contained herein are also contained in Column 1 of Schedule "B" of the Short Forms of Mortgages Act (Ontario) and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column 2 of Schedule "B" of the said Act distinguished by the same number, and this Charge shall be interpreted as if the *Short Forms of Mortgages Act* (Ontario) were still in full force and effect. The implied covenants deemed to be included in a charge under Subsection 7(1) of the *Land Registration Reform Act* (Ontario) shall be and are hereby expressly excluded from the terms of this Charge.
- 24.8** This Charge shall, whether or not it secures a current or running account, be a general and continuing security to the Lender for payment of the indebtedness in an amount not exceeding the amount secured by this Charge and performance of the Borrower's other obligations under the Charge notwithstanding any fluctuation or change in the amount, nature or form of the indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Lender representing all or any part of the indebtedness outstanding at any particular time; and the Charge will not be deemed to have been redeemed or become void as a result of any such event or circumstance.
- 24.9** This Charge is given as collateral security to the Commitment.
- 24.10** Notwithstanding any terms contained in the Commitment to the contrary, in the event of conflict between the Commitment and the terms of this Charge, the provisions of the Commitment shall prevail; provided that any provision herein contained that is not contained in the Commitment and vice versa shall not in and of itself be considered to be inconsistent or in conflict.
- 24.11** The Borrower acknowledges that Computershare Trust Company of Canada is the title trustee/custodian for Trez Capital Limited Partnership and that the terms 'Lender', 'Mortgagee' or 'Chargee' when used in this Charge and other security documents shall include Trez Capital Limited

Partnership. Where the consent of the Lender is required to any matter, the consent of Trez Capital Limited Partnership shall be sufficient to meet that requirement.

**ARTICLE XXV**  
**CONDOMINIUM PROVISIONS**

**25.1** The Borrower covenants and agrees that in the event that the security for the within Charge shall be or shall become a condominium unit(s) the following provisions shall apply.

- (i) the Borrower does hereby assign to the Lender all of its rights to vote or consent in the affairs of the Condominium Corporation having jurisdiction over the subject lands and the Lender, may at its option, exercise the right of an owner of a condominium unit to vote or consent in the affairs of the Condominium Corporation in the place and stead of such owner, without in any way consulting the owner as to the manner in which the vote shall be exercised or not exercised, and without incurring any liability to the owner or anyone else because of the manner in which such vote or right to consent in the affairs of the Condominium Corporation was exercised;
- (ii) the Borrower shall pay promptly, when due, any common expenses, assessments, instalments or payments due to the Condominium Corporation;
- (iii) the Borrower shall observe and perform the covenants and provisions required to be observed and performed under or pursuant to the provisions of the *Condominium Act* (Ontario), all amendments thereto, and any legislation passed in substitution thereof, and the declaration and by-laws of the Condominium Corporation and any amendments thereto; and
- (iv) where the Borrower defaults in the Borrower's obligation to contribute to the common expenses assessed or levied by the Condominium Corporation, or any authorized agent on its behalf, or any assessment, instalment of payment due to the Condominium Corporation, upon breach of any of the foregoing covenants or provisions in this paragraph contained, regardless of any other action or proceeding taken, or to be taken by the Condominium Corporation, the Lender, at its option and without notice to the Borrower, may deem such default to be a default under the terms of this Charge and proceed to exercise its rights therein and the Lender shall be entitled at its option to pay all common expense amounts as they come due and these amounts so paid together with legal fees shall form part of the Indebtedness.

**ARTICLE XXVI**  
**CONSTRUCTION LOAN PROVISIONS**

**26.1** In the event that any of the monies advanced or to be advanced under this Charge are intended to finance any improvement to the Charged Premises, the parties hereto covenant and agree that the following conditions shall apply:

- (a) all construction on the Charged Premises shall be carried out by reputable contractors having experience which is commensurate to nature and size of the project to be constructed, which contractors must be prior approved by the Lender in writing, such approval not to be unreasonably withheld;

- (b) the construction of the building and structures located on the Charged Premises have been commenced and shall be continued in a good and workmanlike manner, with all due diligence and in accordance with the plans and specifications delivered to the Lender and to the satisfaction of all governmental and regulatory authorities having jurisdiction;
- (c) provided that should construction of the project on the Charged Premises cease for any reason whatsoever (strikes, material shortages and weather conditions beyond the control of the Borrower excepted), for a period of fifteen (15) consecutive days (Saturdays, Sundays and Statutory holidays excepted), then, at the option of the Lender, this Charge shall immediately become due and payable. In the event that construction does cease, then the Lender shall have the right, at its sole option, to assume complete control of the construction of the said project in such manner and on such terms as it deems advisable. The cost of completion of the said project by the Lender and all expenses incidental thereto shall be added to the principal amount of this Charge, together with a management fee of fifteen percent (15%) of the costs of the construction completed by the Lender. All costs and expenses, as well as the management fee of fifteen percent (15%) added to the principal amount of this Charge shall bear interest at the rate as herein provided for and shall form part of the principal sum herein and the Lender shall have the same rights and remedies to collection of principal and interest hereunder or at law;
- (d) at all times there shall be sufficient funds unadvanced under this Charge and retained by the Lender to complete the construction and/or renovation of the project on the Charged Premises and as may be necessary to retain the Lender's priority with respect to any deficiency in the holdbacks required to be retained by the Borrower under the *Construction Act* (Ontario);
- (e) this Charge will be advanced in stages as construction upon the Charged Premises proceeds or as the conditions as enumerated by the Commitment are complied with;
- (f) all advances which are made from time to time hereunder shall be based on certificates of a duly qualified architect, engineer, quantity surveyor, cost consultant or other consultant(s) retained for the purpose of reviewing and advising the Lender with respect to the said project and the progress thereof, whose fees and costs shall be for the account of the Borrower regardless of by whom such person has been retained. All such certificates shall without limitation certify the value of the work completed and the estimated costs of any uncompleted work and such certificates shall further certify that such completed construction and/or renovation to the date of such certificate shall be in accordance with the approved plans and specifications for the said construction and further, in accordance with the building permits issued for such construction and in accordance with all municipal and other governmental requirements of all authorities having jurisdiction pertaining to such construction and that there shall be no outstanding work orders or other requirements pertaining to construction on the Charged Premises. Such certificates with respect to any values shall not include materials on the site which are not incorporated into the building;
- (g) the Borrower shall pay to the Lender on each occasion when an inspection of the Charged Premises is required to confirm construction costs to date and compliance with conditions for further advances, an inspection fee in such reasonable amount as the Lender may charge from time to time for each such inspection and the Lender's solicitors shall be paid their reasonable fees and disbursements for each sub-search and work done prior to each such advance and all such monies shall be deemed to be secured hereunder and the Lender shall be entitled to all rights and remedies with respect to collection of same in the same manner

as it would have with respect to collection of principal and interest hereunder or at law; and

- (h) the Borrower agrees to indemnify and hold the Lender harmless from any and all claims, demands, sums of money, debts, covenants, bonds, accounts, actions, causes of action, rights, obligations and liability of every kind whatsoever which arise out of claims against the property under the *Construction Act* (Ontario) and that any liens for work and/or supplies that are registered against the Borrower's interest in the property will be promptly discharged within seven (7) days from the date of registration of the lien. The Lender may, but is not required to, deal with the lien claimant and pay the lien claim into court pursuant to the provision of the *Construction Act* (Ontario) for the purpose of vacating the lien from title to the property. The Borrower agrees to be liable for all costs, claims, amounts and fees including, without limitation, all legal fees (on a solicitor and his client basis) incurred by the Lender arising from or in connection with the Borrower or the Lender obtaining and registering either a release of the lien or an order vacating the lien.

**ARTICLE XXVII**  
**ASSIGNMENT AND SALE**

- 27.1** The Loan and all other amounts secured hereby, this Charge, the Security and all documents ancillary or collateral thereto may, in the Lender's sole discretion and without the consent of the Borrower, in whole or in part, be participated, sold, securitized, syndicated or assigned by the Lender from time to time to one or more Persons.
- 27.2** The Lender may disclose to participants, transferees or assignees or to potential participants, transferees or assignees or others in connection with any sale, assignment, participation, securitization, transfer or syndication, such information concerning the Borrower or the Charged Premises as the Lender may consider to be appropriate in connection therewith.
- 27.3** No grant, assignment or transfer pursuant to this Article XXVII shall constitute a repayment by the Borrower to the Lender of the Loan or any other amounts owing hereunder and included in such assignment or transfer and the Borrower acknowledges that all obligations under this Charge and the Security with respect to such assignment or transfer will continue and not constitute new obligations.
- 27.4** The Borrower agrees to be bound by and do all things necessary or appropriate to assist and give effect to any transfer, participation, securitization, sale, syndication or assignment, but shall incur no increased liabilities as a result thereof.

This is Exhibit G to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. Ha", is centered within the upper portion of the box.

A Commissioner for taking affidavits





October 18<sup>th</sup>, 2021

**Mizrahi Development Group (1451 Wellington) Inc.**  
125 Hazelton Avenue  
Toronto, ON  
M5R 2E4

**C/O**  
**Cushman & Wakefield Structured Finance ULC**  
161 Bay Street – 15th Floor  
Toronto, ON M5J 2S1

**Attention: Mr. Scott MacPherson Mr. Sam Mizrahi**

Dear Sirs:

**RE: Financing in the amount of \$6,000,000 to be secured by a 2<sup>nd</sup> priority mortgage on a 19,833 square foot site currently being developed with a 93-unit residential condominium building with 5,268 square feet of ground floor retail space located at 1451 & 1445 Wellington Street West, Ottawa, Ontario (the “Subject Property”) [Mizrahi – 1451 Wellington Street West 2<sup>nd</sup> Mortgage, Trez Loan # 2272/21]**

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We are pleased to advise that we have approved a 2<sup>nd</sup> mortgage loan (the “Loan”) to **Mizrahi Development Group (1451 Wellington) Inc.**, the “Borrower”), which shall be secured by a \$6,000,000 second mortgage charge on the Subject Property (the “Mortgage”) on the terms described in this commitment letter (the “Commitment Letter”), which upon execution by the Borrower, Guarantor(s) and Lender shall constitute an agreement which shall bind the Borrower and Guarantor(s) with respect to the Loan. The Loan has been approved subject to the following terms and conditions.

#### **LOAN TERMS**

- 1. Lender** Trez Capital Limited Partnership or its nominee (the “Lender”).
- 2. Borrower** Mizrahi Development Group (1451 Wellington) Inc. (the “Borrower”).
- 3. Guarantor(s)** The unlimited guarantee of Sam Mizrahi shall be provided for the full Loan Amount (as hereinafter defined) outstanding from time to time including interest arising therefrom and any other monies which may now or hereafter become due and owing (the “Guarantor”).
- 4. Subject Property** **Civic Address:** 1451 & 1445 Wellington Street West, Ottawa, Ontario  
  
**Site & Property Description:** A 19,833 square foot site currently being developed with a 12-storey concrete frame, condominium building featuring 93 residential units with 5,268 square feet of retail space at grade, 100 storage lockers and 130 underground parking spaces. (the “Subject Property” or the “Project”).
- 5. Purpose & Use** The Loan funds shall be used to provide additional financing to the Borrower or an affiliate of the Borrower for general working capital purposes and shall at all times be used for this said purpose.

- 6. Expiry of Loan Offer** It is a condition of this Commitment Letter that if the Security (as hereinafter defined) is not registered and in place, and the Initial Advance (as hereinafter defined) has not occurred on or before **December 6<sup>th</sup>, 2021**, the Lender shall no longer have any obligation to advance any funds to the Borrower pursuant to the terms of this Commitment Letter. All other terms and conditions of this Commitment Letter shall remain in full force and effect.
- 7. Loan Amount** \$6,000,000
- 8. Term** 13 months commencing from the Interest Adjustment Date (as hereinafter defined). The loan term shall be adjusted based on the funding date of the Loan such that the Loan is co-terminus with the existing Trez 1<sup>st</sup> Loan over the Subject Property which matures on November 1<sup>st</sup>, 2022.
- 9. Interest Adjustment Date** Shall be the 1<sup>st</sup> day of the month immediately following the Initial Advance of funds, or such other date as shall be determined by the Lender.
- 10. Interest Rate** Interest shall be charged at the greater of:
- (a) 12.50% per annum (the "**Minimum Rate**"); and
  - (b) a variable rate per annum (in either case, both before and after maturity, default and judgment) equal to the rate established by the HSBC from time to time as HSBC's prime lending rate for Canadian Dollar Loans ("**Prime Rate**") plus 10.05%

on the outstanding balance of the principal sum owing from time to time for the first 14 months of the Term and 25.0% per annum thereafter. Interest shall be calculated daily and compounded and payable monthly. Overdue interest shall bear interest at the same rate as principal.

Such interest rate shall be set with respect to amounts advanced on the day of each advance and thereafter monthly on the first day of each month. Interest shall be calculated daily on the daily balance outstanding from time to time, before as well as after maturity, default or judgment, from the date of each advance. Such Interest Rate shall be determined upon the basis of a three hundred and sixty-five (365) day year for common years and a three hundred and sixty-six (366) day year for leap years. Interest shall be calculated in accordance with the Lender's usual practice (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower.

All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. To the extent permitted by law, Borrower waives the provisions of the *Judgment Interest Act* (Alberta). All interest payable hereunder bears interest from the date of advance of any portion of the Loan to the Lender's Solicitor (as hereinafter defined), whether or not such advance of the Loan is released to the Borrower or the Borrower's(s) Solicitor (as hereinafter defined).

- 11. Amortization** Interest only.
- 12. Interest Accrual Budget** \$810,000. The interest accrual budget (the "Interest Accrual Budget") represents the maximum amount of interest that the Lender will allow to accrue on the principal Loan Amount outstanding. If at any time during the Term the accrued interest exceeds the Interest Accrual Budget, the Borrower must pay the overage to the Lender on the next Monthly Payment. The registered Loan Amount will include the

principal amount advanced, as well as the Interest Accrual Budget.

**13. Monthly Payments**

Monthly mortgage payments (the “Monthly Payments”) shall be computed in accordance with the Interest Rate and Amortization sections above and will be due and payable on the 1<sup>st</sup> day of each and every month following the Interest Adjustment Date.

Monthly Payments shall be advanced from the Interest Accrual Budget. Interest from the date of first Advance (as hereinafter defined) until the Interest Adjustment Date shall be deducted from the first Advance or, at the option of the Lender, may be advanced from Interest Accrual Budget. Each month, during the term hereof, the Lender shall advance the Monthly Payments due until the Interest Accrual Budget is exhausted and thereafter the Borrower shall be required to make the Monthly Payments from its own resources.

**14. Commitment Fee**

\$120,000. The Commitment Fee shall be deemed to be fully earned upon acceptance of this Commitment Letter by the Borrower, and payable on the earlier of the date of Initial Advance (as hereinafter defined) and the date of expiry of this Commitment Letter. The Commitment Fee shall be funded from the proceeds of the Initial Advance provided this occurs before the date of expiry of this Commitment Letter.

**15. Broker’s Fee**

\$60,000 to be deducted from the Initial Advance (as hereinafter defined) under the Loan and paid to Cushman & Wakefield. Although the fee is being advanced under the Loan, the Borrower(s) shall be responsible for any brokerage or finder’s fees, commissions or other compensation payable to any person not affiliated with or contracted by the Lender in connection with this transaction and shall indemnify and hold the Lender and all related entities harmless in respect of same.

**16. Deposit**

A non-refundable deposit in the amount of \$30,000 is due and payable to the Lender (the “Deposit”). A cheque for the Deposit to “**Trez Capital Limited Partnership Mortgage Brokers Act Trust**” must be returned to the Lender along with a signed copy of this Commitment Letter.

The Deposit is non-refundable upon acceptance of this Commitment Letter by the Borrower. The Deposit, less any expenses incurred during the due diligence process, shall be applied towards the Commitment Fee. The Lender shall not pay any interest to the Borrower on Deposit monies held.

**17. Prepayment**

The Borrower, not being in default of the Loan, may at any time after a minimum of **\$375,000** interest has been earned by the Lender and paid to the Lender and after the provision of no less than 30 days written notice, and must contain a date certain for the repayment (“Date Certain”), repay the whole of the obligations hereby secured hereunder to the Date Certain. If prepayment occurs prior to the Date Certain, interest must be paid to Date Certain. The Date Certain must be a business day that banks in the Province of British Columbia are open for business.

**18. Partial Discharges**

Provided that the Borrower is not in default of the Loan, the Lender shall provide a partial discharge of the Security (as hereinafter defined) for the Loan only upon receipt of 100% of the Net Sale Proceeds. Net Sale Proceeds shall be defined as the gross sale price less real estate commissions, legal fees, closing costs and payments required by the first mortgagee, but explicitly exclusive of HST, which collectively shall not exceed 5% of the gross sale price less any amounts payable to prior mortgagees, as listed in Representation and Warranties section below, if any. In order to ensure the foregoing discharge parameters, a sales price list for each subdivided parcel or condominium unit comprising the Subject Property is agreed to by the Borrower and Lender and attached herein as Schedule ‘B’ (the “Sales Price List”), and no sale can take place at less than **95%** of the Sales Price List without the

Lender's written consent.

**19. Additional Fee(s)** **Administration Fee:** There shall be an administration fee (the "Administration Fee") of **\$400** for each land title document, certificate, confirmation, returned cheque, settlement (other than a payout statement or balance confirmation issued to the Borrower), or similar document required to be issued or executed by the Lender at the Borrower request.

**Partial Discharge Fee:** Should there be partial discharges permitted by the Lender, there shall be a partial discharge fee (the "Partial Discharge Fee") of **\$400** for each partial discharge requested. The Partial Discharge Fee shall be instead of the Administration Fee, and not in addition to it.

**Inspection Fee:** After the initial site visit, there shall be an inspection fee (the "Inspection Fee") of **\$500** for each inspection of the Subject Property done by the Lender. The Inspection Fee shall be in addition to any out of pocket expenses associated with the inspection. The Lender may inspect the Subject Property from time to time and prior to any disbursement of funds.

**Processing Fee:** There shall be a processing fee (the "Processing Fee") of **\$400** for each Construction Advance (as hereinafter defined), as well as the final advance, or for any advance which is less than the minimum amount set out within the Funding section below.

## 20. Sources & Uses

Project Balance Sheet		Assets	
Equity & Liabilities			
Trez First	66,531,718	Payout VTB	900,000
Insured Purchaser Deposits	11,368,282	Cash Equity	1,750,000
Cash Equity To Date	10,186,023	Condo Units in lieu of cash*	2,300,000
Deferred Equity for Land Purchase*	2,300,000	Land Surplus	619,500
Land Surplus	619,500	Land Value	5,569,500
		Hard Costs	53,025,964
		Soft Costs	22,446,291
		Contingency	2,491,125
		Interest Budget	5,601,795
		Trez Commitment Fee	1,172,500
		Broker Fee	670,000
		Legal & Closing, etc.	28,348
Trez Second	6,000,000	Trez 2nd - Commitment Fee	120,000
Equity Repatriation	(5,010,000)	Trez 2nd - Interest Budget	810,000
		Broker Fee	60,000
<b>Total</b>	<b>91,995,523</b>	<b>Total</b>	<b>91,995,523</b>

Note: the equity repatriation may be adjusted to pay for legal & closing costs.

## 21. Security

The Loan shall be secured by the following security (collectively, the "Security"), all of which must be in form and content satisfactory to the Lender and its Solicitor (as hereinafter defined):

- A \$6,000,000 real property mortgage creating a charge in 2<sup>nd</sup> priority over the Subject Property, which shall be cross-defaulted with all other loans, present and future, between the Lender and the Borrower or Guarantor(s), either individually or collectively, and with all other loans, present and future, between the Lender and entities owned or controlled by the principals of the Borrower or Guarantor(s).
- A subordination and postponement of all claims from Mizrahi Developments Inc.
- A guarantee and postponement of claims from the Guarantor(s).

- d) A completion guarantee from the Guarantor(s), which shall include, but not be limited to (i) completion of the Subject Property to the satisfaction of the Lender; (ii) the settlement of all liens registered from time to time against the Subject Property; and (iii) the injection of sufficient additional equity in the Subject Property if, at the Lender's sole discretion, there exists a cost-override.
- e) An assignment of rents, leases, contracts, licenses and offers to purchase on the Subject Property, in 2<sup>nd</sup> priority.
- f) A pledge of shares of the Borrower in favour of the Lender.
- g) A general security agreement over all the site-specific present and after-acquired personal property of the Borrower related to the Subject Property in 2<sup>nd</sup> priority.
- h) A full Lender's policy of title insurance underwritten by a company satisfactory to the Lender in its sole, unfettered and absolute discretion.
- i) A hazardous substance indemnity from the Borrower and Guarantor(s) on the Subject Property.
- j) A specific assignment of all the Borrower right, title and interest in, to and under, all material contracts affecting, or with respect to, the Subject Property as required by the Lender, including without limitation all building and construction contracts, plans, permits, refundable cash deposits and/or letters of credit to the City of Ottawa and insurance policies with respect to the Subject Property, with all necessary consents of the other parties thereto.
- k) Acknowledgement of the status and terms of any contracts affecting, or with respect to, the Subject Property, including without limitation, any pertaining to ownership, insurance, shared facilities, passageway agreements or other similar matters specifically, and without limitation, confirming the good standing of such contracts and the rights of the Lender under its Security.
- l) If registered title is held by a nominee or trustee, a beneficial owners agreement by which all beneficial owners charge their respective beneficial interests in the Subject Property in favour of the Lender and authorize the nominee or trustee to execute all documentation as required pursuant to the Commitment Letter and agree to be bound thereby as if they executed same themselves, provided that any recourse against the beneficial owners pursuant to any covenants contained in such documents shall at all times be limited to the specific obligations as herein or in their guarantees set out and required of them.
- m) Such other security as the Lender or Lender's Solicitor (as hereinafter defined) may deem necessary, acting reasonably. Notwithstanding any other provision of this Commitment Letter and or any other loan documents, there shall be no All Present and After Acquired (All PAAP) registrations (including but not limited to registrations made pursuant to the Personal Property and Security Act) under Sam Mizrahi's personal name. PPSA financing statements containing a limited collateral description shall be permitted.

**22. Conditions  
Precedent to the  
Disbursement of  
Funds**

The conditions precedent to the disbursement of the Initial Advance (as hereinafter defined) shall include, but not be limited to the items set out in the remainder of this section, all of which must be satisfactory to the Lender in its sole, unfettered and absolute discretion, and all of which collectively comprise the Lender's due diligence. The Lender may require any additional information as it deems necessary

in its sole, unfettered and absolute discretion for the Initial Advance and for any other advances (if applicable).

- a) Completion and registration of the Security, as required by the Lender. Title must be acceptable to the Lender and all Security documents must be registered, the Lender's Solicitor (as hereinafter defined) must provide a satisfactory report on registration of the Security, the Lender's Solicitor (as hereinafter defined) must confirm that no adverse filings concerning the Borrower have been registered in any department or agency of government which, in the Solicitor's (as hereinafter defined) opinion, could affect the security or priority of the Security, and all other terms and conditions of this Commitment Letter must be satisfied.
- b) Inspection of the Subject Property by the Lender.
- c) The senior mortgagee's syndicate partner's approval for the subject 2<sup>nd</sup> mortgage loan.

The Lender's receipt and satisfactory review of the following materials:

- d) An appraisal report valuing the Subject Property at no less than \$98,814,351 (net of HST) as-complete, and Land Value of no less than \$6,000,000 with a transmittal letter from the author of the report addressed to "Trez Capital Limited Partnership or its nominee". (*Received*)
- e) All required environmental reports for the Subject Property. The report must include the terms of engagement and a transmittal letter from the author of the report(s) addressed to "Trez Capital Limited Partnership or its nominee" and disclosing the amount of liability insurance that the author carries. (*Received*)
- f) A geotechnical report for the Subject Property. The report must include the terms of engagement and a transmittal letter from the author of the report(s) addressed to "Trez Capital Limited Partnership or its nominee" and disclosing the amount of liability insurance that the author carries. (*Received*)
- g) Land purchase contracts for the Subject Property (1445 & 1451 Wellington Street West); all amendments (if any), and the associated statements of adjustments for the Subject Property. (*Received*)
- h) Architectural drawings, site plans, cross sections, floor layouts and building plans showing the gross square footage of the Subject Property as well as delineating any unit divisions or strata lots within the Subject Property along with net square footage for each such sub-unit. (*Received*)
- i) A current certified survey for the Subject Property. (*Received*)
- j) Proposed strata / condominium corporation bylaws and realtor listing agreement(s) for the Subject Property. (*Received*)
- k) Commitment letter(s) and/or loan agreement(s) for all senior mortgages. All senior mortgage terms and conditions must be satisfactory to the Lender. (*Received*)
- l) A priority and standstill agreement between the Lender and the senior mortgagee, in form and substance satisfactory to the Senior Lender and its syndication partners.

- m) Confirmation of the engagement of Altus Group (the “Project Monitor”) to act on behalf of the Lender throughout the duration of the intended work on the Subject Property at the Borrower’s expense. The Lender reserves the right to retain the Project Monitor to perform work at a level to be determined satisfactory by the Lender and to change the level of work required by the Project Monitor from time to time. *(Received)*
- n) A report by the Project Monitor confirming that the development budget is sufficient to complete the Subject Property, the work completed to date, any applicable holdbacks, the value of any change orders, the amount of the draw request, and the cost-to-complete for the Subject Property. The Report shall be accompanied with a transmittal letter from the author of the report(s) addressed to “Trez Capital Limited Partnership or its nominee” and disclosing the amount of liability insurance that the author carries. *(Received)*
- o) Evidence, as verified by the Lender and the Project Monitor, confirming that the Borrower, inclusive of the land, has: (i) a minimum of \$5,176,023 of cash equity invested in the development of the Subject Property, and (ii) the work in place and materials purchased comprising this cash equity of \$5,176,023 was required for the development of the Subject Property; and (iii) such work and materials are useable for the said development with such equity to stay in place throughout the term of the loan. *(Received)*
- p) Confirmation that fixed price contracts on terms and conditions satisfactory to the Lender are in place for a minimum of 65% of the hard construction costs of the Subject Property or such other higher amount as recommended by the Lender’s cost consultant. The Lender requires labour & material bonds and performance bonds of the hard construction costs, in an amount to be determined at the sole discretion of the Lender. The Lender will consider recommendations of its cost consultant in determining the bonding requirements. *(Received)*
- q) The Borrower’s detailed project / development budget and schedule, indicating individual costs per line item broken out on a monthly basis. *(Received)*
- r) A certified pro-forma profit statement. *(Received)*
- s) An approved site plan for the Subject Property. *(Received)*
- t) Building permits for the Subject Property. *(Received)*
- u) Evidence from Tarion that the Borrower, or related entity that will be constructing on the Subject Property, is a registered multi-family builder in the Province of Ontario. *(Received)*
- v) The letter of credit requirements and associated release requirements from the City of Ottawa. *(Received)*
- w) A signed and dated sales price list and presales summary. *(Received)*
- x) All presale contracts for the Subject Property totaling no less than \$56,135,045 in revenue. All presales must be to arm’s-length purchasers and include deposits of not less than 15% of the purchase price for the respective unit. *(Received)*
- y) A copy of the disclosure statement and all amendments (if any) for the Subject Property. *(Received)*

- z) A copy of the deposit protection insurance contract. *(Received)*
- aa) Written confirmation from the realtor/lawyer holding the presale deposits of the following information: lot number, date of contract, name of purchaser, citizenship of purchaser, purchase price, deposit received, and whether the contract is firm or conditional. *(Received)*
- bb) Resumes / biographies for the Borrower, Guarantor(s) and key members of the development team. *(Received)*
- cc) An organizational chart and a copy of the current shareholder registry for the Borrower and any corporate Guarantors, signed and dated by the respective company's authorized signatory. *(Received)*
- dd) Certified financial statements from the Borrower and Guarantor(s). If an individual then a personal net worth statement, on the Trez Capital form, dated no more than **four (4)** months prior, are required, if a corporate entity then most recent financial statements is required. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency. All Personal Net Worth Statements must include the individuals' full name, full-time occupation, Social Insurance Number, Birth date and current address.
- ee) Satisfactory results, in the Lender's sole discretion, of due diligence investigations conducted pursuant to the *Proceeds of Crime Money Laundering and Terrorist Financing Act (Canada)* and Regulations (collectively the "Act") thereunder including but not limited to the following;
  - i. One piece of satisfactory identification for all *Borrower/Guarantor/Signing Officer(s)* (up to three Signing Officers, if borrowing under a corporate entity) prior to closing; *(Received)*
  - ii. If the Borrower is a corporate entity, the name and address of all individuals who own or control (directly or indirectly) 25% or more of that corporate entity or the assets being held by that corporate entity, together with confirmation/evidence of the accuracy of all such information; *(Received)*
  - iii. The Borrower's bank statements for the last three months and/or such other information as may be required to verify the source of equity funds; *(Received)*
  - iv. Satisfactory verification of employment, income and assets; *(Received)*
  - v. Third Party Declaration/Statement; *(Received)*
  - vi. Politically Exposed (Foreign and Domestic) Persons Declaration; *(Received)*
  - vii. Director's resolutions, certificates of officers and opinions of counsel to the Lender and Borrower, confirming corporate capacity and the due authorization, execution, delivery, enforceability and priority of Security, as may be required by the Lender; and *(Received)*
  - viii. Any other documentation that may be requested by the Lender in order to fulfill its obligations under the Act. *(Received)*
- ff) Confirmation that the Subject Property, the proposed improvements to be constructed thereon are in compliance with current zoning and that there are no outstanding work or fire orders, or that any such orders shall be paid from the proceeds of the Mortgage.
- gg) Confirmation that all property taxes owing on the Subject Property have been paid or will be paid from the proceeds of the Mortgage and the Borrower is



registered in the appropriate monthly property tax payment program in the appropriate city, county or jurisdiction. (*Received*)

- hh) Insurance of the Subject Property which has been reviewed and approved by the Lender's Insurance Consultant (as hereinafter defined) which insurance shall include the coverage set out in Schedule A, or as otherwise required by the Lender in consultation with its Insurance Consultant (as hereinafter defined).
- ii) Confirmation that the Borrower is in compliance with each of the terms and conditions of this Commitment Letter. In the case of any advance, all conditions precedent pertaining to the advance must be performed no less than five (5) business days prior to the scheduled date of the advance or the Lender shall be under no obligation to make the advance.
- jj) A Bring Down Certificate, signed by the Borrower and Guarantor(s), confirming that all representations and warranties set out in the Commitment Letter are true at the time of closing.
- kk) Such other materials and completion of such other reasonable requirements as may be deemed necessary by the Lender.

**23. Conditions  
Subsequent to the  
Disbursement of  
Funds**

The conditions subsequent to the disbursement of the Initial Advance shall include, but not be limited to the items set out in the remainder of this section, all of which must be satisfactory to the Lender in its sole, unfettered and absolute discretion.

The Lender's receipt of the following:

- a) All periodic reports by the Project Monitor provided to the senior mortgagee, dated no earlier than two (2) weeks prior to the requested advance date, confirming that the development budget is sufficient to complete the Subject Property, the work completed to date, any applicable holdbacks, the value of any change orders, the amount of the draw request, and the cost-to-complete the Subject Property.

**24. Real Property  
Taxes**

All property tax payments, utilities and like amounts due and owing in relation to the Subject Property, or any other taxes charged against the Subject Property, shall be paid prior to or coincide with the Advance (as hereinafter defined). The Borrower shall make arrangements to have the taxes paid when due to the appropriate taxing authority in order to have them paid in full on their due date. The Borrower is to provide evidence of same to the Lender on a quarterly basis.

In the Event of a Default (as hereinafter defined) under the Mortgage Security, the Lender shall have the right to require the establishment of a tax reserve by way of monthly payments representing 1/12 of the estimated taxes payable. The Lender shall not be responsible for the payment of any tax arrears.

**25. Statutory  
Declaration**

The Lender shall receive a satisfactory statutory declaration from an officer or director of the Borrower as to the representations and warranties of the Borrower, whether contained in this Commitment Letter or in any of the Security, including: accuracy of financial statements and that there has been no material adverse change in the Borrower financial conditions or operations as reflected in the financial statements used to evaluate this credit; satisfactory title to the Subject Property charged by the Mortgage; power and authority to execute and deliver documents; accuracy of documents delivered and representations made to the Lender; no pending adverse claims; no outstanding judgments; no defaults under other agreements relating to the Subject Property; preservation of assets; payment of all taxes; no other consents, approvals or authorizations necessary in connection with documentation;

compliance of the Subject Property with all laws; no other charges against the Subject Property except permitted encumbrances; all necessary services available to the Subject Property; and such other matters as the Lender or its Solicitor (as hereinafter defined) may require.

**26. Further Documents**

Notwithstanding anything contained in this Commitment Letter, the Lender may request other documents containing such other assurances, information and covenants as the Lender’s Solicitor (as hereinafter defined) may require with regard to the Loan and Security.

**27. Funding**

All fundings shall require **five (5)** business days’ notice.

The Loan shall be funded in a multiple advances as follows:

- \$5,190,000 Upon completion of all legal work in form and content satisfactory to Lender and its Solicitor and registration of all Security, including, but not limited to, a valid 2<sup>nd</sup> mortgage (the “Initial Advance”).
- \$810,000 Monthly payments due will be accrued onto the Loan Amount outstanding in accordance with the Interest Accrual Budget.

The Lender shall record the principal amount of each advance of the Loan and the payment of principal, interest and fees and all other amounts becoming due to the Lender under this agreement. The Lender’s accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower for the Loan to the Lender pursuant to this agreement.

All fees that are payable to the Lender and expenses that are incurred by the Lender during the due diligence process shall be deducted from the Initial Advance or the Deposit.

**REPRESENTATIONS & WARRANTIES**

**28. The Borrower warrants and represents that:**

- a) Description of Properties** 1451 & 1445 Wellington Street West, Ottawa, Ontario  
Site and Property Description: A 19,833 square foot site currently being developed with a 12-storey concrete frame, condominium building featuring 93 residential units with 5,268 square feet of retail space at grade, 100 storage lockers and 130 underground parking spaces. (the “Subject Property” or the “Project”).
- b) Appraised Value** \$98,814,351 (Net of HST). The Subject Property was appraised by Julianne Wright, B. Arch, MBA, AACI, of Altus Group with an effective date of April 16, 2019.
- c) Ownership** At the time of the Initial Advance of the Loan, the legal and beneficial owner of the Subject Property will be Mizrahi Development Group (1451 Wellington) Inc.
- d) Share Capital** The Borrower declares and represents that its authorized share of capital is as follows:

Number of Shares	Class	Shareholder’s Name
		Mizrahi Developments Inc.

- e) **Priority of Financing** The mortgages registered against the Subject Property as at the funding date will be as follows:

Rank	Lender	Amount
1 <sup>st</sup> Position	Trez Capital Limited Partnership or its Nominee	\$70,000,000
2 <sup>nd</sup> Position	Trez Capital Limited Partnership or its Nominee	\$6,000,000
3 <sup>rd</sup> Position	Westmount Guarantee Services Inc.	\$24,000,000
Total		\$100,000,00

- f) **Repayment** This Loan will be repaid from the proceeds of sale of the Subject Property and/or other property or other assets of the Borrower or an affiliate of the Borrower.
- g) **Financial** All financial information provided by the Borrower and Guarantor(s) to the Lender, including but not limited to, financial information provided in respect of the values and other matters pertaining to the Subject Property is true and accurate and may be relied upon by the Lender in executing this Commitment Letter and making the Loan.
- h) **Development Schedule & Budget** Should the Borrower be required by the Lender to provide either a development schedule or a development budget, the Subject Property shall proceed in accordance with the said Lender approved development schedule and/or Lender approved development budget, except in the case of a Force Majeure (including but not limited to a pandemic). The Borrower shall not permit the events set out in the approved development schedule to be delayed more than 45 days from the approved schedule date and shall, within 10 days of notice of any cost over-run above and beyond the approved budget amount, pay said cost over-run from its own resources.
- i) **Legal Compliance** The Subject Property and the use and occupancy thereof, and revenues therefrom, are and shall be at the time of each disbursement, authorized and in accordance with all applicable legislation and there are, and shall be at the time of each disbursement, no work orders or liens outstanding against the Subject Property.
- j) **Hazardous Materials** The Borrower and Guarantor(s) warrant and represent that to the best of their knowledge the Subject Property and existing prior uses comply and have at all times complied with all laws, regulations, orders and approvals of all governmental authorities having jurisdiction with respect to environmental matters applicable to the ownership, use, maintenance, and operation thereof (collectively, the "Environmental Laws") and, without limiting the generality of the foregoing:
- (i) The Subject Property has never been used as a land fill site or to store hazardous substances either above or below ground, in storage tanks or otherwise;
  - (ii) All hazardous substances used in connection with the business conducted on the Subject Property has at all times been received, handled, used, stored, treated, shipped and disposed of in strict compliance with all Environmental Laws;
  - (iii) No hazardous substances have been released into the environment or deposited, discharged, placed or disposed of at, on or near the Subject Property as a result of the conduct of the business on the Subject Property; and
  - (iv) No notices of any violation of any matters referred to above relating to the Subject Property or its use have been received by the Borrower and there are no directions, writs, injunctions, orders or judgments outstanding, no law

suits, claims, proceedings, or investigations being instituted or filed.

For the purposes of this Commitment Letter, a hazardous substance includes but is not limited to contaminants, pollutants, dangerous substances, gasoline, oil, liquid wastes, industrial wastes, whole liquid wastes, toxic substances, hazardous wastes, hazardous materials and hazardous substances as defined in or pursuant to any applicable Environmental Laws. Further, the Borrower shall indemnify and save harmless the Lender from any loss or liability whatsoever arising from any violation whatsoever of any law, regulation, ordinance, judgment, appraisal or decision in connection with hazardous risks or environmental risks.

## GENERAL CONDITIONS

- 29. Repayment of the Loan** The Loan shall be repayable on demand by the Lender following the occurrence of an Event of Default (as hereinafter defined), and shall in any event be repaid in full at the end of the Term. Any payment of any amount due to the Lender hereunder or in the Security documents must be received by the Lender at the Lender's address by 1:00pm Pacific Standard Time on a business day, failing which such payment will be deemed to be received on the next business day.
- 30. Management** The Subject Property is to be managed at all times by a property manager satisfactory to the Lender, and on terms satisfactory to the Lender. A change in the property manager without the Lender's approval shall constitute an Event of Default (as hereinafter defined).
- 31. Abandonment** In the event of abandonment of the Subject Property for a period in excess of fifteen (15) consecutive days, the Lender shall be entitled, after giving the Borrower written notice of any abandonment and provided the Borrower fails to rectify same within ten (10) days after such notice has been given, to forthwith withdraw and cancel its obligations hereunder and/or decline to advance further funds as the case may be and in addition to declare any funds advanced to forthwith become due and payable plus interest, all at the Lender's option.
- 32. Liens** At all times, and in particular on each disbursement date, there shall have been full and complete compliance with all requirements of federal and provincial legislation which may give rise to a lien or other charge in priority to the Lender. The Borrower shall provide additional security, information and documentation as may be required by the Lender to preserve and ensure, in all respects, the absolute priority of the Mortgage over any rights of any existing or potential lien claimants.
- 33. Environmental Concerns** At the time of any disbursement of the Loan, the Lender shall be satisfied that there are not in, on, under or about the Subject Property, or any part thereof, any contaminants, toxic, dangerous or hazardous substances (collectively, the "Dangerous Substances") including, without limitation, UFFI (Urea Formaldehyde Foam Insulation), asbestos fireproofing insulation, PCB's (Polychlorinated Biphenyl's) or radioactive materials and, to the best of the Borrower knowledge, neither the Subject Property, nor any adjacent lands, have ever been used as or for a waste disposal or coal gasification site, nor have they ever contained any underground storage tanks, and further, the use of the Subject Property has not involved, and will not involve, during the Term, the handling of Dangerous Substances or will such use result in any environmental damage. In addition to any liability imposed on the Borrower and Guarantor(s) under any instrument evidencing or securing the Loan indebtedness, the Borrower and Guarantor(s) shall be liable for any and all of the costs, expenses, damages or liabilities of the Lender, its Directors and Officers (including, without limitation, all reasonable legal fees)

directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Subject Property of any hazardous or noxious substances and such liabilities shall survive foreclosure of the Security for the Loan and any other existing obligations of the Borrower and Guarantor(s) to the Lender in respect of the Loan and any other exercise by the Lender of any remedies available to the Lender for any default of the Loan.

**34. Restriction on Further Financing**

The Borrower agrees not to enter into any further financing of the Subject Property and not to further encumber the Subject Property in any manner without the prior written approval of the Lender, which approval may be withheld in the Lender's sole discretion. The Borrower will provide evidence, satisfactory to the Lender, as to the source of the Borrower required equity in the Subject Property. The Borrower shall disclose to the Lender all existing or proposed financing related to the Subject Property or any Security used in connection therewith and shall not further pledge, charge or otherwise encumber its interest in the Subject Property, nor any of the Security used in connection with the Subject Property to any party other than the Lender, without the prior written consent of the Lender.

**35. Sale**

Except as provided in Partial Discharges section above, the Borrower shall not sell, assign, lease in its entirety or otherwise dispose of the legal ownership or title to the Subject Property, or its beneficial interest therein, or of the personal property related thereto or which is necessary to the use and operation of the Subject Property, without the prior written consent of the Lender. The Borrower shall not make any changes to the authorized share capital or allocation or ownership thereof, which would result in a change of voting control or beneficial ownership thereof without the prior written consent of the Lender.

**36. Proceedings**

The Borrower shall provide the Lender with evidence that it has taken all of the necessary corporate proceedings relating to the transactions contemplated herein.

**37. Default**

At the time of the disbursement of any part of the Loan, no default shall have occurred and be continuing, nor any state of affairs or event shall be existing which, with the passage of time or the giving of notice or both, would constitute a default hereunder or in the instruments evidencing or securing the Loan or incidental thereto and neither the Borrower or Guarantor(s) shall be deceased or insolvent or be the subject of any bankruptcy, arrangement with creditors, proposal, amalgamation, reorganization, liquidation, winding-up, dissolution, receivership or material litigation or continuation under the laws of any other jurisdiction. Any default under the Security shall be deemed to be a default hereunder.

**38. Costs & Expenses**

Whether or not the Loan is disbursed, and notwithstanding retention of the Commitment Fee by the Lender, all of the Lender's costs and expenses relating to the Loan, including legal costs and travel costs, in addition to any costs and expenses incurred by the Lender due to proceedings under the Bankruptcy and Insolvency Act relating to the Borrower, shall be borne in full by the Borrower. Such costs and expenses may be added to the then outstanding principal balance of the Mortgage and shall bear interest at the Interest Rate under the Mortgage. If requested by the Lender, the Borrower shall deposit with the Lender's Solicitor (as hereinafter defined) an amount equal to the estimated fees and expenses of the Lender's Solicitor (as hereinafter defined) prior to such Solicitor (as hereinafter defined) commencing preparation of the Security.

In the event of the occurrence of an Event of Default (as hereinafter defined) that is not cured during the applicable cure period, then the Lender shall, notwithstanding anything contained herein to the contrary, be entitled to receive in addition to all

other fees, charges and disbursements, an administration and management fee in the amount of (and not to exceed) **\$5,000** for each month or part thereof for which the Borrower remains in default less any administration and management fee paid to the first mortgagee. This administration and management fee is intended to reimburse the Lender for time and trouble in the management and administration of the Security and the Subject Property. The said sum or sums are agreed to be a liquidated amount to cover the Lender's administration and management costs and are not intended nor shall be construed to be a penalty. All such sums payable to the Lender shall be a charge upon the Subject Property and shall bear interest at the Interest Rate until paid.

### **39. Marketing**

From time to time, the Lender publishes advertisements or announcements of completed transactions. The advertisements or announcements include, but are not limited to, press releases, paid advertisements, internally displayed tombstones, investor brochures or information displayed on the internet or on the Lender's intranet. The Borrower and Guarantors consent to the publication of an advertisement or announcement of the transaction contemplated by this Commitment Letter. The Borrower and Guarantor agree to allow the Lender to photograph or utilize existing photographs or artistic renderings (for unfinished projects) of the Subject Property for possible use in internal or external marketing programs. For clarity, section 39 shall apply on to the Subject Property and shall not include or extend to any other property owned by the Borrower or any affiliate Borrower.

During the Term, the Lender may require a sign to be erected on the Subject Property and maintained by the Borrower evidencing the financing of same. The design of the sign is to be approved by the Lender prior to being erected on the Subject Property.

### **40. Further Assurances**

The Borrower and Guarantor(s) shall, at the Lender's request, execute or deliver such further documentation and enter into such other agreements as are necessary for the securing of the Loan and the fulfilling of the terms contained herein, and deliver such financial information concerning the Borrower as the Lender may require, and satisfy the terms and conditions herein to permit the disbursement of the entire Loan Amount.

### **41. Financial Information**

Until the repayment of the Loan, the Borrower shall provide the Lender, within 120 days after the end of each fiscal year of the Borrower or more often if requested by the Lender, a detailed financial statement of the Borrower including a separate income and expense statement for the Subject Property, an operating statement and an updated rent roll containing relevant lease terms for the Subject Property, all satisfactory to the Lender in form and content.

The financial statement is to be prepared by a chartered accountant licensed under the applicable legislation in the province where the Subject Property is located.

The Borrower and Guarantor(s) authorize the Lender to obtain such financial information as the Lender may require. Specifically, the Borrower and Guarantor(s) consent to the Lender obtaining credit reports from the appropriate credit reporting agencies and relying on these reports when making decisions regarding advances under this Loan.

### **42. Information Updates**

Until the repayment of the Loan, the Borrower shall supply the Lender with such updated information relating to any of the condition precedent requirements as the Lender may request from time to time. Such information shall be provided to the Lender within 14 days from the date of the Lender's request.

- 43. Survival of Commitment** The terms, conditions, representations and warranties expressed herein shall continue in effect as long as any part of the Loan remains outstanding and shall bind the personal representatives, heirs, successors and assigns of the Lender and the Borrower, shall enure to the benefit of the successors and assigns of the Lender and the Borrower, and shall not merge on the execution or registration of the Security. In the event of conflict between this Commitment Letter and the Security delivered hereunder, the Lender shall determine which shall prevail.
- 44. Communication** All communications provided for hereunder shall be in writing, personally delivered or sent by prepaid first class mail or telecommunications, and if to the Lender addressed to the address above noted, to the attention of the President, and if to the Borrower to the address noted above. The date of receipt of any such communication shall be deemed to be the date of delivery, if delivered as aforesaid, or on the third business day following the date of mailing, as aforesaid. Any party hereto may change its address for service from time to time by notice in the manner herein provided. In the event of a postal disruption or an anticipated postal disruption, prepaid first class mail will not be an acceptable means of communication.
- 45. Governing Law** This Commitment Letter shall be governed by and constituted in accordance with the laws of the province in which the Subject Property is situated.
- 46. Waivers** Except as otherwise expressly provided herein, this Commitment Letter cannot be waived, changed, amended, discharged or terminated other than by an agreement in writing signed by the party against whom enforcement of any waiver, change, amendment, discharge or termination is sought.
- 47. Other Agreements** This Commitment Letter, when accepted by the Borrower and Guarantor(s), will constitute the entire agreement and understanding between the parties hereto with respect to the Loan and supersedes all other prior agreements, understandings or commitments, oral or written. This Commitment Letter shall assume the accuracy of information previously supplied by the Borrower and will presuppose no material adverse change in the Borrower prior to any disbursement. Any approvals or consents required to be made or given by the Lender hereunder must be expressly given pursuant hereto and shall not be construed by the delivery or receipt of documents.
- 48. Time of the Essence** Time shall be of the essence in all respects herein.
- 49. Privacy Act Consent** With regard to any personal information that is provided during this application process, the Borrower and Guarantor(s) consent to the collection, use, and disclosure of that information for the following purposes: to understand their financial status in order to approve the Loan; to meet regulatory requirements; to enable the Lender to manage and enforce the credit facility; to verify their identities. The Lender may from time to time give this personal information to credit bureaus and other financial institutions. The Lender may also share this personal information with anyone who works with or for the Lender or any individual or group investing in the Loan, and any other potential sources of business, but only as needed for the provision and enforcement of the credit facility requested.
- 50. Assignment, Sale or Syndication** Neither this Commitment Letter, nor any of the Loan proceeds, may be assigned by the Borrower, but this Commitment Letter and attendant Security may be assigned by the Lender without the consent of the Borrower. The Loan terms, representations and warranties herein contained shall enure to the benefit of each assignee of the Lender. The Lender shall have the right to assign, sell, syndicate or

transfer all or any portion of the Loan, and as part of any such transaction, the Lender is hereby authorized to provide to prospective participants in such transactions all information received by the Lender regarding the Borrower and the Subject Property. This information will be held in strict confidence between the Lender and any prospective participant in the Loan.

#### 51. Interpretation

- a) The headings of all provisions herein are inserted as a matter of convenience only and not to define the intent of this document. The necessary grammatical changes required to apply to the parties hereto shall be assumed as though expressed.
- b) "Business Day" means a day of the week, other than Saturday, Sunday or any other day which is a statutory or a municipal holiday in the municipality in which the Subject Property is situated.
- c) "Event of Default" shall mean the breach of any of the terms, conditions, representations or warranties contained in this Commitment Letter, as it pertains to both the Borrower and Guarantor(s).
- d) "Lender" shall mean Trez Capital Limited Partnership or its nominee.
- e) "Person" includes any individual, partnership, joint venture, trust, unincorporated organization or any other association, corporation and government or any department or agency thereof.
- f) The words "hereto", "herein", "hereunder", "hereby", "Commitment Letter", "this agreement", and similar expressions used in this Commitment Letter, including the schedules attached hereto, mean or refer to this Commitment Letter and not to any particular provision, section or paragraph or other portion of this Commitment Letter and include any instrument supplemental or ancillary hereto.
- g) The word "satisfactory" shall mean acceptable to the Lender in its absolute, sole and unfettered discretion.

#### 52. Advance

Notwithstanding anything contained in this Commitment Letter, the advance of the Loan or any part thereof is subject to the Lender's sole, absolute, unfettered and unqualified discretion not to advance notwithstanding any and all steps taken by you or your legal counsel, including, without limitation, the registration of Security documents.

#### 53. Counterparts, Facsimile & Electronic Transmission

This agreement may be executed in any number of counterparts and by facsimile, electronic transmission or .pdf copy, each of which when so executed is deemed to be an original and all of which together shall constitute one and the same agreement.

#### 54. Professional Advisors

- a) **Solicitor:** The title report, Security and all other documents relating to this financing and the processing of all legal steps with respect to advances of funds shall be prepared and carried out by John D. van Gent of the law firm of Bennett Jones LLP, located at 3400 One First Canadian Place, in the City of Toronto, Province of Ontario (Telephone: 416-777-6522).
- b) **Insurance Consultant:** All insurance and bonding matters shall be reviewed and approved at the cost of the Borrower by David Truscott of the consulting firm Risk Review Inc., located at Suite #3 94 Graham Street, (PO Box 20137), in the City of Woodstock, Province of Ontario (Telephone: 416-607-7251).
- c) **Project Monitor:** The preliminary report and monthly inspections certifying



each monthly claim under the senior mortgage facility shall be prepared by Andrew Driver of the consulting firm Altus Group, located at 33 Yonge Street Suite 500, in the City of Toronto, Province of Ontario (Telephone: 416-641-9630), who shall act as the Project Monitor on behalf of the Lender.

The Lender reserves the right to appoint such other Solicitor, Project Monitor, Insurance Consultant or Environmental Consultant from time to time without the consent of the Borrower.

## ACCEPTANCE

This Commitment Letter shall not become effective until the Borrower, Guarantor(s) and Lender have signed it and a copy is returned to the Lender's office by no later than 5:00 pm Pacific Time on **October 29, 2021**. The Borrower and Guarantor(s) hereby acknowledge and agree to the terms and conditions of this Commitment Letter and authorize Trez Capital Limited Partnership to instruct its Solicitor to prepare the Security documentation. The Borrower and Guarantor(s) further acknowledge that the Commitment Fee set forth herein is a reasonable estimate of the cost incurred in granting the Loan and of holding monies available to fund same, and that the Commitment Fee shall be forfeited and payable to Trez Capital Limited Partnership as liquidated damages, and not as a penalty, if the Initial Advance under the Loan is not taken down within the time limit herein. This Commitment Letter and any fees earned as a result of this Commitment Letter, together with any expenses or costs incurred by Trez Capital Limited Partnership including, but not limited to, appraisal, re-appraisal, inspections, re-inspections, title searches, plan reviews, soil tests, survey, environmental assessments, and legal costs on a solicitor and its client basis, are deemed to be a charge on the Subject Property referred to herein and Trez Capital Limited Partnership may file and maintain a caveat on the title to the Subject Property to protect that charge and the Borrower and Guarantor(s) do hereby mortgage to Trez Capital Limited Partnership all its estate and interest in the said Subject Property and Security. This Commitment Letter supersedes all previous correspondence between the parties hereto.

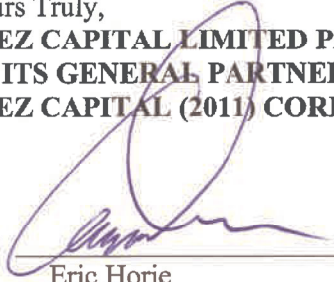
Please set out below the name and phone number (including area code) of the solicitor representing you:


Lawyer	Avril Lavallee
	_____
	(PLEASE PRINT)
Firm	McCarter Grespan Beynon Weir
	_____
	(PLEASE PRINT)
Phone Number	519 571-8800
	_____
	(PLEASE PRINT)

Please set out below the name and phone number (including area code) of the insurance agent representing you:

Insurance Agent	_____
	(PLEASE PRINT)
Firm	_____
	(PLEASE PRINT)
Phone Number	_____
	(PLEASE PRINT)

Yours Truly,  
**TREZ CAPITAL LIMITED PARTNERSHIP  
BY ITS GENERAL PARTNER  
TREZ CAPITAL (2011) CORPORATION**

Per:   
Eric Horie  
Senior Vice President  
Lic.#: M2001785

Per:   
Robert Perkins  
Managing Director  
Lic.#: M16002264

We hereby agree to the terms and conditions contained in this Commitment Letter and agree to be bound by the terms hereof.

Dated at the \_\_\_\_\_ of \_\_\_\_\_, in the Province of Ontario, this 29 day of October, 2021.

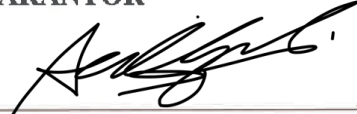
**BORROWER**

Mizrahi Development Group (1451 Wellington) Inc.

  
\_\_\_\_\_  
Sam Mizrahi

I/We have the authority to bind the Corporation.

**GUARANTOR**

  
\_\_\_\_\_  
Sam Mizrahi

\_\_\_\_\_  
Witness

## SCHEDULE 'A' INSURANCE

The Borrower shall obtain and maintain during the Term the following insurance coverage with respect to the Subject Property and the property related thereto or used for its operation, which insurance shall be reviewed by the Lender's Insurance Consultant as set out in the Commitment Letter, prior to any advance of funds.

### 1. Upon substantial completion of the Subject Property

- (i) **Fire Insurance:** A fire insurance policy with extended coverage for all other risks and perils for an amount equal to one hundred percent (100%) of the gross replacement cost for the building erected on the Subject Property, without deduction for foundation and footings; said policy shall inter alia provide for replacement cost endorsement, deletion from the policy of any provision requiring reconstruction on same or adjacent sites, coverage of direct and indirect damage resulting from leakage of fire protection equipment, an endorsement to the effect that the policy will cover any additional costs of reconstruction as a result of enforcement of current building by-laws and regulations, and loss to be payable to the Lender as a second-ranking mortgage creditor on the Subject Property in accordance with the IBC 3000 mortgage clause approved by the Insurance Bureau of Canada including, without limitation, that such policy will not be cancelled, terminated or permitted to expire unless the Lender shall first receive a thirty (30) days prior written notice of the same. Such policy of insurance shall not contain a percentage co-insurance endorsement other than a one hundred percent (100%) stated amount co-insurance endorsement.
- (ii) **Boiler and Machinery Insurance:** A broad form boiler insurance policy with coverage on all electrical and mechanical equipment, as well as all pressure vessels; such policy shall contain a rider with the standard mortgage clause approved by the Canadian Boiler and Machinery Underwriters' Association, with proceeds payable to the Lender as second-ranking mortgage creditor on the Subject Property and such policy shall provide inter alia for the same terms and conditions as set out in paragraph 1(i) above.
- (iii) **Liability Insurance:** A general liability insurance policy covering corporeal and material damages in an amount of not less than Five Million Dollars (\$5,000,000) per occurrence. The Policy shall include limited pollution coverage.
- (iv) **Rental Insurance:** A rental income insurance policy for a period of indemnity of, at minimum, twenty-four (24) months for an amount equal to, at minimum, one hundred per cent (100%) of the actual or projected gross annual rents (or the net rents plus the amount of the operating expenses from the Subject Property).

### 2. For Properties Under Construction

- (i) All Risks Builders Course of Construction including flood and earthquake on:
  - a. One hundred percent (100%) of the estimated final construction cost of the Subject Property, including reasonable soft costs;
  - b. One hundred percent (100%) of the anticipated annual rents (assuming full occupancy) written on a delayed income basis.
  - c. The policy shall allow for partial or full occupancy. All other terms and conditions shall apply as if there were a fire with extended coverage policy in force as described above in paragraph 1(i).
- (ii) The liability coverage as described more fully in paragraph 1(iii) above. However, if the construction cost is in excess of Ten Million Dollars (\$10,000,000), then a wrap-up liability is required with a limit of not less than Ten Million Dollars (\$10,000,000) and must include all contractors, subcontractors and trades.
- (iii) Engineers' errors and omission insurance for at least Five Hundred Thousand Dollars (\$500,000) or such greater amount as the Lender may reasonably require.

**3. Additional Insurance**

In addition to any of the forgoing, the Lender shall be entitled to request that the Borrower obtain any other insurance coverage it deems necessary, useful or appropriate.

The provisions relating to cancellation of the insurance policies or alteration clauses in the policies, including the mortgage clause, shall provide that a prior written notice of not less than thirty (30) days must, in such event, be given to the Lender.

All proceeds of insurance from insurance policies maintained, other than liability insurance, shall be paid to the Lender and at the option of the Lender may either be applied on account of the Loan, whether or not the same may be due and payable, and interest thereon and any other sums payable in respect thereof, or held by it as part of the Lender's Security and, so long as the Borrower is not in default, may be subject to withdrawal by the Borrower in instalments on a cost-to-complete basis, as the repair or replacement progresses, subject to the Lender's receipt of appropriate certificates, opinions and other documents as required by it and Lender's Solicitor.

If the Lender's Security is by way of a leasehold mortgage, then notwithstanding the provisions of the immediately preceding paragraph, but provided that the Lender, its Insurance Consultant and its Solicitor are satisfied that the proceeds of insurance shall be applied to rebuilding and are otherwise completely satisfied with the provisions of all arrangements made with the ground lessor and an insurance trustee in respect thereof, the proceeds payable under the policies referred to above, other than liability insurance may be payable to the insurance trustee under and in accordance with an insurance trust agreement, satisfactory to the Lender, its Insurance Consultant and its Solicitor.

The Borrower shall provide to the Lender such evidence as the Lender may request that all of the above required insurance is in place prior to any advance of the Loan being made.

All required insurance policies shall be forwarded to the Lender's Insurance Consultant for verification and approval, at the expense of the Borrower, prior to the disbursement of the Initial Advance of the Loan.

**SCHEDULE 'B'**  
**SALES PRICE LIST**

The following sales price list is agreed upon by the Borrower and the Lender.

Suite	Status	Size	Type	Unit Price	Parking Price	Parking (1) One or (0) Nil	Locker Price	Locker (1) One or (0) Nil	Total Price	PSF	Total Price Net of HST
201	Firm	638	1 Bed	\$474,990	\$40,000.00	ONE	\$0	NIL	\$514,990	\$744.50	\$476,982.30
202	Available	1,543	2 Bed+Den	\$1,314,990					\$1,314,990	\$852.23	\$1,184,946.90
203	Available	776	1 Bed+Den	\$659,990					\$659,990	\$850.50	\$605,300.88
204	Available	819	1 Bed+Den	\$704,990					\$704,990	\$860.79	\$645,123.89
205	Available	711	1 Bed+Den	\$614,990					\$614,990	\$864.96	\$565,477.88
206	Firm	930	2 Bed+Den	\$689,990	\$40,000.00	ONE	\$10,000	ONE	\$739,990	\$741.92	\$676,097.35
207	Firm	1,660	2 Bed+Den	\$1,284,990	\$40,000.00	ONE	\$10,000	ONE	\$1,334,990	\$774.09	\$1,202,646.02
208	Available	1,102	2 Bed+Den	\$969,990					\$969,990	\$880.21	\$879,637.17
301	Firm	921	2 Bed+Den	\$709,990	\$40,000.00	ONE	\$20,000	TWO	\$769,990	\$770.89	\$702,646.02
302	Available	681	1 Bed+Den	\$609,990					\$609,990	\$895.73	\$561,053.10
303	Firm	1,251	2 Bed+Den	\$959,990	\$80,000.00	TWO	\$10,000	ONE	\$1,049,990	\$767.38	\$950,433.63
304	Available	1,543	2 Bed+Den	\$1,349,990					\$1,349,990	\$874.91	\$1,215,920.35
305	Available	1,276	2 Bed+Den	\$1,109,990					\$1,109,990	\$869.90	\$1,003,530.97
306	Firm	1,080	2 Bed+Den	\$819,990	\$40,000.00	ONE	\$0	NIL	\$859,990	\$759.25	\$782,292.04
307	Available	809	1 Bed+Den	\$709,990					\$709,990	\$877.61	\$649,548.67
308	Firm	1,775	2 Bed+Den	\$1,324,990	\$80,000.00	TWO	\$10,000	ONE	\$1,414,990	\$746.47	\$1,273,442.48
309	Available	1,102	2 Bed+Den	\$979,990					\$979,990	\$889.28	\$888,486.73
310	Available	1,439	2 Bed+Den	\$1,299,990					\$1,299,990	\$903.40	\$1,171,672.57
311	Firm	1,020	2 Bed+Den	\$777,990	\$40,000.00	ONE	\$0	NIL	\$817,990	\$762.74	\$745,123.89
401	Firm	921	2 Bed+Den	\$694,990	\$40,000.00	ONE	\$10,000	ONE	\$744,990	\$754.60	\$680,522.12
402	Firm	681	1 Bed+Den	\$526,990	\$40,000.00	ONE	\$10,000	ONE	\$576,990	\$773.85	\$531,849.56
403	Firm	1,251	2 Bed+Den	\$969,990	\$80,000.00	TWO	\$10,000	TWO	\$1,059,990	\$775.37	\$959,283.19
404	Available	1543	2 Bed+Den	\$1,359,990					\$1,359,990	\$881.39	\$1,224,769.91
405	Available	1,276	2 Bed+Den	\$1,119,990					\$1,119,990	\$877.74	\$1,012,380.53
406	Available	1,080	2 Bed+Den	\$959,990					\$959,990	\$888.88	\$870,787.61
407	Available	809	1 Bed+Den	\$719,990					\$719,990	\$889.98	\$658,398.23
408	Firm	1,775	2 Bed+Den	\$1,331,990	\$40,000.00	ONE	\$10,000	ONE	\$1,381,990	\$750.42	\$1,244,238.94
409	Firm	1,102	2 Bed+Den	\$852,990	\$40,000.00	ONE	\$10,000	ONE	\$902,990	\$774.04	\$820,345.13
410	Firm	1,439	2 Bed+Den	\$1,106,990	\$40,000.00	ONE	\$10,000	ONE	\$1,156,990	\$769.28	\$1,045,123.89
411	Firm	1,020	2 Bed+Den	\$819,990	\$40,000.00	ONE	\$10,000	ONE	\$869,990	\$803.91	\$791,141.59
501	Firm	250	Partial	\$239,000	\$0.00	NIL	\$0	NIL	\$239,000	\$956.00	\$227,186.31
502	Firm	1,238	2 Bed+Den	\$1,014,990	\$80,000.00	TWO	\$20,000	TWO	\$1,114,990	\$819.86	\$1,007,955.75
503	Firm	686	1 Bed	\$579,990	\$40,000.00	ONE	\$10,000	ONE	\$629,990	\$845.47	\$578,752.21
504	Firm	1,215	2 Bed+Den	\$1,029,990	\$40,000.00	ONE	\$0	NIL	\$1,069,990	\$847.73	\$968,132.74
505	Firm	699	1 Bed	\$572,990	\$40,000.00	ONE	\$0	NIL	\$612,990	\$819.73	\$563,707.96
506	Available	621	1 Bed	\$624,990					\$624,990	\$1,006.43	\$574,327.43
507	Available	710	1 Bed+Den	\$709,990					\$709,990	\$999.99	\$649,548.67
508	Firm	1,424	2 Bed+Den	\$1,299,990	\$80,000.00	TWO	\$10,000	ONE	\$1,389,990	\$912.91	\$1,251,318.58
509	Firm	965	2 Bed+Den	\$795,990	\$40,000.00	ONE	\$10,000	ONE	\$845,990	\$824.86	\$769,902.65
510	Firm	1,069	2 Bed+Den	\$879,990	\$40,000.00	ONE	\$10,000	ONE	\$929,990	\$823.19	\$844,238.94
511	Firm	1,237	2 Bed+Den	\$1,159,990	\$40,000.00	ONE	\$10,000	ONE	\$1,209,990	\$937.74	\$1,092,026.55
601	Firm	732	1 Bed+Den	\$619,990	\$80,000.00	TWO	\$10,000	ONE	\$709,990	\$846.98	\$649,548.67
602	Firm	1,238	2 Bed+Den	\$1,024,990	\$80,000.00	TWO	\$10,000	ONE	\$1,114,990	\$827.94	\$1,007,955.75
603	Available	632	1 Bed	\$589,990					\$589,990	\$933.53	\$543,353.98
604	Firm	1,113	2 Bed+Den	\$916,490	\$80,000.00	TWO	\$0	NIL	\$996,490	\$823.44	\$903,088.50
605	Firm	659	1 Bed	\$548,000					\$548,000	\$831.56	\$506,194.69
606	Firm	578	1 Bed	\$479,990	\$40,000.00	ONE	\$10,000	ONE	\$529,990	\$830.43	\$490,256.64
607	Firm	658	1 Bed	\$545,990	\$0.00	NIL	\$0	NIL	\$545,990	\$829.77	\$504,415.93
608	Firm	1,424	2 Bed+Den	\$1,199,990	\$80,000.00	TWO	\$20,000	TWO	\$1,299,990	\$842.69	\$1,171,672.57

Suite	Status	Size	Type	Unit Price	Parking Price	Parking (1) One or (0) Nil	Locker Price	Locker (1) One or (0) Nil	Total Price	PSF	Total Price Net of HST
609	Firm	914	2 Bed	\$759,990	\$40,000.00	ONE	\$10,000	ONE	\$809,990	\$831.50	\$738,044.25
610	Firm	1,073	2 Bed+Den	\$917,990	\$80,000.00	TWO	\$0	ONE	\$997,990	\$855.54	\$904,415.93
611	Firm	841	1 Bed+Den	\$711,990					\$711,990	\$846.60	\$651,318.58
701	Firm	732	1 Bed+Den	\$629,990	\$40,000.00	ONE	\$10,000	ONE	\$679,990	\$860.64	\$623,000.00
702	Firm	1,238	2 Bed+Den	\$1,034,990	\$40,000.00	ONE	\$0	NIL	\$1,074,990	\$836.02	\$972,557.52
703	Available	632	1 Bed	\$599,990					\$599,990	\$949.35	\$552,203.54
704	Firm	1,113	2 Bed+Den	\$924,990	\$80,000.00	TWO	\$0	NIL	\$1,004,990	\$831.08	\$910,610.62
705	Available	659	1 Bed	\$624,990					\$624,990	\$948.39	\$574,327.43
706	Available	578	1 Bed	\$549,990					\$549,990	\$951.54	\$507,955.75
707	Firm	658	1 Bed	\$555,990	\$40,000.00	ONE	\$0	ONE	\$595,990	\$844.97	\$548,663.72
708	Firm	1,424	2 Bed+Den	\$1,184,990	\$80,000.00	TWO	\$10,000	ONE	\$1,274,990	\$832.16	\$1,149,548.67
709	Firm	914	2 Bed	\$779,990	\$80,000.00	TWO	\$0	NIL	\$859,990	\$853.38	\$782,292.04
710	Firm	1,073	2 Bed+Den	\$918,990	\$80,000.00	TWO	\$10,000	ONE	\$1,008,990	\$856.47	\$914,150.44
711	Firm	841	1 Bed+Den	\$712,990	\$0.00	NIL	\$0	NIL	\$712,990	\$847.79	\$652,203.54
801	Firm	250	Partial	\$215,000	\$0.00	NIL	\$0	NIL	\$215,000	\$860.00	\$204,372.62
802	Firm	1,238	2 Bed+Den	\$1,669,990	\$80,000.00	TWO	\$20,000	TWO	\$1,769,990	\$1,348.94	\$1,587,601.77
803	Available	632	1 Bed	\$619,990					\$619,990	\$981.00	\$569,902.65
804	Firm	1,113	2 Bed+Den	\$964,990	\$80,000.00	TWO	\$30,000	THREE	\$1,074,990	\$867.02	\$972,557.52
805	Firm	659	1 Bed	\$577,990	\$0.00	NIL	\$0	NIL	\$577,990	\$877.07	\$532,734.51
806	Available	578	1 Bed	\$569,990					\$569,990	\$986.14	\$525,654.87
807	Available	658	1 Bed	\$644,990					\$644,990	\$980.23	\$592,026.55
808	Firm	1,424	2 Bed+Den	\$1,219,990	\$40,000.00	ONE	\$10,000	ONE	\$1,269,990	\$856.73	\$1,145,123.89
809	Firm	914	2 Bed	\$799,990					\$799,990	\$875.26	\$729,194.69
810	Firm	1,591	2 Bed+Den	\$1,498,990	\$80,000.00	TWO	\$10,000	ONE	\$1,588,990	\$942.17	\$1,427,424.78
811	Available	726	1 Bed+Den	\$769,990					\$769,990	\$1,060.59	\$702,646.02
901	Firm	732	1 Bed+Den	\$639,990	\$80,000.00	TWO	\$20,000	TWO	\$739,990	\$874.30	\$676,097.35
902	Firm	1,238	2 Bed+Den	\$1,054,990	\$80,000.00	TWO	\$20,000	TWO	\$1,154,990	\$852.17	\$1,043,353.98
903	Available	632	1 Bed	\$639,990					\$639,990	\$1,012.64	\$587,601.77
904	Firm	1,113	2 Bed+Den	\$984,990	\$40,000.00	ONE	\$10,000	ONE	\$1,034,990	\$884.99	\$937,159.29
905	Firm	659	1 Bed	\$597,990					\$597,990	\$907.42	\$550,433.63
906	Available	578	1 Bed	\$589,990					\$589,990	\$1,020.74	\$543,353.98
907	Available	658	1 Bed	\$664,990					\$664,990	\$1,010.62	\$609,725.66
908	Firm	1,424	2 Bed+Den	\$1,209,990	\$80,000.00	TWO	\$10,000	ONE	\$1,299,990	\$849.71	\$1,171,672.57
909	Firm	914	2 Bed	\$785,000	\$0.00	NIL	\$10,000	ONE	\$795,000	\$858.86	\$724,778.76
910	Firm	1,073	2 Bed+Den	\$928,990	\$40,000.00	ONE	\$10,000	ONE	\$978,990	\$865.79	\$887,601.77
911	Firm	841	1 Bed+Den	\$732,990	\$0.00	NIL	\$0	NIL	\$732,990	\$871.57	\$669,902.65
1001	Firm	1,714	2 Bed+Den	\$1,949,999	\$40,000.00	ONE	\$10,000	ONE	\$1,999,999	\$1,137.69	\$1,791,149.56
1002	Available	1,938	2 Bed+Den	\$2,599,990					\$2,599,990	\$1,341.58	\$2,322,115.04
1003	Available	2,388	2 Bed+Den	\$3,249,990					\$3,249,990	\$1,360.97	\$2,897,336.28
1004	Firm	1,889	2 Bed+Den	\$2,379,990	\$120,000.00	THREE	\$20,000	TWO	\$2,519,990	\$1,259.92	\$2,251,318.58
1101	Firm	3,563	3 Bed+Den	\$4,275,990	\$120,000.00	THREE	\$10,000	ONE	\$4,405,990	\$1,200.11	\$3,920,345.13
1102	Available	3,577	3 Bed+Den	\$5,019,990					\$5,019,990	\$1,403.41	\$4,463,707.96
1103	Available	4,601	3 Bed+Den	\$6,459,990					\$6,459,990	\$1,404.04	\$5,738,044.25
1104	Available	3,531	3 Bed+Den	\$4,999,990					\$4,999,990	\$1,416.03	\$4,446,008.85
<b>Total</b>		<b>106,657</b>		<b>102,890,619</b>					<b>106,290,619</b>	<b>\$964.69</b>	<b>96,025,027</b>

	<b>Parking</b>	<b>Locker</b>
Number of Remaining Units	55	44
Each must be sold at (Net of HST and Rebates)	\$40,000	\$10,000
<b>Total</b>	<b>\$2,200,000</b>	<b>\$440,000</b>

Loan No: 2272/21

**Disclosure to Borrower***Mortgage Brokerages, Lenders and Administration Act***Important**

This document must be provided to the Borrower 2 business days prior to the signing of any mortgage instruments, unless waived below.

**Property to be mortgaged:** 1451 & 1445 Wellington Street West, Ottawa, Ontario

**Details of Mortgage:**

The principal amount of the second Mortgage to be repaid by the Borrower will be \$6,000,000 to be advanced in multiple installment(s) with the first advance in the amount of \$5,190,000 to be advanced on funding.

The principal amount of the Mortgage will bear interest at 12.50% per year for the initial 14 months and 25.00% per year thereafter, and will be repayable upon loan maturity. Where the annual interest rate may change, the method of determining the annual interest rate is: the greater of HSBC prime rate + 10.05% and 12.50%.

Interest will begin to accrue on the Closing Date.

The mortgage will be interest only and interest is to be compounded monthly.

The total amount of all payments over the initial 14 month term of the mortgage will be \$815,938. Each payment made on the mortgage must be applied first to the accumulated cost of borrowing and then to the outstanding principal.

**Terms and Conditions:**

- *General Terms / Conditions:* See lender commitment letter for details
- *Prepayment Privileges:*
- *Transferability:*
- *Method of Payment:*
- *Special Conditions:*
- *Particulars / Penalties:*
- *Additional Comments:*
- *Optional Services:*

**Fees and Costs Payable by the Borrower:**

<i>Costs Included in APR</i>		<i>Costs Excluded from APR</i>	
Broker/Commitment Fee	\$180,000	Insurance Review	\$500
Exit Fee (if any)		Legal Fees/ Disbursements (est.)	\$5,000
		Appraisal or Inspection (if any)	
<b>Total Costs (Incl. APR):</b>	<b>\$180,000</b>	<b>Total Costs (Excl. from APR)</b>	<b>\$5,500</b>

**Total Cost of Borrowing: APR: 16.03% (This includes the final month of interest at 25%)**

Total Costs (incl. in APR) of \$180,000 + interest to be paid during the term of the mortgage of \$940,938 = **\$1,120,938.**

**Referral Fees Paid to Brokerage and Broker / Agent:**

N/A. The Broker / Agent is an affiliated or related company of the lender.

**Conflicts of Interest:**

The broker / Agent has the following relationship which may be perceived as a conflict of interest:

- The Broker / Agent is representing the Lender and not the Borrower in this transaction.
- The Broker / Agent is an affiliated or related company of the lender.
- The Broker /Agent has acted solely for the lender during the previous fiscal year.

**Name and Address of Brokerage:** Trez Capital, Suite 1404, 401 Bay St., Toronto, Ontario, M5H 2Y4  
**Licensing:** 12222

**Name of Authorized Person signing on behalf of the Brokerage:** Robert Perkins  
**Title of this Authorized Person:** Managing Director  
**Licensing:** M16002264

Date: OCT. 27, 2021

  
 \_\_\_\_\_  
**Signature of Authorized Person**

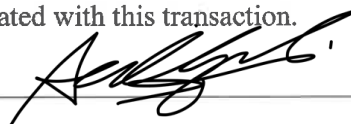
**Material Risks associated with Mortgage Borrowing:**

The Borrower acknowledge that the Brokerage and Broker / Agent have reviewed and discussed the material risks of mortgage financing. These risks include, but are not limited to, such items as the consequences of default in payment or other term of the mortgage which may result in the lender taking action against us; the prepayment penalties in the mortgage, if any; the mortgage may not be renewable at maturity; and any risk that a change in our income or other personal circumstances may create.

**ACKNOWLEDGEMENT**

I / we acknowledge receipt of a copy of this form and that I / we have reviewed the information herein. The Broker / Agent has explained the Risks and Benefits associated with this transaction.

Date: 10/29/21

Borrower: 

Date: \_\_\_\_\_

Borrower: \_\_\_\_\_

I / we waive the 48 hour requirement for this disclosure:

Date: \_\_\_\_\_

Borrower: \_\_\_\_\_

Date: \_\_\_\_\_

Borrower: \_\_\_\_\_





October 27, 2021

**Mizrahi Development Group (1451 Wellington) Inc.**  
125 Hazelton Avenue  
Toronto, ON  
M5R 2E4

**C/O**  
**Cushman & Wakefield Structured Finance ULC**  
161 Bay Street – 15th Floor  
Toronto, ON M5J 2S1

**Attention: Mr. Scott MacPherson Mr. Sam Mizrahi**

Dear Sirs:

**RE: Commitment letter (the "Commitment Letter") for second mortgage financing in the amount of \$6,000,000 (the "Loan") secured by a 19,833 square foot site currently being developed with a 93-unit residential condominium building with 5,268 square feet of ground floor retail space located at 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "Subject Property") [Mizrahi – 1451 Wellington Street West 2<sup>nd</sup> Mortgage, Trez Loan # 2272/21]**

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In connection with the Loan extended by the Lender pursuant to the Commitment Letter, the Lender, the Borrower and the Guarantor(s) hereby agree that, notwithstanding the execution and delivery, and where applicable, the registration or filing of, the Commitment Letter or any of the Security, the following provisions shall govern, as may be applicable:

- 2 Purpose & Use** Notwithstanding that the existing Loan purpose is to provide additional financing to the Borrower or an affiliate of the Borrower for general working capital purposes, the parties hereto covenant and agree that the Loan purpose shall be for the acquisition of the 180 Steeles Avenue West, Vaughn Ontario property and shall at all times be used for this said purpose and for no other purpose, without the prior written consent of the Lender.
- 21 Default** The \$6,000,000 real property mortgage creating a charge in 2<sup>nd</sup> priority over the Subject Property is cross-defaulted with all other loans, present and future, between the Lender and the Borrower or Guarantor(s), either individually or collectively, and with all other loans, present and future, between the Lender and entities owned or controlled by the principals of the Borrower or Guarantor(s), which includes, among other things, an event of default in the event that the \$20,000,000 Trez loan to Mizrahi Constantine (180 SAW) LP for the acquisition of the 180 Steeles Avenue West, Vaughan, Ontario property has not funded on or before the date which is five (5) business days after the date of the real property mortgage. The parties hereto covenant and agree that in the event of such a default the Borrower will have two (2) business days to repay the Loan in full.

A handwritten signature in black ink, appearing to be 'SM', located in the bottom right corner of the page.

**27 Funding**

Notwithstanding that funding of the Loan requires **five (5)** business days' notice. The Loan shall be available for advance up to three (3) business days prior to the funding date of the \$20,000,000 Trez loan to Mizrahi Constantine (180 SAW) LP for the acquisition of the 180 Steeles Avenue West, Vaughn Ontario property.

This Letter Agreement may be executed in one or more counterparts, each of which when so executed shall constitute an original, and all of which shall together constitute one and the same Letter Agreement.

The parties agree that this Letter Agreement may be executed by either party (including by means of DocuSign or other electronic means of execution) and forwarded to the other party by facsimile transmission or other electronic means and receipt by facsimile transmission or other electronic means of a copy of this Letter Agreement executed by a party (including by DocuSign or other electronic means of execution) shall bind the party so sending by facsimile transmission or other electronic means.

Except as expressly otherwise herein provided, all capitalized terms employed herein have the meaning ascribed to them in the Commitment Letter. This Letter Agreement shall be read to include any grammatical changes necessitated by the number or gender of the parties referred to herein

Other than as expressly set out herein, all of the terms and conditions of the Commitment Letter shall continue in full force and effect, unamended. This Amendment Letter shall not become effective until the Borrower, Guarantor(s) and Lender have signed it and the Commitment Letter and a copies of both are returned to the Lender's office by no later than 5:00pm Pacific Time on **October 29, 2021**.

Yours truly,

**Trez Capital Limited Partnership  
by its general partner,  
Trez Capital (2014) Corporation**

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

Eric Horie  
Senior Vice President  
Lic.#: M2001785

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

Robert Perkins  
Managing Director  
Lic.#: M16002264



We hereby agree to the Terms and Conditions contained in this Letter Agreement and agree to be bound by the terms hereof.

Acknowledged and agreed at November this 30 day of October, 2021.

**BORROWER**


Mizrahi Development Group (1451 Wellington) Inc.

  
\_\_\_\_\_  
Sam Mizrahi

I/We have the authority to bind the Corporation.

**GUARANTOR**

  
\_\_\_\_\_  
Sam Mizrahi

  
\_\_\_\_\_  
Witness





October 24, 2022

**Mizrahi Development Group (1451 Wellington) Inc.**  
125 Hazelton Ave  
Toronto, ON  
M5R 2E4

**Attention: Mr. Mark Kilfoyle**

Dear Sir:

**RE: Renewal of financing in the amount of \$6,000,000 secured by a \$6,000,000 2<sup>nd</sup> priority mortgage on a 19,833 square foot site being improved with a 82-unit residential condominium building with 5,268 square feet of ground floor retail space located at 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "Subject Property") [Mizrahi – 1451 Wellington Street West 2<sup>nd</sup> Mortgage, Trez Loan #2272/21]**

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We are pleased to advise that we have approved a renewal (the "Renewal") of the 2<sup>nd</sup> mortgage loan (the "Loan") to Mizrahi Development Group (1451 Wellington) Inc. (the "Borrower") on the terms described in this letter (this "Renewal Letter"), which upon execution by the Borrower, Guarantor and Lender shall constitute an agreement which shall bind the Borrower and Guarantor with respect to the Renewal. This Renewal Letter is an amendment of the Commitment Letter dated October 18, 2021. The Renewal has been approved subject to the following terms and conditions.

**1. Expiry of Renewal Offer**

It is a condition of this Renewal Letter that if the Security is not registered and in place, and the renewal is not completed on or before **November 1, 2022**, this Renewal Letter shall, at the option of the Lender, expire and be of no force and effect.

**2. Renewal Amount**

\$6,000,000 plus interest, fees, costs and expenses as set out in the Commitment Letter and this Renewal Letter.

The current Loan balance is \$5,802,516 as at October 1, 2022.

**3. Renewal Term**

7 months commencing from the renewal date of October 1<sup>st</sup>, 2022 (the "Renewal Date") and maturing on May 1<sup>st</sup>, 2023.

**4. Interest Rate**

Interest will be charged on the outstanding balance under the Loan at the greater of 16.95% per annum and HSBC Prime + 11.50%, compounded and payable monthly, for the initial 6 months of the Renewal Term, and 25.0% per annum, compounded and payable monthly, for the final month of the Renewal Term and thereafter. Overdue interest shall bear interest at the same rate as principal.

Such interest rate shall be set with respect to amounts advanced on the day of each advance and thereafter monthly on the first day of each month. Interest shall be calculated daily on the daily balance outstanding from time to time, before as well as after maturity, default or judgment, from the date of each advance. Such

Interest Rate shall be determined upon the basis of a three hundred and sixty-five (365) day year for common years and a three hundred and sixty-six (366) day year for leap years. Interest shall be calculated in accordance with the Lender's usual practice (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower. All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. All interest payable hereunder bears interest from the date of advance of any portion of the Loan to the Lender's solicitor, whether or not such advance of the Loan is released to the Borrower or the Borrower's solicitor.

**5. Amortization**

Interest only

**6. Renewal Interest Budget**

\$810,000. The interest budget (the "Interest Budget") represents the maximum amount of interest that the Lender will allow to accrue on the principal Loan Amount outstanding. Total interest accrued was \$612,506.35 as at October 1, 2022.

**7. Renewal Interest Reserve**

Upon the renewal of this Loan, monthly interest reserve top up payments (the "Interest Reserve Payments") shall be required to be received from the Borrower and deposited into an interest reserve account (the "Interest Reserve Account") on or before the first business day of the preceding month for which each Monthly Payment is due (the "Interest Reserve Payment Date"). The Lender shall provide the Borrower with a monthly loan statement for the Interest Reserve Payment amount in advance of each Interest Reserve Payment Date. The required monthly Interest Reserve Payment amount shall be equal to the anticipated following month's Monthly Payment plus (minus) any shortfall (surplus) on the current month's payment resulting from a change in the HSBC Prime rate.

**8. Monthly Payments**

Monthly Payments shall be advanced from the Interest Budget until such time as the Interest Budget is exhausted, after which Monthly Payments shall be withdrawn from the Interest Reserve Account. Upon depletion of said funds in the Interest Reserve Account, the Borrower shall be required to make the Monthly Payments from its own resources. Any unused amounts in the Interest Reserve Account will be returned to the Borrower(s) upon discharge of the mortgage.

**9. Deposit**

A non-refundable deposit in the amount of \$62,500 is due upon acceptance of this Renewal Letter, and payable upon return of this Renewal Letter to the Lender. The deposit, less any expenses incurred during the renewal process, shall be applied toward the Renewal Fee. Any amount remaining shall then be applied toward the balance of the Loan.

**10. Renewal Fee**

\$60,000. The renewal fee (the "Renewal Fee") shall be deemed to be fully earned upon acceptance of this Renewal Letter. The Renewal Fee shall be payable on the earlier of the date on which the Lender confirms that all Conditions Precedent to the Renewal have been satisfied and the date of expiry of this Renewal offer.

The Renewal Fee shall be payable from the Deposit and additional Borrower resources if necessary.

**11. Prepayment**

The Borrower, not being in default of the Loan, may, at any time after the provision of 30 days written notice, ~~which notice shall contain evidence of the source of funds to be used for repayment,~~ repay the whole of the

Renewal Amount hereby secured upon payment to the Lender of the Renewal Amount outstanding, together with all interest to date of such prepayment plus costs and other charges, including without limitation, any Periodic Renewal Fees, accrued to the date of payment, up to and including the date of such.

## 12. Updated Sources & Uses

Project Balance Sheet		Assets	
<b>Equity &amp; Liabilities</b>		<b>Assets</b>	
Trez 2nd (Dec 2021)	6,000,000	Trez 2nd - Commitment Fee (Dec 2021)	\$ 120,000
Equity Repatriation (Dec 2021)	(5,070,000)	Trez 2nd - Interest Budget (Dec 2021)	810,000
Cash Equity - At Renewal	121,398	Trez 2nd Renewal Fee	60,000
Cash Equity - Monthly during the Renewal Term*	338,602	Trez 2nd Interest Reserve Payments*	400,000
<b>Total</b>	<b>1,390,000</b>	<b>Total</b>	<b>1,390,000</b>

\*Subject to change based on changes to the HSBC Prime rate

## 13. Conditions Precedent to the Renewal

The conditions precedent to the Renewal shall include, but not be limited to the items set out in the remainder of this section, all of which must be satisfactory to the Lender in its sole, unfettered and absolute discretion, and all of which collectively comprise the Lender's due diligence. The Lender may require any additional information as it deems necessary in its sole, unfettered and absolute discretion.

- a) Completion of all security amendments as required by the Lender.
- b) Satisfactory renewal of the Trez 1<sup>st</sup> Loan over the subject property.
- c) Satisfactory inspection of the Subject Property by the Lender.

The Lender's receipt of the following:

- d) The Borrower's updated development schedule for the Subject Property.
- e) The Borrower's updated development budget for the Subject Property.
- f) A signed and dated sales price list and presales summary.
- g) All presale contracts for the Subject Project.
- h) Written confirmation from the law firm holding the presale deposits of the following information: lot number, date of contract, name of purchaser, purchase price, deposit received, and whether the contract is firm or conditional.
- i) Certified financial statements from the Borrower and Guarantor. If an individual then a personal net worth statement, on the Trez Capital form, dated no more than **four (4)** months prior, is required, if a corporate entity then most recent financial statements is required. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency.
- j) Confirmation that the Subject Property is in compliance with current zoning and that there are no outstanding work or fire orders, or that any such orders shall be paid from the proceeds of the Mortgage.
- k) Confirmation that all property taxes owing on the Subject Property have been paid or will be paid from the proceeds of the Loan.
- l) Insurance of the Subject Property which has been reviewed and approved by the Lender's Insurance Consultant which insurance shall include the coverage set out in Schedule A of the Commitment Letter, or as otherwise required by the Lender in consultation with its Insurance Consultant.
- m) Such other materials and completion of such other reasonable requirements a may be deemed necessary by the Lender.

This Renewal Letter and the Commitment Letter shall be read together as one and the same document and may be executed in counterpart and delivered via facsimile or other electronic transmission. Other than as expressly

set out herein, all of the terms and conditions of the Commitment Letter shall continue in full force and effect, unamended.

This Renewal shall not become effective until 1) the Borrower, Guarantor and Lender have signed this letter and a copy is returned to the Lender's office along with a cheque for the Deposit of \$62,500 by no later than 5:00pm Pacific Time on **November 30, 2022**; and 2) the Lender has confirmed that all Conditions Precedent to the Renewal have been satisfied.

The Borrower and Guarantor hereby acknowledge and agree to the terms and conditions of this Renewal Letter and authorize Trez Capital Limited Partnership to instruct its solicitor to prepare the documentation required to give effect to this Renewal. The Borrower and Guarantor further acknowledge that the Renewal Fee set forth herein is a reasonable estimate of the cost incurred in granting the Renewal and of holding monies available for same, and that the Renewal Fee shall be forfeited and payable to Trez Capital Limited Partnership as liquidated damages, and not as a penalty, if the Renewal is not completed within the time limit herein. This Renewal and any fees earned as a result of this Renewal Letter, together with any expenses or costs incurred by Trez Capital Limited Partnership including, but not limited to, appraisal, re-appraisal, inspections, re-inspections, title searches, plan reviews, soil tests, survey, environmental assessments, and legal costs on a solicitor and its client basis, are deemed to be a charge on the Subject Property referred to herein and Trez Capital Limited Partnership may file and maintain a caveat on the title to the Subject Property to protect that charge and the Borrower and Guarantor do hereby mortgage to Trez Capital Limited Partnership all its estate and interest in the said Subject Property and Security. This Renewal Letter supersedes all previous correspondence between the parties hereto save and except for the amendment letter(s) (if any) and the Commitment Letter.

Yours truly,

**Trez Capital Limited Partnership**  
by its general partner,  
**Trez Capital (2011) Corporation**

Per:

  
Eric Horie  
Senior Managing Director, Head of  
Origination Canada  
Agent#: M2001785

Per:

  
Chris Worthington  
Vice President, Head of Credit Risk &  
Underwriting, Canada  
Broker#: M17000400

We hereby agree to the Terms and Conditions contained in this Renewal Letter and agree to be bound by the terms hereof.

Acknowledged and agreed at Toronto this 11 day of January, 2022.

**BORROWER:**

**Mizrahi Development Group (1451 Wellington) Inc.**

Per:   
Authorized Signature

**GUARANTOR:**

  
Sam Mizrahi





April 10, 2023

**Mizrahi Development Group (1451 Wellington) Inc.**  
125 Hazelton Ave  
Toronto, ON  
M5R 2E4

**Attention: Mr. Sam Mizrahi, Mr. Mark Kilfoyle,**

Dear Sirs:

**RE: Renewal of financing in the amount of \$6,000,000 secured by a \$6,000,000 2<sup>nd</sup> priority mortgage on a 19,833 square foot site being improved with a 82-unit residential condominium building with 5,268 square feet of ground floor retail space located at 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "Subject Property") [Mizrahi – 1451 Wellington Street West 2<sup>nd</sup> Mortgage, Trez Loan #2272/21]**

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We, Trez Capital Limited Partnership by its general partner, Trez Capital (2011) Corporation (the "**Lender**"), are pleased to advise that we have approved a second renewal (the "**Second Renewal**") of the 2<sup>nd</sup> mortgage loan (the "**Loan**") to Mizrahi Development Group (1451 Wellington) Inc. (the "**Borrower**") on the terms described in this letter (this "**Second Renewal Letter**"), which upon execution by the Borrower, Guarantor and Lender shall constitute an agreement which shall bind the Borrower and Guarantor with respect to the Second Renewal. This Second Renewal Letter is an amendment of the Commitment Letter dated October 18, 2021 (the "**Commitment**"), and the Renewal Letter dated October 24, 2022. The Second Renewal has been approved subject to the following terms and conditions.

#### **1. Acknowledgments**

- a) The Borrower and the Guarantor acknowledge that as at April 1, 2023, the Borrower was indebted to the Lender in the amount of \$6,000,000 plus accrued and ongoing interest and reasonable costs accruing after April 1, 2023 (collectively, the "**Indebtedness**"), without the right of set-off or defense or equity which would reduce the amounts currently owing, and notwithstanding the provisions of the *Limitations Act, 2002*, based on their current knowledge or what they ought to know in the circumstances.
- b) The Borrower and the Guarantor acknowledge that the security for the Indebtedness provided by each of them as set out in Schedule "A" (the "**Security**"), is valid and enforceable by the Lender in accordance with its respective terms without defence or right of set-off or equity, as of the date hereof, and that the Lender shall be free to exercise its rights under the Security at the end of the Renewal Period (defined below) or upon termination of the Loan without interference, objection or action by the Borrower or the Guarantor in respect of the validity or enforceability of the security and that the Lender is relying upon this acknowledgement in providing its agreement as set forth herein.
- c) The Borrower and the Guarantor hereby consent to the terms of the Lender's renewal and other accommodations as set out herein. The Borrower and the Guarantor specifically acknowledge that they have, as of the date hereof, no defences, counterclaims or rights of set-off or reduction to any claims which might be brought by the Lender under the Security granted by the Borrower or the Guarantor to the Lender or in respect of the Loan, notwithstanding the provisions of the *Limitations Act, 2002*.

A handwritten signature in blue ink, appearing to be 'A', located in the bottom right corner of the page.

- d) The Borrower and the Guarantor hereby agree that, upon the execution of this Agreement, they shall each absolutely and irrevocably release the Lender, its officers, directors, employees, solicitors and agents (the "**Releasees**"), of and from any and all claims which they may have in respect of the Loan against the Releasees up to and including the date hereof including, without limitation, any actions taken by the Lender in dealing with the Borrower, the Guarantor, the Subject Property or with the administration of the Borrower's accounts with the Lender.

## 2. Expiry of Renewal Offer

It is a condition of this Second Renewal Letter that if the Security is not registered and in place, and the renewal is not completed on or before **May 9, 2023**, this Second Renewal Letter shall, at the option of the Lender, expire and be of no force and effect.

## 3. Renewal Amount

\$6,000,000 plus interest, fees, costs and expenses as set out in the Commitment Letter and this Second Renewal Letter.

The current Loan balance is \$6,000,000 as at April 1, 2023.

## 4. Renewal Term

4 months commencing from the second renewal date of April 1<sup>st</sup>, 2023 (the "Second Renewal Date") and maturing on August 1<sup>st</sup>, 2023 (the "**Renewal Period**").

## 5. Interest Rate

Interest will be charged on the outstanding balance under the Loan at the greater of 16.95% per annum and HSBC Prime + 11.50%, compounded and payable monthly, for the initial 3 months of the Second Renewal Term, and 25.0% per annum, compounded and payable monthly, for the final month of the Second Renewal Term and thereafter. Overdue interest shall bear interest at the same rate as principal.

Such interest rate shall be set with respect to amounts advanced on the day of each advance and thereafter monthly on the first day of each month. Interest shall be calculated daily on the daily balance outstanding from time to time, before as well as after maturity, default or judgment, from the date of each advance. Such Interest Rate shall be determined upon the basis of a three hundred and sixty-five (365) day year for common years and a three hundred and sixty-six (366) day year for leap years. Interest shall be calculated in accordance with the Lender's usual practice (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower. All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. All interest payable hereunder bears interest from the date of advance of any portion of the Loan to the Lender's solicitor, whether or not such advance of the Loan is released to the Borrower or the Borrower's solicitor.

## 6. Amortization

Interest only

## 7. Interest Accrual

The Lender will allow the interest to accrue and remain unpaid on the principal Loan Amount outstanding which accrued and unpaid interest shall not capitalize to the principal Loan Amount. Compound interest as set out in the Loan Documents shall be payable on all accrued and unpaid interest from time to time, as well after as before maturity, and if interest as compounded is not paid on the first calendar day of each month, a rest shall be made, and compound interest as set out in the Loan Documents shall be payable on the aggregate amount of accrued and unpaid interest then due, as well after as before maturity, both before and after default, demand and judgement and so on from time to time and all such interest and compound interest shall be a charge on the Property under the Charge.

## 8. Deposit

A non-refundable deposit in the amount of \$70,000 is due upon acceptance of this Second Renewal Letter, and payable upon return of this Second Renewal Letter to the Lender. The deposit, less any expenses incurred during the renewal process, shall be applied toward the Second Renewal Fee. Any amount remaining shall then be applied toward the balance of the Loan.

## 9. Renewal Fee

\$70,000. The second renewal fee (the "Second Renewal Fee") shall be deemed to be fully earned upon acceptance of this Second Renewal Letter. The Second Renewal Fee shall be payable on the earlier of the date on which the Lender confirms that all Conditions Precedent to the Second Renewal have been satisfied and the date of expiry of this Second Renewal offer.

The Second Renewal Fee shall be payable from the Deposit and additional Borrower resources if necessary.

## 10. Prepayment

The Borrower may, at any time after the provision of 30 days written notice, repay within 45 days of such written notice, the whole of the Second Renewal Amount hereby secured upon payment to the Lender of the Second Renewal Amount outstanding, together with all interest to date of such prepayment plus costs and other charges, including without limitation, any Periodic Renewal Fees, accrued to the date of payment, up to and including the date of such.

## 11. Additional Covenants

During the Renewal Period, the Borrower and the Guarantor shall:

- a) forthwith provide the Lender with notice of the occurrence of any litigation proceeding or dispute affecting it or the Subject Property, and if the result of such litigation might have a material adverse effect on the Borrower or the Guarantor, financial or otherwise, perform its obligations under the Second Renewal Letter and/or the Security herein, and shall from time to time, as requested by the Lender, provide the Lender with all reasonable information requested by the Lender concerning any such litigation, proceeding or dispute;
- b) not make a proposal, or apply for, or seek, relief from its creditors, under the *Bankruptcy and Insolvency Act* (the "BIA"), the *Companies' Creditors Arrangement Act* (the "CCAA"), or any other legislation granting relief from creditors unless the prior written consent of the Lender is obtained. In the event that the Borrower or Guarantor, or any of them, are the subject of any voluntary or involuntary proceeding under bankruptcy and insolvency laws including the BIA, CCAA or any other applicable legislation, the Borrower and the Guarantor hereby unconditionally and irrevocably agree that the Lender is immediately entitled, without notice, demand or any other action, to relief from the automatic stay so as to allow the Lender to realize on the Security and enforce its other rights and remedies under the Loan, or at law and in equity under applicable provincial and federal laws. The Borrower and Guarantor hereby consent to the immediate lifting, without notice, demand or any other action, of any such automatic stay and agree that they shall not, in any manner, contest or otherwise delay any motion filed by the Lender for relief from the automatic stay. The Lender's enforcement of this stay waiver is subject to the discretion and approval of the bankruptcy court;
- c) further to paragraph 13 (b) above, in the event of the Borrower's intention to apply for, or seek, relief from its creditors, under the BIA, the CCAA, or any other legislation granting relief from creditors, the Borrower and the Guarantor shall deliver to the Lender fourteen (14) business days prior written notice of any such proposed action, in order to provide the Lender sufficient time to consider the request to provide its consent to the proposed action.

## 12. Updated Sources & Uses

Project Balance Sheet		Assets	
Equity & Liabilities			
Trez 2nd (Dec 2021)	6,000,000	Trez 2nd - Commitment Fee (Dec 2021)	120,000
Equity Repatriation (Dec 2021)	(5,070,000)	Trez 2nd - Interest Budget (Dec 2021)	810,000
Cash Equity - At Renewal (Nov 2022 renewal)	296,814	Trez 2nd Renewal Fee	60,000
		Trez 2nd Interest Budget Top Up Payments to date	236,814
Trez 2nd - Interest Accrual****	366,275	Trez 2nd - 2nd Renewal Fee	70,000
Cash Equity - at Renewal (April 1st)	70,000	Trez 2nd - Interest Accrual	366,275
<b>Total 2nd</b>	<b>1,663,089</b>	<b>Total 2nd</b>	<b>1,663,089</b>

\*\*\*\*estimated interest accrual over the renewal term

## 13. Revised Development Schedule and Budget

The Borrower shall proceed to complete the construction of the Subject Property in accordance with the schedule and development budget as set out in Quantity Surveyor Report Number 38 of Altus Group Limited made in respect of the Subject Property dated April 4, 2023, or other Lender approved schedule and development budget. The Borrower shall not permit the events set out in the approved development schedule to be delayed more than 45 days from the approved schedule date and shall, within 10 days of notice of any cost over-run above and beyond the approved budget amount, pay said cost over-run from its own resources.

## 14. Additional Security

The Loan shall be secured by the following additional and or revised security (the “Additional Security”) which together with the existing security as outlined in the Original Commitment Letter and the Renewal Letter shall collectively form the “Security”, all of which must be in form and content satisfactory to the Lender and its Solicitor:

- a) An Assignment Of Net Proceeds Agreement in the form attached hereto as Schedule “C”; and
- b) An Undertaking To Deliver an Assignment of Net Proceeds Agreement in the form attached hereto as Schedule “D”.

## 15. Conditions Precedent to the Renewal

The conditions precedent to the Second Renewal shall include, but not be limited to the items set out in the remainder of this section, all of which must be satisfactory to the Lender in its sole, unfettered and absolute discretion, and all of which collectively comprise the Lender’s due diligence. The Lender may require any additional information as it deems necessary in its sole, unfettered and absolute discretion.

- a) Completion of all security amendments as required by the Lender.
- b) Delivery of a Certificate of Independent Legal Advice (“**Certificate of Independent Legal Advice**”) in the form attached hereto as **Schedule “B**” upon execution of this Agreement.
- c) Satisfactory renewal of the Trez 1<sup>st</sup> Loan over the subject property.
- d) Satisfactory inspection of the Subject Property by the Lender.

The Lender’s receipt of the following:

- e) The Borrower’s updated development schedule for the Subject Property.
- f) The Borrower’s updated development budget for the Subject Property.
- g) A ledger from the Borrower illustrating the payment waterfall and the net proceeds of sale, if any, to the Mizrahi beneficial ownership entities from the sale of 180 Steeles Avenue West property.
- h) A signed and dated sales price list and presales summary.

- i) All presale contracts for the Subject Project.
- j) All Tarion amendments to disclosure (notice of “Unavoidable Delay”) sent to all presale purchasers.
- k) Written confirmation from the law firm holding the presale deposits of the following information: lot number, date of contract, name of purchaser, purchase price, deposit received, and whether the contract is firm or conditional.
- l) Written confirmation from the law firm holding the presale deposits in trust that a minimum of \$3,000,000 of “Occupancy Deposits” are contractually due upon partial occupancy.
- m) Written approval from the Deposit Insurer that they will agree to advance the “Occupancy Deposits” once received in trust.
- n) Certified financial statements from the Borrower and Guarantor. If an individual then a personal net worth statement, on the Trez Capital form, dated no more than **four (4)** months prior, is required, if a corporate entity then most recent financial statements is required. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency. Corporate financial statements and Notices of Assessment for the fiscal years ending in 2022 shall be provided within ninety (90) days.
- o) Confirmation that the Subject Property is in compliance with current zoning and that there are no outstanding work or fire orders, or that any such orders shall be paid from the proceeds of the Mortgage.
- p) Confirmation that all property taxes owing on the Subject Property have been paid or will be paid from the proceeds of the Loan.
- q) Insurance of the Subject Property which has been reviewed and approved by the Lender’s Insurance Consultant which insurance shall include the coverage set out in Schedule A of the Commitment Letter, or as otherwise required by the Lender in consultation with its Insurance Consultant.
- r) Such other materials and completion of such other reasonable requirements as may be deemed necessary by the Lender.

This Second Renewal Letter, the Renewal Letter and the Commitment Letter shall be read together as one and the same document and may be executed in counterpart and delivered via facsimile or other electronic transmission. Other than as expressly set out herein, all of the terms and conditions of the Commitment Letter shall continue in full force and effect, unamended.

In the event that one or more of the provisions of the Second Renewal Letter, the Renewal Letter and the Commitment Letter are found to be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

This Second Renewal shall not become effective until 1) the Borrower, Guarantor and Lender have signed this letter and a copy is returned to the Lender’s office along with a cheque for the Deposit of \$70,000 by no later than 5:00pm Pacific Time on **May 9, 2023**; and 2) the Lender has confirmed that all Conditions Precedent to the Second Renewal have been satisfied.

The Borrower and Guarantor hereby acknowledge and agree to the terms and conditions of this Second Renewal Letter and authorize Trez Capital Limited Partnership to instruct its solicitor to prepare the documentation required to give effect to this Second Renewal. The Borrower and Guarantor further acknowledge that the Second Renewal Fee set forth herein is a reasonable estimate of the cost incurred in granting the Second Renewal and of holding monies available for same, and that the Second Renewal Fee shall be forfeited and payable to Trez Capital Limited Partnership as liquidated damages, and not as a penalty, if the Second Renewal is not completed within the time limit herein. This Second Renewal and any fees earned as a result of this Second Renewal Letter, together with any expenses or costs incurred by Trez Capital Limited Partnership including, but not limited to, appraisal, re-appraisal, inspections, re-inspections, title searches, plan reviews, soil tests, survey, environmental assessments, and legal costs on a solicitor and its client basis,

are deemed to be a charge on the Subject Property referred to herein and Trez Capital Limited Partnership may file and maintain a caveat on the title to the Subject Property to protect that charge and the Borrower and Guarantor do hereby mortgage to Trez Capital Limited Partnership all its estate and interest in the said Subject Property and Security. This Second Renewal Letter supersedes all previous correspondence between the parties hereto save and except for the amendment letter(s) (if any), the Renewal Letter and the Commitment Letter.

Yours truly,

**Trez Capital Limited Partnership  
by its general partner,  
Trez Capital (2011) Corporation**

Per:



Eric Horie  
Senior Managing Director, Head of  
Origination Canada  
Agent#: M2001785

Per:



Chris Worthington  
Vice President, Head of Credit Risk &  
Underwriting, Canada  
Broker#: M17000400

We hereby agree to the Terms and Conditions contained in this Second Renewal Letter and agree to be bound by the terms hereof.

Acknowledged and agreed at Toronto this 9 day of 2023,  
2023.

***BORROWER:***

**Mizrahi Development Group (1451 Wellington) Inc.**



Per: \_\_\_\_\_  
Authorized Signature

***GUARANTOR:***



\_\_\_\_\_  
Sam Mizrahi

**SCHEDULE "A"**  
**THE SECURITY**

1. Charge/Mortgage on the Subject Property as defined in the Commitment dated December 1, 2021 and received as instrument no. OC2430519;
2. Notice of Assignment of Rents dated December 1, 2021 and received as Instrument No. OC2430520;
3. Postponement of Interest dated December 1, 2021 and received as Instrument NO. OC2430521;
4. General Security Agreement dated December 1, 2021;
5. Limited Recourse Guarantee and Postponement of Claim dated December 1, 2021;
6. Guarantee and Postponement of Claim dated December 1, 2021;
7. Completion and Cost-Overrun Guarantee dated December 1, 2021;
8. Environmental Indemnity dated December 1, 2021;
9. Bring-down Certificate dated December 1, 2021;
10. Specific Assignment of Material Project Agreements dated December 1, 2021;
11. Specific Assignment of CDC2 dated December 1, 2021;
12. Assignment of Insurance dated December 1, 2021;
13. Statutory Declaration as to Material Facts dated November 30, 2021;
14. Subordination and Standstill Agreement dated December 1, 2021;
15. Priority Agreement dated December 1, 2021;
16. Share Pledge Agreement dated December 1, 2021;
17. Acknowledgment and Direction dated December 1, 2021;
18. Acknowledgment and Directions dated November 26, 2021;
19. Financing Statement pursuant to the PPSA filed December 1, 2021 and registered as Reference File No. 778675995;
20. Financing Statement pursuant to the PPSA filed December 1, 2021 and registered as Reference File No. 778676976;
21. Financing Statement pursuant to the PPSA filed December 1, 2021 and registered as Reference File No. 778676292.





**SCHEDULE "B"**  
**CERTIFICATE OF INDEPENDENT LEGAL ADVICE**

**TO: TREZ CAPITAL LIMITED PARTNERSHIP**

I, Sam Mizrahi, hereby declare that I have been consulted with Mizrahi Development Group (1451 Wellington) Inc. (the "**Borrower**") and Sam Mizrahi (the "**Guarantor**") as to the liability which the Borrower and the Guarantor would incur by signing the Second Renewal Letter and have also been consulted by the Borrower and the Guarantor in respect of breaching the Second Renewal Letter and that I have advised the Borrower and the Guarantor fully as to the effect of the aforementioned and the liability which the Borrower and the Guarantor would incur in entering into the Second Renewal Letter, the manner in which such liability could be enforced and the possible consequences and ramifications if the Borrower and the Guarantor fail to enter into the terms of the Second Renewal Letter; and that the Borrower and the Guarantor understand the nature and effect of the liability which would arise from the taking by the Borrower and the Guarantor of the said actions, or the failure of taking such actions; and I hereby further declare that:

1. I have given this advice to the Borrower and the Guarantor, as solicitor for the Borrower and the Guarantor and in the Borrower and Guarantor's interest only and without regard to or consideration for the interests of the Lender,
2. I have never given any legal advice to the Lender in connection with this matter;
3. the Borrower and the Guarantor have executed the Second Renewal Letter in my presence only and no other person was present; and
4. the Borrower and the Guarantor appear to have executed the Second Renewal Letter without any threat of compulsion, or any undue influence from third parties.

DATED at Toronto, Ontario, this 9 day of May, 2023

  
\_\_\_\_\_

**SCHEDULE "C"**  
**ASSIGNMENT OF NET SALES PROCEEDS AGREEMENT**

**THIS ASSIGNMENT** made as of the 9 day of May, 2023,

**BY:**

**SAM M (180 SAW) INC.**  
**SAM MIZRAHI**  
(collectively, the "Assignor")

**IN FAVOUR OF:**

**TREZ CAPITAL LIMITED PARTNERSHIP and/or its nominee**  
(the "Assignee")

**WHEREAS** pursuant to a credit agreement with respect to construction financing for the properties known municipally as 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "**Wellington Property**") dated October 2, 2019 among, *inter alia*, Mizrahi Development Group (1451 Wellington) Inc. (the "**Wellington Borrower**"), as borrower and the Assignee, as lender, as the same may be amended, supplemented, extended, renewed, restated, replaced or superseded from time to time, including, without limitation, a certain renewal letter dated April 10, 2023 (collectively, the "**1<sup>st</sup> Credit Agreement**") certain credit facilities have been established in respect of the construction of the a 93 unit residential condominium building to be located on the Wellington Property (the "**1<sup>st</sup> Wellington Obligations**");

**AND WHEREAS** pursuant to a further credit agreement with respect to mezzanine financing for the Wellington Property dated October 18, 2021 among the Wellington Borrower, as borrower and the Assignee, as lender, as the same may be amended, supplemented, extended, renewed, restated, replaced or superseded from time to time, including, without limitation, a certain renewal letter dated April 10, 2023 (collectively, the "**2<sup>nd</sup> Credit Agreement**") certain further credit facilities have been established for general working capital purposes of the Wellington Borrower (the "**2<sup>nd</sup> Wellington Obligations**");

**AND WHEREAS** each of the 1<sup>st</sup> Credit Agreement and 2<sup>nd</sup> Credit Agreement now provide that, as additional security for the obligations of the Wellington Borrower thereunder, the Assignor would assign the certain of the net sale proceeds payable to the Assignor with respect to the sale of the property municipally known as 180 Steeles Avenue West, Vaughan, Ontario (the "**180 Steeles Property**");

**AND WHEREAS** the Assignee has a mortgage and other security registered on the 180 Steeles Property in connection with a loan made to the owner(s) of the 180 Steeles Property (collectively the "**180 Security**");

**AND WHEREAS** the 180 Steeles Property is legally owned by Mizrahi Constantine (180 SAW) Inc. (the "**180 Steeles Registered Owner**") and beneficially owned by Mizrahi Constantine (180 SAW) LP (the "**180 Steeles Beneficial Owner**");



**AND WHEREAS** the Assignor has an indirect but no direct interest in the 180 Steeles Registered Owner and the 180 Steeles Beneficial Owner or is an affiliate of entities which have such interest, and are thereby entitled to a portion of the net sales proceeds payable in connection with the 180 Steeles Property;

**AND WHEREAS** in order to further secure the performance of the obligations of the Wellington Borrower under each of the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> Credit Agreement the Assignor has entered into this Agreement.

**NOW THEREFORE WITNESSETH** that in consideration of the mutual covenants hereinafter contained, payment of \$2.00 by the Assignee to the Assignor and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

## 1. **ASSIGNMENT**

The Assignor hereby assigns and sets over to the Assignee as continuing and collateral security for the due payment of all sums and liabilities and the performance of all obligations and covenants of the Wellington Borrower under the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> Credit Agreement, the first portion of its right, title, benefits and interest in and to its share of the net sales proceeds to the Maximum Amount (as defined in section 2 below) arising from the sale of the 180 Steeles Property after the payment of all amounts owed to Constantine Enterprises Inc. (“**Constantine**”) as is required to satisfy the amounts set out in Section 3A, 3B and 3C hereof (the “**Collateral**”). The Assignee acknowledges:

- a) that there is no intention under this Agreement to “Transfer” a “Partnership Interest” as those terms are defined in the Amended and Restated LP Agreement dated December 3, 2021 between Sam M (180 Saw) LP Inc., Sam M (180 Saw) LP Inc. and Constantine Enterprises Inc. a copy of which the Assignee acknowledges having received; and
- b) that i) there are amounts owed to Constantine which shall be first repaid prior to any payment of any amount to the Assignee, ii) this assignment does not include the amounts owed to Constantine, and iii) the security interest created herein does not attach to any amounts owed to Constantine.

The Assignee is hereby informed that i) the sale price for the 180 Steeles Property is uncertain as the 180 Steeles Property has not yet been sold but is being made available in the market, ii) any sale of the 180 Steeles Property requires the approval of Constantine and iii) the Assignor’s arrangements with Constantine are complex making any example of available proceeds to the Assignor on the completion of a sale uncertain and difficult to estimate. Given the foregoing the Assignor provided an example of net sales summary which is attached to this Agreement as Schedule “A” which example assumes, inter alia, a sales price of \$205,000,000 and that the amount owed to Constantine at the time of such sale is \$19,710,435. The Collateral in such example excludes the estimated amount payable to Constantine of \$19,710,435 first to be repaid and includes only the Maximum Amount. The example contained in Schedule “A” is intended to set out how the net sale proceeds will be calculated only, and the Assignor does not provide any representations or warranties with respect to the amount of net sale proceeds which will be available from the sale of 180 Steeles Property.

Notwithstanding the security interest created herein the Assignee agrees that no registrations shall be permitted in connection therewith.

## 2. DIRECTIONS

The Assignor hereby irrevocably directs the 180 Steeles Registered Owner, the 180 Steeles Beneficial Owner and Constantine to abide by the assignment of the Collateral contemplated herein to the maximum amount of \$8,714,153.00 reduced from time to time as applicable such that the amount directed shall be the amount then determined under Sections 3A, 3B, and 3C (the “**Maximum Amount**”) and to pay the Collateral to the Assignee (or as it may further direct) promptly upon their respective receipt of the Collateral from time to time. This Direction is coupled with an interest. For clarity, neither this Agreement nor the Maximum Amount as set out herein shall in any way reduce the liability of the Borrower to the Lender pursuant to the 1<sup>st</sup> Credit Agreement, 2<sup>nd</sup> Credit Agreement or any security granted in connection therewith, including, without limitation, any provisions which require the Borrower to inject further equity except to the extent that any amounts actually paid to the Lender pursuant hereto.

This Direction shall remain in effect until the earliest of i) the 1st Wellington Obligations and the 2nd Wellington Obligations being satisfied and paid in full and shall be automatically released without the need for a re-assignment upon such payment, ii) the Assignee has advised otherwise, or iii) the Assignee has specifically released this Agreement. The Assignee agrees that neither Constantine nor the lawyers acting on any sale of the 180 Steeles Property shall be notified of the assignment contained in this Agreement nor the direction contained herein (a “**Notice of Assignment**”) until all of the following have occurred:

- a) the Assignee has received a request for a discharge of the 180 Security for a pending sale;
- b) the Assignee, acting reasonably, does not have assurances that the Maximum Amount shall be paid to it forthwith after completion of a sale of the 180 Steeles Property; and
- c) the Assignee has first given the Assignor written notice at least 2 business days prior to delivery of a Notice of Assignment to afford the Assignor the opportunity to continue to obtain such assurances.

## 3. APPLICATION OF COLLATERAL

The Assignor acknowledges that the Collateral shall be used by the Assignee in the following order of priority:

- A. Firstly, to satisfy \$1,714,153 of required deferred equity contributions to be made by the Wellington Borrower pursuant to the 1st Credit Agreement;
- B. Secondly, to satisfy any unpaid monthly deferred equity contributions (to a maximum of \$1,350,000) which were to be made by the Wellington Borrower pursuant to the 1st Credit Agreement;
- C. Thirdly, the sum of \$6,000,000 to be used to repay all or the remaining portion of the 2<sup>nd</sup> Wellington Obligation; and
- D. Fourthly, any remaining amounts (which is acknowledged is not part of the Collateral) to be made available for the use of the Assignor, or any of them.

4. **FURTHER ASSIGNMENTS**

The Collateral shall not be further assigned by the parties hereto except as provided for under the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement.

5. **NOTICES**

Any demand, notice or communication to be made or given hereunder shall be in the manner provided for in the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement.

6. **ENUREMENT**

This Agreement shall be binding upon the parties hereto and enure to the benefit of the Assignee and its successors and assigns and shall be binding upon and enure to the benefit of the Assignor and its successors and permitted assigns. The rights of the Assignee under this Agreement may be assigned by the Assignee to the same extent, and on and subject to the same terms and conditions, as the Assignee may assign its rights under the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement. The Assignor may not assign its obligations under this Agreement except in accordance with the provisions of the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement.

7. **AFTER ACQUIRED PROPERTY**

The Assignor covenants and agrees that if and to the extent that its right, title and interest in any Collateral is not acquired until after delivery of this Agreement, this Agreement shall nonetheless apply thereto and the security interest of the Assignee hereby created shall attach to any such Collateral at the same time as the Assignor acquires rights therein, without the necessity of any further assignment or other assurance, and thereafter the security interests created hereby in respect of such condominium sales agreement shall be absolute, fixed and specific, subject only to permitted encumbrances (if any).

8. **ATTACHMENT**

The Assignor acknowledges and agrees that there is no agreement between the parties hereto, express or implied, to postpone the attachment of the security interests created hereby.

9. **CONFLICT**

This Agreement has been entered into pursuant to the provisions of the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> 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 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement, the rights and obligations of the parties will be governed by the provisions of this Agreement and the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> Credit 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 1<sup>st</sup> Credit Agreement and 2<sup>nd</sup> Credit Agreement, the existence of such remedies shall not constitute a conflict with the terms of this Agreement.



10. **HEADINGS**

The headings and captions in this Agreement have been inserted for convenience only and are not a part hereof.

11. **GOVERNING LAW**

This Agreement shall in all respects be governed by and construed in accordance with the laws of Ontario and the Laws of Canada applicable therein.

12. **COUNTERPARTS AND ELECTRONIC SIGNATURE/DELIVERY**

This document may be executed and delivered in counterparts and by electronic means and shall be binding upon the undersigned notwithstanding such execution and/or delivery.



**SCHEDULE A TO ASSIGNMENT OF NET SALES PROCEEDS AGREEMENT**

**Mizrahi 180 SAW**

**Waterfall**

**REVENUE**

Sale Price Anticipated	205,000,000
Commissions - 1.25%	2,562,500
	<hr/>
Net Price	202,437,500

**DEBT REPAYMENT**

CWB Mortgage	78,000,000
Trez	20,000,000
	<hr/>
	98,000,000

Anticipated Partnership Distributions	<hr/> 104,437,500 <hr/>
---------------------------------------	-------------------------

**Anticipated Mizrahi Portion (33.3%)** **34,812,500**

Equity Distributions	
Amount Owed to Constantine	19,710,435
Amount Owed to Mizrahi before	
Mizrahi's share of disposition costs	15,102,065
	<hr/>
	34,812,500

**SCHEDULE "D"**  
**UNDERTAKING TO DELIVER AN ASSIGNMENT OF NET SALES PROCEEDS**  
**AGREEMENT**

**THIS ASSIGNMENT** made as of the 9 day of May, 2023,

**BY:**

**SAM M (180 SAW) INC.**  
**SAM MIZRAHI**  
(collectively, the "**Covenantors**")

**IN FAVOUR OF:**

**TREZ CAPITAL LIMITED PARTNERSHIP and/or its nominee**  
(the "**Trez**")

**WHEREAS** pursuant to a credit agreement with respect to construction financing for the properties known municipally as 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "**Wellington Property**") dated October 2, 2019 among, *inter alia*, Mizrahi Development Group (1451 Wellington) Inc. (the "**Wellington Borrower**"), as borrower and Trez, as lender, as the same may be amended, supplemented, extended, renewed, restated, replaced or superseded from time to time, including, without limitation, a certain renewal letter dated April 10, 2023 (collectively, the "**1<sup>st</sup> Credit Agreement**") certain credit facilities have been established in respect of the construction of the a 93 unit residential condominium building to be located on the Wellington Property (the "**1<sup>st</sup> Wellington Obligations**");

**AND WHEREAS** pursuant to a further credit agreement with respect to mezzanine financing for the Wellington Property dated October 18, 2021 among the Wellington Borrower, as borrower and Trez, as lender, as the same may be amended, supplemented, extended, renewed, restated, replaced or superseded from time to time, including, without limitation, a certain renewal letter dated April 10, 2023 (collectively, the "**2<sup>nd</sup> Credit Agreement**") certain further credit facilities have been established for general working capital purposes of the Wellington Borrower (the "**2<sup>nd</sup> Wellington Obligations**");

**AND WHEREAS** each of the 1<sup>st</sup> Credit Agreement and 2<sup>nd</sup> Credit Agreement now provide that, as additional security for the obligations of the Wellington Borrower thereunder, the Covenantors would assign the certain of the net sale proceeds payable to the Covenantors with respect to the sale of the property municipally known as 180 Steeles Avenue West, Vaughan, Ontario (the "**180 Steeles Property**");

**AND WHEREAS** Trez has a mortgage and other security registered on the 180 Steeles Property in connection with a loan made to the owner(s) of the 180 Steeles Property (collectively the "**180 Security**");

**AND WHEREAS** the 180 Steeles Property is legally owned by Mizrahi Constantine (180 SAW) Inc. (the "**180 Steeles Registered Owner**") and beneficially owned by Mizrahi Constantine (180 SAW) LP (the "**180 Steeles Beneficial Owner**");





**AND WHEREAS** the Covenantors have an indirect but no direct interest in the 180 Steeles Registered Owner and the 180 Steeles Beneficial Owner or is an affiliate of entities which have such interest, and are thereby entitled to a portion of the net sales proceeds payable in connection with the 180 Steeles Property;

**AND WHEREAS** the Covenantors have entered into an Assignment of Net Sales Proceeds Agreement made as of the \_\_\_ day of May, 2023 (the “**Executed Assignment of Net Sales Proceeds Agreement**”);

**AND WHEREAS** in order to further secure the performance of the obligations of the Wellington Borrower under each of the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> Credit Agreement the Covenantors have entered into this Agreement.

**NOW THEREFORE WITNESSETH** that in consideration of the mutual covenants hereinafter contained, payment of \$2.00 by Trez to each of the Covenantors and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties hereto agree as follows:

1. The Covenantors hereby agree to cause Sam M(180 SAW) LP Inc. to execute and deliver an Assignment of Net Sales Proceeds Agreement in the same form as the Executed Assignment of Net Sales Proceeds Agreement with the following amendments, once all of its liabilities, obligations and indebtedness to Constantine Enterprises Inc. have been satisfied and paid in full:
  - a. The date shall be the date of execution by the parties;
  - b. Sam M (180 SAW) LP Inc. shall be added as an additional “Assignor”; and
  - c. The recital that reads as follows:

“AND WHEREAS the Assignor has an indirect but no direct interest in the 180 Steeles Registered Owner and the 180 Steeles Beneficial Owner or is an affiliate of entities which have such interest, and are thereby entitled to a portion of the net sales proceeds payable in connection with the 180 Steeles Property;”

shall be changed to:

“AND WHEREAS the Assignor has a direct or indirect interest in the 180 Steeles Registered Owner and the 180 Steeles Beneficial Owner or is an affiliate of entities which have such interest, and are thereby entitled to a portion of the net sales proceeds payable in connection with the 180 Steeles Property;”

2. Notwithstanding that this Agreement is not intended to create a security interest herein Trez agrees that no registrations shall be permitted in connection therewith.
3. This Agreement shall remain in effect until the earliest of i) the 1st Wellington Obligations and the 2nd Wellington Obligations being satisfied and paid in full, ii) Trez has advised otherwise, or iii) Trez has specifically released this Agreement. Trez agrees that neither Constantine nor the lawyers acting on any sale of the 180 Steeles Property shall be notified of the undertaking contained in this Agreement (a “**Notice of Assignment**”) until all of the following have occurred:
  - d) Trez has received a request for a discharge of the 180 Security for a pending sale;
  - e) Trez, acting reasonably, does not have assurances that the Maximum Amount (as defined in the Executed Assignment of Net Sales Proceeds Agreement) shall be paid to it forthwith after completion of a sale of the 180 Steeles Property; and



- f) Trez has first given the Covenantors written notice at least 2 business days prior to delivery of a Notice of Assignment to afford the Assignor the opportunity to continue to obtain such assurances.
4. Any demand, notice or communication to be made or given hereunder shall be in the manner provided for in the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement.
5. This Agreement shall be binding upon the parties hereto and enure to the benefit of Trez and its successors and assigns and shall be binding upon and enure to the benefit of the Covenantors and its successors and permitted assigns. The rights of Trez under this Agreement may be assigned by Trez to the same extent, and on and subject to the same terms and conditions, as Trez may assign its rights under the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement. The Covenantors may not assign its obligations under this Agreement except in accordance with the provisions of the 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement.
6. This Agreement has been entered into pursuant to the provisions of the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> 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 1<sup>st</sup> Credit Agreement or the 2<sup>nd</sup> Credit Agreement, the rights and obligations of the parties will be governed by the provisions of this Agreement and the 1<sup>st</sup> Credit Agreement and the 2<sup>nd</sup> Credit 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 1<sup>st</sup> Credit Agreement and 2<sup>nd</sup> Credit Agreement, the existence of such remedies shall not constitute a conflict with the terms of this Agreement.
7. This Agreement shall in all respects be governed by and construed in accordance with the laws of Ontario and the Laws of Canada applicable therein.
8. This document may be executed and delivered in counterparts and by electronic means and shall be binding upon the undersigned notwithstanding such execution and/or delivery.





July 01, 2023

**Mizrahi Development Group (1451 Wellington) Inc.**  
125 Hazelton Ave  
Toronto, ON  
M5R 2E4

**Attention: Mr. Sam Mizrahi, Mr. Mark Kilfoyle**

Dear Sirs:

**RE: Renewal of financing in the amount of \$6,273,412.74 secured by a 2<sup>nd</sup> priority mortgage on a 19,833 square foot site being improved with a 82-unit residential condominium building with 5,268 square feet of ground floor retail space located at 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "Subject Property") [Mizrahi – 1451 Wellington Street West 2<sup>nd</sup> Mortgage, Trez Loan #2272/21]**

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We, Trez Capital Limited Partnership by its general partner, Trez Capital (2011) Corporation ( the "**Lender**"), are pleased to advise that we have approved a third renewal (the "**Third Renewal**") of the 2<sup>nd</sup> mortgage loan (the "**Loan**") to Mizrahi Development Group (1451 Wellington) Inc. (the "**Borrower**") on the terms described in this letter (this "**Third Renewal Letter**"), which upon execution by the Borrower, Guarantor and Lender shall constitute an agreement which shall bind the Borrower and Guarantor with respect to the Third Renewal. This Third Renewal Letter is an amendment of the Commitment Letter dated October 18, 2021 (the "**Commitment**"), the Renewal Letter dated October 24, 2022, and the Second Renewal Letter dated April 10, 2023. The Third Renewal has been approved subject to the following terms and conditions.

#### **1. Acknowledgments**

- a) The Borrower and the Guarantor acknowledge that as at July 1, 2023, the Borrower was indebted to the Lender in the amount of \$6,273,412.74 plus accrued and ongoing interest and reasonable costs accruing after July 1, 2023 (collectively, the "**Indebtedness**"), without the right of set-off or defense or equity which would reduce the amounts currently owing, and notwithstanding the provisions of the *Limitations Act, 2002*, based on their current knowledge or what they ought to know in the circumstances.
- b) The Borrower and the Guarantor acknowledge that the security for the Indebtedness provided by each of them as set out in Schedule "A" ( the "**Security**"), is valid and enforceable by the Lender in accordance with its respective terms without defence or right of set-off or equity, as of the date hereof, and that the Lender shall be free to exercise its rights under the Security at the end of the Renewal Period (defined below) or upon termination of the Loan without interference, objection or action by the Borrower or the Guarantor in respect of the validity or enforceability of the security and that the Lender is relying upon this acknowledgement in providing its agreement as set forth herein.
- c) The Borrower and the Guarantor hereby consent to the terms of the Lender's renewal and other accommodations as set out herein. The Borrower and the Guarantor specifically acknowledge that they have, as of the date hereof, no defences, counterclaims or rights of set-off or reduction to any claims which might be brought by the Lender under the Security granted by the Borrower or the Guarantor to the Lender or in respect of the Loan, notwithstanding the provisions of the *Limitations Act, 2002*.

- d) The Borrower and the Guarantor hereby agree that, upon the execution of this Agreement, they shall each absolutely and irrevocably release the Lender, its officers, directors, employees, solicitors and agents (the "Releasees"), of and from any and all claims which they may have in respect of the Loan against the Releasees up to and including the date hereof including, without limitation, any actions taken by the Lender in dealing with the Borrower, the Guarantor, the Subject Property or with the administration of the Borrower's accounts with the Lender.

## 2. Expiry of Renewal Offer

It is a condition of this Third Renewal Letter that if the Security is not registered and in place, and the renewal is not completed on or before **July 31, 2023**, this Third Renewal Letter shall, at the option of the Lender, expire and be of no force and effect.

## 3. Renewal Amount

\$6,273,412.74 plus interest, fees, costs and expenses as set out in the Commitment Letter and this Third Renewal Letter.

The current Loan balance is \$6,273,412.74 as at July 1, 2023.

## 4. Renewal Term

6 months commencing from the third renewal date of July 1<sup>st</sup>, 2023 (the "Third Renewal Date") and maturing on January 1<sup>st</sup>, 2024 (the "Renewal Period").

## 5. Interest Rate

Interest will be charged on the outstanding balance under the Loan at the greater of 16.95% per annum and HSBC Prime + 11.50%, compounded and payable monthly, for the initial 5 months of the Third Renewal Term, and 25.0% per annum, compounded and payable monthly, for the final month of the Third Renewal Term and thereafter. Overdue interest shall bear interest at the same rate as principal.

Such interest rate shall be set with respect to amounts advanced on the day of each advance and thereafter monthly on the first day of each month. Interest shall be calculated daily on the daily balance outstanding from time to time, before as well as after maturity, default or judgment, from the date of each advance. Such Interest Rate shall be determined upon the basis of a three hundred and sixty-five (365) day year for common years and a three hundred and sixty-six (366) day year for leap years. Interest shall be calculated in accordance with the Lender's usual practice (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower. All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. All interest payable hereunder bears interest from the date of advance of any portion of the Loan to the Lender's solicitor, whether or not such advance of the Loan is released to the Borrower or the Borrower's solicitor.

## 6. Amortization

Interest only

## 7. Interest Accrual

The Lender will allow the interest to accrue and remain unpaid on the principal Loan Amount outstanding which accrued and unpaid interest shall not capitalize to the principal Loan Amount. Compound interest as set out in the Loan Documents shall be payable on all accrued and unpaid interest from time to time, as well after as before maturity, and if interest as compounded is not paid on the first calendar day of each month, a rest shall be made, and compound interest as set out in the Loan Documents shall be payable on the aggregate amount of accrued and unpaid interest then due, as well after as before maturity, both before and after default, demand and judgement and so on from time to time and all such interest and compound interest shall be a charge on the Property under the Charge.

**8. Deposit**

A non-refundable deposit in the amount of \$50,000 is due upon acceptance of this Third Renewal Letter, and payable upon return of this Third Renewal Letter to the Lender. The deposit, less any expenses incurred during the renewal process, shall be applied toward the Third Renewal Fee. Any amount remaining shall then be applied toward the balance of the Loan.

**9. Renewal Fee**

\$50,000. The third renewal fee (the "Third Renewal Fee") shall be deemed to be fully earned upon acceptance of this Third Renewal Letter. The Third Renewal Fee shall be payable on the earlier of the date on which the Lender confirms that all Conditions Precedent to the Third Renewal have been satisfied and the date of expiry of this Third Renewal offer.

The Third Renewal Fee shall be payable from the Deposit and additional Borrower resources if necessary.

**10. Prepayment**

The Borrower may, at any time after the provision of 30 days written notice, repay within 45 days of such written notice, the whole of the Third Renewal Amount hereby secured upon payment to the Lender of the Third Renewal Amount outstanding, together with all interest to date of such prepayment plus costs and other charges, including without limitation, any Periodic Renewal Fees, accrued to the date of payment, up to and including the date of such.

**11. Additional Covenants**

During the Renewal Period, the Borrower and the Guarantor shall:

- a) forthwith provide the Lender with notice of the occurrence of any litigation proceeding or dispute affecting it or the Subject Property, and if the result of such litigation might have a material adverse effect on the Borrower or the Guarantor, financial or otherwise, perform its obligations under the Third Renewal Letter and/or the Security herein, and shall from time to time, as requested by the Lender, provide the Lender with all reasonable information requested by the Lender concerning any such litigation, proceeding or dispute;
- b) not make a proposal, or apply for, or seek, relief from its creditors, under the *Bankruptcy and Insolvency Act* (the "BIA"), the *Companies' Creditors Arrangement Act* (the "CCAA"), or any other legislation granting relief from creditors unless the prior written consent of the Lender is obtained. In the event that the Borrower or Guarantor, or any of them, are the subject of any voluntary or involuntary proceeding under bankruptcy and insolvency laws including the BIA, CCAA or any other applicable legislation, the Borrower and the Guarantor hereby unconditionally and irrevocably agree that the Lender is immediately entitled, without notice, demand or any other action, to relief from the automatic stay so as to allow the Lender to realize on the Security and enforce its other rights and remedies under the Loan, or at law and in equity under applicable provincial and federal laws. The Borrower and Guarantor hereby consent to the immediate lifting, without notice, demand or any other action, of any such automatic stay and agree that they shall not, in any manner, contest or otherwise delay any motion filed by the Lender for relief from the automatic stay. The Lender's enforcement of this stay waiver is subject to the discretion and approval of the bankruptcy court;
- c) further to paragraph 13 (b) above, in the event of the Borrower's intention to apply for, or seek, relief from its creditors, under the BIA, the CCAA, or any other legislation granting relief from creditors, the Borrower and the Guarantor shall deliver to the Lender fourteen (14) business days prior written notice of any such proposed action, in order to provide the Lender sufficient time to consider the request to provide its consent to the proposed action.

## 12. Updated Sources & Uses

Project Balance Sheet			
<b>Equity &amp; Liabilities</b>		<b>Assets</b>	
Trez 2nd (Dec 2021)	6,000,000	Trez 2nd - Commitment Fee (Dec 2021)	\$ 120,000
Equity Repatriation (Dec 2021)	(5,070,000)	Trez 2nd - Interest Budget (Dec 2021)	810,000
		Trez 2nd Renewal Fee	60,000
Cash Equity - At Renewal (Nov 2022 renewal)	296,814	Trez 2nd Interest Budget Top Up Payments to date	236,814
Cash Equity - at Renewal (April 1st - June 30)	70,000	Trez 2nd - 2nd Renewal Fee	70,000
Trez 2nd - Interest Accrual (to June 30)	273,413	Trez 2nd - Interest	273,413
Cash Equity - renewal fee	50,000	Trez 2nd - 3rd Renewal Fee	50,000
Trez 2nd Interest Accrual****	484,527	Trez 2nd - Interest	484,527
<b>Total 2nd</b>	<b>2,104,754</b>	<b>Total 2nd</b>	<b>2,104,754</b>

\*\*\*\*estimated interest accrual over the 3rd renewal term

## 13. Revised Development Schedule and Budget

The Borrower shall proceed to complete the construction of the Subject Property in accordance with the schedule and development budget as set out in Quantity Surveyor Report Number 41 of Altus Group Limited made in respect of the Subject Property dated June 28, 2023, or other Lender approved schedule and development budget. The Borrower shall not permit the events set out in the approved development schedule to be delayed more than 45 days from the approved schedule date and shall, within 10 days of notice of any cost over-run above and beyond the approved budget amount, pay said cost over-run from its own resources.

## 14. Conditions Precedent to the Renewal

The conditions precedent to the Third Renewal shall include, but not be limited to the items set out in the remainder of this section, all of which must be satisfactory to the Lender in its sole, unfettered and absolute discretion, and all of which collectively comprise the Lender's due diligence. The Lender may require any additional information as it deems necessary in its sole, unfettered and absolute discretion.

- a) Completion of all security amendments as required by the Lender.
- b) Delivery of a Certificate of Independent Legal Advice ("**Certificate of Independent Legal Advice**") in the form attached hereto as **Schedule "B"** upon execution of this Agreement.
- c) Satisfactory renewal of the Trez 1<sup>st</sup> Loan over the subject property.
- d) Satisfactory inspection of the Subject Property by the Lender.

The Lender's receipt of the following:

- e) The Borrower's updated development schedule for the Subject Property.
- f) The Borrower's updated development budget for the Subject Property.
- g) A ledger from the Borrower illustrating the payment waterfall and the net proceeds of sale, if any, to the Mizrahi beneficial ownership entities from the sale of 180 Steeles Avenue West property.
- h) A signed and dated sales price list and presales summary.
- i) All presale contracts for the Subject Project.
- j) All Tarion amendments to disclosure (notice of "Unavoidable Delay") sent to all presale purchasers.
- k) Written confirmation from the law firm holding the presale deposits of the following information: lot number, date of contract, name of purchaser, purchase price, deposit received, and whether the contract is firm or conditional.
- l) Written confirmation from the law firm holding the presale deposits confirming; (i) the deposits received to date into trust; (ii) the deposits released to date to fund project costs; (iii) the remaining deposits contractually due prior to project completion including all "Occupancy Deposits" due upon

partial occupancy. It is a condition of the renewal that a minimum of \$3,000,000 in remaining deposits be contractually due prior to project completion.

- m) Written approval from the Deposit Insurer that they continue to agree to advance the “Occupancy Deposits” once received in trust.
- n) Certified financial statements from the Borrower and Guarantor. If an individual then a personal net worth statement, on the Trez Capital form, dated no more than **four (4)** months prior, is required, if a corporate entity then most recent financial statements is required. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency.
- o) Confirmation that the Subject Property is in compliance with current zoning and that there are no outstanding work or fire orders, or that any such orders shall be paid from the proceeds of the Mortgage.
- p) Confirmation that all property taxes owing on the Subject Property have been paid or will be paid from the proceeds of the Loan.
- q) Insurance of the Subject Property which has been reviewed and approved by the Lender’s Insurance Consultant which insurance shall include the coverage set out in Schedule A of the Commitment Letter, or as otherwise required by the Lender in consultation with its Insurance Consultant.
- r) Such other materials and completion of such other reasonable requirements a may be deemed necessary by the Lender.

This Third Renewal Letter, the Second Renewal Letter, the Renewal Letter and the Commitment Letter shall be read together as one and the same document and may be executed in counterpart and delivered via facsimile or other electronic transmission. Other than as expressly set out herein, all of the terms and conditions of the Commitment Letter shall continue in full force and effect, unamended.

In the event that one or more of the provisions of the Third Renewal Letter, the Second Renewal Letter, the Renewal Letter and the Commitment Letter are found to be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

This Third Renewal shall not become effective until 1) the Borrower, Guarantor and Lender have signed this letter and a copy is returned to the Lender’s office along with a cheque for the Deposit of \$50,000 by no later than 5:00pm Pacific Time on **July 14, 2023**; and 2) the Lender has confirmed that all Conditions Precedent to the Third Renewal have been satisfied.

The Borrower and Guarantor hereby acknowledge and agree to the terms and conditions of this Third Renewal Letter and authorize Trez Capital Limited Partnership to instruct its solicitor to prepare the documentation required to give effect to this Third Renewal. The Borrower and Guarantor further acknowledge that the Third Renewal Fee set forth herein is a reasonable estimate of the cost incurred in granting the Third Renewal and of holding monies available for same, and that the Third Renewal Fee shall be forfeited and payable to Trez Capital Limited Partnership as liquidated damages, and not as a penalty, if the Third Renewal is not completed within the time limit herein. This Third Renewal and any fees earned as a result of this Third Renewal Letter, together with any expenses or costs incurred by Trez Capital Limited Partnership including, but not limited to, appraisal, re-appraisal, inspections, re-inspections, title searches, plan reviews, soil tests, survey, environmental assessments, and legal costs on a solicitor and its client basis, are deemed to be a charge on the Subject Property referred to herein and Trez Capital Limited Partnership may file and maintain a caveat on the title to the Subject Property to protect that charge and the Borrower and Guarantor do hereby mortgage to Trez Capital Limited Partnership all its estate and interest in the said Subject Property and Security. This Third Renewal Letter supersedes all previous correspondence between the parties hereto save and except for the Second Renewal Letter, the Renewal Letter, and the Commitment Letter.


Yours truly,

**Trez Capital Limited Partnership  
by its general partner,  
Trez Capital (2011) Corporation**

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

  
Eric Horie  
Senior Managing Director, Head of  
Origination Canada  
Agent#: M2001785

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

  
Chris Worthington  
Vice President, Head of Credit Risk &  
Underwriting, Canada  
Broker#: M17000400

We hereby agree to the Terms and Conditions contained in this Third Renewal Letter and agree to be bound by the terms hereof.

Acknowledged and agreed at \_\_\_\_\_ Toronto \_\_\_\_\_ this 31 day of July \_\_\_\_\_, 2023.

***BORROWER:***

**Mizrahi Development Group (1451 Wellington) Inc.**

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

  
Authorized Signature

***GUARANTOR:***

  
\_\_\_\_\_  
Sam Mizrahi



**SCHEDULE "A"**  
**THE SECURITY**

1. Charge/Mortgage on the Subject Property as defined in the Commitment dated December 1, 2021 and received as instrument no. OC2430519;
2. Notice of Assignment of Rents dated December 1, 2021 and received as Instrument No. OC2430520;
3. Postponement of Interest dated December 1, 2021 and received as Instrument NO. OC2430521;
4. General Security Agreement dated December 1, 2021;
5. Limited Recourse Guarantee and Postponement of Claim dated December 1, 2021;
6. Guarantee and Postponement of Claim dated December 1, 2021;
7. Completion and Cost-Overrun Guarantee dated December 1, 2021;
8. Environmental Indemnity dated December 1, 2021;
9. Bring-down Certificate dated December 1, 2021;
10. Specific Assignment of Material Project Agreements dated December 1, 2021;
11. Specific Assignment of CDC2 dated December 1, 2021;
12. Assignment of Insurance dated December 1, 2021;
13. Statutory Declaration as to Material Facts dated November 30, 2021;
14. Subordination and Standstill Agreement dated December 1, 2021;
15. Priority Agreement dated December 1, 2021;
16. Share Pledge Agreement dated December 1, 2021;
17. Acknowledgment and Direction dated December 1, 2021;
18. Acknowledgment and Directions dated November 26, 2021;
19. Financing Statement pursuant to the PPSA filed December 1, 2021 and registered as Reference File No. 778675995;
20. Financing Statement pursuant to the PPSA filed December 1, 2021 and registered as Reference File No. 778676976;
21. Financing Statement pursuant to the PPSA filed December 1, 2021 and registered as Reference File No. 778676292.
22. Assignment of Net Sales Proceeds Agreement from SAM M (180 SAW) INC. and SAM MIZRAHI dated May 9, 2023;
23. Undertaking to Deliver an Assignment of Net Sales Proceeds Agreement from SAM M (180 SAW) INC. and SAM MIZRAHI dated May 9, 2023.

**SCHEDULE "B"**  
**CERTIFICATE OF INDEPENDENT LEGAL ADVICE**

**TO: TREZ CAPITAL LIMITED PARTNERSHIP**

I, \_\_\_\_\_, hereby declare that I have been consulted with Mizrahi Development Group (1451 Wellington) Inc. (the "**Borrower**") and Sam Mizrahi (the "**Guarantor**") as to the liability which the Borrower and the Guarantor would incur by signing the Third Renewal Letter and have also been consulted by the Borrower and the Guarantor in respect of breaching the Third Renewal Letter and that I have advised the Borrower and the Guarantor fully as to the effect of the aforementioned and the liability which the Borrower and the Guarantor would incur in entering into the Third Renewal Letter, the manner in which such liability could be enforced and the possible consequences and ramifications if the Borrower and the Guarantor fail to enter into the terms of the Third Renewal Letter; and that the Borrower and the Guarantor understand the nature and effect of the liability which would arise from the taking by the Borrower and the Guarantor of the said actions, or the failure of taking such actions; and I hereby further declare that:

1. I have given this advice to the Borrower and the Guarantor, as solicitor for the Borrower and the Guarantor and in the Borrower and Guarantor's interest only and without regard to or consideration for the interests of the Lender,
2. I have never given any legal advice to the Lender in connection with this matter;
3. the Borrower and the Guarantor have executed the Third Renewal Letter in my presence only and no other person was present; and
4. the Borrower and the Guarantor appear to have executed the Third Renewal Letter without any threat of compulsion, or any undue influence from third parties.

DATED at \_\_\_\_\_, Ontario, this \_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_



# TREZ CAPITAL

December 22, 2023

**Mizrahi Development Group (1451 Wellington) Inc.**

125 Hazelton Ave  
Toronto, ON  
M5R 2E4

**Attention: Mr. Sam Mizrahi, Mr. Mark Kilfoyle**

Dear Sirs:

**RE: Renewal of financing in the amount of \$6,892,299 secured by a 2<sup>nd</sup> priority mortgage on a 19,833 square foot site being improved with an 82-unit residential condominium building with 5,268 square feet of ground floor retail space located at 1451 & 1445 Wellington Street West, Ottawa, Ontario (the "Subject Property") [Mizrahi – 1451 Wellington Street West 2<sup>nd</sup> Mortgage, Trez Loan #2272/21]**

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We, Trez Capital Limited Partnership by its general partner, Trez Capital (2011) Corporation (the "**Lender**"), are pleased to advise that we have approved a fourth renewal (the "**Fourth Renewal**") of the 2<sup>nd</sup> mortgage loan (the "**Loan**") to Mizrahi Development Group (1451 Wellington) Inc. (the "**Borrower**") on the terms described in this letter (this "**Fourth Renewal Letter**"), which upon execution by the Borrower, Guarantor and Lender shall constitute an agreement which shall bind the Borrower and Guarantor with respect to the Fourth Renewal. This Fourth Renewal Letter is an amendment of the Commitment Letter dated October 18, 2021 (the "**Commitment**"), the Renewal Letter dated October 24, 2022, the Second Renewal Letter dated April 10, 2023 and the Third Renewal dated July 1, 2023. The Fourth Renewal has been approved subject to the following terms and conditions.

## **1. Acknowledgments**

- a) The Borrower and the Guarantor acknowledge that as at December 1, 2023, the Borrower was indebted to the Lender in the amount of \$6,784,545.75 plus accrued and ongoing interest and reasonable costs accruing after December 1, 2023 (collectively, the "**Indebtedness**"), without the right of set-off or defense or equity which would reduce the amounts currently owing, and notwithstanding the provisions of the *Limitations Act, 2002*, based on their current knowledge or what they ought to know in the circumstances.
- b) The Borrower and the Guarantor acknowledge that the security for the Indebtedness provided by each of them as set out in Schedule "A" (the "**Security**"), is valid and enforceable by the Lender in accordance with its respective terms without defence or right of set-off or equity, as of the date hereof, and that the Lender shall be free to exercise its rights under the Security at the end of the Renewal Period (defined below) or upon termination of the Loan without interference, objection or action by the Borrower or the Guarantor in respect of the validity or enforceability of the security and that the Lender is relying upon this acknowledgement in providing its agreement as set forth herein.
- c) The Borrower and the Guarantor hereby consent to the terms of the Lender's renewal and other accommodations as set out herein. The Borrower and the Guarantor specifically acknowledge that they have, as of the date hereof, no defences, counterclaims or rights of set-off or reduction to any claims which might be brought by the Lender under the Security granted by the Borrower or the Guarantor to the Lender or in respect of the Loan, notwithstanding the provisions of the *Limitations Act, 2002*.

- d) The Borrower and the Guarantor hereby agree that, upon the execution of this Agreement, they shall each absolutely and irrevocably release the Lender, its officers, directors, employees, solicitors and agents (the "Releasees"), of and from any and all claims which they may have in respect of the Loan against the Releasees up to and including the date hereof including, without limitation, any actions taken by the Lender in dealing with the Borrower, the Guarantor, the Subject Property or with the administration of the Borrower's accounts with the Lender.

## 2. Expiry of Renewal Offer

It is a condition of this Fourth Renewal Letter that if the Security is not registered and in place, and the renewal is not completed on or before **February 7, 2024**, this Fourth Renewal Letter shall, at the option of the Lender, expire and be of no force and effect.

## 3. Renewal Amount

\$7,001,464 plus interest, fees, costs and expenses as set out in the Commitment Letter and this Fourth Renewal Letter.

The current Loan balance is \$6,784,545.75 as at December 1, 2023.

## 4. Renewal Term

3 months commencing from the fourth renewal date of December 1<sup>st</sup>, 2023 (the "**Fourth Renewal Date**") and maturing on March 1<sup>st</sup>, 2024 (the "**Renewal Period**").

The Borrower shall have the option to extend the Renewal Period on a month-to-month basis (the "**Extended Renewal Term**"), but no later than July 1<sup>st</sup>, 2024, subject to the following additional terms and conditions:

- (a) the Borrower shall provide the Lender with written notice at least 15 days prior to exercising each Extended Renewal Term option, as applicable;
- (b) all other terms and conditions of this Fourth Renewal letter shall continue to remain in force and effect during the Extended Renewal Term;
- (c) no default shall exist or shall have occurred during the Renewal Period, or if applicable, any of the Extended Renewal Term periods;
- (d) payment of an additional monthly renewal fee of \$11,500 payable at the end of each month (excluding the last month of the Extended Renewal Term) commencing March 1<sup>st</sup>, 2024, payable from the Borrower's own resources;
- (e) submission of such other materials and completion of such other reasonable requirements as may be deemed necessary by the Lender;

Notwithstanding the above, upon the sale of the property located at 180 Steeles Avenue West, the Extended Renewal Term option shall cease and the Loan shall become due and payable.

## 5. Interest Rate

**Renewal Period:** during the Renewal Term, interest will be charged on the outstanding balance under the Loan at the greater of 16.95% per annum and HSBC Prime + 11.50%, compounded and payable monthly for the initial 2 months of the Renewal Period, and 25.0% per annum, compounded and payable monthly, thereafter. Overdue interest shall bear interest at the same rate as principal.

**Extended Renewal Term:** in the event the Borrower successfully exercises the Extended Renewal Term, interest will be charged on the outstanding balance under the Loan at the greater of 16.95% per annum and HSBC Prime + 11.50%, compounded and payable monthly, for the time period up to May 31<sup>st</sup>, 2024, and 25.0% per annum, compounded and payable monthly, thereafter. Overdue interest shall bear interest at the same rate as principal.

Such interest rate shall be set with respect to amounts advanced on the day of each advance and thereafter monthly on the first day of each month. Interest shall be calculated daily on the daily balance outstanding from time to time, before as well as after maturity, default or judgment, from the date of each advance. Such Interest Rate shall be determined upon the basis of a three hundred and sixty-five (365) day year for common years and a three hundred and sixty-six (366) day year for leap years. Interest shall be calculated in accordance with the Lender's usual practice (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower. All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. All interest payable hereunder bears interest from the date of advance of any portion of the Loan to the Lender's solicitor, whether or not such advance of the Loan is released to the Borrower or the Borrower's solicitor.

#### **6. Amortization**

Interest only

#### **7. Interest Accrual**

The Lender will allow the interest to accrue and remain unpaid on the principal Loan Amount outstanding which accrued and unpaid interest shall not capitalize to the principal Loan Amount. Compound interest as set out in the Loan Documents shall be payable on all accrued and unpaid interest from time to time, as well after as before maturity, and if interest as compounded is not paid on the first calendar day of each month, a rest shall be made, and compound interest as set out in the Loan Documents shall be payable on the aggregate amount of accrued and unpaid interest then due, as well after as before maturity, both before and after default, demand and judgement and so on from time to time and all such interest and compound interest shall be a charge on the Property under the Charge.

#### **8. Renewal Fee**

\$23,000. The fourth renewal fee (the "**Fourth Renewal Fee**") shall be deemed to be fully earned upon acceptance of this Fourth Renewal Letter. The Fourth Renewal Fee shall be payable on the earlier of the date on which the Lender confirms that all Conditions Precedent to the Fourth Renewal have been satisfied and the date of expiry of this Fourth Renewal offer.

The Fourth Renewal Fee shall be payable from Borrower resources.

#### **9. Prepayment**

The Borrower may, at any time after the provision of 30 days written notice (5 days written notice in the event of the sale of the property located at 180 Steeles Avenue West), repay the whole of the Fourth Renewal Amount hereby secured upon payment to the Lender of the Fourth Renewal Amount outstanding, together with all interest to date of such prepayment plus costs and other charges, including without limitation, any Periodic Renewal Fees, accrued to the date of payment, up to and including the date of such.

#### **10. Additional Covenants**

During the Renewal Period and, as applicable, during the Extended Renewal Term, the Borrower and the Guarantor shall:

- a) forthwith provide the Lender with notice of the occurrence of any litigation proceeding or dispute affecting it or the Subject Property, and if the result of such litigation might have a material adverse effect on the Borrower or the Guarantor, financial or otherwise, perform its obligations under the Fourth Renewal Letter and/or the Security herein, and shall from time to time, as requested by the Lender, provide the Lender with all reasonable information requested by the Lender concerning any such litigation, proceeding or dispute;

- b) not make a proposal, or apply for, or seek, relief from its creditors, under the *Bankruptcy and Insolvency Act* (the “**BIA**”), the *Companies’ Creditors Arrangement Act* (the “**CCAA**”), or any other legislation granting relief from creditors unless the prior written consent of the Lender is obtained. In the event that the Borrower or Guarantor, or any of them, are the subject of any voluntary or involuntary proceeding under bankruptcy and insolvency laws including the BIA, CCAA or any other applicable legislation, the Borrower and the Guarantor hereby unconditionally and irrevocably agree that the Lender is immediately entitled, without notice, demand or any other action, to relief from the automatic stay so as to allow the Lender to realize on the Security and enforce its other rights and remedies under the Loan, or at law and in equity under applicable provincial and federal laws. The Borrower and Guarantor hereby consent to the immediate lifting, without notice, demand or any other action, of any such automatic stay and agree that they shall not, in any manner, contest or otherwise delay any motion filed by the Lender for relief from the automatic stay. The Lender’s enforcement of this stay waiver is subject to the discretion and approval of the bankruptcy court;
- c) further to paragraph 13 (b) above, in the event of the Borrower’s intention to apply for, or seek, relief from its creditors, under the BIA, the CCAA, or any other legislation granting relief from creditors, the Borrower and the Guarantor shall deliver to the Lender fourteen (14) business days prior written notice of any such proposed action, in order to provide the Lender sufficient time to consider the request to provide its consent to the proposed action.
- d) ensure that Mr. Sam Mizrahi and/or Mr. Esteban Yanquelevech are on site at the Project in a management capacity at minimum on a bi-weekly basis until full repayment of the Loan.
- e) provide copies of Binding Letter(s) of Interest to refinance the balance of unsold units (take out inventory loan(s)) to be presented to the Lender for approval on or before March 15, 2024, (the “**Binding letter(s) of Interest**”).
- f) provide copies of Binding Commitment Letter(s) to refinance the balance of unsold units (take out inventory loan(s)), which together with the net proceeds of the sold units is sufficient to discharge the indebtedness, to be presented to the Lender for approval on or before June 1, 2024 (the “**Binding Commitment Letter(s)**”).
- g) defer payment of all sales commissions payable on unit closings (estimated at \$1,629,353) until full repayment of the Loan.
- h) pay for all costs and expenses related to the engagement of Toddglen by the Lender as the additional project monitor (the “**Additional Project Monitor**”) to the Maximum Amount (as defined in a fourth renewal letter dated December 23, 2023, issued to the Borrower by the Lender in respect of the first mortgage loan on the Subject Property) with the intent that there will be no costs and expenses hereunder if the Maximum Amount is reached in connection with the first mortgage loan. Their engagement is separate to and supplements the existing Project Monitor, Altus Group Limited. The Additional Project Monitor is to be given unfettered and full access to the site and all contracts, purchase orders, construction schedules, permits and other documentation required to complete their scope of work:
- a. Assess the project status in conjunction with the schedule;
  - b. Assess the schedule feasibility;
  - c. Assess the project team in conjunction with the project needs;
  - d. Assess the trades’ performance in conjunction with the agreements in place;
  - e. Assess the resources allocated for ensuring minimum industry standards for the quality assurance;
  - f. Assess the procurement status;
  - g. Identify risks and opportunities related to the above 6 assessments;
  - h. Propose strategy to secure successful project delivery;

- i. Monitor monthly the progress and the implementation of the proposed/approved strategy.

## 11. Updated Balance Sheet

Project Balance Sheet		Assets	
Equity & Liabilities		\$	
Trez 2nd (Dec 2021)	6,000,000	Trez 2nd - Commitment Fee (Dec 2021)	120,000
Equity Repatriation (Dec 2021)	(5,070,000)	Trez 2nd - Interest Budget (Dec 2021)	810,000
Cash Equity - At Renewal (Nov 2022 renewal)	389,549	Trez 2nd Renewal Fee #1	60,000
		Trez 2nd Interest Budget Top Up Payments to date	329,549
Cash Equity - at Renewal (April 1st - June 30)	70,000	Trez 2nd Renewal Fee #2	70,000
Trez 2nd - Interest Accrual	273,398	Trez 2nd - Interest	273,398
Cash Equity	50,000	Trez 2nd - Renewal Fee #3	50,000
Trez 2nd Interest Accrual	484,527	Trez 2nd - Interest	484,527
Cash Equity	11,500	Trez 2nd - Renewal Fee #4	11,500
Trez 2nd Interest Accrual**	134,374	Trez 2nd - Interest	134,374
<b>Total 2nd</b>	<b>2,343,349</b>	<b>Total 2nd</b>	<b>2,343,349</b>

## 12. Revised Development Schedule and Budget

The Borrower shall proceed to complete the construction of the Subject Property in accordance with the schedule and development budget as set out in Quantity Surveyor Report Number 46 of Altus Group Limited made in respect of the Subject Property dated December 04, 2023, or other Lender approved schedule and development budget. The Borrower shall not permit the events set out in the approved development schedule to be delayed more than 45 days from the approved schedule date and shall, within 10 days of notice of any cost over-run above and beyond the approved budget amount, pay said cost over-run from its own resources.

## 13. Conditions Precedent to the Renewal

The conditions precedent to the Fourth Renewal shall include, but not be limited to the items set out in the remainder of this section, all of which must be satisfactory to the Lender in its sole, unfettered and absolute discretion, and all of which collectively comprise the Lender's due diligence. The Lender may require any additional information as it deems necessary in its sole, unfettered and absolute discretion.

- a) Completion of all security amendments as required by the Lender.
- b) Delivery of a Certificate of Independent Legal Advice (“**Certificate of Independent Legal Advice**”) in the form attached hereto as **Schedule “B”** upon execution of this Agreement.
- c) Satisfactory renewal of the Trez 1<sup>st</sup> Loan over the subject property.
- d) Satisfactory inspection of the Subject Property by the Lender.

The Lender's receipt of the following:

- e) The Borrower's updated development schedule for the Subject Property.
- f) The Borrower's updated development budget for the Subject Property.
- g) A ledger from the Borrower illustrating the payment waterfall and the net proceeds of sale, if any, to the Mizrahi beneficial ownership entities from the sale of 180 Steeles Avenue West property.
- h) A signed and dated sales price list and presales summary.
- i) All presale contracts for the Subject Project.
- j) All Tarion amendments to disclosure (notice of “Unavoidable Delay”) sent to all presale purchasers.
- k) Written confirmation from the law firm holding the presale deposits of the following information: lot number, date of contract, name of purchaser, purchase price, deposit received, and whether the contract is firm or conditional.
- l) Written confirmation from the law firm holding the presale deposits confirming; (i) the deposits received to date into trust; (ii) the deposits released to date to fund project costs; (iii) the remaining

deposits contractually due prior to project completion including all “Occupancy Deposits” due upon partial occupancy. It is a condition of the renewal that a minimum of \$3,000,000 in remaining deposits be contractually due prior to project completion.

- m) Written approval from the Deposit Insurer that they continue to agree to advance the “Occupancy Deposits” once received in trust.
- n) Certified financial statements from the Borrower and Guarantor. If an individual then a personal net worth statement, on the Trez Capital form, dated no more than **four (4)** months prior, is required, if a corporate entity then most recent financial statements is required. All statements, whether personal or corporate, must be accompanied by the most recent Notice of Assessment from Canada Revenue Agency.
- o) Confirmation that the Subject Property is in compliance with current zoning and that there are no outstanding work or fire orders, or that any such orders shall be paid from the proceeds of the Mortgage.
- p) Confirmation that all property taxes owing on the Subject Property have been paid or will be paid from the proceeds of the Loan.
- q) Insurance of the Subject Property which has been reviewed and approved by the Lender’s Insurance Consultant which insurance shall include the coverage set out in Schedule A of the Commitment Letter, or as otherwise required by the Lender in consultation with its Insurance Consultant.
- r) Such other materials and completion of such other reasonable requirements a may be deemed necessary by the Lender.

#### 14. Partial Discharges

Provided that the Borrower is not in default of the Loan, the Lender shall provide a partial discharge of the Security (as hereinafter defined) for the Loan only upon receipt of 100% of the Net Sale Proceeds. Net Sale Proceeds shall be defined as the gross sale price less legal fees and closing costs, but explicitly exclusive of HST, which collectively shall not exceed 5% of the gross sale price less any amounts payable to prior mortgagees, approved by the Lender, if any. In order to ensure the foregoing discharge parameters, a sales price list for each subdivided parcel or condominium unit comprising the Subject Property is agreed to by the Borrower(s) and Lender and attached herein as Schedule ‘C’ (the “**Sales Price List**”), and no sale can take place at less than **95%** of the Sales Price List without the Lender’s written consent.

For clarity, given the deferral in payment of sales commission, in calculating the Net Sale Proceeds, the amount of any sales commissions shall not be deducted from the gross sale price.

Notwithstanding the above, the Lender shall have no obligation to provide a partial discharge until such time as i) all of the deferred equity requirements to complete the capital stack has been satisfied and ii) the Binding Commitment Letter(s) has(have) been secured.

This Fourth Renewal Letter, the Third Renewal Letter, the Second Renewal Letter, the Renewal Letter and the Commitment Letter shall be read together as one and the same document and may be executed in counterpart and delivered via facsimile or other electronic transmission. Other than as expressly set out herein, all of the terms and conditions of the Commitment Letter shall continue in full force and effect, unamended.

In the event that one or more of the provisions of the Fourth Renewal Letter, the Third Renewal Letter, the Second Renewal Letter, the Renewal Letter and the Commitment Letter are found to be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality or enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

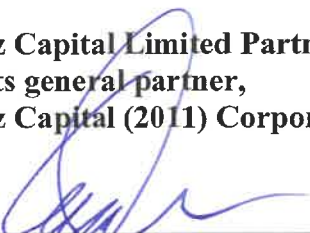
This Fourth Renewal shall not become effective until 1) the Borrower, Guarantor and Lender have signed this letter and a copy is returned to the Lender’s office by no later than 5:00pm Pacific Time on **February 7, 2024**; and 2) the Lender has confirmed that all Conditions Precedent to the Fourth Renewal have been satisfied.




The Borrower and Guarantor hereby acknowledge and agree to the terms and conditions of this Fourth Renewal Letter and authorize Trez Capital Limited Partnership to instruct its solicitor to prepare the documentation required to give effect to this Fourth Renewal. The Borrower and Guarantor further acknowledge that the Fourth Renewal Fee set forth herein is a reasonable estimate of the cost incurred in granting the Fourth Renewal and of holding monies available for same, and that the Fourth Renewal Fee shall be forfeited and payable to Trez Capital Limited Partnership as liquidated damages, and not as a penalty, if the Fourth Renewal is not completed within the time limit herein. This Fourth Renewal and any fees earned as a result of this Fourth Renewal Letter, together with any expenses or costs incurred by Trez Capital Limited Partnership including, but not limited to, appraisal, re-appraisal, inspections, re-inspections, title searches, plan reviews, soil tests, survey, environmental assessments, and legal costs on a solicitor and its client basis, are deemed to be a charge on the Subject Property referred to herein and Trez Capital Limited Partnership may file and maintain a caveat on the title to the Subject Property to protect that charge and the Borrower and Guarantor do hereby mortgage to Trez Capital Limited Partnership all its estate and interest in the said Subject Property and Security. This Fourth Renewal Letter supersedes all previous correspondence between the parties hereto save and except for the Third Renewal Letter, the Second Renewal Letter, the Renewal Letter, and the Commitment Letter.

Yours truly,

**Trez Capital Limited Partnership**  
**by its general partner,**  
**Trez Capital (2011) Corporation**

Per:   
Eric Horie  
Senior Managing Director, Head of  
Origination Canada  
Agent#: M20001785

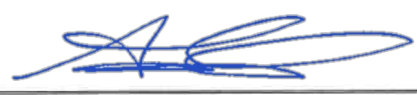
Per:   
Colin Philpotts  
Director, Credit Risk & Underwriting

We hereby agree to the Terms and Conditions contained in this Fourth Renewal Letter and agree to be bound by the terms hereof.

Acknowledged and agreed at Toronto this 7th day of 2024,  
2024.

***BORROWER:***

**Mizrahi Development Group (1451 Wellington) Inc.**

Per:   
Authorized Signature

***GUARANTOR:***

  
Sam Mizrahi

**SCHEDULE "A"**  
**THE SECURITY**

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2. Notice of Assignment of Rents dated December 1, 2021 and receipted as Instrument No. OC2430520;
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5. Limited Recourse Guarantee and Postponement of Claim dated December 1, 2021;
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17. Acknowledgment and Direction dated December 1, 2021;
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19. Financing Statement pursuant to the PPSA filed December 1, 2021 and registered as Reference File No. 778675995;
20. Financing Statement pursuant to the PPSA filed December 1, 2021 and registered as Reference File No. 778676976;
21. Financing Statement pursuant to the PPSA filed December 1, 2021 and registered as Reference File No. 778676292.
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23. Amended and restated Undertaking to Deliver an Assignment of Net Sales Proceeds Agreement from SAM M (180 SAW) INC. and SAM MIZRAHI dated September 12, 2023.

**SCHEDULE "B"**  
**CERTIFICATE OF INDEPENDENT LEGAL ADVICE**

**TO: TREZ CAPITAL LIMITED PARTNERSHIP**

I, \_\_\_\_\_, hereby declare that I have been consulted with Mizrahi Development Group (1451 Wellington) Inc. (the "**Borrower**") and Sam Mizrahi (the "**Guarantor**") as to the liability which the Borrower and the Guarantor would incur by signing the Fourth Renewal Letter and have also been consulted by the Borrower and the Guarantor in respect of breaching the Fourth Renewal Letter and that I have advised the Borrower and the Guarantor fully as to the effect of the aforementioned and the liability which the Borrower and the Guarantor would incur in entering into the Fourth Renewal Letter, the manner in which such liability could be enforced and the possible consequences and ramifications if the Borrower and the Guarantor fail to enter into the terms of the Fourth Renewal Letter; and that the Borrower and the Guarantor understand the nature and effect of the liability which would arise from the taking by the Borrower and the Guarantor of the said actions, or the failure of taking such actions; and I hereby further declare that:

1. I have given this advice to the Borrower and the Guarantor, as solicitor for the Borrower and the Guarantor and in the Borrower and Guarantor's interest only and without regard to or consideration for the interests of the Lender,
2. I have never given any legal advice to the Lender in connection with this matter;
3. the Borrower and the Guarantor have executed the Fourth Renewal Letter in my presence only and no other person was present; and
4. the Borrower and the Guarantor appear to have executed the Fourth Renewal Letter without any threat of compulsion, or any undue influence from third parties.

DATED at \_\_\_\_\_, Ontario, this \_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_

robapp\9062489.2

**SCHEDULE "C"  
SALES PRICE LIST**

No.	Suite	Status	Unit	Level	Size	Type	Exposure	Unit Price	Unit Price Net of HST	Total Price Net of HST
1	201	F	01	2	638	1 Bed	North/East	\$474,990	\$442,028	\$476,982
2	202	A	02	2	1,543	2 Bed+Den	South/East	\$1,549,990	\$1,392,912	\$1,392,912
3	203	A	03	2	776	1 Bed+Den	South	\$779,990	\$711,496	\$711,496
4	204	F	04	2	819	1 Bed+Den	South	\$704,990	\$645,124	\$689,372
5	205	A	05	2	711	1 Bed+Den	South	\$724,990	\$662,823	\$662,823
6	206	F	06	2	930	2 Bed+Den	South	\$689,990	\$631,850	\$676,097
7	207	F	07	2	1,660	2 Bed+Den	South/West	\$1,325,000	\$1,193,805	\$1,280,088
8	208	A	08	2	1,102	2 Bed+Den	West	\$1,124,990	\$1,016,805	\$1,016,805
9	301	F	01	3	921	2 Bed+Den	North	\$709,990	\$649,549	\$702,646
10	302	A	02	3	681	1 Bed+Den	North	\$719,990	\$658,398	\$658,398
11	303	F	03	3	1,251	2 Bed+Den	North/East	\$959,990	\$870,788	\$950,434
12	304	A	04	3	1,543	2 Bed+Den	South/East	\$1,589,990	\$1,428,310	\$1,428,310
13	305	A	05	3	1,276	2 Bed+Den	South	\$1,399,990	\$1,260,168	\$1,260,168
14	306	F	06	3	1,080	2 Bed+Den	South	\$819,990	\$746,894	\$782,292
15	307	F	07	3	809	1 Bed+Den	South	\$799,990	\$729,195	\$729,195
16	308	F	08	3	1,775	2 Bed+Den	South/West	\$1,324,990	\$1,193,796	\$1,273,442
17	309	F	09	3	1,102	2 Bed+Den	West	\$1,029,990	\$932,735	\$976,982
18	310	F	10	3	1,439	2 Bed+Den	North/West	\$1,625,000	\$1,459,292	\$1,614,159
19	311	F	11	3	1,020	2 Bed+Den	North	\$777,990	\$709,726	\$745,124
20	401	F	01	4	921	2 Bed+Den	North	\$694,990	\$636,274	\$680,522
21	402	F	02	4	681	1 Bed+Den	North	\$526,990	\$487,602	\$531,850
22	403	F	03	4	1,251	2 Bed+Den	North/East	\$969,990	\$879,637	\$959,283
23	404	A	04	4	1543	2 Bed+Den	South/East	\$1,599,990	\$1,437,159	\$1,437,159
24	405	A	05	4	1,276	2 Bed+Den	South	\$1,409,990	\$1,269,018	\$1,269,018
25	406	F	06	4	1,080	2 Bed+Den	South	\$959,990	\$870,788	\$950,434
26	407	F	07	4	809	1 Bed+Den	South	\$719,990	\$658,398	\$658,398
27	408	F	08	4	1,775	2 Bed+Den	South/West	\$1,331,990	\$1,199,991	\$1,244,239
28	409	F	09	4	1,102	2 Bed+Den	West	\$852,990	\$776,097	\$820,345
29	410	F	10	4	1,439	2 Bed+Den	North/West	\$1,106,990	\$1,000,876	\$1,045,124
30	411	F	11	4	1,020	2 Bed+Den	North	\$819,990	\$746,894	\$791,142
31	501	F	01	5	250	Partial	North	\$239,000	\$227,186	\$227,186
32	502	F	02	5	1,238	2 Bed+Den	North/East	\$1,014,990	\$919,460	\$1,007,956
33	503	F	03	5	686	1 Bed	East	\$579,990	\$534,504	\$578,752
34	504	F	04	5	1,215	2 Bed+Den	South/East	\$1,029,990	\$932,735	\$968,133
35	505	F	05	5	699	1 Bed	South	\$572,990	\$528,310	\$563,708
36	506	F	06	5	621	1 Bed	South	\$809,990	\$738,044	\$892,912
37	507	F	07	5	710	1 Bed+Den	South	\$980,000	\$888,496	\$888,496
38	508	F	08	5	1,424	2 Bed+Den	South/West	\$1,299,990	\$1,171,673	\$1,251,319
39	509	F	09	5	965	2 Bed+Den	West	\$795,990	\$725,655	\$769,903
40	510	F	10	5	1,069	2 Bed+Den	North/West	\$879,990	\$799,991	\$844,239
41	511	F	11	5	1,237	2 Bed+Den	North	\$1,159,990	\$1,047,779	\$1,092,027
42	601	F	01	6	732	1 Bed+Den	North	\$619,990	\$569,903	\$649,549
43	602	F	02	6	1,238	2 Bed+Den	North/East	\$1,024,990	\$928,310	\$1,007,956
44	603	A	03	6	632	1 Bed	East	\$739,990	\$676,097	\$676,097
45	604	F	04	6	1,113	2 Bed+Den	South/East	\$916,490	\$832,292	\$903,088

46	605	F	05	6	659	1 Bed	South	\$548,000	\$506,195	\$506,195
47	606	F	06	6	578	1 Bed	South	\$479,990	\$446,220	\$490,257
48	607	F	07	6	658	1 Bed	South	\$545,990	\$504,416	\$495,566
49	608	F	08	6	1,424	2 Bed+Den	South/West	\$1,199,990	\$1,083,177	\$1,171,673
50	609	F	09	6	914	2 Bed	West	\$759,990	\$693,796	\$738,044
51	610	F	10	6	1,073	2 Bed+Den	North/West	\$917,990	\$833,619	\$904,416
52	611	F	11	6	841	1 Bed+Den	North	\$711,990	\$651,319	\$629,204
53	701	F	01	7	732	1 Bed+Den	North	\$629,990	\$578,752	\$623,000
54	702	F	02	7	1,238	2 Bed+Den	North/East	\$1,034,990	\$937,159	\$972,558
55	703	A	03	7	632	1 Bed	East	\$749,990	\$684,947	\$684,947
56	704	F	04	7	1,113	2 Bed+Den	South/East	\$924,990	\$839,814	\$910,611
57	705	A	05	7	659	1 Bed	South	\$722,990	\$661,053	\$661,053
58	706	F	06	7	578	1 Bed	South	\$629,000	\$577,876	\$577,876
59	707	F	07	7	658	1 Bed	South	\$555,990	\$513,265	\$548,664
60	708	F	08	7	1,424	2 Bed+Den	South/West	\$1,184,990	\$1,069,903	\$1,149,549
61	709	F	09	7	914	2 Bed	West	\$779,990	\$711,496	\$782,292
62	710	F	10	7	1,073	2 Bed+Den	North/West	\$918,990	\$834,504	\$914,150
63	711	F	11	7	841	1 Bed+Den	North	\$712,990	\$652,204	\$652,204
64	801	F	01	8		Partial		\$0	\$0	\$0
65	802	F	02	8	1,574	2 Bed+Den	North/East	\$1,669,990	\$1,499,106	\$1,587,602
66	803	A	03	8	632	1 Bed	East	\$769,990	\$702,646	\$702,646
67	804	F	04	8	1,113	2 Bed+Den	South/East	\$964,990	\$875,212	\$972,558
68	805	F	05	8	659	1 Bed	South	\$577,990	\$532,735	\$532,735
69	806	A	06	8	578	1 Bed	South	\$704,990	\$645,124	\$645,124
70	807	A	07	8	658	1 Bed	South	\$804,990	\$733,619	\$733,619
71	808	F	08	8	1,424	2 Bed+Den	South/West	\$1,219,990	\$1,100,876	\$1,145,124
72	809	F	09	8	914	2 Bed	West	\$799,990	\$729,195	\$729,195
73	810	F	10	8	1,591	2 Bed+Den	North/West	\$1,498,990	\$1,347,779	\$1,427,425
74	811	F	11	8	726	1 Bed+Den	North	\$889,990	\$808,841	\$808,841
75	901	F	01	9	732	1 Bed+Den	North	\$639,990	\$587,602	\$669,912
76	902	F	02	9	1,238	2 Bed+Den	North/East	\$1,054,990	\$954,858	\$1,043,354
77	903	A	03	9	632	1 Bed	East	\$789,990	\$720,345	\$720,345
78	904	F	04	9	1,113	2 Bed+Den	South/East	\$984,990	\$892,912	\$937,159
79	905	F	05	9	659	1 Bed	South	\$597,990	\$550,434	\$550,434
80	906	F	06	9	578	1 Bed	South	\$1,599,990	\$1,437,159	\$1,525,655
81	907	F	07	9	658	1 Bed	South	\$0	\$0	\$0
82	908	F	08	9	1,424	2 Bed+Den	South/West	\$1,209,990	\$1,092,027	\$1,171,673
83	909	F	09	9	914	2 Bed	West	\$785,000	\$715,929	\$724,779
84	910	F	10	9	1,073	2 Bed+Den	North/West	\$928,990	\$843,354	\$887,602
85	911	F	11	9	841	1 Bed+Den	North	\$732,990	\$669,903	\$669,903
86	1001	F	01	10	1,714	2 Bed+Den (JR P	North/East	\$1,949,999	\$1,746,902	\$1,791,150
87	1002	A	02	10	1,938	2 Bed+Den (JR P	South/East	\$3,281,990	\$2,925,655	\$2,925,655
88	1003	F	03	10	2,388	2 Bed+Den (JR P	South/West	\$4,259,990	\$3,791,142	\$3,791,142
89	1004	F	04	10	1,889	2 Bed+Den (JR P	North/West	\$2,379,990	\$2,127,425	\$2,251,319
90	1101	F	01	11	3,563	3 Bed+Den (PH)	North/East	\$4,275,990	\$3,805,301	\$3,920,345
91	1102	A	02	11	3,577	3 Bed+Den (PH)	South/East	\$6,439,990	\$5,720,345	\$5,720,345
92	1103	A	03	11	4,601	3 Bed+Den (PH)	South/West	\$8,279,990	\$7,348,664	\$7,348,664
93	1104	A	04	11	3,531	3 Bed+Den (PH)	North/West	\$6,355,990	\$5,646,009	\$5,646,009
	3186					CRU		\$1,840,234	\$1,649,765	\$1,649,765
	2082					CRU		\$1,202,563	\$1,085,454	\$1,085,454
<b>Total</b>								<b>\$116,293,466</b>	<b>\$104,884,891</b>	<b>\$108,464,342</b>

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*m:\19\190399\4th renewal\renewal\_#4\_letter\_mizrahi\_1451\_wellington\_2nd\_(december 2023) pjd changes jan 9 md.docx*

This is Exhibit H to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits

**Properties**

*PIN* 04030 - 0154 LT *Interest/Estate* Fee Simple  
*Description* LTS 1 & 2, PL 145 , N/S RICHMOND RD (NOW WELLINGTON ST) ; OTTAWA; SUBJECT TO AN EASEMENT AS IN OC2360765  
*Address* 1451 WELLINGTON STREET WEST  
 OTTAWA

*PIN* 04030 - 0155 LT *Interest/Estate* Fee Simple  
*Description* LT 3 & PT LT 4, PL 145 , BEING THE W 1/2, N/S RICHMOND RD (NOW WELLINGTON ST) ; OTTAWA; SUBJECT TO AN EASEMENT AS IN OC2360765  
*Address* 1445 WELLINGTON STREET WEST  
 OTTAWA

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.  
*Address for Service* 125 Hazelton Avenue  
 Toronto, ON M5R 2E4

I, Sam Mizrahi, A.S.O., have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)***Capacity**Share*

*Name* COMPUTERSHARE TRUST COMPANY OF CANADA  
*Address for Service* 100 University Avenue, 9th Floor  
 Toronto, ON M5J 2Y1

**Statements**

Schedule: See Schedules

**Provisions**

*Principal* \$6,000,000.00 *Currency* CDN  
*Calculation Period* See Schedule  
*Balance Due Date* 2023/01/01  
*Interest Rate* See Schedule  
*Payments*  
*Interest Adjustment Date* 2021 12 01  
*Payment Date* 1st day of each and every month  
*First Payment Date* 2022 01 01  
*Last Payment Date* 2023 01 01  
*Standard Charge Terms*  
*Insurance Amount* Full insurable value  
*Guarantor* Sam Mizrahi

**Signed By**

Nasim Akbari-Balderlou 3400-1 First Canadian Place acting for Signed 2021 12 01  
 Toronto  
 M5X 1A4  
 Chargee(s)

Tel 416-863-1200

Fax 416-863-1716

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

BENNETT JONES LLP 3400-1 First Canadian Place 2021 12 01  
 Toronto  
 M5X 1A4

Tel 416-863-1200

Fax 416-863-1716



**Fees/Taxes/Payment**

Statutory Registration Fee	\$66.30
Total Paid	\$66.30

**File Number**

Chargee Client File Number : 72996.313 (JVG/SB/NA)

## SCHEDULE TO CHARGE/MORTGAGE

### RECITALS

The Lender has agreed to make a loan in favour of the Borrower upon the terms and conditions more particularly contained herein.

The Borrower is the registered and beneficial owner of the lands and premises described in the electronic Charge to which this schedule is attached.

This Charge is given by the Borrower to the Lender as continuing security for the repayment by the Borrower to the Lender of such loan and the performance by the Borrower of its obligations as more particularly described herein.

### **ARTICLE I** **DEFINITIONS**

**1.1** For the purposes of this Charge the following definitions will apply:

"**Applicable Laws**" means, at any time, in respect of any Person, property, transaction, event or other matter, as applicable, all then current laws, rules, statutes, regulations, treaties, orders, judgments and decrees and all official directives, rules, guidelines, orders, policies, decisions and other requirements of any Governmental Authority (whether or not having the force of law) (collectively, the "Law") relating or applicable to such Person, property, transaction, event or other matter and shall also include any interpretation of the Law or any part of the Law by any Person having jurisdiction over it or charged with its administration or interpretation;

"**Applicable Rate**" means the interest rate set out in the electronic Charge to which this schedule is attached or, in the alternative, the interest rate set out in the Commitment;

"**Bills**" has the meaning ascribed thereto in Section 10.1(a);

"**Borrower**" means the party identified as "Chargor" set out in the electronic Charge to which this schedule is attached and its successors and assigns;

"**Business Day**" means a day on which the Lender is open for business but specifically excluding Saturdays, Sundays or statutory holidays pursuant to the laws of Canada or the Province of Ontario and "**Business Days**" means more than one Business Day;

"**Charge**" means this charge/mortgage of land and all instruments supplemental hereto or in amendment, renewal, extension, restatement, replacement or confirmation hereof;

"**Charged Premises**" means, collectively, the Lands and the Improvements;

"**Commitment**" means the letter of commitment between the Borrower and Trez Capital Limited Partnership dated October 18, 2021, as the same has been or may be amended, restated, supplemented, renewed, extended or superseded from time to time;

"**Environmental Approvals**" has the meaning ascribed to it in Section 12.1 hereof;

"**Environmental Laws**" or "**Environmental Law**" has the meaning ascribed to them in Section 12.1 hereof;

"**Event of Default**" has the meaning ascribed thereto in Section 18.1 hereof;

"**Event of Insolvency**" means the occurrence of any one of the following events:

- (a) If the Borrower, or the Guarantor(s), shall, other than as expressly permitted hereby:
  - (i) be wound up, dissolved or liquidated, whether pursuant to the provisions of the laws of the Province of Ontario or the federal laws of Canada applicable therein, or any other law or otherwise, or becomes subject to the provisions of the *Winding-Up and Restructuring Act* (Canada), or has its existence terminated or has any resolution passed therefor; or
  - (ii) makes a general assignment for the benefit of its creditors or files a proposal or a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act* (Canada), shall otherwise acknowledge its insolvency or shall be declared or become bankrupt or insolvent; or

- (iii) proposes a compromise or arrangement or otherwise brings proceedings under or becomes subject to the provisions of the *Companies' Creditors Arrangement Act* (Canada) or shall file any petition or answer seeking any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution or any other relief for itself under, or in any way takes the benefit of, the *Bankruptcy and Insolvency Act* (Canada) or any other present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors; or
  - (iv) be unable, by reason of insolvency or similar circumstances, to pay its trade creditors generally, within one hundred and twenty (120) days of the rendering of trade accounts or admit its inability to pay its debts or perform its obligations as they become due; or
- (b) If a court of competent jurisdiction shall enter an order, judgment or decree against the Borrower in respect of any re-organization, arrangement, composition, re-adjustment, liquidation, dissolution, winding-up, termination of existence, declaration of bankruptcy or insolvency, or similar relief under any present or future law relative to bankruptcy, insolvency or other relief for debtors or for or against the benefit of creditors, or the Borrower shall acquiesce in the entry of such order, judgment or decree, unless the Borrower is also proceeding forthwith to diligently and in good faith contest the same and, provided that none of the Charged Premises, the Charge or the Security, the value of the Charged Premises or the operation thereof, are adversely affected and there is no prejudice to the Lender in the Lender's reasonable opinion, and such order, judgement or decree is vacated or permanently stayed within fifteen (15) days of its making; or
  - (c) If any trustee in bankruptcy, receiver, receiver and manager, monitor or liquidator or any other officer with similar powers shall be appointed for the Charged Premises or any portion thereof, or for the Borrower or the Guarantor(s), or for all or any substantial part of its assets or its interest in the Charged Premises with the consent or acquiescence of the Borrower; or
  - (d) If, other than as expressly permitted hereby, an encumbrancer or the holder of any lien or charge or any other creditor takes possession of the Charged Premises or the Borrower's interest in the Charged Premises, or any part thereof, or if a distress, execution, garnishment or any similar process is levied or enforced upon or against the same;

**"Governmental Authority"** means any federal, provincial, territorial or municipal government and any executive, judicial, regulatory or administrative functions of, or pertaining to, government (including, without limitation, all boards, commissions, agencies, departments and ministries);

**"Guarantor(s)"** means any Person from time to time guaranteeing the Indebtedness;

**"Hazardous Substance"** has the meaning ascribed to it in Section 12.1 hereof;

**"Improvements"** means the buildings, erections, structures, fixed machinery, fixed equipment, plant, and improvements now located on the Lands and all appurtenances pertaining thereto, together with all other buildings, structures, fixtures and improvements hereafter located from time to time in, on or under the Lands and all personal property, equipment and chattels now or hereafter affixed to the Lands or to such buildings, erections, structures, fixed machinery, fixed equipment, plant, and improvements owned by the Borrower;

**"Indebtedness"** means, collectively, the Principal Sum, any debts, liabilities, obligations, covenants and duties owing by the Borrower to the Lender of any kind or nature, present or future and arising under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith, whether or not evidenced by any note, guarantee or other instrument, whether or not for the payment of money, whether arising by reason of an extension of credit, loan, guarantee, indemnification, or in any other manner, whether direct or indirect (including those acquired by assignment), absolute or contingent, due or to become due, now existing or hereafter arising and however acquired and in all cases arising under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith. The term includes, without limitation, all interest, yield maintenance, charges, expenses, fees, including all processing and commitment fees and all legal fees and disbursements (in each case whether or not allowed), and any other sum chargeable to the Borrower under, pursuant to or in connection with this Charge, the Security or any other document delivered pursuant to or in connection herewith or therewith;

**"Insolvency Notice"** has the meaning ascribed to it in Section 9.3 hereof;

**"Inspections"** has the meaning ascribed to it in Section 12.1 hereof;

**"Interest Adjustment Date"** means the interest adjustment date set by the Lender for the purposes of setting a payment schedule;

**"Lands"** means the lands and premises described in the electronic Charge to which this schedule is attached, including all tenements, hereditaments and appurtenances belonging or in any way appertaining thereto, and the reversion or reversions, remainder and remainders, rents, issues and profits therefrom, and all the estate, right, title, interest, property claim and demand whatsoever of the Borrower of, in and to the same and of, in and to every part thereof;

**"Lease Benefits"** means the benefit of all covenants and obligations of tenants, licencees or occupants contained in any of the Leases, including, without limitation, all rights and benefits of any guarantees thereof, the right to demand, sue for, collect, recover and receive all Rents, to enforce the landlord's rights under any Lease and generally any collateral advantage or benefit to be derived from the Leases or any of them;

**"Lease Rights"** means, collectively, the Leases, the Rents and the Lease Benefits;

**"Leases"** means all present and future leases, subleases, licences, agreements to lease, agreements to sublease, options to lease or sublease, rights of renewal or other agreements by which the Borrower, or any predecessor or successor in title thereto, has granted or will grant the right to use or occupy all or part or parts of the Charged Premises, including all agreements collateral thereto, but which, for the purpose of this definition does not include the Property Lease, and "Lease" means any one of them;

**"Lender"** means the party identified as **"Chargee"** in the electronic Charge to which this schedule is attached, and its successors and assigns;

**"Loan"** means the loan extended or to be extended by the Lender to the Borrower in the principal amount set out in the electronic Charge to which this schedule is attached and secured by this Charge and other security given to the Lender by the Borrower and the Guarantor(s), if any;

**"Major Tenant Leases"** means any agreements to lease, offers to lease or leases, subleases or occupancy agreements in respect of premises situate on the Charged Premises and which are determined by the Lender in its discretion to be material to the Charged Premises and the extension and maintenance of the Loan;

**"Maturity Date"** means, subject to early maturity by reason of the occurrence of an Event of Default and the acceleration of repayment at the option of the Lender, the balance due date set out in the electronic Charge to which this schedule is attached;

**"Permitted Encumbrances"** means encumbrances, liens and interests affecting the Charged Premises which are acceptable to the Lender in its sole discretion;

**"Person"** means any natural person, sole proprietorship, partnership, syndicate, trust, joint venture, Governmental Authority or any incorporated or unincorporated or entity or association of any nature;

**"Principal"** or **"Principal Sum"** means the principal amount of the Loan owing from time to time by the Borrower to the Lender;

**"Rents"** means all rents, issues and profits now due or to become due under or derived from the Leases;

**"Security"** means, collectively, all other or additional security, other than this Charge, given by the Borrower or others to the Lender as security for the Loan;

**"Taxes"** means for each year during the term of this Charge all real property taxes, business taxes, rates, duties, charges, assessments, impositions, taxes, levies and charges for local improvements or otherwise, imposed upon or assessed against the Charged Premises or any part or parts thereof by any Governmental Authority including, without limitation, school boards, and paid or payable by the Borrower or any tenant of the Charged Premises, but shall not include franchise, capital levy or transfer tax or any income, excess profits or revenue tax or any other tax or impost of a personal nature charged or levied upon the Borrower or any tenant of the Charged Premises. If the system of real property taxation or business shall be altered or varied and any new tax shall be levied or imposed on all or any portion of the Charged Premises or the revenues therefrom in substitution for, or in addition to, taxes presently levied or imposed, then any such new tax or levy shall be deemed to be and shall be included herein; and

**"Term"** means the term of this Charge and being a period which expires on the Maturity Date.

**ARTICLE II**  
**CHARGING PROVISIONS**

- 2.1** Now therefore witnesseth that the Borrower, being the registered and beneficial owner of a freehold estate in fee simple in possession of the Lands, in consideration of the Loan advanced or to be advanced by the Lender to the Borrower or for its benefit, and as security for the repayment of all Indebtedness and the performance of the obligations of the Borrower hereunder, does hereby grant, a mortgage, charge and create a security interest in, to and in favour of the Lender all of its estate, right, title and interest in and to the Charged Premises and covenants and agrees to and with the Lender as hereinafter provided.
- 2.2** The last day of any term reserved by any lease or sublease, verbal or written, or any agreement therefor, now held or hereafter acquired by the Borrower, as lessee, and forming part of the Charged Premises is hereby excepted out of the mortgage, charge, assignment and security interest hereby created or granted or any instrument in implementations hereof, and the same shall be deemed to be a charge by way of sublease. As further security for the payment of the Indebtedness, the Borrower agrees that it will stand possessed of the reversion of such last day of the term and shall hold it in trust for the Lender for the purpose of this Charge and to assign and dispose thereof, without cost or expense to the Lender, in such manner as the Lender shall by notice in writing, for such purpose, direct. Upon any sale, assignment, sublease or other disposition of such leasehold interest or any part thereof, the Lender, for the purpose of vesting the aforesaid one day residue of such term or renewal thereof in any purchaser, assignee, sublessee or other acquirer thereof, shall be entitled by deed or writing to appoint such party or parties as a new trustee or trustees of the aforesaid residue of any such term or renewal thereof in the place of the Borrower and to vest the same accordingly in the new trustee or trustees so appointed freed and discharged from any obligation respecting the same.

**ARTICLE III**  
**REPAYMENT AND INTEREST**

- 3.1** The Borrower covenants to pay to or to the order of the Lender at its offices as set out in Article XXIII hereof or at such other address as the Lender may from time to time designate in writing, without set-off, compensation or deduction, and without deduction for bank service or any other charges, the Principal Sum together with all other Indebtedness with interest thereon at the Applicable Rate, as well after as before maturity and both before and after default, demand and judgment. Such interest at the Applicable Rate shall be computed from the date of advance to become due and be paid initially on the Interest Adjustment Date and thereafter to be paid in equal instalments of interest, commencing on the first payment date set out in the Commitment or in the electronic Charge to which this schedule is attached and continuing each month during the Term, to and including the last payment date set out in the Commitment or the electronic Charge to which this schedule is attached, each such instalment to be in the amount stipulated in the Commitment or in the electronic Charge to which this schedule is attached and the last instalment, in the amount of the then remaining balance of the Principal Sum, other Indebtedness and accrued interest thereon, to be paid on the Maturity Date.
- 3.2** The Borrower acknowledges and agrees that monthly instalments for interest described in Section 3.1 together with all payments for Taxes as set out in Section 10.1 hereof must pass through a single bank account on which the Borrower will have provided post-dated cheques (as required by the Lender) or have pre-authorized the Lender to withdraw the monthly payments under this Charge plus any Taxes payable in respect of the Charged Premises if not otherwise paid by the Borrower. In addition, the Borrower must maintain at all times in such account a minimum balance equal to the sum of the monthly payment of principal, interest and Taxes (as such Taxes become due).
- 3.3** It is hereby agreed that if default should occur in payment of any sum due at the time appointed for payment thereof as herein provided, compound interest at the Applicable Rate shall be payable on the sum in arrears from time to time, as well after as before maturity, and if interest as compounded is not paid within one (1) month from the time of default, a rest shall be made, and compound interest at the Applicable Rate shall be payable on the aggregate then due, as well after as before

maturity, both before and after default, demand and judgement and so on from time to time and all such interest and compound interest shall be a charge on the Charged Premises.

- 3.4 All interest in arrears shall be treated (as to payment of interest thereon) as Principal and shall bear compound interest, as well after as before maturity, default and judgement as provided in Section 3.3 hereof.
- 3.5 The Borrower will pay interest, including interest on overdue interest, at the Applicable Rate on any arrears of instalments of interest, and any payment by the Borrower shall be applied by the Lender first on account of interest and then on account of principal.
- 3.6 All payments of principal and interest pursuant to Section 3.1 shall be made to and received by the Lender prior to 3:00 p.m. Toronto time on the date due, failing which such payment shall be deemed received on the next succeeding Business Day provided that in such case, such extension of time shall be included for the purpose of computation for interest; provided further that in the event any payment is due on a day which is not a Business Day, it shall be payable prior to 3:00 p.m. Toronto time on the next succeeding Business Day and provided such payment is received by such date and such time, then, save in respect of repayment of the Indebtedness at the Maturity Date where interest shall be charged for extensions to the next succeeding Business Day, interest shall not be charged for such extension.

#### **ARTICLE IV CRIMINAL RATE OF INTEREST**

- 4.1 Notwithstanding any other provisions of this Charge, in no event shall the aggregate "interest" (as defined in Section 347 of the *Criminal Code* (Canada), as the same shall be amended, replaced or re-enacted from time to time) payable to the Lender under this Charge exceed the effective annual rate of interest on the "credit advances" (as defined in that section) under this Charge lawfully permitted under that section and, if any payment, collection or demand pursuant to this Charge in respect of "interest" (as defined in that section) is determined to be contrary to the provisions of that section, such payment, collection, or demand shall be deemed to have been made by mutual mistake of the Lender and the Borrower and the amount of such payment or collection in excess of that lawfully permitted shall be refunded by the Lender to the Borrower.

#### **ARTICLE V INTEREST ACT (CANADA)**

- 5.1 For the purposes of this Charge, whenever interest is payable or stated not on the basis of a yearly rate, such rate of interest may be determined by multiplying the Applicable Rate by a fraction the numerator of which is the actual number of days in the calendar year in which the same is to be ascertained and the denominator of which is the number of days in the period for which such rate is determined to be payable.
- 5.2 All calculations of interest or fees under this Charge are to be made on the basis of the stated rates set out herein and not on any basis which gives effect to the principle of deemed re-investment.

#### **ARTICLE VI PREPAYMENT**

- 6.1 Subject to prepayment provisions provided for in the Commitment, if any, or early maturity by reason of the acceleration of the repayment of the Indebtedness at the option of the Lender upon the occurrence of an Event of Default, the Borrower shall not be entitled to prepay all or any portion of the Principal under this Charge prior to the Maturity Date.

#### **ARTICLE VII NO OBLIGATION TO ADVANCE**

- 7.1 The Borrower acknowledges and agrees that the Lender is not bound to make any advance of any of the Principal Sum or any unadvanced portion thereof by reason of the registration of this Charge in any place or registry office or the advance of any part of the said Principal Sum, it being acknowledged by the Borrower that any advance hereunder is subject, *inter alia*, to: (a) the representations and warranties contained herein being true and correct as of the date of any advance of the Loan; (b) no default having occurred hereunder, under any of the Security or under the Commitment; and (c) the conditions precedent and conditions subsequent contained in the Commitment having been satisfied.
- 7.2 In the event this Charge is registered and either no advance whatsoever is made hereunder by the Lender or the Borrower's ability to draw down funds is terminated by the Lender before any funds

are advanced, the Lender will, at the expense of the Borrower and upon payment of all monies, costs, fees and disbursements then due to the Lender, promptly upon request by the Borrower execute and deliver to the Borrower, or any agent thereof, registrable discharges of this Charge and of the Security, for use in every registry office where they or notices thereof have been recorded or filed; provided that the Borrower acknowledges that this Section 7.2 shall be of no effect once any advance of the funds is made hereunder by the Lender.

**ARTICLE VIII**  
**REPRESENTATIONS AND WARRANTIES**

**8.1** The Borrower represents and warrants in favour of the Lender, acknowledging that the Lender is relying on such representations and warranties in extending the Loan:

- (a) The Borrower is a corporation duly organized, validly subsisting and in good standing under the laws of its incorporating jurisdiction and has all necessary corporate power and authority to enter into this Charge and the Security and to perform or cause to be performed its obligations contained herein and therein, to own and operate the Charged Premises and to carry on its business pertaining thereto as presently carried on;
- (b) There are no provisions in the articles or bylaws of the Borrower or any unanimous shareholders agreement of or with respect to the Borrower or to which the Borrower is a party which restrict, limit or regulate in any way the powers of the Borrower to borrow on credit or to issue, sell or pledge any of the property or assets now or hereafter owned by it to secure its debt obligations, save and except any provisions which have been complied with. No steps or proceedings have been taken or are pending to amend or supersede the articles or bylaws of the Borrower in a manner which would impair or limit the Borrower's ability to perform its obligations hereunder or under the Security;
- (c) The Borrower has taken all necessary corporate action to authorize the execution and delivery of this Charge and the Security, and performance of the provisions of each in accordance with its terms;
- (d) The authorization, creation, execution or delivery of this Charge or the Security or the Borrower's performance of its obligations hereunder or thereunder does not require any approval or consent of any Governmental Authority having jurisdiction nor will any such action be in conflict with or contravene any of the Borrower's articles, bylaws, unanimous shareholders agreement, if any, or resolutions of directors or shareholders, or the provisions of any indenture, instrument, agreement or undertaking to which the Borrower is a party or by which it or its properties or assets are bound, or result in the creation, imposition or crystallization of any hypothec, title retention, charge, pledge, lien, encumbrance or security interest of any kind upon any of its property or assets subject to the Charge or security interest created thereby or by the Security other than in accordance with the provisions of this Charge and the Security. This Charge and the Security when executed and delivered will constitute valid and legally binding obligations of the Borrower, enforceable against it in accordance with its terms;
- (e) There is not now pending or, to the best of the Borrower's knowledge or belief after due inquiry, threatened against the Borrower, any litigation, action, suit, investigation or other proceeding by or before any court, tribunal or other competent Governmental Authority which would materially adversely affect the present or prospective ability of the Borrower to perform its obligations under this Charge or the Security, as the case may be, or which calls into question the validity or enforceability of this Charge or the Security;
- (f) No Event of Insolvency has occurred or is threatened or pending;
- (g) The Borrower is the registered and beneficial owner of and has a good and marketable title in fee simple to the Lands, free and clear of all security interests, charges, liens and other encumbrances whatsoever except for the Permitted Encumbrances, which Permitted Encumbrances are in good standing;
- (h) The Borrower has the right to charge the Charged Premises to the Lender;
- (i) The Borrower has not received any notice of or threat of a lien under the *Construction Act* (Ontario), as amended, against the Charged Premises nor has any lien been registered against the Charged Premises in respect of labour, materials or services furnished with respect to any improvement thereon which has not been discharged;

- (j) All accounts for labour, contracts, subcontracts, products, materials, services, and construction machinery and equipment have been paid in full or will be paid from the proceeds of the initial advance of the Loan secured hereby;
- (k) Unless expressly stipulated in the Commitment, the Charge is not being given with the intention to use the proceeds thereof to finance any alterations, additions or repairs to, or any construction, erection, demolition or installation on the Charged Premises or any structure thereon;
- (l) Unless expressly stipulated in the Commitment, the Charge is not a building mortgage, within the meaning of the *Construction Act* (Ontario), as amended, and the funds to be advanced by the Lender are not being used to repay a building mortgage;
- (m) Except as disclosed to the Lender in writing, the existing and proposed uses, the operation of the Charged Premises and the business conducted thereon comply and, to the best of the Borrower's knowledge and belief, have (including all prior uses) at all times complied with all Applicable Laws, including all Environmental Laws, and the Borrower is not in violation of, and does not violate, by virtue of the ownership, use, maintenance or operation of the Charged Premises or the conduct of any business related thereto, any Applicable Laws, including all Environmental Laws;
- (n) The Charged Premises may be charged by the Borrower in compliance with the *Planning Act* (Ontario), and no severance of any adjoining lands owned by the Borrower is required;
- (o) All financial statements and data delivered or presented to the Lender by the Borrower pursuant to the Commitment or any of the Security up to and including the date hereof are true and correct in all material respects as at the dates and for the periods indicated and have been prepared in accordance with Canadian generally accepted accounting principles and disclose to the Lender all financial information relevant to the Lender in respect of making the Loan and there is no information, financial or otherwise, which has not been disclosed to the Lender which would be material to the Lender in its decision to advance the Loan, and, without limiting the foregoing, neither the Guarantor(s) nor the Borrower has failed to disclose to the Lender any facts or information material to the making of the Loan;
- (p) No Event of Default, or an event which with the giving of notice, lapse of time or otherwise, would constitute an Event of Default exists;
- (q) Each Permitted Encumbrance is in good standing and all obligations and covenants required to be met or complied with thereunder on the part of the Borrower have been complied with and, in respect to any other party thereto to the best of the Borrower's knowledge and belief, have been met or complied with;
- (r) All Leases entered into as of the date hereof are valid, subsisting and enforceable leases and are in good standing as of the date hereof without right of set-off or abatement;
- (s) The Borrower is not bound by any indenture, agreement, lease or other instrument, nor is it subject to any trust agreement, charter, by-law, unanimous shareholders agreement or other corporate restriction or any of the Applicable Laws, which materially adversely affects its business operations in respect of the Charged Premises or the performance of its obligations under this Charge or the Security;
- (t) The Borrower has complied with all Applicable Laws in respect of any residential unit located on the Charged Premises, including in respect of any conversion, demolition, rentals charged or filings or applications to be made and there are no outstanding orders, decisions or directives made or pending which are or would be adverse to the Borrower or the Charged Premises in respect of any residential unit located on the Charged Premises;
- (u) The Borrower is not a non-resident of Canada for the purposes of Section 116 of the *Income Tax Act* (Canada); and
- (v) The Borrower shall not, without the prior written consent of the Lender, execute or deliver any mortgage, charge, lien or other encumbrance of the Lands intended to rank subordinate to this Charge.

**8.2** The representations and warranties set out in this Article VIII shall speak as of the date made, survive the execution and delivery of this Charge and the making of any advance hereunder and continue to be true and accurate during the Term of this Charge, notwithstanding any investigations



or examinations which may be made by the Lender or the Lender's solicitors and the Lender shall be deemed to have relied on such representations and warranties in making advances under the Loan.

- 8.3 The Borrower shall indemnify and save harmless the Lender from and against all losses, damages, claims and expenses directly or indirectly incurred or suffered by the Lender resulting from any omission, inaccuracy or misrepresentation of the Borrower herein relating to or concerning the Charged Premises and with respect to all losses, charges, claims and expenses directly or indirectly incurred or suffered by the Lender resulting from or arising in connection with environmental matters relating to, arising from, in connection with or concerning the Charged Premises, whether referred to or contemplated herein or hereby.

#### **ARTICLE IX COVENANTS**

- 9.1 The Borrower covenants with the Lender that upon the occurrence of an Event of Default, the Lender shall have quiet possession of the Charged Premises, free from any encumbrances, save and except for the Permitted Encumbrances.
- 9.2 The Borrower shall not without the prior written consent of the Lender, which may be withheld in the sole discretion of the Lender permit or suffer to exist any charges, liens, security interests or other encumbrances against the Charged Premises, save and except for the Permitted Encumbrances; and the Borrower shall maintain the Permitted Encumbrances in good standing and provide notice to the Lender forthwith of any default under any of the Permitted Encumbrances.
- 9.3 The Borrower shall not initiate, permit or suffer to exist any Event of Insolvency, in respect of itself or, to the extent that the Loan, this Charge or the Security is affected by the occurrence of any such event, of any related person or corporation, including without limitation, any parent corporation of the Borrower. The Borrower covenants and agrees: (a) to provide two (2) Business Days' notice prior to the occurrence of an Event of Insolvency (an "**Insolvency Notice**"), and agrees that the receipt of an Insolvency Notice by the Lender shall constitute an immediate Event of Default if the Borrower or any Guarantor(s) is an applicant or takes the benefit of such statute or proceeding or if any of these proceedings otherwise affect the rights or entitlements of the Lender under the Loan, this Charge or the Security or the Lender's ability to enforce this Charge or the Security; and (b) prior to the commencement of any such proceedings, to deliver to the Lender copies of all relevant filing materials, including, without limitation, copies of draft court orders, plans of compromise, proposals and notices of intention, it being intended by the Borrower that the Lender be entitled during the period after receipt of an Insolvency Notice to enforce this Charge and the Security for the purpose of, among other things, taking possession and control of the Charged Premises, in the Lender's sole discretion.
- 9.4 The Borrower shall not, without the prior written consent of the Lender, initiate, join in or consent to any change to or modification in any private restrictive covenant, municipal or other governmental law, rule or regulation, by-law, or any other public or private restrictions, limiting or defining the uses which may be made of the Charged Premises, or any part thereof and which could adversely affect the Charge, the Security, the day-to-day operations of the Charged Premises, the income derived therefrom or the value of the Charged Premises.
- 9.5 The Borrower shall comply in all respects with all covenants, deed restrictions, easements and Applicable Laws which pertain to the ownership, use or operation of the Charged Premises or the performance by the Borrower of its obligations under this Charge and shall ensure that all representations and warranties contained herein continue to be true and accurate at all times during the Term.
- 9.6 The Borrower shall permit the Lender, or cause to be made available to the Lender, access to all records, both written and electronic, pertaining to the Charged Premises and upon request shall make copies of such information for the Lender. For such purposes, the Lender shall have reasonable access to the Charged Premises or such other place as such records are kept upon reasonable prior written notice to the Borrower.
- 9.7 The Borrower shall fulfil on a timely basis any undertaking provided by it to the Lender at the time of the advance of the Loan.
- 9.8 The Borrower covenants to ensure that this Charge will remain a valid and enforceable mortgage of the Charged Premises with priority subject only to the Permitted Encumbrances and the

Borrower will fully and effectively maintain and keep the Security as valid and effective security during the currency hereof.

- 9.9** The Borrower shall promptly give written notice to the Lender of any litigation, proceeding or dispute affecting the Charged Premises if the result thereof might have a material adverse effect on the Charged Premises, the financial condition or operations of the Borrower or any Guarantor(s) or its ability to perform its obligations hereunder and shall, from time to time, furnish to the Lender all reasonable information requested by the Lender concerning the status of such litigation, proceeding or dispute and shall in all such cases diligently and in good faith proceed to defend, settle or otherwise deal with any such litigation, proceeding or dispute in a commercially reasonable manner.
- 9.10** The Borrower shall promptly give notice to the Lender upon becoming aware of and provide particulars in respect of:
- (a) an Event of Default or any event which with the passage of time or giving of notice would constitute an Event of Default;
  - (b) any default under a Lease;
  - (c) details of material renovations to the Charged Premises when the Borrower intends to or reasonably anticipates that it will renovate the Charged Premises;
  - (d) any default under any Permitted Encumbrance;
  - (e) any notice of expropriation, action or proceeding materially affecting the Charged Premises or the violation of any Applicable Law which may have a material adverse affect on the Charged Premises; and
  - (f) any matter which may have a material adverse affect upon the Borrower or the Guarantor(s) or Charged Premises or the operations conducted thereon, or the security constituted by this Charge and the Security.
- 9.11** The Borrower covenants at all times:
- (a) to perform or cause to be performed all of the covenants and obligations on the part of lessor contained in the Leases (except the extent the same have been expressly waived by the other parties to such Leases and except in circumstances where the tenant is in default and the Borrower is acting prudently and in the best interests of the Charged Premises);
  - (b) to maintain or cause to be maintained the Lease Rights in good standing and not to do, permit to be done or omit to do anything which may impair the enforceability of the Lease Rights;
  - (c) save for the deposits for the first and last month rentals, not to accept Rents more than one (1) month in advance of the dates when Rents fall due;
  - (d) not to enter into Leases which are not at arm's length unless the terms thereof are at least equal to current market terms;
  - (e) not to enter into any Lease which does not constitute a Major Tenant Lease unless such Leases are substantially on Lender pre-approved standard lease forms and not to enter into Major Tenant Leases without the Lender's approval as hereafter provided;
  - (f) not to or to permit termination, alteration or amendment or waiver of rights or remedies or otherwise take any action with respect to any of the Leases which in the aggregate would create a material reduction in Rents from those payable as of the date hereof, without the prior approval of the Lender;
  - (g) not to further assign, mortgage or pledge or permit the assignment, mortgaging or pledging of any Lease or the rents thereunder; and
  - (h) to ensure in respect of all Leases now or hereafter entered into that: (i) the tenant thereunder, at the option of the Lender, subordinates its Lease to the security of this Charge and attorns to and becomes a tenant of the Lender or any purchaser from the Lender in the event of the exercise of a sale remedy by the Lender, for the unexpired residue of the term and upon the terms and conditions of said Lease, provided that the Lender will agree to enter into non-disturbance agreements on commercially reasonable terms with all such

tenants; and (ii) at the request of the Lender, provide as further Security specific assignments of any Lease hereinafter entered into.

- 9.12** The Borrower shall not, without the prior written consent of the Lender, acting reasonably and promptly, enter into any agreement or document in respect of the Charged Premises (except for leases in accordance with the terms hereof and the Security) which is material to the ownership, value, operation, or use of the Charged Premises unless the same is in the ordinary course of business.
- 9.13** With respect to any Major Tenant Lease, the Borrower shall not and shall not permit without the prior written consent of the Lender:
- (a) cancel or modify any Major Tenant Lease, release the obligations of any lessee thereunder, accept a surrender of a Major Tenant Lease, accept any prepayment of Rents thereunder or consent to any sublet or assignment by the lessee under any Major Tenant lease (except where the provisions of such Major Tenant Lease require the landlord to do so);
  - (b) enter into any Major Tenant Lease unless the terms, form and substance of such Major Lease is satisfactory to the Lender, acting reasonably; or
  - (c) to further assign, mortgage, pledge, hypothecate or otherwise deal with any Major Tenant Lease.
- 9.14** The Borrower shall do or cause to be done all things necessary to keep in full force and effect all rights, franchises, licences and qualifications necessary or incidental to perform or cause to be performed its obligations contained in this Charge and the Security and to carry on its business pertaining thereto as presently carried on.
- 9.15** The Borrower shall from time to time to pay or cause to be paid all amounts related to taxes, wages, workers compensation obligations, government royalties, and any other similar amounts relating to the business conducted on the Charged Premises if non-payment thereof may result in an encumbrance (other than a Permitted Encumbrance) against the Charged Premises or any of the assets secured in favour of the Lender by the Security.
- 9.16** The Borrower shall not, without the prior written consent of the Lender, acting reasonably and promptly, cause or permit any change in the status of the Borrower that results in the representation contained in Section 8.1(u) ceasing to be accurate.
- 9.17** The Borrower covenants, subject to the rights of reorganization herein contained, to continue as a corporation duly organized, validly subsisting and in good standing under the laws of its incorporating jurisdiction and maintain all necessary corporate power and authority to perform or cause to be performed its obligations contained herein and in the Security, to own and operate the Charged Premises and to carry on its business pertaining thereto as presently carried on.
- 9.18** The Borrower covenants that, unless in respect of a reorganization of the Borrower permitted under Section 18.1(h) or with the consent of the Lender as provided therein, no steps or proceedings will be taken to amend or supersede the articles or bylaws of the Borrower and in any event no steps or proceedings, including any reorganization of the Borrower, will be taken in a manner which would impair or limit the Borrower's or its successor's ability to perform its obligations hereunder or under the Security.
- 9.19** The Borrower will not enter into any indenture, agreement, lease or other instrument, nor become subject to any trust agreement, charter, by-law, unanimous shareholders agreement or other corporate restriction, which materially adversely affects the Charged Premises.

## **ARTICLE X**

### **TAXES/LIENS**

#### **10.1**

- (a) The Borrower shall pay or cause to be paid, all Taxes together with such other amounts, the failure to pay which would give rise to a lien against the Charged Premises, as and when the same shall fall due and payable (collectively, the "**Bills**").
- (b) The Borrower shall make arrangements to have the Taxes paid by monthly installments to the appropriate taxing authority in order to have them paid in full on their due date, and the Borrower shall provide evidence of such payments to the Lender on a quarterly basis.

- (c) With respect to Taxes, upon and during the continuance of an Event of Default, at the option of the Lender the Borrower shall pay to the Lender in equal monthly instalments on the first day of each month in each calendar year during the Term, commencing on the first day of the month next following the Interest Adjustment Date, one-twelfth (1/12) of the annual Taxes (or such amount as may be required in order to pay the Taxes as they become due) as reasonably estimated by the Lender; said payments of Taxes shall be paid to the Lender in addition to the instalments of interest due and payable under this Charge, to be deposited upon receipt and held by the Lender in an interest-bearing account for the payment of Taxes, with interest to accrue thereon to the benefit of the Borrower and to be credited in reduction of the amount required to be paid to the Lender for Taxes. The Lender agrees that upon and subject to receipt of monies for Taxes it will remit such monies to the proper municipal offices in payment of Taxes as required from time to time; provided that if any Event of Default shall occur and be continuing, then the Lender, at its sole option, may apply all or any part of any funds held in such account to any amount due hereunder, whether principal, interest or otherwise. The Borrower shall also pay, or cause to be paid, to the Lender before the due date for the payment of Taxes (or next periodic instalment date therefor, as the case may be) any sums in addition to the aforesaid monthly instalments which may be required in order that out of such sums held in trust or escrow by the Lender and such additional sums, the Lender may pay the whole amount of Taxes assessed thereto, on the due date for payment thereof. Notwithstanding the foregoing provisions of this Section 10.1(c), the Borrower acknowledges that the Lender is under no obligation to collect from the Borrower monthly instalments on account of Taxes. In addition, the Borrower acknowledges its obligation to pay all Taxes when due, whether or not the payment of all Taxes are the responsibilities of tenants and whether or not such tenants have remitted the same to the Borrower.
- (d) The Lender may, after written notice being given to the Borrower, pay all unpaid and due Taxes, and any amounts, the failure to pay which would give rise to a lien and any amounts so paid by the Lender shall become part of the Principal hereby secured and be a charge on the Charged Premises in favour of the Lender and shall be payable forthwith by the Borrower to the Lender with interest at the Applicable Rate until paid.
- (e) If the Charged Premises or any part thereof are sold or forfeited for nonpayment of Taxes while any sum remains unpaid hereunder, the Lender may acquire the title and rights of the purchaser at any sale, or the rights of any other person or corporation becoming entitled on or under any such forfeiture, or the Lender may pay, either in its own name or in the name of the Borrower and on the Borrower's behalf, any and all sums necessary to be paid to redeem such land so sold or forfeited, and to revest such lands in the Borrower, and the Borrower hereby nominates and appoints the Lender as agent to pay such monies on the Borrower's behalf and in the Borrower's name, and any monies so expended by the Lender shall become part of the Principal Sum hereby secured and be a charge on the Charged Premises in favour of the Lender and shall be payable forthwith by the Borrower to the Lender and until so paid shall bear interest at the Applicable Rate or in the alternative, the Lender may purchase the Charged Premises at any tax sale of the same.
- (f) Notwithstanding anything to the contrary herein contained, the Borrower shall have the right to contest or defend any actions brought to recover, or appeal any judgments recovered against it in respect of any Bills, or other like charges, or any construction or other liens levied or registered against the Charged Premises, by appropriate proceedings diligently conducted in good faith, provided that the Borrower shall have first deposited with the Lender, or otherwise provided to the reasonable satisfaction of the Lender, such security as the Lender acting reasonably may require including, without limitation, security for the payment of such Bills, charges or liens and any costs payable in connection therewith, and further provided that the Lender shall have determined, to its reasonable satisfaction, that any such contest, defence or appeal or any delay or nonpayment of such Bills, charges or liens shall not materially prejudice the prior charge or lien of this Charge or the title of the Borrower to the Charged Premises. Should the Lender at any time thereafter determine, in its reasonable discretion, that any such contest, defence or appeal or any delay or nonpayment of such Bills, charges or liens shall materially prejudice the prior charge or lien of this Charge or the title of the Borrower to the Charged Premises, the Lender may realize upon such security for payment as aforesaid and pay such Bills, charges or liens. Upon termination of such proceedings, the Borrower shall promptly pay or cause to be paid the amount of the Bills, charges or liens and any other costs, fees, interest and penalties as are properly payable upon determination of such proceedings and promptly cause any tax notifications, caveats, liens, certificates of or pertaining litigation or any other form of notice or encumbrance in respect thereof to be promptly discharged from the title to the Charged Premises at the sole expense of the Borrower whereupon all such security

deposited or otherwise provided to the Lender and any proceeds from the realization thereof not paid on account of Bills as aforesaid, shall be returned and paid to the Borrower.

- (g) The Borrower agrees to and does hereby indemnify the Lender against all claims, demands, costs, damages and expenses which arise in respect of any default, late payment, omission, act or proceeding by the Borrower, under or in respect of this Section 10.1.
- (h) If the Lender comes into and for as long as it is in possession of the Charged Premises, the Lender, in its sole discretion, shall be entitled to and shall enjoy all the rights of the Borrower set out in Section 10.1(e), to the exclusion of the Borrower.

#### **ARTICLE XI** **INSURANCE**

- 11.1** The Borrower shall obtain and maintain at all times the insurance coverage, including without limitation the insurance coverage required for properties under construction, with respect to the Charged Premises required pursuant to Schedule "A" of the Commitment. Such insurance shall be placed with a company approved by the Lender. Evidence of continuation of all such insurance having been effected shall be produced to the Lender at least thirty (30) days before the expiration thereof; otherwise the Lender may provide therefore and charge the premium paid and interest thereon at the rate provided for in the Charge to the Borrower and the same shall be payable forthwith and shall also be a charge upon the land. It is further agreed that the Lender may at any time require any insurance of the buildings to be cancelled and new insurance effected in a company to be named by the Lender and also of his own accord may effect or maintain any insurance herein provided for, and any amount paid by the Lender therefore shall be payable forthwith by the Borrower with interest at the rate provided for in the Charge and shall also be a charge upon the land. Policies of insurance herein required shall provide that loss, if any, shall be payable to the Lender as his interest may appear, subject to the standard form of mortgage clause approved by the Insurance Bureau of Canada which shall be attached to the policy of insurance.

#### **ARTICLE XII** **ENVIRONMENTAL**

- 12.1** The following capitalized terms shall have the following respective meanings:

**"Environmental Approvals"** means all applicable permits, licences, authorizations, consents, directions or approvals required by Governmental Authorities pursuant to the Environmental Laws with respect to the use, occupation, ownership or operation of the Charged Premises;

**"Environmental Laws"** means all applicable federal, provincial and municipal laws, by-laws, regulations, executive orders, judgments and protocols, relating in whole or in part, to the environment or its protection, and without restricting the generality of the foregoing, includes without limitation, those laws relating to the manufacturing, processing, use, handling, packaging, labelling, sale, storage, recycling, transportation, treatment, destruction, burial or disposal of Hazardous Substances, employee safety, and the emission, discharge, release, deposit, issuance, spraying, dumping, throwing, pouring, spilling, emptying, placing, leaking, seeping, exhausting or abandonment of Hazardous Substances into the atmosphere, air, surface water, ground water, land surface or subsurface strata and, in each such case, as such Environmental Laws may be amended or supplemented from time to time, and "Environmental Law" means any of them;

**"Hazardous Substance"** means any pollutant, contaminant, waste, hazardous waste, toxic substance or dangerous good which is defined or identified in or the object of any Environmental Law, the presence of which in the environment is in contravention of any Environmental Law; and

**"Inspections"** means all inspections, evaluations or tests conducted by the Lender or any agent or consultant thereof for the purpose of determining the environmental condition of the Charged Premises, as the Lender may deem appropriate, acting reasonably.

- 12.2** The Borrower represents and warrants (which representations and warranties shall continue throughout the Term of the Loan) that:

- (a) the condition and use of the Charged Premises is and, to the best of the Borrower's knowledge, any prior use of the same was, in compliance in all material respects with all applicable Environmental Laws;
- (b) the Charged Premises is not subject to any judicial or administrative proceedings alleging violation of any Environmental Laws and there are no outstanding orders or proceedings against the Charged Premises from a Governmental Authority responsible for protecting the environment alleging the violation of any Environmental Laws;

- (c) to the knowledge of the Borrower, the Charged Premises is not the subject of any investigation by Governmental Authorities having jurisdiction evaluating whether any remedial action is needed to respond to a contravention of any Environmental Laws; and
- (d) there is no contingent liability of which the Borrower has knowledge or reasonably should have knowledge in connection with the contravention of any Environmental Laws.

**12.3** The Borrower covenants with the Lender:

- (a) if not already provided, to provide to the Lender within ninety (90) days of the execution of this Charge, an environmental audit with respect to the Lands, and if an event shall have occurred after the date of this Charge, which the Lender, acting reasonably, believes may have resulted or may result in material adverse change in the environmental condition of the Charged Premises or any part thereof, to provide such further environmental audits as the Lender may require;
- (b) to provide notice within fifteen (15) days of either having learned of any enactment or promulgation of any Environmental Laws which may result in any material adverse change in the condition, financial or otherwise, of the Charged Premises;
- (c) to defend, indemnify and hold harmless the Lender, its directors, officers, employees, agents and their respective successors and assigns, against any and all loss, cost, expense, claim, liability or alleged liability arising out of any environmental damage occasioned to the Charged Premises contravention of any Environmental Laws;
- (d) to, at all times and at its own expense, conduct its business and maintain the Charged Premises in compliance with all Environmental Laws and Environmental Approvals including causing all tenants of the Charged Premises to comply with the same;
- (e) if the Borrower:
  - (i) receives notice from any Governmental Authority having jurisdiction that violation of any Environmental Law or Environmental Approval has been committed by the Borrower or any tenant with respect to the Charged Premises;
  - (ii) receives notice that any remedial order or other proceeding has been filed against the Borrower or any tenant alleging in respect of the Charged Premises violations of any Environmental Law or requiring the Borrower to take any action in connection with the release of a Hazardous Substance into the environment; or
  - (iii) receives any notice from a Governmental Authority having jurisdiction in respect of the Charged Premises that the Borrower or any tenant may be liable or responsible for costs associated with a nuisance or a response to, or clean up of, a release of a Hazardous Substance into the environment or any damages caused thereby;

to provide to the Lender a copy of such notice within ten (10) days of the Borrower's receipt thereof, and thereafter shall keep the Lender informed in a timely manner of any developments in such matters, and shall provide to the Lender such other information in respect thereto as may be reasonably requested by the Lender from time to time and shall proceed to deal with the same diligently and in good faith in order to bring the Charged Premises into compliance to the extent necessary to comply with Environmental Laws;
- (f) unless in existence on the Charged Premises on the date of this Charge, not to use, discharge, transport or install in or upon the Charged Premises any material or equipment containing PCBs or permit any tenant of the Charged Premises to do so and, to the extent in existence on the Charged Premises as of the date of this Charge, to maintain the same in compliance with all Environmental Laws;
- (g) to maintain, and to require all occupants of the Charged Premises to maintain in good leak-proof condition all above-ground and underground storage tanks and drums on the Charged Premises;
- (h) not to install asbestos or permit asbestos to be installed in the Charged Premises. With respect to any asbestos present in the Charged Premises on the date of this Charge, the Borrower shall, at its expense, promptly comply with the requirements of Environmental Laws and Governmental Authorities respecting the use, removal and disposal of asbestos; and

- (i) to obtain or cause to be obtained copies of all relevant environmental studies or assessments of the Charged Premises which the Borrower or its solicitors or agents have commissioned or which are in the possession or control of the Borrower, as of the date of this Charge and, to the extent any such assessments or studies are required by the Lender from time to time, to promptly provide same to the Lender upon request and hereby authorizes and directs its solicitors, agents and consultants to promptly release same to the Lender.

**12.4** Having due regard to the rights of any tenant of the Borrower, the Lender and its employees and agents shall have the right, and are hereby granted permission by the Borrower, to enter the Charged Premises from time to time, and to have access to the Borrower's relevant documents and records, in order to conduct Inspections, to determine compliance with Environmental Laws as the Lender, acting reasonably, may deem appropriate. Inspections shall be:

- (a) at such times and to such extent as may be reasonable in the circumstances on prior notice to the Borrower if the Lender has reasonable grounds for believing that:
  - (i) there are, contrary to Environmental Laws or Environmental Approvals, Hazardous Substances in or upon the Charged Premises which have not been disclosed to and approved by the Lender and appropriate Government Authorities; or
  - (ii) the Borrower is in breach of any environmental representations in this Charge or its covenants in this Article; or
  - (iii) the Borrower is not in compliance with any Environmental Laws or material Environmental Approvals; and
- (b) at any time without prior notice upon the occurrence of an Event of Default which is continuing.

If the Borrower is found not to be in compliance with the Environmental Laws or Environmental Approvals and such failure to comply becomes an Event of Default that is continuing, the Lender may, at its option (but without any obligation to do so) take such actions as are required, acting reasonably, to bring the Charged Premises into compliance, and the costs thereof shall immediately become due and payable to the Lender by the Borrower and shall be secured by the Security.

**12.5** The Lender shall not, by virtue of being the chargee under this Charge or the enforcement of its rights contained herein for purposes of the Environmental Laws, be or be deemed to be the owner of, any of the Charged Premises, or to have management, charge, control, occupation or possession of any of the Charged Premises or the businesses of the Borrower, or of any Hazardous Substances located on, upon or within any of the Charged Premises.

**12.6** The Borrower hereby covenants and agrees to be responsible for, and to indemnify and hold harmless the Lender and each of its officers, directors, employees and agents and their respective successors and assigns (in this Section, collectively referred to as the "**Indemnified Parties**") from and against all claims, demands, liabilities, losses, costs, damages and expenses (including, without limitation, reasonable legal fees and all costs incurred in the investigation, pursuing of any claim, or in any proceeding with respect to, defense and settlement of any item or matter hereinafter set out) that the Indemnified Parties may incur or suffer, directly or indirectly as a result of or in connection with:

- (a) any inaccuracy in or breach of the Borrower's representations and warranties relating to the environmental matters contained herein;
- (b) the presence of any Hazardous Substance on, upon or within the Charged Premises, or the escape, seepage, leakage, spillage, discharge, emission, release, disposal or transportation away from the Charged Premises of any Hazardous Substance, whether or not there is compliance with all applicable Environmental Laws and Environmental Approvals;
- (c) the imposition of any remedial order affecting the Lands, or any non-compliance with Environmental Laws or Environmental Approvals pertaining to the Charged Premises by any person, including the Borrower, the Lender or any person acting on behalf of the Lender; and
- (d) any diminution in the value or any loss on the disposition of the Charged Premises arising directly or indirectly as a result of the presence on the Lands of any Hazardous Substance, or as a result of the imposition of any remedial order or the breach by any person of any Environmental Law or Environmental Approval.

This indemnity shall survive the satisfaction and release of this Charge and the Security and the payment and satisfaction of all indebtedness hereunder. The benefit of this indemnity may be assigned by the Lender to any successor or assign of the Lender and the Borrower hereby consents to any such assignment.

**ARTICLE XIII**  
**ASSIGNMENT OF RENTS AND LEASES**

- 13.1** As further security for the payment of all monies owing and the performance of all obligations to be performed hereunder, the Borrower does, as and by way of security, hereby sell, assign, transfer and set over unto to the Lender all of the Borrower's right, title and interest, both at law and equity, in and to the Lease Rights, to hold and receive the same unto the Borrower with full power and authority to demand, collect, sue for, recover and receive and give receipts for Rents and enforce payments of the same and enforce performance of the obligations of tenants under the Leases, provided, however, that, subject to the terms of this Charge, the Borrower shall have the full right, so long as no Event of Default has occurred and is continuing, to continue to collect Rents, to take or cause to take all actions as it deems necessary with respect to the Lease Rights, acting as a reasonable lessor.
- 13.2** It is expressly acknowledged and agreed by the Borrower that nothing contained in this Charge shall oblige the Lender to assume or perform any obligation of the Borrower to any third party in respect of or arising out of the assigned Lease Rights. The Lender may, however, after the occurrence of an Event of Default and while such Event of Default continues, at its option, assume or perform any such obligation as the Lender considers necessary or desirable to obtain the benefit of the Lease Rights, free of any set-off, reduction or abatement, and any money expended by the Lender in this regard shall form part of or be deemed to form part of the indebtedness secured by this Charge and shall bear interest at the Applicable Rate.

**ARTICLE XIV**  
**MANAGEMENT AND REPAIR**

- 14.1** The Borrower shall cause the Charged Premises at all times to be professionally maintained, managed and operated and fully and continuously operational during customary business hours, including all uses ancillary or incidental to its operations, at all times, by competent managers and staff of proper background and training, in a first class manner consistent with the management and operation of other properties which are of size, location, use, class, age and type comparable to the Charged Premises, and the Borrower shall obtain the Lender's prior written approval of any manager and any management contract with any manager which may be entered into by the Borrower for the management of the Charged Premises. In addition to any other rights hereunder of the Lender, the Lender shall have the right, acting reasonably, to replace the manager at the expense of the Borrower in the event the management standards are not maintained as required hereunder and the situation is not remedied within thirty (30) days after written notice from the Lender. The Lender acknowledges and approves, as of the date hereof, of the Borrower or a company controlled by the Borrower acting as manager of the Charged Premises provided that the Charged Premises are managed and maintained in accordance with the provisions hereof.
- 14.2** The Borrower shall promptly repair, maintain, restore, replace, rebuild, keep, make good, finish, add to and put in order, or cause to be so done, the Charged Premises, so that the same shall, at all times, be in good condition and repair and to pay or cause to be paid when due all claims for labour performed and materials furnished therefor. The Borrower shall not commit or suffer any waste of the Charged Premises nor take any action that might invalidate or give cause for cancellation of any insurance maintained in respect of the Charged Premises. No building or other property now or hereafter charged by this Charge shall be removed, or demolished or nor shall the structure of any building be materially altered, redeveloped, retrofitted or renovated, without the prior written consent of the Lender, except that the Borrower shall have the right, without such consent, to remove and dispose of, free from the lien or charge of this Charge, such fixed equipment as from time to time may become worn out or obsolete, provided that either (a) simultaneously with or prior to such removal, and if necessary for the operation of the Charged Premises such equipment shall be replaced with other equipment of a quality comparable to that of the replaced equipment and free from any lien, title retention agreement, conditional sale contract, security agreement or other encumbrance, and by such removal and replacement the Borrower shall be deemed to have subjected such fixed equipment to the lien or charge of this Charge, or, (b) any net cash proceeds received from such disposition shall, at the option of the Lender, be paid over promptly to the Lender to be applied in a manner determined by Lender in its sole discretion toward the payment of any amounts owing hereunder or secured hereby. The Borrower shall notify the Lender promptly of any material damage to or defects in any of the Improvements, and thereafter forthwith shall make or cause to be made such repairs thereto as are required to correct any such damage or defects



and return the Charged Premises to a state of condition and repair equivalent to the state of condition and repair required by the provisions of this Charge.

- 14.3** The Borrower shall comply with, or cause to be complied with, all statutes including without limitation the provisions of the *Construction Act* (Ontario), ordinances and requirements of any Governmental Authority having jurisdiction with respect to the Charged Premises; the Borrower shall complete and pay for, within a reasonable time, any structure at any time in the process of construction on the Charged Premises.
- 14.4** The Borrower shall permit the Lender or its authorized agents at all reasonable times to enter upon the Charged Premises and inspect same, and if such inspection reveals that any repairs or like actions are necessary, the Lender may give notice to the Borrower requiring the Borrower to repair, rebuild or reinstate the same, or take such other like action within a reasonable time. Any failure by the Borrower to comply with such notice shall constitute an Event of Default hereunder and the Lender may repair, rebuild or reinstate the Charged Premises at the cost of the Borrower and charge all sums of money determined by the Lender to be properly paid therefor and interest thereon at the Applicable Rate until paid.

#### **ARTICLE XV** **INCREASED COSTS**

- 15.1** In the event that as a result of any application of or any change in or enactment of any applicable law, regulation, treaty or official directive after the date hereof (whether or not having the force of law), or in the interpretation of application thereof by any court or by any governmental or other authority or entity charged with the administration thereof which now or hereafter:
- (a) Subjects the Lender to any tax or changes the basis of taxation, or increases any existing tax, on payments of principal, interest or other amounts payable by the Borrower to the Lender under this Charge (except for taxes on the overall net income of the Lender or capital of the Lender imposed by the Government of Canada or any political subdivision thereof or by the jurisdiction in which the principal or lending office of the Lender is located); or
  - (b) Imposes, modifies or deems applicable any special requirements against assets held by, or deposits in or for the account of or any other acquisition of funds by the Lender or imposes on the Lender a requirement to maintain or allocate capital or additional capital in relation to the Loan; or
  - (c) Imposes on the Lender any other condition with respect to this Charge; or
  - (d) Renders any portion of this Charge illegal or unenforceable;

and the result of any of the foregoing is to increase the cost to the Lender, or reduce the amount of principal, interest or other amount received or receivable by the Lender hereunder or its effective return hereunder in respect of making or maintaining the Loan hereunder or to reduce the payments receivable by the Lender in respect of the Loan by an amount which the Lender deems to be material, the Lender shall promptly give written notice thereof to the Borrower setting out in reasonable detail the facts giving rise to and a summary calculation of such increased costs or reduced payments, and the Borrower shall forthwith pay to the Lender upon receipt of such notice that amount which will compensate the Lender for such additional cost or reduction in income (herein referred to as "**Additional Compensation**"). Upon the Lender having determined that it is entitled to Additional Compensation in accordance with the provisions of this Section, the Lender shall promptly so notify the Borrower. The Borrower shall forthwith pay to the Lender upon receipt of such notice such Additional Compensation calculated on the date of demand. The Lender shall be entitled to be paid such Additional Compensation from time to time to the extent that the provisions of this Section are then applicable notwithstanding that the Lender has previously been paid any Additional Compensation. The Lender shall endeavour to limit the incidence of any such Additional Compensation, including seeking recovery for the account of the Borrower, by appealing any assessment at the expense of the Borrower upon the Borrower's request.

- 15.2** All payments made by the Borrower to the Lender will be made free and clear of all present and future taxes, withholdings or deductions of whatever nature arising as a result of such payments. If these taxes, withholdings or deductions arising as a result of such payments are required by Applicable Law and are made, the Borrower shall, as a separate and independent obligation, pay to the Lender all additional amounts as shall fully indemnify the Lender from any such taxes, withholding or deduction arising as a result of such payments. Provided, however, that the Borrower shall have no obligation to pay any taxes, withholdings or deductions arising as a result of payments made by the Borrower to the Lender which may be exigible, incurred or required as a

result of the Lender being a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

**15.3** If the result of any law, regulation, treaty or official directive or request or any change in or any introduction thereof or change in the interpretation or application thereof or compliance by the Lender with the same (including, without limitation, those relating to taxation, reserve requirements, capital adequacy or other banking or monetary controls) is such that it is or will become (other than as a result of some positive action of the Lender, including any participation or syndication hereof by the Lender) unlawful for the Lender to make, fund or allow to remain outstanding all or part of the Loan, or to carry out all or any of its other obligations under this Charge and/or the Security or receive interest or any fee at the Applicable Rate, then in such case:

- (a) the Lender may give written notice to the Borrower of such law, regulation, treaty or official directive or request (whether or not having the force of law) or such change in or any introduction thereof or change in the interpretation or application thereof or compliance by the Lender with the same (including, without limitation, those relating to taxation, reserve requirements, capital adequacy or other banking or monetary controls) which such notice shall certify that such law, regulation, treaty, official directive or request is generally applicable to all other borrowers from the Lender with any accommodation similar to that herein provided; and
- (b) the Borrower shall prepay the Indebtedness on such date and to such extent as the Lender shall certify to be necessary to comply with the relevant law or change described above;

provided, however, that should the Loan become unlawful, the Lender, without prejudice to its rights to require repayment and without any obligation on its part, will consider other means of funding the Loan which would not be unlawful, would allow the Lender to carry out its obligations in respect of the Loan and would enable the Lender to receive interest at the Applicable Rate, provided always, notwithstanding the foregoing, the Lender is not obligated to provide alternate funding.

#### **ARTICLE XVI**

#### **OBTAINING AND MAINTAINING SECURITY**

**16.1** Regardless of whether such sums are advanced or incurred with the knowledge, consent, concurrence or acquiescence of the Borrower or otherwise and in addition to any other amounts provided for herein or otherwise permitted by Applicable Law to be secured hereby, except as herein otherwise provided, the following are to be secured hereby and shall be a charge on the Charged Premises, together with the interest thereon at the Applicable Rate, and all such monies shall be repayable to the Lender, on demand, except as herein otherwise provided:

- (a) all reasonable and properly chargeable solicitor's, inspector's, valuator's, consultant's, architect's, engineer's, surveyor's and appraiser's fees and out-of-pocket expenses:
  - (i) for drawing and registering this Charge and the Security and financing statements in connection therewith, and attending to advances hereunder;
  - (ii) for examining the Charged Premises and the title thereto up the date hereof;
  - (iii) for making and maintaining this Charge as a registered charge on the Charged Premises and maintaining the Security (including the registration and filing of renewals);
  - (iv) for the preparation of this Charge, the Security and any related documents and in exercising or enforcing or attempting to enforce or advising the Lender in respect of defaults hereunder or in pursuit of any right, power, remedy or purpose hereunder or subsisting at law; and
  - (v) reasonable allowance for the time, work and expenses of the Lender or of any agent of the Lender in connection therewith;
- (b) all reasonable sums which the Lender may from time to time advance, expend, incur or suffer hereunder:
  - (i) for insurance premiums, Bills, Taxes, rates, or in or toward payment of prior liens, charges, encumbrances or claims charged or to be charged against the Charged Premises;

- (ii) in maintaining, repairing, restoring or completing construction of the Charged Premise; and
  - (iii) in inspecting, leasing, managing or improving the Charged Premises as permitted hereunder, including the price or value of any goods of any sort or description supplied to be used on the Charged Premises as permitted hereunder; and
- (c) Without limiting the generality of any of the foregoing, the then current reasonable fee of the Lender and/or its solicitor for the following matters:
- (i) executing any cessation or discharge of this Charge, notwithstanding that said cessation or discharge may have been prepared by the Borrower;
  - (ii) entering into an agreement to amend the interest rate or any other provision in the Charge;
  - (iii) handling any dishonored cheque;
  - (iv) preparing an amortization schedule showing the principal and interest components of payments due under this Charge;
  - (v) the cost of completing a Phase I & II Environmental Audit and such other environmental audits as the Lender may require in its discretion;
  - (vi) such other administrative matters as the Lender may perform with regards to the Charge or with regards to any collateral security, as permitted by the Commitment;
  - (vii) the fee charged by the Lender's insurance consultant to review the Borrower's policy of insurance for the subject lands including business interruption insurance if required by the Lender; and
  - (viii) the execution and delivery of any consents, postponements, acknowledgments or any other documents that may be required from the Lender, whether from the Borrower and/or any governmental authorities and/or public/private utilities.

**16.2** If any action or proceeding be commenced (except an action to foreclose this Charge or to collect the money that is secured hereby) in which the Lender becomes a party or participant by reason of being the holder of this Charge or the indebtedness secured hereby, all sums paid by the Lender for the expense of so becoming a party or participating (including all reasonable and properly chargeable legal costs) shall, on written notice, be paid by the Borrower, together with interest thereon at the Applicable Rate from the dates of payment of such sums by the Lender, and shall be a lien and charge on the Charged Premises, prior to any right or title to, interest in, or claim upon the Charged Premises subordinate to the lien and charge of this Charge, and shall be deemed to be secured by this Charge, and that in any action or proceeding to foreclose this Charge, or to recover or collect the indebtedness secured hereby, provisions of law respecting the recovery of costs, disbursements and allowances shall prevail unaffected by this covenant.

## **ARTICLE XVII**

### **CONDEMNATION AWARDS**

**17.1** The Borrower shall notify the Lender promptly upon it being aware of any and all awards or payments ("**Condemnation Award(s)**") including interest thereon, and the right to receive the same (save for any portion of any such Condemnation Award paid for remedial purposes and which is actually used for such purpose) which may be made with respect to the Charged Premises, or any part thereof, as a result of:

- (a) Any condemnation, eminent domain, compulsory acquisition, expropriation or like procedures ("**Condemnation**"), partial or complete, including any sidewalk or lane; or
- (b) The imposition, and enforcement, of any restriction, regulation or condition to meet any building or development guideline for development or restriction of or by any municipality or other competent authority; or
- (c) Any other material injury to or decrease in the value of the Charged Premises by any lawful regulation or any governmental authority having jurisdiction;

(each being hereinafter called an "**Incident of Expropriation**") to the extent of all amounts which may be secured by this Charge at the date of receipt of any such Condemnation Award by the Borrower. Notwithstanding the occurrence of any Incident of Expropriation, the Borrower shall

continue to pay interest at the Applicable Rate on the Principal Sum. The Borrower does hereby change, assign, set over as transfer to the Lender, as security for the repayment of all Indebtedness.

- 17.2** Any Condemnation Award received by the Lender shall be held by the Lender as part of the security for the Loan subject to application as provided in this Article XVII. Pending such application, such amounts received shall be held and invested by the Lender, acting reasonably. If at any time an Event of Default has occurred and is continuing, the Lender may, at its option, apply such amounts in reduction of the amounts owing hereunder.
- 17.3** Notwithstanding the provisions of Section 17.1 and Section 17.2, in the event that any Incident of Expropriation shall occur which, in the reasonable opinion of the Lender, would materially and adversely affect the security of the Charge or any other Security after the application of any Condemnation Award pursuant to Section 17.1, the Lender may, at its option, declare such Incident of Expropriation to be an Event of Default and be entitled to exercise any and all rights and remedies available to it hereunder at law or in equity.

### **ARTICLE XVIII** **EVENTS OF DEFAULT**

- 18.1** The whole of the Principal Sum together with interest thereon at the Applicable Rate, interest on overdue interest and any amounts payable pursuant to Article VI, and all other amounts secured hereby shall, at the option of the Lender, subject to Section 18.2, become due and payable and all powers conferred on the Lender herein and hereby shall become exercisable, in like manner to all intents and purposes as if the time herein mentioned for payment of such Principal monies had fully come and expired, if specifically provided for in this Charge, or if any of the following events shall occur (the occurrence of any such event together with the expiry of the applicable cure period, if any, and any other occurrence specifically provided for herein as an Event of Default being collectively referred to as an "**Event of Default**"):
- (a) upon default in payment of any regularly schedule instalment of interest beyond the date such payment is due and payable; or
  - (b) upon default in payment of the Indebtedness due and owing on the Maturity Date; or
  - (c) upon default in payment of any Indebtedness (other than an instalment of interest and upon maturity) due hereunder within three (3) Business Days after written notice thereof is provided by the Lender; or
  - (d) save as otherwise provided for in Section 18.1(a), Section 18.1(b) and Section 18.1(c) or otherwise specifically provided herein, upon any default in the performance of any covenant or obligation of the Borrower hereunder within thirty (30) days after written notice thereof is provided by the Lender, provided that if such default is curable and the nature of such default is such that the exercise of reasonable diligence of more than thirty (30) days is required to cure such default, and if such default in the Lender's reasonable discretion does not jeopardize or adversely effect the security interest of the Lender hereunder or adversely affect the Borrower or its ability to perform its obligations hereunder or under the Security or adversely affect the Charged Premises, the Lender will not, for such longer period as is reasonably necessary to cure such default and so long as no other Event of Default has occurred, enforce its remedies in respect of such default while and so long as during such time the Borrower is actively continuing to diligently and in good faith cure such default; or
  - (e) if at any time during the Term there is a breach of any representation or warranty contained herein or at any time during the Term if any representation or warranty contained herein is no longer true or accurate or becomes untrue or inaccurate for any reason and provided the same can be rectified, and the same is not rectified within thirty (30) days after written notice thereof is provided by the Lender; or
  - (f) upon the assignment by the Borrower to any other party of the whole or a part of the rents, income or profits arising from the Charged Premises, without the written consent of the Lender; or
  - (g) the occurrence of an Event of Insolvency; or
  - (h) if without the prior written consent of the Lender, in its sole and absolute discretion, the Borrower transfers, sells, conveys, or otherwise disposes of all or any part of the Charged Premises, or any interest therein (other than by way of Leases), whether legal or beneficial or enters into any transaction or series of transactions where all or any part of the Charged

Premises becomes the property of another person, whether through reorganization, amalgamation, merger, consolidation or otherwise, or if there is any change in the legal or beneficial interest, in whole or in part, of the Charged Premises; or

- (i) if, without the prior written consent of the Lender, in its sole and absolute discretion:
  - (i) there is any change in the Borrower's corporate control or change in the Borrower's effective control existing as of the date of this Charge; or
  - (ii) the Borrower creates, permits or suffers to exist any mortgage, pledge, charge, loan, assignment, hypothecation, security interest or other encumbrance attaching the Charged Premises other than this Charge, the Security and the Permitted Encumbrances; or
- (j) upon default by or non-compliance of the Borrower or any Guarantor(s), or any others bound by or acknowledging to be bound by the terms of this Charge, with respect to any of the provisions of the Security or the Permitted Encumbrances; or
- (k) if the Charged Premises are abandoned; or
- (l) failure by the Borrower to fulfil, complete or comply with any undertakings delivered by the Borrower to Lender in connection with the Loan in accordance with the terms of such undertakings; or
- (m) upon any breach, default, non-observance occurring or being alleged, charged or claimed against the Borrower as lessor under any lease or as sublessor under any sublease of the Charged Premises and the Borrower is not diligently proceeding to rectify any such breach, default, non-observance or non-performance or defend any allegations, charges or claims of the same; or
- (n) if this Charge, or any of the Security, shall fail to constitute a legal, valid, binding and enforceable first charge, first assignment or first security interest, each enforceable in accordance with its terms, subject only to Permitted Encumbrances; or
- (o) if in the reasonable opinion of the Lender there occurs an event which has a material adverse effect on the financial condition or operation of the Borrower, the Charged Premises, this Charge, the Security or the ability of the Borrower to pay the Indebtedness or to perform its obligations hereunder or under the Security and which cannot be rectified by the Borrower within a reasonable period of time.

**18.2** Save as otherwise specifically provided, an Event of Default hereunder or under any Security shall not have occurred or be deemed to have occurred until the expiration of any applicable notice period, if any, called for in this Charge or in such Security within which the Borrower may remedy such default. In any event, if in the opinion of the Lender, an event has occurred which with the passing of time, the giving of notice or otherwise would constitute an Event of Default and as a result of which the Charged Premises or the property assets and undertaking subject to the Security is materially at risk, the Lender may take such action or exercise such remedies as may be appropriate without notice to the Borrower or the expiry of any cure period.

**18.3** In addition to the security granted hereunder, this Charge is cross-defaulted to all other loans, present and future, or security granted or to be granted, between the Chargee and/or the Lender and the Chargor or any covenantor, either individually or collectively, or with all other loans, present and future, or security granted or to be granted, between the Chargee and/or Lender and entities owned or controlled by the principals of the Chargor or any covenantor (the "**Other Security**"). Default hereunder shall constitute default under the Other Security and default under any or all of the Other Security shall constitute default hereunder.

## **ARTICLE XIX**

### **REMEDIES**

**19.1** If an Event of Default has occurred hereunder and is continuing (or if the Lender exercises its rights pursuant to Section 18.1(d) hereof before the occurrence of an Event of Default), then at any time thereafter, but subject always to the waiver thereof by the Lender, the Lender may:

- (a) declare the Indebtedness to be immediately due and payable and proceed to exercise any and all rights hereunder or under the Security or any other rights available to it under any other document or instrument or at law or in equity including without limitation, the drawdown of any letter of credit held by the Lender;

- (b) commence legal action to enforce payment of the Indebtedness or performance of the obligations by the Borrower to the Lender;
- (c) at the expense of the Borrower, when and to such extent as the Lender deems advisable, observe and perform or cause to be observed and performed any covenant, agreement, proviso or stipulation contained herein or in the Security, and the reasonable cost thereof with interest thereon at the Applicable Rate until paid, shall immediately become due from the Borrower to the Lender after demand by the Lender upon the Borrower therefor;
- (d) pay or discharge any mortgage, encumbrance, lien, adverse claim or charge that may exist or be threatened against the Charged Premises; in any such case, the amounts so paid together with costs, charges and expenses incurred in connection therewith shall be added to the Principal outstanding and shall bear interest at the Applicable Rate;
- (e) send or employ any inspector or agent to inspect and report upon the value, state and condition of the Charged Premises and may employ a lawyer to examine and report upon the title to the same;
- (f) immediately take possession of all of the Charged Premises or any part or parts thereof by action or otherwise, with power, among other things, to exclude the Borrower, to enforce the Borrower's rights, to preserve and maintain the Charged Premises, to repair, alter or extend the Charged Premises, to lease the Charged Premises, to complete construction and development of the Charged Premises, to operate and manage the Charged Premises and to collect or receive rents, income and profits of all kinds (including taking proceedings in the name of the Borrower for that purpose) and pay therefrom all reasonable expenses and charges of maintaining, preserving, protecting and operating the Charged Premises (payment of which may be necessary to preserve or protect the Charged Premises), and to enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including without limitation, power to advance its own moneys and enter into contracts and undertake obligations for the foregoing purposes upon the security hereof, and all sums advanced or expended shall be added to the Principal outstanding and shall bear interest at the Applicable Rate;
- (g) on default of payment for at least fifteen (15) days may, on at least thirty-five (35) days' notice, sell and dispose in the Charged Premises with or without entering into possession of the same and with notice to such persons and in such manner and form and within such terms as provided under Part III of the *Mortgages Act* (Ontario), as amended; and all remedies available may be resorted to and all rights, powers and privileges granted or conferred upon the Lender under and by virtue of any statute or by this Charge may be exercised and no want of notice or publication or any other defect, impropriety or irregularity shall invalidate any sale made or purporting to be made in the Charged Premises; and the Lender may sell, transfer and convey any part of the Charged Premises on such terms, including on credit for all or part of the consideration, (provided the Borrower shall not be accountable for any default in respect of the credit), secured by contract or agreement for sale, or charge, or otherwise, as shall appear to the Lender most advantageous and for such prices as can reasonably be obtained therefor in the circumstances; and in the event of sale on credit or part cash and part credit, whether by way of contract for sale or by conveyance or transfer, charge, or otherwise, the Lender is not to be accountable for or charged with any monies until the same shall be actually received in cash or received by a take-back charge; and sales may be made from time to time of parts of the Charged Premises to satisfy interest and leaving the Principal or part thereof to run with interest at the Applicable Rate; and the Lender may make any stipulations as to title or evidences or commencement of title or otherwise as the Lender shall deem proper and may buy or rescind or vary any contract for sale; and on any sale or resale, the Lender shall not be answerable for loss occasioned thereby; and for any of such purposes the Lender may make and execute all arrangements and assurances that the Lender shall deem advisable or necessary;
- (h) with respect to the Leases:
  - (i) to demand, collect and receive the Rents or any part thereof and to give acquittances therefor, and to take from time to time, in the name of the Borrower, any proceeding which may be, in the opinion of the Lender or its counsel, expedient for the purpose of collecting the Rents or for securing the payment thereof or for enforcing any of the Borrower's rights under the Leases;

- (ii) to compound, compromise or submit to arbitration any dispute which has arisen or may arise in respect to any amount of Rent and any settlement arrived at shall be binding upon the Borrower;
  - (iii) to enter upon the Lands by its officers, agents or employees for the purpose of collecting the Rents;
  - (iv) to receive, enjoy or otherwise avail itself of the Lease Rights; and
  - (v) on behalf of the Borrower to alter, modify, amend or change the terms of Leases; to terminate Leases, to enter into new Leases; to give consents, concessions or waivers of any rights or provisions of Leases; to accept surrenders of Leases; to give consents to assignment of or subletting under Leases;
- (i) with or without taking possession of all or any part of the Charged Premises, sell, lease or otherwise dispose of the whole or any part of the Charged Premises, as agent for the Borrower and not the Lender, and in exercising the foregoing power, the Lender may, in its absolute discretion:
- (i) sell, lease or otherwise dispose of the whole or any part of the Charged Premises by public auction, public tender with notice, or by private contract (in the name of or on behalf of the Borrower) or otherwise, with such notice, advertisement or other formality as is required by law;
  - (ii) make and deliver to the purchaser good and sufficient deeds, assurances and conveyances of the Charged Premises and give receipts for the purchase money, and any such sale once effected shall be a perpetual bar, both at law and in equity, to the Borrower and all those claiming an interest in the Charged Premises by, from, through or under the Borrower making any claim against the purchaser of the Charged Premises;
  - (iii) grant, rescind, vary or complete any contract for sale, lease or options to purchase or lease, or rights of first refusal to purchase or lease the whole or any part of the Charged Premises, for cash or for credit, with or without security being given therefor, and on terms as shall appear to be most advantageous to the Lender (including a term that a commission be payable to the Lender or a related corporation in respect thereof) and if a sale is on credit, the Lender shall not be accountable for any moneys until actually received;
  - (iv) make any stipulation as to title or conveyance or commencement of title;
  - (v) re-sell or re-lease the Charged Premises or any part thereof without being answerable for any loss occasioned thereby; and
  - (vi) make any arrangements or compromises which the Lender shall think expedient in the interest of the Lender and to assent to any modification of this Charge, and to exchange any part or parts of the Charged Premises for any other property suitable for the purposes of the Lender on such terms as the Lender considers expedient, either with or without payment of money for equality or exchange or otherwise;
- (j) take proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;
- (k) borrow or raise money on the security of the Charged Premises or any part thereof in priority to this Charge or otherwise, for the purpose of the maintenance, preservation or protection of the Charged Premises or any part thereof or for carrying on all or any part of the business of the Borrower relating to the Charged Premises;
- (l) take proceedings in any court of competent jurisdiction for the appointment of a receiver (which term as used in this Charge includes a manager and a receiver and manager, and hereafter, the "Receiver") of all or any part of the Charged Premises;
- (m) by instrument in writing appoint, with or without taking possession, any person to be a Receiver of the Charged Premises or of any part thereof and may remove any Receiver so appointed and appoint another in his stead, with all fees and costs related thereto being the Borrower's obligations; and the following shall apply in respect of any such Receiver so appointed:

- (i) the Lender may from time to time fix the remuneration of the Receiver who shall be entitled to deduct that same out of the revenue from the Charged Premises or the proceeds thereof;
- (ii) the Receiver shall, to the fullest extent permitted by law, be deemed the agent or attorney of the Borrower for all purposes and the Lender shall not be in any way responsible for any actions other than as caused by gross negligence, willful misconduct or fraud, of any Receiver, and the Borrower hereby agrees to indemnify and save harmless the Lender from and against any and all claims, demands, actions, costs, damages, expenses or payments which the Lender may hereafter suffer, incur or be required to pay as a result, in whole or in part, of any action taken by the Receiver or any failure of the Receiver to do any act or thing other than as are caused by gross negligence, willful misconduct or fraud;
- (iii) the appointment of the Receiver by the Lender shall not incur or create any liability on the part of the Lender to the Receiver in any respect and such appointment or anything which may be done by the Receiver or the removal of the Receiver or the termination of any such Receivership shall not have the effect of constituting the Lender a mortgagee in possession in respect of the Lands or any part thereof; and
- (iv) the Receiver may exercise or pursue any other remedy or proceeding which the Lender is entitled as the holder of the Charge authorized or permitted hereby or by law or in equity in order to enforce the security constituted by this Charge,

and for the purposes above, the Borrower hereby irrevocably empowers the Receiver so appointed as its attorney to execute deeds, transfers, leases, contracts, agreements or other documents on its behalf and in its place (and the same shall bind the Borrower and have the same effect as if such deeds were executed by the Borrower) and to affix the Borrower's seal, if necessary, or a duplicate thereof to any of the same. On its own account or through a Receiver and whether alone or in conjunction with the exercise of all or any other remedies contemplated hereby, shall have the right, at any time, to notify and direct any account debtor to make all payments whatsoever to the Lender and the Lender shall have the right, at any time, to hold all amounts received from any account debtor and any proceeds as part of the Secured Property; any payments received by the Borrower from and after the security hereby constituted becomes enforceable, shall be held by the Borrower in trust for the Lender in the same medium in which received, shall not be commingled with any assets of the Borrower and shall, at the request of the Lender, be turned over to the Lender not later than the next Business Day following the day of their receipt. Save as to claims for accounting under Section 19.1(o), the Borrower hereby releases and discharges the Lender and the Receiver from every claim of every nature, whether resulting in damages or not, which may arise or be caused to the Borrower by reason or as a result of anything done by the Lender or any successor or assign claiming through or under the Lender or the Receiver under the provisions of this paragraph unless such claim be the direct result of dishonesty or gross neglect;

- (n) the Lender may at any time and from time to time terminate any receivership by notice in writing to the Borrower and to the Receiver;
- (o) the Receiver shall account for all monies received in respect of the Charged Premises or any part thereof, and shall pay, out of such monies received, subject to the further direction of the Lender in its discretion, the following in the order specified:
  - (i) the Receiver's remuneration;
  - (ii) all payments reasonably made or incurred by the Receiver in connection with its receivership;
  - (iii) all payments of interest, Principal and other money which may, from time to time, be or become charged upon the Charged Premises in priority to this Charge, and all Bills, Taxes, insurance premiums and every other proper expenditure reasonably made or incurred by the Receiver in respect to the Charged Premises or any part thereof; and
  - (iv) all payments to the Lender of all interest due or falling due hereunder and the balance to be applied upon Principal due and payable and secured hereby;

and thereafter any surplus remaining in the hands of the Receiver after payments made as aforesaid shall be accountable to the Borrower or other persons entitled thereto; and



- (p) on its own account or through a Receiver and whether alone or in conjunction with the exercise of all or any other remedies contemplated hereby, shall have the right, at any time, to notify and direct any account debtor to make all payments whatsoever to the Lender and the Lender shall have the right, at any time, to hold all amounts received from any account debtor and any proceeds thereof as security for the Indebtedness; any payments received by the Borrower from and after the security hereby constituted becomes enforceable, shall be held by the Borrower in trust for the Lender in the same medium in which received, shall not be commingled with any assets of the Borrower and shall, at the request of the Lender, be turned over to the Lender not later than the next Business Day following the day of their receipt.

## ARTICLE XX

### DEFAULT UNDER SECURITY, PARAMOUNTCY DISCHARGE AND RENEWAL

- 20.1** Payments of principal and interest made under and pursuant to the terms of the Security shall constitute payment hereunder and vice versa and default in the payment of principal and interest under the Security shall constitute default hereunder and vice versa. Default in compliance with any of the conditions, covenants, undertakings, provisions and stipulations contained in the Security shall entitle the Lender to exercise all or any of the rights or remedies provided herein and the occurrence of and Event of Default hereunder or in compliance with any of the conditions, covenants, undertakings, provisions and stipulations contained herein shall entitle the Lender to exercise all or any of the rights or remedies provided in the Security. The occurrence of an Event of Default hereunder shall constitute an Event of Default under the Security and vice versa.
- 20.2** The cancellation of or any other dealing with any Security (other than foreclosure thereof) shall not release or affect this Charge, and the taking of this Charge, or the cancellation of or any other dealing with, or proceeding under (other than foreclosure hereunder), this Charge, shall not release or affect any Security:
- (a) the Lender may at any time and from time to time release any part or parts of the Charged Premises or any other Security or any surety for payment of all or any part of the monies hereby secured or may release the Borrower or any other person from any covenant or other liability to pay the Principal Sum and interest and all other monies secured hereby, or any part thereof, either with or without any consideration therefor, and without being accountable for the value thereof or for any monies except those actually received by the Lender, and without thereby releasing any other part of the Charged Premises, or any other Security or covenants herein contained, it being especially agreed that notwithstanding any such release, the Charged Premises, the Security and the covenants remaining unreleased shall stand charged with the whole of the monies hereby secured;
  - (b) in the event that the monies advanced hereunder are applied to payment of any charge or encumbrance, the Lender shall be subrogated to all the rights of and stand in the position of and be entitled to all the equities of the party or parties so paid whether such charge or encumbrance has or has not been discharged; and the decision of the Lender as to the validity or amount of any advance or disbursement made under this Charge or of any claims so paid, shall be final and binding on the Borrower; and
  - (c) the Lender shall not be charged with any monies receivable or collectible out of the Charged Premises or otherwise, except those actually received by or on behalf of the Lender and all revenue of the Charged Premises received or collected by the Lender from any source other than payment by the Borrower may, at the option of the Lender, be retained in a separate account to be used in, maintaining, insuring or improving the Charged Premises to the extent required for such purpose, in the opinion of the Lender, acting reasonably, or in payment of Taxes or other liens, charges or encumbrances against the Charged Premises, or applied in reduction of the amounts owing hereunder.
- 20.3** Subject to Section 6.1, upon payment of all amounts secured by this Charge, the Borrower shall be entitled to receive and the Lender shall provide a discharge of this Charge and the Security within a reasonable period of time after the request therefor. The Lender shall have a reasonable time after such payment within which to prepare and execute such discharge and all reasonable legal and other expenses for the preparation, execution and registration of such discharge and/or documents, as the case may be, shall be borne by the Borrower.
- 20.4** All payments made pursuant to Section 20.3 shall be made to and received by the Lender prior to 1:00 p.m. on the date due or the next succeeding Business Day in the event the date due is not a

Business Day; provided such extension of time shall be included for the purposes of computation of interest.

**ARTICLE XXI**  
**NO MERGER OR WAIVER OF LENDER'S RIGHTS**

- 21.1** It is further understood and agreed that this Charge and the Security shall stand as a continuing security for repayment of the Loan, including, all advances made thereunder together with all interest, damages, costs, charges and expenses which may become due and payable to the Lender in respect of or in connection with the Loan or any portion thereof, notwithstanding any fluctuation or change in the amount, nature or form of the Loan or in the obligations now or hereafter representing the Loan or any portion thereof or in the names of the obligors or any of them.
- 21.2** The rights of the Lender arising under this Charge shall be separate, distinct and cumulative and, except as expressly provided herein, none of them shall be in exclusion of the other and no act of the Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision, anything herein or otherwise to the contrary notwithstanding.
- 21.3** The giving and taking of this Charge shall in no way merge, waive, prejudice, suspend or affect any of the rights or remedies of the Lender under any Security which may be given or which may have been or may hereafter be given in respect of the Principal Sum hereof, interest and other monies secured by this Charge, or any part thereof, or under the Security and all rights and remedies which the Lender now has or may hereafter have against any one or more persons, are hereby preserved.
- 21.4** The taking of a judgment or judgments under any of the covenants or obligations herein or under any Security shall not operate as a merger of the covenants of the Borrower or affect the Lender's right to interest at the Applicable Rate on any monies due or owing to the Lender during the continuance of this Charge, under any of the covenants herein contained or on any judgment to be recovered thereon.
- 21.5** The covenant of the Borrower to pay interest shall not merge in any judgment in respect of any covenant or obligation of the Borrower under this Charge or any Security and such judgment shall bear interest at the Applicable Rate until such judgment and all interest thereon have been paid in full.
- 21.6** Any waiver by the Lender of any default by the Borrower or any omission on the Lender's part in respect of any default by the Borrower shall not extend to or be taken in any manner whatsoever to affect any subsequent default by the Borrower or the rights resulting therefrom.
- 21.7** No extension of time given by the Lender to the Borrower or anyone claiming under the Borrower, shall in any way affect or prejudice the rights of the Lender against the Borrower or any person liable for payment of the monies hereby secured.

**ARTICLE XXII**  
**FINANCIAL DATA**

- 22.1** The Borrower shall provide or cause to be provided promptly to the Lender:
- (a) full and complete information about the financial condition and operations of the Charged Premises, including a separate income and expense statement for the Charged Premises, an operating statement and an updated rent roll containing relevant lease terms for the Charged Premises, provided that all operating statements shall contain a certificate by a senior officer of the Borrower as to the contents and preparation thereof; and
  - (b) full and complete information about the financial condition of the Borrower and any Guarantor(s); and
  - (c) such other information which the Lender may reasonably require from time to time,
- and the Lender shall have the right to examine the books and records of the Borrower relating to the Charged Premises at reasonable times and upon reasonable prior notice.
- 22.2** Without limiting the foregoing, until the repayment of the Loan the Borrower covenants and agrees to provide or cause to be provided to the Lender, within 120 days after the end of each fiscal year of the Borrower or more often if requested by the Lender, a detailed financial statement of the Borrower. The financial statements are to be prepared by a chartered accountant licensed in the Province of Ontario and shall include a balance sheet and a detailed statement of income and expenditures all satisfactory to the Lender in form and content. In the event applicable, the

Borrower shall provide the Lender with copies of all proxy statements, reports and information circulars that the Borrower makes available to its shareholders and copies of all regular and periodic reports which the Borrower may file with any securities commission or any other Governmental Authority.

- 22.3** The Borrower shall provide or cause to be provided to the Lender, or as the Lender may direct, a comprehensive list of all current tenants and rentals of space in the Charged Premises during the Term, which list shall disclose, without limitation, the name of each tenant, the duration of its term, renewal options, if any, and the term thereof, the rental being paid, the last date on which rental was paid and whether such tenancy is in good standing. Such list shall contain an endorsement by an officer of the Borrower as to being complete and accurate.
- 22.4** All statements, reports and other documents required to be provided hereunder shall be prepared in a manner acceptable to the Lender, in its reasonable discretion.

### **ARTICLE XXIII** **NOTICE**

- 23.1** Unless otherwise provided herein, any demand, notice or communication given or required to be given to a party hereunder shall be in writing and shall be personally delivered or given by transmittal by telecopy or facsimile transmission addressed to the respective parties at its address or telecopy or facsimile number set forth below or to such other address or telecopy or facsimile number as such party may designate by notice in writing to the other party hereto:
- (a) If to the Borrower, at the address for service set out in the electronic Charge to which this schedule is attached; and
  - (b) If to the Lender, at the address for service set out in the electronic Charge to which this schedule is attached.

Any demand, notice or communication made by or given by personal delivery shall be conclusively deemed to have been made or given on the day of actual delivery thereof, and, if made or given by telecopy or by facsimile, on the first day other than a Saturday, Sunday or a statutory holiday in Ontario, on which Schedule I banks are open for commercial business in Toronto, Ontario, following the transmittal thereof.

### **ARTICLE XXIV** **GENERAL**

- 24.1** If any provision of this Charge or the application thereof to any circumstances shall be held to be invalid or unenforceable, it shall be deemed severed herefrom and the remaining provisions of this Charge, or the application thereof to other circumstances, shall not be affected thereby and shall be held valid and enforceable to the full extent permitted by law. In particular, and without limiting the generality of the foregoing, to the extent any and all amounts due pursuant to Article VI hereof may be deemed to be in excess of what is permissible by law, any such excess shall be deemed not to be due under this Charge.
- 24.2** Wherever used in this Charge, unless the context clearly indicates a contrary intent as unless or otherwise specifically provided herein, the word "Borrower" shall mean "Borrower and/or subsequent owner or owners of the Charged Premises", the word "Lender" shall mean "Lender or any subsequent holder or holders of this Charge".
- 24.3** The descriptive headings of the several subparagraphs or paragraphs or sections or articles of this Charge are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.
- 24.4** Wherever the singular number or masculine gender is used in this Charge, the same shall be construed as including the plural and feminine or a body corporate, respectively, and vice versa, where the fact or context so requires; and the successors and assigns of any party executing this Charge are bound by the covenants, agreements stipulations and provisos herein contained. The covenants, agreements stipulations and provisos herein stated shall, except as otherwise limited hereby, be in addition to those granted or implied by statutory law.
- 24.5** This Charge shall be construed and enforceable under and in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and the Borrower hereby irrevocably attorns to the non-exclusive jurisdiction of the courts sitting at Toronto, Ontario.
- 24.6** The Borrower shall at all times, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further acts, deeds, transfers, assignments, security agreements

and assurances as the Lender may reasonably require in order to give effect to the provisions hereof and for the better granting, transferring, assigning, charging, setting over, assuring, confirming or perfecting the Charge and the priority accorded to them by law or under this Charge.

- 24.7** If any of the forms of words contained herein are also contained in Column 1 of Schedule "B" of the Short Forms of Mortgages Act (Ontario) and distinguished by a number therein, this Charge shall be deemed to include and shall have the same effect as if it contained the form of words in Column 2 of Schedule "B" of the said Act distinguished by the same number, and this Charge shall be interpreted as if the *Short Forms of Mortgages Act* (Ontario) were still in full force and effect. The implied covenants deemed to be included in a charge under Subsection 7(1) of the *Land Registration Reform Act* (Ontario) shall be and are hereby expressly excluded from the terms of this Charge.
- 24.8** This Charge shall, whether or not it secures a current or running account, be a general and continuing security to the Lender for payment of the indebtedness in an amount not exceeding the amount secured by this Charge and performance of the Borrower's other obligations under the Charge notwithstanding any fluctuation or change in the amount, nature or form of the indebtedness or in the accounts relating thereto or in the bills of exchange, promissory notes and/or other obligations now or later held by the Lender representing all or any part of the indebtedness outstanding at any particular time; and the Charge will not be deemed to have been redeemed or become void as a result of any such event or circumstance.
- 24.9** This Charge is given as collateral security to the Commitment.
- 24.10** Notwithstanding any terms contained in the Commitment to the contrary, in the event of conflict between the Commitment and the terms of this Charge, the provisions of the Commitment shall prevail; provided that any provision herein contained that is not contained in the Commitment and vice versa shall not in and of itself be considered to be inconsistent or in conflict.
- 24.11** The Borrower acknowledges that Computershare Trust Company of Canada is the title trustee/custodian for Trez Capital Limited Partnership and that the terms 'Lender', 'Mortgagee' or 'Chargee' when used in this Charge and other security documents shall include Trez Capital Limited Partnership. Where the consent of the Lender is required to any matter, the consent of Trez Capital Limited Partnership shall be sufficient to meet that requirement.

#### **ARTICLE XXV**

#### **CONDOMINIUM PROVISIONS**

- 25.1** The Borrower covenants and agrees that in the event that the security for the within Charge shall be or shall become a condominium unit(s) the following provisions shall apply.
- (a) the Borrower does hereby assign to the Lender all of its rights to vote or consent in the affairs of the Condominium Corporation having jurisdiction over the subject lands and the Lender, may at its option, exercise the right of an owner of a condominium unit to vote or consent in the affairs of the Condominium Corporation in the place and stead of such owner, without in any way consulting the owner as to the manner in which the vote shall be exercised or not exercised, and without incurring any liability to the owner or anyone else because of the manner in which such vote or right to consent in the affairs of the Condominium Corporation was exercised;
  - (b) the Borrower shall pay promptly, when due, any common expenses, assessments, instalments or payments due to the Condominium Corporation;
  - (c) the Borrower shall observe and perform the covenants and provisions required to be observed and performed under or pursuant to the provisions of the Condominium Act (Ontario), all amendments thereto, and any legislation passed in substitution thereof, and the declaration and by-laws of the Condominium Corporation and any amendments thereto; and
  - (d) where the Borrower defaults in the Borrower's obligation to contribute to the common expenses assessed or levied by the Condominium Corporation, or any authorized agent on its behalf, or any assessment, instalment of payment due to the Condominium Corporation, upon breach of any of the foregoing covenants or provisions in this paragraph contained, regardless of any other action or proceeding taken, or to be taken by the Condominium Corporation, the Lender, at its option and without notice to the Borrower, may deem such default to be a default under the terms of this Charge and proceed to exercise its rights therein and the Lender shall be entitled at its option to pay all common expense amounts

as they come due and these amounts so paid together with legal fees shall form part of the Indebtedness.

**ARTICLE XXVI**  
**CONSTRUCTION LOAN PROVISIONS**

- 26.1** In the event that any of the monies advanced or to be advanced under this Charge are intended to finance any improvement to the Charged Premises, the parties hereto covenant and agree that the following conditions shall apply:
- (a) all construction on the Charged Premises shall be carried out by reputable contractors having experience which is commensurate to nature and size of the project to be constructed, which contractors must be prior approved by the Lender in writing, such approval not to be unreasonably withheld;
  - (b) the construction of the building and structures located on the Charged Premises have been commenced and shall be continued in a good and workmanlike manner, with all due diligence and in accordance with the plans and specifications delivered to the Lender and to the satisfaction of all governmental and regulatory authorities having jurisdiction;
  - (c) provided that should construction of the project on the Charged Premises cease for any reason whatsoever (strikes, material shortages and weather conditions beyond the control of the Borrower excepted), for a period of fifteen (15) consecutive days (Saturdays, Sundays and Statutory holidays excepted), then, at the option of the Lender, this Charge shall immediately become due and payable. In the event that construction does cease, then the Lender shall have the right, at its sole option, to assume complete control of the construction of the said project in such manner and on such terms as it deems advisable. The cost of completion of the said project by the Lender and all expenses incidental thereto shall be added to the principal amount of this Charge, together with a management fee of fifteen percent (15%) of the costs of the construction completed by the Lender. All costs and expenses, as well as the management fee of fifteen percent (15%) added to the principal amount of this Charge shall bear interest at the rate as herein provided for and shall form part of the principal sum herein and the Lender shall have the same rights and remedies to collection of principal and interest hereunder or at law;
  - (d) at all times there shall be sufficient funds unadvanced under this Charge and retained by the Lender to complete the construction and/or renovation of the project on the Charged Premises and as may be necessary to retain the Lender's priority with respect to any deficiency in the holdbacks required to be retained by the Borrower under the *Construction Act* (Ontario);
  - (e) this Charge will be advanced in stages as construction upon the Charged Premises proceeds or as the conditions as enumerated by the Commitment are complied with;
  - (f) all advances which are made from time to time hereunder shall be based on certificates of a duly qualified architect, engineer, quantity surveyor, cost consultant or other consultant(s) retained for the purpose of reviewing and advising the Lender with respect to the said project and the progress thereof, whose fees and costs shall be for the account of the Borrower regardless of by whom such person has been retained. All such certificates shall without limitation certify the value of the work completed and the estimated costs of any uncompleted work and such certificates shall further certify that such completed construction and/or renovation to the date of such certificate shall be in accordance with the approved plans and specifications for the said construction and further, in accordance with the building permits issued for such construction and in accordance with all municipal and other governmental requirements of all authorities having jurisdiction pertaining to such construction and that there shall be no outstanding work orders or other requirements pertaining to construction on the Charged Premises. Such certificates with respect to any values shall not include materials on the site which are not incorporated into the building;
  - (g) the Borrower shall pay to the Lender on each occasion when an inspection of the Charged Premises is required to confirm construction costs to date and compliance with conditions for further advances, an inspection fee in such reasonable amount as the Lender may charge from time to time for each such inspection and the Lender's solicitors shall be paid their reasonable fees and disbursements for each sub-search and work done prior to each such advance and all such monies shall be deemed to be secured hereunder and the Lender shall be entitled to all rights and remedies with respect to collection of same in the same manner as it would have with respect to collection of principal and interest hereunder or at law; and

- (h) the Borrower agrees to indemnify and hold the Lender harmless from any and all claims, demands, sums of money, debts, covenants, bonds, accounts, actions, causes of action, rights, obligations and liability of every kind whatsoever which arise out of claims against the property under the *Construction Act* (Ontario) and that any liens for work and/or supplies that are registered against the Borrower's interest in the property will be promptly discharged within seven (7) days from the date of registration of the lien. The Lender may, but is not required to, deal with the lien claimant and pay the lien claim into court pursuant to the provision of the *Construction Act* (Ontario) for the purpose of vacating the lien from title to the property. The Borrower agrees to be liable for all costs, claims, amounts and fees including, without limitation, all legal fees (on a solicitor and his client basis) incurred by the Lender arising from or in connection with the Borrower or the Lender obtaining and registering either a release of the lien or an order vacating the lien.

**ARTICLE XXVII**  
**ASSIGNMENT AND SALE**

- 27.1** The Loan and all other amounts secured hereby, this Charge, the Security and all documents ancillary or collateral thereto may, in the Lender's sole discretion and without the consent of the Borrower, in whole or in part, be participated, sold, securitized, syndicated or assigned by the Lender from time to time to one or more Persons.
- 27.2** The Lender may disclose to participants, transferees or assignees or to potential participants, transferees or assignees or others in connection with any sale, assignment, participation, securitization, transfer or syndication, such information concerning the Borrower or the Charged Premises as the Lender may consider to be appropriate in connection therewith.
- 27.3** No grant, assignment or transfer pursuant to this Article XXVII shall constitute a repayment by the Borrower to the Lender of the Loan or any other amounts owing hereunder and included in such assignment or transfer and the Borrower acknowledges that all obligations under this Charge and the Security with respect to such assignment or transfer will continue and not constitute new obligations.
- 27.4** The Borrower agrees to be bound by and do all things necessary or appropriate to assist and give effect to any transfer, participation, securitization, sale, syndication or assignment, but shall incur no increased liabilities as a result thereof.

This is Exhibit I to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read 'R. S. H. a', is centered within the upper portion of the box.

A Commissioner for taking affidavits



December 5, 2018

Mizrahi Development Group (1451 Wellington) Inc.  
c/o Mizrahi Developments Inc.  
125 Hazelton Avenue  
Toronto, ON M5R 2E4

**Attention: Mr. Sam Mizrahi**

**Re: Tarion Warranty Corporation Bond & Deposit Insurance Facility**  
**For: Mizrahi Development Group (1451 Wellington) Inc.**  
**Project: A 86 unit Tarion Type D condominium project located at 1451 Wellington Street West, Ottawa and known as "1451 Wellington" (Hereinafter referred to as the "Project")**

Subject to your acceptance, and to the terms and conditions detailed within this letter ("Commitment Letter"), Westmount Guarantee Services Inc. ("Westmount") is pleased to confirm that it will provide a Tarion Bond and Deposit Insurance Facility as detailed below:

**ENTITY BONDED:** Mizrahi Development Group (1451 Wellington) Inc.  
(hereinafter referred to as the "Principal")

**PURPOSE** To enable the release of deposits from trust so that they may be used as a source of the Project's financing.

**FACILITY:** Tarion Bond Amount: \$1,720,000  
Deposit Insurance Facility: \$22,000,000  
(hereinafter referred to as the "Facility")

**FEES &** Commitment fee: \$7,500

**PREMIUM RATES:** Annual premium rate for Tarion Bond: 0.75%  
Annual premium rate for deposits insured above Tarion coverage: 0.75%

**All fees and premiums are payable to Westmount Guarantee Services Inc. and are due as outlined below unless stipulated otherwise. Premiums that remain outstanding longer than 60 days shall accrue interest at a rate of 1% per month. Westmount reserves the right to deduct outstanding fees and premiums from future deposits releases.**

The Commitment Fee is non-refundable and deemed earned and due upon the acceptance of this Commitment Letter.

The Tarion Bond premium for the first one year term will be payable prior to the release of the Tarion Bond to the Principal. All premiums for future terms will be billed at this rate unless stipulated otherwise, and will be payable as of the invoice date.

At the end of the bond invoice term following condominium registration, Westmount may consider reducing the minimum premium term from twelve (12) months to as low as four (4) months. Should any further reductions in the Tarion Bond take place during a reduced term, adjustments will be considered at the next premium term renewal.



The Deposit Insurance premium shall be charged at the rate outlined in this Commitment Letter. Premium for deposit insurance shall be billed quarterly and payable upon receipt of invoice.

## **INSURING ENTITY**

By executing this Commitment Letter, the Principal acknowledges and accepts that the insurer/surety for any bonds and/or policies issued under this Commitment Letter shall be Aviva Insurance Company of Canada either as (i) the single insurer/surety; or (ii) or as the lead insurer with Intact Insurance Company and/or Liberty Mutual Insurance Company on a co-subscription basis (hereinafter referred to as the "Surety"). Westmount, as Administrative Agent for the Surety, shall manage all aspects of the Facility detailed in this Commitment Letter including but not limited to security, premiums and fees, deposit releases and any subsequent, modifications, amendments, alterations which may be agreed to from time to time. Westmount shall provide the Surety with information with respect to the Principal, Project, indemnitors, security, premiums and fees or any other information provided to or obtained by Westmount with respect to this Commitment Letter or the Project.

The Principal further acknowledges that security required under the Commitment Letter will be held by the Surety or Westmount, jointly or independently but in either case, to the benefit of the Surety.

## **LEGAL REPRESENTATION**

The Principal acknowledges and accepts that the law firm selected to act for Westmount and the Surety with respect to registration of the security, the role of escrow agent and other matters shall be Harris, Sheaffer LLP ("Solicitor" or "Escrow Agent"), attention: Gary Harris.

The Principal shall be responsible for the full payment of all legal fees and disbursements when invoiced by this firm, and shall pay all costs with respect to preserving the Surety's rights under its mortgage security including all defense costs of any construction lien actions incurred by or on behalf of Westmount or the Surety.

## **SECURITY**

As general and continuing security for the payment of present and future indebtedness, obligations and liabilities of the Principal to the Surety, the following security (collectively the "Surety Security") shall be registered and/or executed:

- i. Indemnity Agreement,
- ii. Deposit Trust Agreement, and
- iii. Collateral Mortgage

This offer for a Bond and/or Deposit Insurance Facility contained in this Commitment Letter shall expire should the Surety Security not be registered by March 31, 2019 (the "Expiration Date"). Westmount may extend the Expiration Date at its sole discretion.

### **(a) Indemnity Agreement**

The Principal consents to provide the unlimited, joint and several indemnities of the following corporations and individuals in favour of the Surety in the Surety's standard form, along with all other resolutions, and supplementary documents deemed necessary by Westmount's Solicitor:

- Mizrahi Development Group (1451 Wellington) Inc.
- Sam Mizrahi, in a personal capacity

Should the company from which title to purchasers will be transferred not be the Principal noted on page one of the Commitment Letter ("Declarant"), the Principal further consents to provide the indemnity of the Declarant under the same terms noted above. (Declarant company: \_\_\_\_\_)

The Principal and each of the Indemnitors listed above agree to provide Westmount with yearend financial statements as they are produced but not later than 180 days after their fiscal year end. If applicable, personal indemnitors shall provide Westmount with updated personal net worth statements annually.

#### **(b) Deposit Trust Agreement**

The Principal shall execute a Deposit Trust Agreement in Westmount's standard form between the Principal, Westmount as Administrative Agent for the Surety and the Escrow Agent with respect to the control and operation of the designated trust account ("Trust Account"). Westmount shall require a first charge and security interest in its favour as Administrative Agent of the Surety over the designated trust account and in those deposits contained within that account and will require a PPSA Financing statement registered in first position for a term not less than 10 years.

#### **(c) Collateral Mortgage**

The Principal consents to providing Westmount as Administrative Agent for the Surety with a collateral **2nd** mortgage on the Project and property in the amount of **\$24,000,000**. Westmount will fully postpone its mortgage position to a construction lender approved by Westmount ("Construction Lender") providing appropriate project financing. The Principal shall not further encumber the Project without Westmount's prior written approval.

Westmount will require an opinion from its Solicitor that it has a valid and enforceable charge over the Project and property and security interest in the deposits contained within the Trust Account in accordance with the required priority.

Westmount will discharge its collateral mortgage upon the final closing of units and the discharge will be provided at no charge to the Principal, other than legal fees associated with the preparation and discharge of the Surety's Security, which shall be the Principal's responsibility. Westmount shall require evidence of transfer of title from the Principal/Declarant to purchasers whose deposits have been previously insured as a condition of discharge.

Upon full payment of any prior encumbrances to Westmount's mortgage, and at Westmount's sole discretion, Westmount may require, as a condition of executing further partial discharges of additional sold and/or unsold units, the sale revenues from those units to be retained in the Trust Account as added security for any indemnity or outstanding obligations to the Surety and/or Westmount.

**Prior to the execution of a partial discharge for any of the last 5 remaining units in the Project after the full payment of any prior encumbrances Westmount will require payment of \$150,000 per discharge, which will be held as security against any indemnity or outstanding obligations to the Surety and/or Westmount.**

**All amounts retained by Westmount shall be returned to the Principal upon the completion of the Surety's obligations under the bonds and/or policies and the payment of any indemnity or other outstanding obligations to the Surety and/or Westmount.**

#### **(d) Insurance Requirements**

The Principal shall provide evidence of all risk insurance including but not limited to course of construction, business interruption, earthquake and flood. The policy(s) shall provide for full replacement cost on all buildings, equipment, and inventory owned by the Principal and located at the project or located elsewhere and reasonably necessary for the effective implementation, management and administration of the project. Insurance is to include public liability coverage at least equal in scope to commercial general liability form as well as a soft cost endorsement.

The Certificate of Insurance evidencing both Builder's Risk and Wrap-up Liability shall note the Construction Lender as First Mortgagee and loss payee, then Westmount as Second Mortgagee and loss payee as per the Standard Mortgage Clause. Westmount may at its own discretion and without notice to the Principal, retain at the Principal's expense a 3<sup>rd</sup> party to review the adequacy of the insurance provided.

#### **(e) Additional Security**

The Principal consents to provide Westmount with all such other certificates, documents and opinions as Westmount or its Solicitor shall reasonably require.

## DEPOSIT RELEASE TERMS

Subject to the:

- i. registration of the Surety's Security,
- ii. adherence by the Principal to all terms and conditions contained within this Commitment Letter, and
- iii. the Escrow Agent receiving Tarion Deposit Receipts,

Westmount shall authorize the release of purchaser deposits from the Trust Account in the following manner:

- All deposits shall be made available to fund project costs on a 1:1 ratio of Construction Lender advances to deposits released as recommended by the Cost Consultant.

## THE CONDOMINIUM ACT

The Principal covenants and agrees to comply at all times with the provisions and requirements of the Condominium Act, S.O. 1998 c.19, as may be amended from time to time, and the regulations made thereunder ("the Act"). All deposits to be insured under the Facility shall be held in trust by a prescribed trustee as required under the Act.

The Principal shall provide Westmount or its authorized representative with all information necessary and in a format acceptable to Westmount to prepare the schedule of insured purchasers that will form part of the required Master Deposit Insurance Policy.

## PURCHASER RELEASE, ASSIGNMENT AND/OR DEFAULT

The Principal, when allowing a purchaser to cancel a deal, shall require the purchaser to execute a Mutual Release and Termination Agreement in Westmount's prescribed format as a condition of requesting the deposit to be released from the Trust Account. Should the purchaser deposit be already insured and released from trust to the Principal, the Principal shall be solely responsible for paying the deposit refund and shall supply Westmount with a copy of the cleared refund cheque as evidence of payment.

For purchasers of units in default, the Principal shall notify Westmount of the default and request permission to remarket the unit. All deposits from the defaulting purchaser shall remain in trust until the earlier of: (i) the date Westmount is satisfied the dispute with the purchaser has been settled; or (ii) the second anniversary of the date of the termination of the agreement of purchase and sale by the Principal as a consequence of the purchaser's default. If the deposit from the defaulting purchaser has been released to the Principal, deposits from any new purchaser(s) shall remain in trust until Westmount is satisfied the dispute has been settled with the original purchaser. In either case where the dispute has not been settled the deposit shall remain in trust unless release is authorized in writing, in a format acceptable to Westmount, by both the Principal and the defaulting purchaser.

Should the Principal permit the assignment of a purchase and sale agreement to another party, the Principal agrees to either (i) obtain a release in favour of Tarion and the Surety and provide details of the assignment to Westmount as a condition of insuring the new party's deposit; or (ii) cause an addendum to be entered into by the purchaser, new purchaser and Principal confirming the new purchaser. An additional premium shall be charged should the new deposit be insured and released from trust.

## TARION

- (a) The Principal shall continue to maintain registration with Tarion so long as there are unsold units and it shall comply with all aspects of the Ontario New Home Warranties Plan Act, its regulations and bulletins issued pursuant thereto until such time as the Tarion Bond is returned to Westmount.
- (b) If the Project is governed under Tarion's Builder Bulletin 19 – Design and Field Review Reporting for Condominium Projects ("Tarion's BB19"), the Principal undertakes and agrees to execute a direction authorizing the field review consultant designated by the Principal for the Project to provide Westmount with copies of all reports.

- (c) The Principal and/or its solicitor agree to provide, upon final closing of sales, written information to Tarion with a copy to Westmount to facilitate the release/reduction of the Tarion Bond in accordance with Tarion's BB19 and Builder Bulletin 28 – Tarion Requirements for the Receipt and Release of Security (“BB28”).
- (d) The Principal shall execute an authorization directing Tarion to provide Westmount with any information that may alter the Surety's exposure under the Bond and/or policies.
- (e) The Principal shall provide Westmount with access to the Principal's on-line Tarion files, and any related electronic information from Tarion, through the Principal's Builder Portal. The Principal shall provide Westmount with a user ID and password to access the Builder Portal.

(User ID: \_\_\_\_\_ Password: \_\_\_\_\_)

- (f) In respect of Tarion's Builder Bulletin 47 – Condominium Delayed Occupancy Warranty (“BB47”):
  - i. The Principal shall provide the following information to Westmount in respect of the required addendum to the agreement of purchase and sale called “Statement of Critical Dates”:
    - a. the date the Vendor has obtained formal zoning approval for the building.
    - b. the actual date of commencement of construction, which is to be provided at the same time the Vendor provides notice to purchasers.
    - c. the date established as the Final Tentative Closing Occupancy Date, which date is to be set no later than 30 days after completion of the roof slab or the roof trusses and sheathing of the building;
  - ii. The Principal and/or its solicitor undertakes and agrees to provide:
    - a. any required statutory declarations and undertakings with respect to compliance with BB47; and
    - b. information prior to either interim or final closing regarding whether delayed closing compensation is owing or was paid to each purchaser.

## **PROJECT FINANCING AND CONSTRUCTION**

### **(a) Financing**

The Principal shall provide Westmount with copies of all discussion papers with proposed Construction Lenders and the final accepted construction loan financing commitment. The terms of the accepted commitment shall be satisfactory to Westmount and permit the Project to be completed in a timely matter. If the terms of the said commitment do not contemplate the Facility provided by Westmount or do not compliment the Facility provided by Westmount all terms in this Commitment Letter may be amended or terminated at Westmount's sole option.

The Principal shall take full responsibility to advise and obtain consent from the Construction Lender of the involvement and/or security requirements by Westmount on the Project.

### **(b) Cost Overruns**

Westmount's authorization to release funds shall be conditional upon the Principal addressing cost overruns to the satisfaction of both the Construction Lender and Westmount and that construction of the Project shall proceed without any major construction problems identified by any consultant that could ultimately negatively affect the Surety's exposure under the bond and/or policies.

### **(c) Project Construction and Bonding of Major Trades**

The Principal shall notify Westmount of any key construction staff changes and/or changes in plans regarding retention of a general contractor or construction manager from those that were contemplated and revealed to Westmount prior to these terms being offered in the application by the Principal.

The Principal acknowledges that under its Tarion Builder Agreement, it shall indemnify Tarion for all claims relating to the building envelope, mechanical and electrical systems for two years after condominium registration. Westmount highly recommends that any major trades involved in these areas provide the Principal with

performance and labour and material payment bonds with a two year maintenance period to offset any liability for deficiencies that may be discovered in the first year condominium performance audit.

**(d) Project Monitoring**

The Principal agrees to authorize the Cost Consultant to provide copies of all reports to Westmount as and when provided to the Construction Lender. Both the Cost Consultant firm and the content of the report shall be acceptable to Westmount for the purposes of fulfilling its obligations under this Facility.

Occasionally, Westmount may request its own "Project Status Report", which is to be completed with basic sales, closing and construction information. The Principal undertakes to complete and return those reports on a timely basis.

Representatives of Westmount shall be entitled to, subject to reasonable prior notice, attend and inspect the Project.

**MATERIAL CHANGE IN THE INFORMATION SUPPLIED TO WESTMOUNT**

The Principal shall notify Westmount immediately of any material adverse change in respect of the Project or its financial condition.

If at any time prior to the execution and/or release of any bond or policy or release of deposits from trust, Westmount determines there is a material adverse change to the Project, including, but not limited to: the Project's viability, ownership of the Project or financial ability of the Principal and/or the Indemnitors, Westmount may suspend the issuance of bonds, policies or release of monies from trust until the matter is resolved to the satisfaction of Westmount.

**CONSENT AND ACKNOWLEDGEMENT TO COLLECTION, USE AND DISCLOSURE OF INFORMATION**

The Principal and all Indemnitors consent to Westmount obtaining from any person or company, including credit reporting agencies, any information, including personal information, that Westmount may require at any time to facilitate the delivery of the bonds and policies contemplated under this Commitment Letter. The Principal and all Indemnitors further consent to the disclosure of this information to any credit grantor or re-insurer by Westmount or the Surety if Westmount or the Surety is requested to do so.

**ELECTRONIC EXECUTION OF DOCUMENTS**

It is expressly acknowledged and agreed that the execution of this Commitment Letter may be made or manifested by way of an electronic signature (as such term is defined in The Electronic Commerce Act 2000, S.O. 2000, as amended), undertaken by or through a computer program or any other electronic means, as expressly provided or contemplated by (and in accordance with the provisions of) The Electronic Commerce Act 2000, S.O. 2000, as amended.

Each of the parties hereto further acknowledges and agrees that the Commitment Letter may be executed via telefax transmission (and the execution of a telefaxed version hereof by any or all of the parties that have signed the Commitment Letter shall have the same force and effect as if same were originally executed), and that a photocopy or telefaxed copy of the Commitment Letter may be relied upon by all of the parties that have signed the Commitment Letter to the same extent as if it were an original executed version addressed specifically to each of them.

***All the above terms and conditions are strictly confidential and neither the Principal nor any Indemnitor shall disclose the contents hereof without the prior written or verbal consent of Westmount. Failure to observe this condition may result in either Westmount withdrawing or altering this commitment.***

If the above terms and conditions are satisfactory, kindly signify your acceptance by executing a copy of this letter and returning it together with the Commitment Fee, on or before December 21, 2018.

**Westmount Guarantee Services Inc.**



**Jim Emanoilidis  
President**



**Abdul Waheed, Sr. Underwriter  
Developer Solutions**

I/We have the authority to bind the Corporation.

Accepted this 6th day of December, 2018.

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

Per:

Name:

  
\_\_\_\_\_  
**Sam Mizrahi**

Title:

**President**  
\_\_\_\_\_

Per:

Name:

Title:

I/We have the authority to bind the Corporation

This is Exhibit J to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. H. a", is centered below the text.

A Commissioner for taking affidavits

**Properties**

*PIN* 04030 - 0154 LT *Interest/Estate* Fee Simple  
*Description* LTS 1 & 2, PL 145 , N/S RICHMOND RD (NOW WELLINGTON ST) ; OTTAWA  
*Address* 1451 WELLINGTON STREET WEST  
 OTTAWA

*PIN* 04030 - 0155 LT *Interest/Estate* Fee Simple  
*Description* LT 3 & PT LT 4, PL 145 , BEING THE W 1/2, N/S RICHMOND RD (NOW WELLINGTON ST) ; OTTAWA  
*Address* 1445 WELLINGTON STREET WEST  
 OTTAWA

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.  
*Address for Service* 125 Hazelton Avenue  
 Toronto, ON M5R 2E4

I, Sam Mizrahi, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)***Capacity**Share*

*Name* WESTMOUNT GUARANTEE SERVICES INC.  
*Address for Service* Suite 205, 600 Cochrane Drive  
 Markham, ON L3R 5K3

**Provisions**

*Principal* \$24,000,000.00 *Currency* CDN  
*Calculation Period* See Standard Charge Terms  
*Balance Due Date* On Demand  
*Interest Rate* See Standard Charge Terms  
*Payments*  
*Interest Adjustment Date*  
*Payment Date* See Standard Charge Terms  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms* 201707  
*Insurance Amount* Full insurable value  
*Guarantor*

**Signed By**

Loraine Audrey Teeter 610-4100 Yonge St. acting for Signed 2019 10 29  
 Toronto  
 M2P 2B5 Chargor(s)

Tel 416-250-5800

Fax 416-250-5300

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

HARRIS, SHEAFFER LLP 610-4100 Yonge St. 2019 10 29  
 Toronto  
 M2P 2B5

Tel 416-250-5800

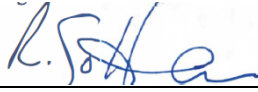
Fax 416-250-5300

**Fees/Taxes/Payment**

*Statutory Registration Fee* \$64.40  
*Total Paid* \$64.40



This is Exhibit K to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read 'K. J. Halla', is written over a faint, illegible stamp.

A Commissioner for taking affidavits

## PRIORITY AGREEMENT

THIS AGREEMENT dated the 24 day of October, 2019.

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

**WESTMOUNT GUARANTEE SERVICES INC.**  
(hereinafter called the "Surety")

- and -

**COMPUTERSHARE TRUST COMPANY OF CANADA**

(hereinafter called the "Construction Lender")

### WHEREAS:

1. Mizrahi Development Group (1451 Wellington) Inc. (hereinafter called the "Principal") has entered into a credit facility with the Construction Lender pursuant to which it has executed and delivered certain security to the Construction Lender, including, without limitation, a Charge/Mortgage of Land (the "Charge") in the principal amount of \$68,000,000.00 and certain other security (all present and future security granted by the Principal to the Construction Lender in respect of the Project (as hereinafter defined) including, without limitation, such security pursuant to the Charge, collectively referred to herein as the "Construction Lender Security").
2. The Charge was registered in the Land Registry Office for the Land Titles Division of Ottawa-Carleton (No. 4) (the "LRO") on the 29<sup>th</sup> day of October, 2019 as Instrument No. OC2158856 against the lands described therein (the "Property").
3. The Principal has requested the Surety to provide a Bond to Tarion Warranty Corporation and/or deposit insurance policies in connection with the Principal's proposed development of a condominium project (the "Project") on the Property.
4. The Principal has entered into a deposit trust agreement dated as of the 7th day of December, 2018 (the "DTA") with the Surety and Harris, Sheaffer LLP (the "Escrow Agent") in connection with deposit monies received from time to time from purchasers of dwelling units in the Project and accrued interest thereon (collectively the "Deposit Monies").
5. By a mortgage (the "Surety Mortgage") made between the Principal as mortgagor and the Surety as mortgagee which was registered on the 29<sup>th</sup> day of October, 2019 in the LRO as Instrument No. OC2158858, the Principal did mortgage the Property to the Surety to secure payment of the sum of \$24,000,000.00 and interest as set out in the Surety Mortgage.
6. The Principal has granted to the Surety, pursuant to the provisions of the Surety Mortgage and the DTA, security interests in the Property and in certain of its personal property, including the Deposit Monies (all present and future security granted by the Principal to the Surety in respect of the Project, including, without limitation, such security pursuant to the Surety Mortgage and the DTA, collectively referred to herein as the "Surety Security").
7. The parties hereto wish to record their agreement as to the priorities of the Construction Lender Security and the Surety Security.
8. For the purposes of this Agreement, "**Protective Advances**" means, in respect of the Charge, any advance thereunder necessary or prudent for the protection or preservation of the Property or to avoid the probability or likelihood of losses to the Construction Lender under the Charge and the other Construction Lender Security, including without limitation payments for property taxes, environmental remediation, reasonable legal fees, realization costs, appraisals, consultant's fees, receiver's fees, property manager's fees, insurance or repairs and construction liens in respect of the Property or construction costs.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are acknowledged) the Surety and the Construction Lender agree as follows:

- (a) The Charge and all amounts secured thereby (including, without limitation, all costs, charges, fees and expenses incurred by the Construction Lender, or any agent, receiver or receiver and manager appointed by the Construction Lender in connection therewith) but including advances made or to be made thereunder only to the extent of \$68,000,000.00 plus interest

thereunder and Protective Advances and secured thereby shall be an encumbrance upon the Property prior to the Surety Mortgage (the "Prior Indebtedness"), and the Surety hereby postpones and subordinates all of its rights and interests under the Surety Mortgage to the Prior Indebtedness. In order to give effect to this postponement and subordination, the Surety releases to the Construction Lender all of its rights and claims to priority with respect to the Surety Mortgage to the extent noted above.

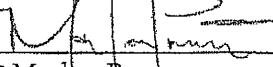
- (b) Subject to the provisions of paragraph (a) above in respect of the Charge and the Surety Mortgage, the Surety Security shall at all times be postponed to and rank subordinate to the Construction Lender Security, except in respect of the Deposit Monies, in respect of which the Surety Security shall have priority over the Construction Lender Security for only so long as, and to the extent that, such Deposit Monies shall remain in trust pursuant to the provisions of the DTA.
- (c) The above postponements and subordinations shall apply notwithstanding the respective dates of execution and registration of any of the Construction Lender Security or the Surety Security, the date of attachment or perfection of any security interest granted thereby, the date of any advance, the date of any default, or any other matter. Each of the parties hereto agrees that it shall not claim against the other the benefit of any charge, mortgage, security interest, trust or other claim which would affect the priorities set out herein.
- (d) The Surety hereby confirms that notwithstanding any provision to the contrary in any of the Surety Security, the security provided by the Surety Security over the Property and other assets of the Principal in any way related to the Project (including without limitation, the Deposit Monies) shall not secure any indebtedness, liability or obligation of the Principal except in respect of the Project, while any amounts under the Construction Lender Security remain unpaid.
- (e) The Surety and the Construction Lender consent to the granting of the security by the Principal referred to herein, and shall at all times and from time to time execute and deliver to the other all such further documents, agreements or other assurances as may be necessary to give effect to this agreement and to carry out the intent hereof.
- (f) Nothing herein shall affect the rights of the Surety and the Construction Lender respectively against the Principal. The provisions of this agreement shall enure to the benefit of and be binding upon the Construction Lender and the Surety and their respective successors and assigns, and shall be interpreted and construed according to the laws of the Province of Ontario.
- (g) The Surety hereby covenants and agrees to and with the Construction Lender from and after the date hereof, to and until the date of repayment of the outstanding indebtedness secured under the Construction Lender Security and the complete discharge thereof (the Standstill Period"), not to appoint, or make an application to a court of competent jurisdiction for the appointment of a receiver, receiver and manager, liquidator, or trustee of, or take possession of, or make application to a court of competent jurisdiction for any order of judgment for possession of the Property or the Project or any substantial part of the assets of the Principal or otherwise enforce the Surety Security or take any other action that impairs the Construction Lender Security or the priority of the Construction Lender Security as provided for herein, save and except with the prior written consent of the Construction Lender. Nothing hereinbefore set out shall restrict the rights of the Surety against any indemnitor set out in the Indemnity Agreement dated December 7, 2018 entered into by the Principal and Sam Mizrahi with respect to the Project and the right to take action against such parties.
- (h) Notwithstanding anything contained in this Priority Agreement to the contrary, it is expressly understood and agreed that the foregoing covenant of the Surety to forebear and standstill during and throughout the Standstill Period shall only be binding and enforceable against the Surety so long as ninety (90) days have not passed at any time after default of the Principal under the Construction Lender Security and prior to the completion of the Project without (a) the Construction Lender making advances in order to fund the development, construction and completion of the Project, and (b) in the event of the enforcement of the Construction Lender Security as a result of default by the Principal, the Construction Lender continuing to take all reasonable steps to complete the Project in substantial conformity with the approved plans and specifications by the Construction Lender and the Surety and to thereafter honour the existing agreements of purchase and sale and transferring title to the purchasers for whom the Surety has insured their Deposit Monies (excluding those purchasers whose agreements have been terminated because of breach of contract committed by such purchasers).
- (i) The Surety hereby expressly acknowledges and confirms that the Construction Lender is relying upon such forbearance and standstill on the part of the Surety on the terms herein set out, in order to be assured that in the event that the Construction Lender Security is hereafter in default, then no actions, steps or proceedings shall or will be taken by or on behalf of the

Surety subject to what is herein set out (whether culminating in any document or instrument hereafter registered against or otherwise affecting the Property or Project (or any portion thereof), or otherwise which might negatively or detrimentally impact upon the Construction Lender's ability to expeditiously complete the development, construction and registration of the condominium comprising the Project, and/or which might restrict, inhibit, hinder or delay the sale and closing of the individual unit sale transactions in respect of the Project by or on behalf of the Construction Lender.

- (j) The Surety hereby covenants, agrees and undertakes to and with the Construction Lender to:
  - (i) execute and deliver any usual documentation required in connection with the development and registration of the Project as a condominium; and
  - (ii) execute and deliver without payment therefore partial discharges of units comprising the Surety Security in respect of condominium units (and their appurtenant common interests) which have been sold in order to complete the sale of same.
- (k) This Priority Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together shall constitute one and the same instrument.
- (l) This Priority Agreement may be executed and transmitted by facsimile and/or email and shall in such event be effective and binding on the undersigned and their successors and assigns as if originally executed and delivered.

IN WITNESS WHEREOF the parties have duly executed this agreement as of the date first above written.

**WESTMOUNT GUARANTEE SERVICES INC.**

Per:   
Name: Marlon Brown  
Title: Authorized Signing Officer

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
I/We have authority to bind the Corporation

**COMPUTERSHARE TRUST COMPANY OF CANADA**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
I/We have authority to bind the Bank

Surety subject to what is herein set out (whether culminating in any document or instrument hereafter registered against or otherwise affecting the Property or Project (or any portion thereof), or otherwise which might negatively or detrimentally impact upon the Construction Lender's ability to expeditiously complete the development, construction and registration of the condominium comprising the Project, and/or which might restrict, inhibit, hinder or delay the sale and closing of the individual unit sale transactions in respect of the Project by or on behalf of the Construction Lender.

- (j) The Surety hereby covenants, agrees and undertakes to and with the Construction Lender to:
  - (i) execute and deliver any usual documentation required in connection with the development and registration of the Project as a condominium; and
  - (ii) execute and deliver without payment therefore partial discharges of units comprising the Surety Security in respect of condominium units (and their appurtenant common interests) which have been sold in order to complete the sale of same.
- (k) This Priority Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together shall constitute one and the same instrument.
- (l) This Priority Agreement may be executed and transmitted by facsimile and/or email and shall in such event be effective and binding on the undersigned and their successors and assigns as if originally executed and delivered.

IN WITNESS WHEREOF the parties have duly executed this agreement as of the date first above written.

**WESTMOUNT GUARANTEE SERVICES INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:  
I/We have authority to bind the Corporation

**COMPUTERSHARE TRUST COMPANY OF CANADA**

Per: P. G. **Pooja Ghatkar**  
Name: **Administrator, MBS**  
Title:

Per: D. Lee **Daniel Lee**  
Name: **Professional, MBS**  
Title:  
I/We have authority to bind the Bank

AMENDED AND RESTATED PRIORITY AGREEMENT

THIS AGREEMENT dated the 22 day of April, 2021.

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

**WESTMOUNT GUARANTEE SERVICES INC.**  
(hereinafter called the "Surety")

- and -

**COMPUTERSHARE TRUST COMPANY OF CANADA**

(hereinafter called the "Construction Lender")

WHEREAS:

1. Mizrahi Development Group (1451 Wellington) Inc. (hereinafter called the "Principal") has entered into a credit facility with the Construction Lender pursuant to which it has executed and delivered certain security to the Construction Lender, including, without limitation, a Charge/Mortgage of Land (the "Original Charge") in the original principal amount of \$68,000,000.00 and certain other security (all present and future security granted by the Principal to the Construction Lender in respect of the Project (as hereinafter defined) including, without limitation, such security pursuant to the Charge (as defined below), collectively referred to herein as the "Construction Lender Security").
2. The Original Charge was registered in the Land Registry Office for the Land Titles Division of Ottawa-Carleton (No. 4) (the "LRO") on the 29<sup>th</sup> day of October, 2019 as Instrument No. OC2158856 against the lands described therein (the "Property").
3. The Principal has requested the Surety to provide a Bond to Tarion Warranty Corporation and/or deposit insurance policies in connection with the Principal's proposed development of a condominium project (the "Project") on the Property.
4. The Principal has entered into a deposit trust agreement dated as of the 7<sup>th</sup> day of December, 2018 (the "DTA") with the Surety and Harris, Sheaffer LLP (the "Escrow Agent") in connection with deposit monies received from time to time from purchasers of dwelling units in the Project and accrued interest thereon (collectively the "Deposit Monies").
5. By a mortgage (the "Surety Mortgage") made between the Principal as mortgagor and the Surety as mortgagee which was registered on the 29<sup>th</sup> day of October, 2019 in the LRO as Instrument No. OC2158858, the Principal did mortgage the Property to the Surety to secure payment of the sum of \$24,000,000.00 and interest as set out in the Surety Mortgage.
6. The Principal has granted to the Surety, pursuant to the provisions of the Surety Mortgage and the DTA, security interests in the Property and in certain of its personal property, including the Deposit Monies (all present and future security granted by the Principal to the Surety in respect of the Project, including, without limitation, such security pursuant to the Surety Mortgage and the DTA, collectively referred to herein as the "Surety Security").
7. The parties hereto entered into a priority agreement dated October 24, 2019 to record their agreement as to the priorities of the Construction Lender Security and the Surety Security (the "Original Priority Agreement").
8. The Original Charge was amended pursuant to a mortgage amending agreement (the "Charge Amendment") dated April \_\_, 2019 between the Principal and the Construction Lender, whereby the principal amount secured by the Original Charge was increased to \$70,000,000.00 (together with the Original Charge, collectively the "Charge").
9. The Charge Amendment was registered in the LRO on the \_\_\_ day of April, 2021 as Instrument No. \_\_\_\_\_ against the Property.
10. The parties hereto wish to amend and restate the Original Priority Agreement, as more particularly set out herein.
11. For the purposes of this Agreement, "**Protective Advances**" means, in respect of the Charge, any advance thereunder necessary or prudent for the protection or preservation of the Property or to avoid the probability or likelihood of losses to the Construction Lender under the Charge and the other Construction Lender Security, including without limitation

payments for property taxes, environmental remediation, reasonable legal fees, realization costs, appraisals, consultant's fees, receiver's fees, property manager's fees, insurance or repairs and construction liens in respect of the Property or construction costs.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are acknowledged) the Surety and the Construction Lender agree as follows:

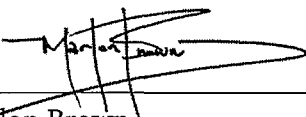
- (a) The Charge and all amounts secured thereby (including, without limitation, all costs, charges, fees and expenses incurred by the Construction Lender, or any agent, receiver or receiver and manager appointed by the Construction Lender in connection therewith) but including advances made or to be made thereunder only to the extent of \$70,000,000.00 plus interest thereunder and Protective Advances and secured thereby shall be an encumbrance upon the Property prior to the Surety Mortgage (the "Prior Indebtedness"), and the Surety hereby postpones and subordinates all of its rights and interests under the Surety Mortgage to the Prior Indebtedness. In order to give effect to this postponement and subordination, the Surety releases to the Construction Lender all of its rights and claims to priority with respect to the Surety Mortgage to the extent noted above.
- (b) Subject to the provisions of paragraph (a) above in respect of the Charge and the Surety Mortgage, the Surety Security shall at all times be postponed to and rank subordinate to the Construction Lender Security, except in respect of the Deposit Monies, in respect of which the Surety Security shall have priority over the Construction Lender Security for only so long as, and to the extent that, such Deposit Monies shall remain in trust pursuant to the provisions of the DTA.
- (c) The above postponements and subordinations shall apply notwithstanding the respective dates of execution and registration of any of the Construction Lender Security or the Surety Security, the date of attachment or perfection of any security interest granted thereby, the date of any advance, the date of any default, or any other matter. Each of the parties hereto agrees that it shall not claim against the other the benefit of any charge, mortgage, security interest, trust or other claim which would affect the priorities set out herein.
- (d) The Surety hereby confirms that notwithstanding any provision to the contrary in any of the Surety Security, the security provided by the Surety Security over the Property and other assets of the Principal in any way related to the Project (including without limitation, the Deposit Monies) shall not secure any indebtedness, liability or obligation of the Principal except in respect of the Project, while any amounts under the Construction Lender Security remain unpaid.
- (e) The Surety and the Construction Lender consent to the granting of the security by the Principal referred to herein, and shall at all times and from time to time execute and deliver to the other all such further documents, agreements or other assurances as may be necessary to give effect to this agreement and to carry out the intent hereof.
- (f) Nothing herein shall affect the rights of the Surety and the Construction Lender respectively against the Principal. The provisions of this agreement shall enure to the benefit of and be binding upon the Construction Lender and the Surety and their respective successors and assigns, and shall be interpreted and construed according to the laws of the Province of Ontario.
- (g) The Surety hereby covenants and agrees to and with the Construction Lender from and after the date hereof, to and until the date of repayment of the outstanding indebtedness secured under the Construction Lender Security and the complete discharge thereof (the Standstill Period"), not to appoint, or make an application to a court of competent jurisdiction for the appointment of a receiver, receiver and manager, liquidator, or trustee of, or take possession of, or make application to a court of competent jurisdiction for any order of judgment for possession of the Property or the Project or any substantial part of the assets of the Principal or otherwise enforce the Surety Security or take any other action that impairs the Construction Lender Security or the priority of the Construction Lender Security as provided for herein, save and except with the prior written consent of the Construction Lender. Nothing hereinbefore set out shall restrict the rights of the Surety against any indemnitor set out in the Indemnity Agreement dated December 7, 2018 entered into by the Principal and Sam Mizrahi with respect to the Project and the right to take action against such parties.
- (h) Notwithstanding anything contained in this Priority Agreement to the contrary, it is expressly understood and agreed that the foregoing covenant of the Surety to forbear and standstill during and throughout the Standstill Period shall only be binding and enforceable against the Surety so long as ninety (90) days have not passed at any time after default of the Principal under the Construction Lender Security and prior to the completion of the Project without (a) the Construction Lender making advances in order to fund the development, construction and completion of the Project, and (b) in the event of the enforcement of the Construction Lender

Security as a result of default by the Principal, the Construction Lender continuing to take all reasonable steps to complete the Project in substantial conformity with the approved plans and specifications by the Construction Lender and the Surety and to thereafter honour the existing agreements of purchase and sale and transferring title to the purchasers for whom the Surety has insured their Deposit Monies (excluding those purchasers whose agreements have been terminated because of breach of contract committed by such purchasers).



- (i) The Surety hereby expressly acknowledges and confirms that the Construction Lender is relying upon such forbearance and standstill on the part of the Surety on the terms herein set out, in order to be assured that in the event that the Construction Lender Security is hereafter in default, then no actions, steps or proceedings shall or will be taken by or on behalf of the Surety subject to what is herein set out (whether culminating in any document or instrument hereafter registered against or otherwise affecting the Property or Project (or any portion thereof), or otherwise which might negatively or detrimentally impact upon the Construction Lender's ability to expeditiously complete the development, construction and registration of the condominium comprising the Project, and/or which might restrict, inhibit, hinder or delay the sale and closing of the individual unit sale transactions in respect of the Project by or on behalf of the Construction Lender.
- (j) The Surety hereby covenants, agrees and undertakes to and with the Construction Lender to:
  - (i) execute and deliver any usual documentation required in connection with the development and registration of the Project as a condominium; and
  - (ii) execute and deliver without payment therefore partial discharges of units comprising the Surety Security in respect of condominium units (and their appurtenant common interests) which have been sold in order to complete the sale of same.
- (k) This Priority Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together shall constitute one and the same instrument.
- (l) This Priority Agreement may be executed and transmitted by facsimile and/or email and shall in such event be effective and binding on the undersigned and their successors and assigns as if originally executed and delivered.
- (m) This Priority Agreement supersedes and replaces the Original Priority Agreement.

IN WITNESS WHEREOF the parties have duly executed this agreement as of the date first above written.

**WESTMOUNT GUARANTEE SERVICES INC.**

Per:   
Name: Marlon Brown  
Title: Authorized Signing Officer  
Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
I/We have authority to bind the Corporation

**COMPUTERSHARE TRUST COMPANY OF CANADA**

Per:   
Name: Daniel Lee  
Title: Professional, MBS  
Per:   
Name: Allana Williams  
Title: Administrator, MBS  
I/We have authority to bind the Bank



payments for property taxes, environmental remediation, reasonable legal fees, realization costs, appraisals, consultant's fees, receiver's fees, property manager's fees, insurance or repairs and construction liens in respect of the Property or construction costs.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are acknowledged) the Surety and the Construction Lender agree as follows:

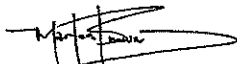
- (a) The Charge and all amounts secured thereby (including, without limitation, all costs, charges, fees and expenses incurred by the Construction Lender, or any agent, receiver or receiver and manager appointed by the Construction Lender in connection therewith) but including advances made or to be made thereunder only to the extent of \$70,000,000.00 plus interest thereunder and Protective Advances and secured thereby shall be an encumbrance upon the Property prior to the Surety Mortgage (the "Prior Indebtedness"), and the Surety hereby postpones and subordinates all of its rights and interests under the Surety Mortgage to the Prior Indebtedness. In order to give effect to this postponement and subordination, the Surety releases to the Construction Lender all of its rights and claims to priority with respect to the Surety Mortgage to the extent noted above.
- (b) Subject to the provisions of paragraph (a) above in respect of the Charge and the Surety Mortgage, the Surety Security shall at all times be postponed to and rank subordinate to the Construction Lender Security, except in respect of the Deposit Monies, in respect of which the Surety Security shall have priority over the Construction Lender Security for only so long as, and to the extent that, such Deposit Monies shall remain in trust pursuant to the provisions of the DTA.
- (c) The above postponements and subordinations shall apply notwithstanding the respective dates of execution and registration of any of the Construction Lender Security or the Surety Security, the date of attachment or perfection of any security interest granted thereby, the date of any advance, the date of any default, or any other matter. Each of the parties hereto agrees that it shall not claim against the other the benefit of any charge, mortgage, security interest, trust or other claim which would affect the priorities set out herein.
- (d) The Surety hereby confirms that notwithstanding any provision to the contrary in any of the Surety Security, the security provided by the Surety Security over the Property and other assets of the Principal in any way related to the Project (including without limitation, the Deposit Monies) shall not secure any indebtedness, liability or obligation of the Principal except in respect of the Project, while any amounts under the Construction Lender Security remain unpaid.
- (e) The Surety and the Construction Lender consent to the granting of the security by the Principal referred to herein, and shall at all times and from time to time execute and deliver to the other all such further documents, agreements or other assurances as may be necessary to give effect to this agreement and to carry out the intent hereof.
- (f) Nothing herein shall affect the rights of the Surety and the Construction Lender respectively against the Principal. The provisions of this agreement shall enure to the benefit of and be binding upon the Construction Lender and the Surety and their respective successors and assigns, and shall be interpreted and construed according to the laws of the Province of Ontario.
- (g) The Surety hereby covenants and agrees to and with the Construction Lender from and after the date hereof, to and until the date of repayment of the outstanding indebtedness secured under the Construction Lender Security and the complete discharge thereof (the Standstill Period"), not to appoint, or make an application to a court of competent jurisdiction for the appointment of a receiver, receiver and manager, liquidator, or trustee of, or take possession of, or make application to a court of competent jurisdiction for any order of judgment for possession of the Property or the Project or any substantial part of the assets of the Principal or otherwise enforce the Surety Security or take any other action that impairs the Construction Lender Security or the priority of the Construction Lender Security as provided for herein, save and except with the prior written consent of the Construction Lender. Nothing hereinbefore set out shall restrict the rights of the Surety against any indemnitor set out in the Indemnity Agreement dated December 7, 2018 entered into by the Principal and Sam Mizrahi with respect to the Project and the right to take action against such parties.
- (h) Notwithstanding anything contained in this Priority Agreement to the contrary, it is expressly understood and agreed that the foregoing covenant of the Surety to forebear and standstill during and throughout the Standstill Period shall only be binding and enforceable against the Surety so long as ninety (90) days have not passed at any time after default of the Principal under the Construction Lender Security and prior to the completion of the Project without (a) the Construction Lender making advances in order to fund the development, construction and completion of the Project, and (b) in the event of the enforcement of the Construction Lender

Security as a result of default by the Principal, the Construction Lender continuing to take all reasonable steps to complete the Project in substantial conformity with the approved plans and specifications by the Construction Lender and the Surety and to thereafter honour the existing agreements of purchase and sale and transferring title to the purchasers for whom the Surety has insured their Deposit Monies (excluding those purchasers whose agreements have been terminated because of breach of contract committed by such purchasers).

- (i) The Surety hereby expressly acknowledges and confirms that the Construction Lender is relying upon such forbearance and standstill on the part of the Surety on the terms herein set out, in order to be assured that in the event that the Construction Lender Security is hereafter in default, then no actions, steps or proceedings shall or will be taken by or on behalf of the Surety subject to what is herein set out (whether culminating in any document or instrument hereafter registered against or otherwise affecting the Property or Project (or any portion thereof), or otherwise which might negatively or detrimentally impact upon the Construction Lender's ability to expeditiously complete the development, construction and registration of the condominium comprising the Project, and/or which might restrict, inhibit, hinder or delay the sale and closing of the individual unit sale transactions in respect of the Project by or on behalf of the Construction Lender.
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  - (ii) execute and deliver without payment therefore partial discharges of units comprising the Surety Security in respect of condominium units (and their appurtenant common interests) which have been sold in order to complete the sale of same.
- (k) This Priority Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together shall constitute one and the same instrument.
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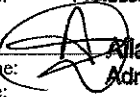
**WESTMOUNT GUARANTEE SERVICES INC.**

Per:   
 Name: Marlon Brown  
 Title: Authorized Signing Officer

Per: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 I/We have authority to bind the Corporation

**COMPUTERSHARE TRUST COMPANY OF CANADA**

Per:   
 Name: Daniel Lee  
 Title: Professional, MBS

Per:   
 Name: Milana Williams  
 Title: Administrator, MBS

I/We have authority to bind the Bank

## PRIORITY AGREEMENT

THIS AGREEMENT dated the 1<sup>st</sup> day of December, 2021.

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

**WESTMOUNT GUARANTEE SERVICES INC.**  
(hereinafter called the "Surety")

- and -

**COMPUTERSHARE TRUST COMPANY OF CANADA**

(hereinafter called the "Construction Lender")

### WHEREAS:

1. Mizrahi Development Group (1451 Wellington) Inc. (hereinafter called the "Principal") has entered into a credit facility with the Construction Lender pursuant to which it has executed and delivered certain security to the Construction Lender, including, without limitation, a Charge/Mortgage of Land (the "Charge") in the principal amount of \$6,000,000.00 and certain other security (all present and future security granted by the Principal to the Construction Lender in respect of the Project (as hereinafter defined) including, without limitation, such security pursuant to the Charge, collectively referred to herein as the "Construction Lender Security").
2. The Charge was registered in the Land Registry Office for the Land Titles Division of Ottawa-Carleton (No. 4) (the "LRO") on the 1<sup>st</sup> day of December, 2021 as Instrument No. OC2430519 against the lands described therein (the "Property").
3. The Principal has requested the Surety to provide a Bond to Tarion Warranty Corporation and/or deposit insurance policies in connection with the Principal's proposed development of a condominium project (the "Project") on the Property.
4. The Principal has entered into a deposit trust agreement dated as of the 7th day of December, 2018 (the "DTA") with the Surety and Harris, Sheaffer LLP (the "Escrow Agent") in connection with deposit monies received from time to time from purchasers of dwelling units in the Project and accrued interest thereon (collectively the "Deposit Monies").
5. By a mortgage (the "Surety Mortgage") made between the Principal as mortgagor and the Surety as mortgagee which was registered on the 29th day of October, 2019 in the LRO as Instrument No. OC2158858, the Principal did mortgage the Property to the Surety to secure payment of the sum of \$24,000,000.00 and interest as set out in the Surety Mortgage.
6. The Principal has granted to the Surety, pursuant to the provisions of the Surety Mortgage and the DTA, security interests in the Property and in certain of its personal property, including the Deposit Monies (all present and future security granted by the Principal to the Surety in respect of the Project, including, without limitation, such security pursuant to the Surety Mortgage and the DTA, collectively referred to herein as the "Surety Security").
7. The parties hereto wish to record their agreement as to the priorities of the Construction Lender Security and the Surety Security.
8. For the purposes of this Agreement, "**Protective Advances**" means, in respect of the Charge, any advance thereunder necessary or prudent for the protection or preservation of the Property or to avoid the probability or likelihood of losses to the Construction Lender under the Charge and the other Construction Lender Security, including without limitation payments for property taxes, environmental remediation, reasonable legal fees, realization costs, appraisals, consultant's fees, receiver's fees, property manager's fees, insurance or repairs and construction liens in respect of the Property or construction costs.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are acknowledged) the Surety and the Construction Lender agree as follows:

- (a) The Charge and all amounts secured thereby (including, without limitation, all costs, charges, fees and expenses incurred by the Construction Lender, or any agent, receiver or receiver and manager appointed by the Construction Lender in connection therewith) but including advances made or to be made thereunder only to the extent of \$6,000,000.00 plus interest thereunder and Protective Advances and secured thereby shall be an encumbrance upon the

Property prior to the Surety Mortgage (the "Prior Indebtedness"), and the Surety hereby postpones and subordinates all of its rights and interests under the Surety Mortgage to the Prior Indebtedness. In order to give effect to this postponement and subordination, the Surety releases to the Construction Lender all of its rights and claims to priority with respect to the Surety Mortgage to the extent noted above.

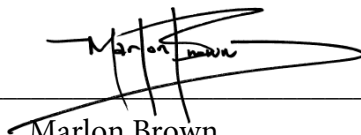
- (b) Subject to the provisions of paragraph (a) above in respect of the Charge and the Surety Mortgage, the Surety Security shall at all times be postponed to and rank subordinate to the Construction Lender Security, except in respect of the Deposit Monies, in respect of which the Surety Security shall have priority over the Construction Lender Security for only so long as, and to the extent that, such Deposit Monies shall remain in trust pursuant to the provisions of the DTA.
- (c) The above postponements and subordinations shall apply notwithstanding the respective dates of execution and registration of any of the Construction Lender Security or the Surety Security, the date of attachment or perfection of any security interest granted thereby, the date of any advance, the date of any default, or any other matter. Each of the parties hereto agrees that it shall not claim against the other the benefit of any charge, mortgage, security interest, trust or other claim which would affect the priorities set out herein.
- (d) The Surety hereby confirms that notwithstanding any provision to the contrary in any of the Surety Security, the security provided by the Surety Security over the Property and other assets of the Principal in any way related to the Project (including without limitation, the Deposit Monies) shall not secure any indebtedness, liability or obligation of the Principal except in respect of the Project, while any amounts under the Construction Lender Security remain unpaid.
- (e) The Surety and the Construction Lender consent to the granting of the security by the Principal referred to herein, and shall at all times and from time to time execute and deliver to the other all such further documents, agreements or other assurances as may be necessary to give effect to this agreement and to carry out the intent hereof.
- (f) Nothing herein shall affect the rights of the Surety and the Construction Lender respectively against the Principal. The provisions of this agreement shall enure to the benefit of and be binding upon the Construction Lender and the Surety and their respective successors and assigns, and shall be interpreted and construed according to the laws of the Province of Ontario.
- (g) The Surety hereby covenants and agrees to and with the Construction Lender from and after the date hereof, to and until the date of repayment of the outstanding indebtedness secured under the Construction Lender Security and the complete discharge thereof (the Standstill Period"), not to appoint, or make an application to a court of competent jurisdiction for the appointment of a receiver, receiver and manager, liquidator, or trustee of, or take possession of, or make application to a court of competent jurisdiction for any order of judgment for possession of the Property or the Project or any substantial part of the assets of the Principal or otherwise enforce the Surety Security or take any other action that impairs the Construction Lender Security or the priority of the Construction Lender Security as provided for herein, save and except with the prior written consent of the Construction Lender. Nothing hereinbefore set out shall restrict the rights of the Surety against any indemnitor set out in the Indemnity Agreement dated December 7, 2018 entered into by the Principal and Sam Mizrahi with respect to the Project and the right to take action against such parties.
- (h) Notwithstanding anything contained in this Priority Agreement to the contrary, it is expressly understood and agreed that the foregoing covenant of the Surety to forebear and standstill during and throughout the Standstill Period shall only be binding and enforceable against the Surety so long as ninety (90) days have not passed at any time after default of the Principal under the Construction Lender Security and prior to the completion of the Project without (a) the Construction Lender making advances in order to fund the development, construction and completion of the Project, and (b) in the event of the enforcement of the Construction Lender Security as a result of default by the Principal, the Construction Lender continuing to take all reasonable steps to complete the Project in substantial conformity with the approved plans and specifications by the Construction Lender and the Surety and to thereafter honour the existing agreements of purchase and sale and transferring title to the purchasers for whom the Surety has insured their Deposit Monies (excluding those purchasers whose agreements have been terminated because of breach of contract committed by such purchasers).
- (i) The Surety hereby expressly acknowledges and confirms that the Construction Lender is relying upon such forbearance and standstill on the part of the Surety on the terms herein set out, in order to be assured that in the event that the Construction Lender Security is hereafter in default, then no actions, steps or proceedings shall or will be taken by or on behalf of the Surety subject to what is herein set out (whether culminating in any document or instrument

hereafter registered against or otherwise affecting the Property or Project (or any portion thereof), or otherwise which might negatively or detrimentally impact upon the Construction Lender's ability to expeditiously complete the development, construction and registration of the condominium comprising the Project, and/or which might restrict, inhibit, hinder or delay the sale and closing of the individual unit sale transactions in respect of the Project by or on behalf of the Construction Lender.

- (j) The Surety hereby covenants, agrees and undertakes to and with the Construction Lender to:
  - (i) execute and deliver any usual documentation required in connection with the development and registration of the Project as a condominium; and
  - (ii) execute and deliver without payment therefore partial discharges of units comprising the Surety Security in respect of condominium units (and their appurtenant common interests) which have been sold in order to complete the sale of same.
- (k) This Priority Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together shall constitute one and the same instrument.
- (l) This Priority Agreement may be executed and transmitted by facsimile and/or email and shall in such event be effective and binding on the undersigned and their successors and assigns as if originally executed and delivered.

IN WITNESS WHEREOF the parties have duly executed this agreement as of the date first above written.

**WESTMOUNT GUARANTEE SERVICES INC.**



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

Name: Marlon Brown

Title: Authorized Signing Officer

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

Name:

Title:

I/We have authority to bind the Corporation

**COMPUTERSHARE TRUST COMPANY OF CANADA**

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

Name:

Title:

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

Name:

Title:

I/We have authority to bind the Bank

hereafter registered against or otherwise affecting the Property or Project (or any portion thereof), or otherwise which might negatively or detrimentally impact upon the Construction Lender's ability to expeditiously complete the development, construction and registration of the condominium comprising the Project, and/or which might restrict, inhibit, hinder or delay the sale and closing of the individual unit sale transactions in respect of the Project by or on behalf of the Construction Lender.

- (j) The Surety hereby covenants, agrees and undertakes to and with the Construction Lender to:
  - (i) execute and deliver any usual documentation required in connection with the development and registration of the Project as a condominium; and
  - (ii) execute and deliver without payment therefore partial discharges of units comprising the Surety Security in respect of condominium units (and their appurtenant common interests) which have been sold in order to complete the sale of same.
- (k) This Priority Agreement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together shall constitute one and the same instrument.
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IN WITNESS WHEREOF the parties have duly executed this agreement as of the date first above written.

**WESTMOUNT GUARANTEE SERVICES INC.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:  
I/We have authority to bind the Corporation

**COMPUTERSHARE TRUST COMPANY OF CANADA**

Per:         DL          
Name: **Daniel Lee**  
Title: **Professional, MBS**

Per:         S. Thwaragan          
Name: **Thwaragan Sivarantham**  
Title: **Administrator, MBS**  
I/We have authority to bind the Bank

This is Exhibit L to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. Ha", is centered within the upper portion of the box.

A Commissioner for taking affidavits

**LOAN AGREEMENT**

**BETWEEN**

**SAM MIZRAHI**

**as Borrower**

**AND**

**V2 INVESTMENT HOLDINGS INC.**

**as Lender**

**MADE AS OF**

**October 31, 2019**



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**LOAN AGREEMENT**

THIS AGREEMENT is made as of October 31, 2019,

BETWEEN:

**SAM MIZRAHI**  
(the “**Borrower**”),

- and -

**V2 INVESTMENT HOLDINGS INC.**  
(the “**Lender**”).

WHEREAS the Borrower has requested the Loan and the Lender has agreed to provide the Loan to the Borrower upon and subject to the terms and conditions set out in this Agreement;

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties agree as follows:

**ARTICLE 1 - INTERPRETATION**

**1.01        Definitions**

In this Agreement, unless something in the subject matter or context is inconsistent therewith:

“**Affiliate**” means, any Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with, the same Person, or (ii) any other Person that directly or indirectly owns or controls greater than fifty percent (50%) or more of any class of Equity Interest (including any Equity Interest issuable upon the exercise of any option or resulting from the conversion or exchange of any Equity Interest or other rights or interests) of that Person or any of its Affiliates.

“**Agreement**” means this loan agreement, including its recitals and schedules.

“**AMLA**” means the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada) and its associated regulations in effect as of the date hereof.

“**Applicable Law**” means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgement, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, licence, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case having the force of law.

“**Arm’s Length**” has the meaning ascribed to it in the *Income Tax Act* (Canada).

“**Assignment of Project Management Agreement**” means the specific assignment of the Project Management Agreement by the Wellington Guarantor in favour of the Lender in a form acceptable to the Lender and the Borrower, which assignment will be acknowledged by the Project Manager and will contain provisions which provides that amounts owing due to the Project Manager are assigned and postponed to the Lender upon the occurrence and during the continuance of an Event of Default and that the Project Management Agreement may be terminated on not less than thirty (30) days notice upon the occurrence and during the continuance of an Event of Default.

“**Board**” has the meaning given to it in the Shareholders Agreement.

“**Budgeted Project Costs**” means the costs associated with acquisition of the Project Lands and all budgeted Hard Costs and all budgeted Soft Costs described as a line item in the Project Budget, including any Contingency Amount of budgeted Hard Costs and budgeted Soft Costs.

“**Business Day**” means a day of the year, other than a Saturday, Sunday or statutory holiday, in Ontario.

“**Canadian Dollars**” and “**Cdn. \$**” mean the lawful money of Canada.

“**Capital Lease**” means a capital lease or a lease that should be treated as a capital lease under GAAP.

“**Certificate of Substantial Completion**” means a certificate to be issued by the Independent Cost Consultant, certifying that “substantial performance” of the Construction of the Project or relevant portion thereof has been achieved in accordance with Section 2(1) of the Construction Act and in such regard the Independent Cost Consultant may rely on Certificates of Substantial Performance relating to the Project.

“**Change of Control**” means if the Borrower ceases to Control, directly or indirectly, any of the Guarantors and such change of control happens without the prior written consent of the Lender, in its Sole and Absolute Discretion.

“**Charge**” means the debenture/mortgage of land in the principal amount of \$12,900,000.00 constituting a charge on the Project Lands and assets related to the Project (subject only to the charge granted in favour of the Construction Lender under the Construction Loan and DBC under the DBC Mortgage) granted by the Wellington Guarantor in favour of the Lender and in a form acceptable to the Lender and the Wellington Guarantor, such debenture to include, *inter alia*, an assignment of leases and a general security agreement relating to all present and future personal property of the Wellington Guarantor, including, without limitation, purchase and sale agreements, plans, contracts, drawings, agreements, permits, approvals, equipment, receivables, inventory, intellectual property, and which shall contain an assignment of property insurance proceeds, Performance and Payment Bonds, Material Project Agreements, Construction Contracts, Condominium Sales Agreements and Deposits.

“**CMHC**” means Canada Mortgage and Housing Corporation.

**“Compliance Certificate”** means the certificate required pursuant to Section 7.02(4), substantially in the form attached as Schedule C.

**“Condominium Act”** means the *Condominium Act, 1998* (Ontario), as amended or replaced from time to time.

**“Condominium Documents”** means the Declaration, condominium corporation by-laws (or agreements relating thereto), shared facility agreements, insurance trust agreement (if any) or other documents relating to the creation and operation of the Project.

**“Condominium Sales Agreements”** means the purchase and sale agreements with purchasers in respect of the Units.

**“Construction”** means the design and construction of the Project in accordance with the Plans and Specifications.

**“Construction Contracts”** means all contracts, subcontracts and agreements entered into by the Wellington Guarantor relating to the Construction of the Project, including contracts, subcontracts and agreements relating to the supply of materials or services to or for the Project.

**“Construction Lender”** means Trez Capital Limited Partnership or such other lender acceptable to the Lender, acting reasonably.

**“Construction Act”** means the *Construction Act* (Ontario) and any amendments or successor legislation thereto.

**“Construction Loan”** means the first ranking construction loan of the Project from the Construction Lender in the amount of the lesser of: (i) \$68,000,000 and (ii) 73.6% of the aggregate amount of the Hard Costs and Soft Costs as set out in the Project Budget.

**“Construction Schedule”** means the construction schedule for the Project provided to and approved by the Lender and the Independent Cost Consultant, as it may be amended from time to time pursuant to the provisions of this Agreement.

**“Consultant Contracts”** means the contracts between the Wellington Guarantor or the Project Manager, as agent for the Wellington Guarantor, and each of the Consultants.

**“Consultants”** means, as applicable, any architect, mechanical and electrical consultant, geotechnical and environmental engineers for the Project and such other consultants required for the Project.

**“Contingency Amount”** means, with respect to the Project Budget, the amount, if any, of any contingency provided in respect of the calculation of Project Costs.

**“Contingent Obligation”** means, with respect to any Person, any obligation, whether secured or unsecured, of such Person guaranteeing or indemnifying, or in effect guaranteeing or indemnifying, any indebtedness, leases, dividends, letters of credit or other monetary obligations (the “primary obligations”) of any other Person (the “primary obligor”) in any manner, whether

directly or indirectly, including any obligation of such Person as an account party in respect of a letter of credit or letter of guarantee issued to assure payment by the primary obligor of any such primary obligation and any obligations of such Person, whether or not contingent, (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefor, (ii) to advance or supply funds for the purchase or payment of any such primary obligation or to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the obligee under any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, or (iv) otherwise to assure or hold harmless the obligee under such primary obligation against loss in respect of such primary obligation; provided, however, that the term Contingent Obligation does not include endorsements of instruments for deposit or collection in the ordinary course of business.

**“Contractors”** means the contractors, sub-contractors and suppliers retained by or on behalf of the Borrower or the Wellington Guarantor in connection with the Construction of the Project.

**“Control”** as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through ownership of voting Equity Interests, by contract or otherwise; provided that a Person may still have “control” of a specified Person notwithstanding that one or more third parties may have rights to participate in major decisions of the specified Person so long as the day-to-day responsibility and authority is not so vested in the third party(ies) with such participation rights. “Controlling” and “Controlled” have corresponding meanings.

**“Cost Overruns”** means the positive difference, if any, between the then-applicable Cost to Complete and the amount of all unpaid Budgeted Project Costs (which, for greater certainty, includes any Contingency Amount) attributable to the Construction in respect of which the Cost to Complete relates.

**“Cost to Complete”** means, at any given date, that amount established by the Independent Cost Consultant, and approved by the Lender, acting reasonably, and after consulting with the Borrower, which is the aggregate of (without duplication):

- (i) the amount of all Project Costs not then incurred; and
- (ii) the amount of all Project Costs incurred, to the extent not paid in full (except for any construction lien Holdback amounts),

as of such date.

**“DBC”** means the deposit insurance company that is acceptable to the Wellington Guarantor, the Borrower and the Lender, acting reasonably, as the surety for bonds and/or excess deposit insurance issued to Tarion Warranty Corporation and/or purchasers of Residential Units pursuant to the terms of Condominium Sales Agreements for the deposits made by such purchasers thereunder.

**“DBC Agreements”** mean the agreements (including, without limitation, any deposit bonding commitment, deposit trust agreement, or excess deposit insurance terms and conditions letter(s))

entered into or to be entered into between DBC and the Wellington Guarantor in respect of Purchaser Deposits, bonds issued in respect thereof and/or excess deposit insurance.

**“DBC Mortgage”** means the mortgage in a principal amount of no greater than \$22,000,000, granted by the Wellington Guarantor in favour of DBC as collateral security for the obligations of the Wellington Guarantor to DBC pursuant to the DBC Agreements, registered against title to the Project Lands.

**“Debt”** means, with respect to any Person, all obligations that, in accordance with GAAP, would then be classified as a liability of such Person, and, without duplication, includes, with respect to such Person,

- (i) an obligation in respect of borrowed money or for the deferred purchase price of Property or services or an obligation that is evidenced by a note, bond, debenture or any other similar instrument;
- (ii) a transfer with an obligation to repurchase, to the extent of the liability of such Person with respect thereto;
- (iii) an obligation under a Capital Lease;
- (iv) an obligation under a residual value guarantee made with respect to an operating lease in which such Person is the lessee;
- (v) a reimbursement obligation or other obligation in connection with a bankers’ acceptance or any similar instrument, or letter of credit or letter of guarantee issued by or for the account of such Person; or
- (vi) the aggregate amount at which any shares of such Person that are redeemable or retractable at the option of the holder of such shares (except where the holder is such Person) may be redeemed or retracted prior to the Maturity Date for cash or obligations constituting Debt or any combination thereof;

provided, however, that there will not be included for the purpose of this definition any obligation that is on account of (A) reserves for deferred income taxes or general contingencies, (B) trade accounts payable and accrued liabilities (including contract loans and income taxes payable) incurred in the ordinary course of business, or (C) Purchaser Deposits or deposits made by tenants.

**“Debtor Relief Law”** means any of the *Companies’ Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada), the *Winding-up and Restructuring Act* (Canada), and any similar federal, provincial, state or foreign law for or in respect of the relief of debtors, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, arrangement, receivership, insolvency, reorganization or similar laws of Canada or other applicable jurisdictions from time to time in effect and any similar federal, provincial, state or foreign law for the relief of debtors affecting the rights of creditors generally.

**“Declaration”** means the declaration or declarations which, together with the description, shall be registered under the Condominium Act and will subject the Project or portion(s) thereof to the provisions of the Condominium Act, and all amendments to such declaration or declarations.

**“Default”** means any event or condition that would constitute an Event of Default except for satisfaction of any condition subsequent required to make the event or condition an Event of Default, including giving of any notice, passage of time, or both.

**“Deferred Costs”** means Budgeted Project Costs which are projected to be incurred upon or after the closing of Unit sales but, for greater clarity, to the extent such costs are to be paid by a purchaser of a Unit under a Condominium Sales Agreement on the closing thereof, such costs shall be excluded from such calculation.

**“Development and Management Fee”** means the fees paid to the Project Manager pursuant to the Project Management Agreement, being 5% of all Hard Costs and Soft Costs, excluding land cost, interest payable under the Loan, the Construction Loan or any other Debt.

**“Disposition”** means, with respect to a Person, any sale, assignment, transfer, conveyance, lease, licence or other disposition of any nature or kind whatsoever of any Property or of any right, title or interest in or to any Property or of any Share or of any right, title or interest in or to any Share, and the verb **“Dispose”** has a corresponding meaning.

**“Distribution”** means (i) any payment (other than on account of fees earned by Consultants, Contractors, or the Project Manager as contemplated in the Project Budget), declaration of dividend or other distribution, whether in cash or Property, to any holder of shares of any class of such Person, or (ii) any repurchase, redemption, retraction or other retirement or purchase for cancellation of shares of such Person, or of any options, warrants or other rights to acquire any of such shares.

**“Encumbrance”** means, with respect to any Person, any mortgage, debenture, pledge, hypothec, lien, charge, assignment by way of security, hypothecation or security interest granted or permitted by such Person or arising by operation of law, in respect of any of such Person’s Property, or any consignment by way of security or Capital Lease of Property by such Person as consignee or lessee, as the case may be, or any other security agreement, trust or arrangement having the effect of security for the payment of any debt, liability or other obligation, and **“Encumbrances”**, **“Encumbrancer”**, **“Encumber”** and **“Encumbered”** have corresponding meanings.

**“Environmental Indemnity”** means the environmental indemnity given by the Borrower and the Guarantors in favour of the Lender in a form acceptable to the Lender and the Borrower.

**“Environmental Law”** means any Applicable Law relating to the environment, including those pertaining to:

- (i) reporting, licensing, permitting, investigating, remediating and cleaning up in connection with any presence or Release, or the threat of the same, of Hazardous Substances, and



- (ii) the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling and the like of Hazardous Substances, including those pertaining to occupational health and safety.

**“Equity Interests”** means, with respect to any Person, shares of capital stock of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or other acquisition from such Person of such shares (or such other interests), and other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or non-voting, and whether or not such shares, warrants, options, rights or other interests are authorized or otherwise existing on any date of determination.

**“Event of Default”** has the meaning set out in Section 10.01.

**“FarmCo”** means 2659100 Ontario Inc.

**“FarmCo Shares”** means all of the issued and outstanding shares of FarmCo.

**“Financial Assistance”** means, without duplication and with respect to any Person, all loans granted by that Person and guarantees or Contingent Obligations incurred by that Person for the purpose of or having the effect of providing financial assistance to another Person or Persons, including letters of guarantee, letters of credit, legally binding comfort letters or indemnities issued in connection therewith, endorsements of bills of exchange (other than for collection or deposit in the ordinary course of business), obligations to purchase assets regardless of the delivery or non-delivery thereof and obligations to make advances or otherwise provide financial assistance to any other Person.

**“Force Majeure”** means any of the following events which prevents or materially impairs the Construction or operation of the Project and is not caused by and is beyond the reasonable control of the Borrower or the Wellington Guarantor: acts of God, floods, earthquakes, tidal waves, hurricanes, windstorms, severe weather conditions, lightning, fire, wars (whether declared or not), riots, insurrections, rebellions, acts of terrorism, civil commotions, sabotage, partial or entire failure of utilities, strikes, walkouts or other labour disruptions, accidents, shortages of and inability to procure labour, materials and supplies (after all commercially reasonable efforts have been made by the Borrower or the Wellington Guarantor to obtain replacement for such labour, materials and supplies) or orders, legislation, regulations and directives of any Governmental Authorities. For greater certainty, lack of funds, the state of the market or any wilful or negligent act or omission on the part of the Borrower or the Wellington Guarantor does not constitute Force Majeure.

**“GAAP”** means those accounting principles that are from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute (which, for greater clarity includes the IFRS and accounting for private enterprises as set out in Part II of the CPA Canada Handback-Accounting, approved by same from time to time).

**“Governmental Authority”** means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank and including a Minister of the Crown, Superintendent of Financial Institutions or other comparable authority or agency provided that, for the purposes of the Agreement, it shall mean a Governmental Authority with jurisdiction over the Borrower or the Project.

**“Guarantors”** means, collectively, MDI, the Wellington Guarantor and FarmCo.

**“Hard Costs”** means, without duplication, amounts expended or to be expended for work, services or materials done, performed, placed or furnished in connection with Construction, all as more particularly set out in the Project Budget and approved by the Independent Cost Consultant (for greater certainty, Hard Costs shall not include amounts payable pursuant to the terms of the Project Management Agreement or the Consultant Contracts or the costs of acquiring the Project Lands).

**“Hazardous Substance”** means any substance or material that is prohibited, controlled or regulated by any Governmental Authority pursuant to Environmental Law, including pollutants, contaminants, dangerous goods or substances, toxic or hazardous substances or materials, wastes (including solid non-hazardous wastes and subject wastes), petroleum and its derivatives and by-products and other hydrocarbons, all as defined in or pursuant to any Environmental Law.

**“Hedge Arrangement”** means any currency swap, rate swap, currency exchange or rate cap, rate floor, rate collar, forward rate agreement, option, spot, spot deferred, fixed forward, floating lease rate forward, futures or other rate protection or similar agreement, arrangement or option with respect to any such transaction (or any combination of the foregoing, or any derivative thereof) and all other agreements or arrangements designed to protect the Borrower or any Guarantor against fluctuations in interest rates or currency rates.

**“Holdback”** means any amount required to be retained by or on behalf of the Borrower or the Wellington Guarantor in respect of the value of work, services and materials actually done, performed, placed or furnished on or in the Project in accordance with the Construction Act.

**“HST”** means the harmonized sales tax under the *Excise Tax Act* (Canada).

**“Indemnified Taxes”** means Taxes.

**“Indemnitee”** has the meaning set out in Section 12.02(2).

**“Independent Cost Consultant”** means the independent cost consultant appointed by the Construction Lender, who shall be Altus Group Limited, or such other replacement consultant appointed by the Construction Lender from time to time, so long as the Construction Loan is outstanding and otherwise, Altus Group Limited or such other replacement consultant appointed by the Lender.

**“Investment”** means, (x) with respect to any Person, any acquisition or investment (whether or not of a controlling interest) by such Person, by means of any of the following: (a) the purchase or

other acquisition of any Equity Interest in another Person, (b) a loan, advance or extension of credit to, capital contribution to, guarantee of Debt of, or purchase or other acquisition of any Debt of, another Person, including any partnership or joint venture interest in such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute the business or a division or operating unit of another Person and (y) with respect to any property or other asset, the acquisition thereof. Any unconditional binding commitment (other than ordinary course closing conditions) to make an Investment in any other Person, as well as any option of another Person to require an Investment in such Person, shall constitute an Investment.

**“Lease”** means any lease, sublease, agreement to lease, offer to lease, licence or right of occupation granted from time to time, by or on behalf of the Borrower entitling the lessee, sublessee or grantee thereunder to use or occupy all or any part of the Project.

**“Lender’s Counsel”** means the firm of Osler, Hoskin & Harcourt LLP or such other firm of legal counsel as the Lender may from time to time designate.

**“Loan”** means the loan provided hereunder.

**“Loan Documents”** means (a) this Agreement, (b) the Security, and (c) all present and future agreements, documents, certificates and instruments delivered by the Borrower or the Guarantors to the Lender pursuant to or in respect of this Agreement or the Security, in each case as the same may from time to time be amended, and **“Loan Document”** means any one of the Loan Documents.

**“Material Adverse Change”** means any event or occurrence which, when considered individually or together with other events or occurrences, has a material adverse effect on (i) the business, assets, liabilities, operations, results of operations, condition (financial or other) or prospects of the Borrower, any of the Guarantors and/or the Project, (ii) the Construction and/or operation of the Project, or (iii) the ability of the Borrower or any of the Guarantors to perform the Obligations in all material respects. For greater certainty, a Material Adverse Change does not include a change in general economic conditions unless same in turn causes any of the foregoing events. In addition, an increase in density in the Project does not constitute a Material Adverse Change.

**“Material Licences”** means all licences, permits or approvals issued by any Governmental Authority, to the Borrower or the Wellington Guarantor and which are at any time on or after the date of this Agreement, necessary or material to the business and operations of the Project (including the Construction of the Project), the breach or default of which would result in a Material Adverse Change, other than those not required or able to be obtained until a later stage of Construction or until Substantial Completion of the Project, provided those not obtained may be reasonably expected to be received in the ordinary course of business prior to the date when required to complete the transactions provided for in the Material Project Agreements and to construct and operate the Project.

**“Material Project Agreements”** means the following agreements (and if same has not yet been executed, once such agreements are executed and in full force and effect):

- (i) the Project Management Agreement;

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- (ii) all Consultant Contracts that provide for aggregate payments thereunder in excess of \$100,000;
- (iii) all Construction Contracts or subcontracts that provide for aggregate payments in excess of \$500,000;
- (iv) each other operating contract with respect to the Project having a term more than one year and which contemplates payments in excess of \$100,000 per annum;
- (v) any shared facilities and/or reciprocal easement agreements in respect of the Project;
- (vi) any Performance and Payment Bonds; and
- (vii) the Plans and Specifications and all planning approvals, permits, licences, development agreements, and other material contracts with respect to the Project designated as Material Project Agreements by the Lender from time to time, provided that the Lender has notified the Borrower of such designation,

and **“Material Project Agreement”** means any one of the Material Project Agreements.

**“Maturity Date”** the date that is thirty-six (36) months from the date of the advance of the Loan.

**“MDI”** means Mizrahi Developments Inc.

**“MDI Shares”** means all of the issued and outstanding shares of MDI.

**“Obligations”** means all obligations of the Borrower and the Guarantors to the Lender under or in connection with this Agreement or the other Loan Documents, including all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower or any Guarantor to the Lender in any currency or remaining unpaid by the Borrower or any Guarantor to the Lender under or in connection with this Agreement or the other Loan Documents whether arising from dealings between the Lender and the Borrower or any Guarantor or from any other dealings or proceedings by which the Lender may be or become in any manner whatsoever a creditor or obligee of the Borrower or any Guarantor pursuant to this Agreement or the other Loan Documents, and wherever incurred, and whether incurred by the Borrower or any Guarantor alone or with another or others and whether as principal or surety, and all interest, fees, legal and other costs, charges and expenses relating thereto.

**“Organizational Documents”** means, with respect to any Person, such Person’s articles, memorandum or other charter documents, partnership agreement, joint venture agreement, declaration of trust, trust agreement, by-laws, unanimous shareholder agreement, or any and all other similar agreements, documents and instruments pursuant to which such Person is constituted, organized or governed.

**“Other Taxes”** means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under any other Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or any other Loan Document.

**“Palm Beach Lender”** means FBC Mortgage, LLC Oculina Bank

**“Palm Beach Loan”** means the first ranking construction loan of the Palm Beach Project from the Palm Beach Lender

**“Palm Beach Project”** means the construction of a residential home located at 168 Seabreeze Avenue, Palm Beach, Florida for the personal use of the Borrower and his family.

**“Performance and Payment Bonds”** means if applicable labour and material or performance bonds issued by a surety acceptable to the Lender relating to all or a portion of the Construction, such bonds to be in customary form typically utilized within the construction industry and otherwise acceptable to the Lender (which bonds shall contain dual obligee riders in favour of the Lender) and in such amount as may be required hereunder.

**“Permitted Encumbrances”** means, with respect to any Person, the following:

- (i) liens for Taxes, rates, assessments or other governmental charges or levies not yet due, or for which instalments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person, provided that, if the aggregate amount being contested is in excess of \$50,000, the Borrower shall, upon the request of the Lender, deposit with the Lender collateral satisfactory to the Lender to secure the payment of such Taxes and assessments;
- (ii) undetermined or inchoate liens, rights of distress and charges incidental to construction, maintenance or current operations that have not at such time been filed or exercised and of which the Lender has not been given notice, or that relate to obligations not due or payable, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;
- (iii) reservations, limitations, provisos and conditions expressed in any original grant from the Crown or other grants of real or immovable property, or interests therein, that do not materially affect the use of the affected land for the purpose for which it is used by that Person;
- (iv) permits, reservations, covenants, servitudes, right of access or user licenses, easements, rights of way and rights in the nature of easements (including, without limitation, licenses, easements, rights of way and rights in the nature of easements for railways, sidewalks, public ways, public transit, sewers, drains, gas and oil pipelines, steam and water mains or electric light and power, or telephone, telecommunication, television and telegraph conduits, poles, wires and cables) that do not materially impair the use of the affected land for the purpose for which it is used by that Person, or in respect of which satisfactory arrangements have been made for relocation so that such use will not, in the aggregate, be materially and adversely impaired, or which that Person is bound to enter into pursuant to any agreement with a Governmental Authority or a counterparty to a Material Project Agreement entered into in connection with the development of the Project;

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- (v) title defects, irregularities or other matters relating to title that are of a minor nature and that in the aggregate do not materially impair the use of the affected property for the purpose for which it is used by that Person;
- (vi) the right reserved to or vested in any Governmental Authority by the terms of any lease, licence, franchise, grant or permit acquired by that Person or by any statutory provision to terminate any such lease, licence, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (vii) the Encumbrance resulting from the deposit of cash or securities in connection with contracts, tenders or expropriation proceedings, or to secure workers' compensation, employment insurance, surety or appeal bonds, costs of litigation when required by law, liens and claims incidental to current construction, mechanics', warehousemen's, carriers' and other similar liens, and public, statutory and other like obligations incurred in the ordinary course of business;
- (viii) security given to a public utility or any Governmental Authority when required by such utility or authority in connection with the operations of that Person in the ordinary course of its business;
- (ix) the Security;
- (x) encroachments by the Project or structures thereon over neighbouring lands (including public streets) and minor encroachments by neighbouring lands or structures thereon over the Project Lands, so long as, in the former case, there are written agreements permitting such encroachments;
- (xi) subdivision, development, servicing and site plan agreements, undertakings and agreements made pursuant to applicable planning and development legislation, entered into with or made in favour of any Governmental Authority, or public or private utility relating to the Project Lands;
- (xii) all municipal by-laws and regulations and other municipal land use instruments, including, without limitation, official plans, zoning and building by-laws, restrictive covenants and other land use limitations, public or private, and other restrictions as to the use of the Project Lands (in the case of restrictive covenants, other land use limitations or other restrictions, provided same are acceptable to the Lender, acting reasonably);
- (xiii) in respect of the Project, the DBC Mortgage and/or any other security required by DBC, customarily required by a deposit insurance company for a project similar to the Project and subject to the approval of the Lender, acting reasonably;
- (xiv) in respect of the Project, the security securing the Construction Loan;
- (xv) security interests that secure purchase money security interests related to the Project;
- (xvi) in respect of the Palm Beach Project, the loan in the principal amount of \$4,475,000 in favour of FBC Mortgage, LLC Oculina Bank; and

(xvii) such other Encumbrances not otherwise contemplated in this definition as are agreed to in writing by the Lender.

**“Person”** means any natural person, corporation, limited liability company, unlimited liability company, trust, joint venture, association, company, partnership, Governmental Authority, or other entity.

**“Plans and Specifications”** means the plans and specifications pertaining to the development and construction of the Project prepared by or at the direction of the Borrower and as approved by the Lender and the Independent Cost Consultant, as amended from time to time pursuant to this Agreement.

**“Prepayment Premium”** means a fee equal to the greater of (i) three months’ interest on the principal amount of the Loan then outstanding and (ii) the total of (A) the positive difference, if any, between (x) the present value on the date of such acceleration or prepayment of all future monthly payments which the Borrower would otherwise be required to pay under the Loan up to the Maturity Date and the unpaid principal amount of the Loan which would otherwise be due on the Maturity Date absent such acceleration or prepayment, with such present value being determined by the use of a discount rate equal to the yield to maturity, on the date of such acceleration or prepayment of Government of Canada bonds (the “Bond(s)”) having the term to maturity closest to what otherwise would have been the remainder of the term of the Loan absent such acceleration or prepayment, and (y) the principal amount of the Loan outstanding on the date of such acceleration or prepayment and (B) without duplication, all costs, losses and expenses that the Lender may incur due to such acceleration or prepayment.

**“Project”** means the Project Lands, the Residential Tower, the Retail Space, an underground parking garage, and all other improvements, landscaping and interior decoration, plants, machinery, improvements and equipment and all other property whether free-standing or otherwise, auxiliary or ancillary thereto or connected therewith or added thereto, to be constructed on, above or under the surface of the Project Lands, in each case in respect of which the Wellington Guarantor has an ownership interest in accordance with the Plans and Specifications and in accordance with the Project Budget. The Project is to be marketed as “1451 Wellington – The Residences at Island Park Drive”.

**“Project Account”** means the account with The Toronto-Dominion Bank.

**“Project Budget”** means the budget of all Project Costs of approximately \$95,155,523.00 which has specified a line by line itemization of Project Costs, including Contingency Amounts and a detailed schedule of Deferred Costs, as prepared by the Borrower and approved by the Lender prior to the advance of the Loan and by the Independent Cost Consultant, as amended from time to time subject to the requirements of Section 7.03(9).

**“Project Cash Flow”** means the amount equal to Project Gross Revenues received less Project Costs paid and the principal amount outstanding of the Loan.

**“Project Costs”** means the aggregate of the acquisition costs of the Project Lands, the Development and Management Fee, all Hard Costs and all Soft Costs expended in accordance with the Plans and Specifications and Construction Schedule, in each case excluding all Taxes.

**“Project Equity”** means, at any time and from time to time, the cash equity of the Borrower in the Project.

**“Project Gross Revenues”** means all pre-Tax revenue derived from the sale of all Units, including parking units, or any other part of the Project less any amounts paid as commissions, as approved by the Lender or set out in the approved Project Budget, or any other Project cash flow received (including insurance proceeds, financing proceeds, and expropriation proceeds), such amount to be determined by the Lender or the Independent Cost Consultant, provided that Project Gross Revenue shall include the fair market value, as determined by the Borrower and Lender, each acting reasonably, of any unsold Units at the time of any calculation of Project Gross Revenue, including at the Maturity Date.

**“Project Lands”** means the lands and premises located at 1451 Wellington Street West, Ottawa, Ontario and more particularly described in Schedule A hereto.

**“Project Management Agreement”** means the CCDC 2 Agreement dated July 12, 2019 relating to the development and construction of the Project made between *inter alia* the Borrower and the Project Manager, as such agreement may be amended, restated or supplemented as permitted hereunder.

**“Project Manager”** means Mizrahi Inc., and its successors and assigns.

**“Property”** means, with respect to any Person, all or any portion of that Person’s undertaking and property, both real and personal.

**“Purchaser Deposits”** means deposits paid by purchasers of Units under the Condominium Sales Agreements.

**“Related Party”** means, with respect to any Person, such Person’s Affiliates and the directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

**“Release”** means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal.

**“Relevant Jurisdiction”** means, from time to time, with respect to a Person that is granting Security hereunder, any province or territory of Canada, or any other country or political subdivision thereof in which such Person has its chief executive office or chief place of business or has Property that is subject to the Security.

**“Replacement Charge”** has the meaning set out in Section 8.06.

**“Requirements of Environmental Law”** means all requirements of the common law or of statutes, regulations, by-laws, ordinances, treaties, judgments and decrees, and (to the extent that they have the force of law) rules, policies, guidelines, orders, approvals, notices, permits, directives, and the like, of any Governmental Authority in Ontario relating to environmental or occupational health and safety matters (as they relate to exposure to a Hazardous Substance) and



the assets and undertaking of such Person and the intended uses thereof in connection with such matters, including all such requirements relating to: (a) the protection, preservation or remediation of the natural environment (the air, land, surface water or groundwater); (b) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation; (c) consumer, occupational or public safety and health (as they relate to exposure to a Hazardous Substance); and (d) Hazardous Substances or conditions (matters that are prohibited, controlled or otherwise regulated, such as contaminants, pollutants, toxic substances, dangerous goods, wastes, hazardous wastes, liquid industrial wastes, hazardous materials, petroleum and other materials such as urea formaldehyde and polyurethane foam insulation, asbestos or asbestos-containing materials, polychlorinated biphenyls (PCBs) or PCB contaminated fluids or equipment, lead based paint, explosives, radioactive substances, petroleum and associated products, above ground and underground storage tanks or surface impoundments).

**“Requirements of Law”** means, with respect to any Person, the Organizational Documents of such Person and any Applicable Law or any determination of a Governmental Authority, in each case applicable to or binding upon such Person or any of its business or Property or to which such Person or any of its business or Property is subject.

**“Residential Tower”** means the residential component of the Project, which, in accordance with the Plans and Specifications, is to consist of a twelve storey tower comprising a total of approximately 93 Residential Units (together with the parking stalls and lockers located in the underground parking garage of the Project allocated for the Residential Units) together with other common areas.

**“Residential Unit”** means a “unit” (as defined in the Condominium Act) comprising part of the Residential Tower, together with the common and exclusive use interests appurtenant thereto.

**“Retail Space”** means the retail units comprised of approximately 6,000 (and no greater than 10,000) square feet of net rentable area of retail premises to be erected on the Project Lands as part of the Project.

**“Security”** means the documents creating an Encumbrance in favour of, or any collateral held from time to time by, the Lender, in each case securing or intended to secure repayment of the Obligations, including all security described in Article 8.

**“Shareholder’s Equity”** means, on any date, in respect of MDI, the aggregate amount of shareholder’s equity, as shown on MDI’s most recent consolidated balance sheet at such time, calculated in accordance with GAAP.

**“Shareholders Agreement”** means the amended and restated unanimous shareholders’ agreement dated January, 2019 of TerraFarma Inc.

**“Shares”** means the FarmCo Shares and the MDI Shares.

**“Single Purpose Entity”** means, in respect of the Wellington Guarantor, that the Wellington Guarantor (i) does not engage in any business activity other than acquiring, developing, constructing, owning, holding, selling, leasing, transferring, exchanging, managing and operating the Project, entering into this Agreement and the other Loan Documents, and transacting lawful

business that is incidental, necessary and appropriate to accomplish the foregoing or contemplated herein, and (ii) does not incur any Debt other than that related to the Loan, the Construction Loan, or the DBC Agreements and does not incur any Contingent Obligations, and, in respect of FarmCo, that FarmCo (i) does not engage in any business activity other than as shareholder of TerraFarma Inc., and (ii) does not incur any Debt other than in the ordinary course of business and not secured on any assets of FarmCo (including the Terra Shares).

**“Soft Costs”** means, without duplication, all amounts expended or to be expended in respect of the Project for consultants, architects, taxes, surveys, construction insurance, bonding costs, legal fees, accounting fees, promotion of the Project, financing, leasing, pre-operating costs and all other costs related to the Project except Hard Costs and the cost of acquiring the Project Lands and being those costs more particularly set out in the Project Budget and approved by the Independent Cost Consultant and the Lender (for greater certainty, Soft Costs includes, without limitation, amounts payable pursuant to the terms of the Project Management Agreement and the Consultant Contracts).

**“Sole and Absolute Discretion”** means in the sole, absolute, and unfettered discretion of the relevant Person, which discretion may be exercised unreasonably.

**“Standard Form Residential Sales Agreement”** means the standard form agreement of purchase and sale which are already being utilized in respect of the sale of the Residential Units, and which have been prepared by the Wellington Guarantor.

**“Subsidiary”** means, at any time, with respect to any Person, any other Person, if at such time the first mentioned Person (i) owns, directly or indirectly, securities or other ownership interests in such other Person, having ordinary voting power to elect a majority of the board of directors or persons performing similar functions for such other Person, and (ii) directly or indirectly, through the operation of any agreement or otherwise, the ability to elect or cause the election of a majority of the board of directors or other persons performing similar functions for such other Person or otherwise exercise control over the management and policies of such other Person, and in either case will include any other Person in like relationship to a Subsidiary of such first mentioned Person.

**“Substantial Completion”** means the date on which a Certificate of Substantial Completion is delivered in respect of a portion of the Project.

**“Tarion”** means Tarion Warranty Corporation, its successors and assigns.

**“Tarion Home Warranty Program”** means the applicable warranty program operated by Tarion relating to purchasers of the Residential Units.

**“Taxes”** means all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

**“Terra Shares”** means all of the issued and outstanding shares of TerraFarma Inc. owned by FarmCo or its Affiliates or any Affiliate of the Borrower.

“Units” means the Residential Units and “Unit” means any such unit as the context requires.

“Wellington Guarantor” means Mizrahi Development Group (1451 Wellington) Inc.

1.02            **Extended Meanings**

In this Agreement words importing the singular number include the plural and *vice versa*, and words importing any gender include all genders. The term “including” means “including without limiting the generality of the foregoing” and the term “third party” means any Person other than a Person who is a party to this Agreement.

1.03            **Accounting Principles**

Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other accounting computation is required to be made, for the purpose of this Agreement or any Loan Document, such determination or calculation will, to the extent applicable and except as otherwise specified herein or as otherwise agreed in writing by the parties, be made in accordance with GAAP.

1.04            **Interest Calculations and Payments**

Unless otherwise stated, wherever in this Agreement reference is made to a rate of interest “*per annum*” or a similar expression is used, such interest will be calculated on the basis of a calendar year of 365 days or 366 days, as the case may be, and using the nominal rate method of calculation and not the effective rate method of calculation or on any other basis that gives effect to the principle of deemed reinvestment of interest. Interest will continue to accrue after maturity and default and/or judgment, if any, until payment thereof.

1.05            **Permitted Encumbrances**

The inclusion of reference to Permitted Encumbrances in any Loan Document is not intended to subordinate and will not subordinate, any Encumbrance created by any of the Security to any Permitted Encumbrance.

1.06            **Currency**

Unless otherwise specified in this Agreement, all references to currency (without further description) are to lawful money of Canada.

1.07            **Conflicts**

In the event of a conflict between the provisions of this Agreement and the provisions of any other Loan Document, then, unless such Loan Document or an acknowledgement from the Borrower and the Lender relative to such Loan Document expressly states that this Section 1.07 is not applicable to such Loan Document, notwithstanding anything else contained in such other Loan Document, the provisions of this Agreement will prevail and the provisions of such other Loan Document will be deemed to be amended to the extent necessary to eliminate such conflict.

### 1.08 **Nature of Borrower's Liability**

(1) Nothing in any of the Loan Documents shall mean, nor be construed to mean, that the recourse of the Lender against the Borrower or any Guarantor is anything other than full recourse with regard to their respective obligations hereunder, the manner and order of realization or the exercise of remedies hereunder or, in the case of the Borrower, under the Security.

### 1.09 **Schedules**

The following are the Schedules attached hereto and incorporated by reference and deemed to be part hereof:

Schedule A	-	Project Lands
Schedule B	-	Ownership Structure
Schedule C	-	Compliance Certificate

## **ARTICLE 2 - THE LOAN**

### 2.01 **Loan**

Subject to the terms and conditions of this Agreement, the Lender establishes in favour of the Borrower a term loan (the "Loan") in an amount of Cdn. \$12,900,000, which term loan is non-revolving.

### 2.02 **Purpose of Loan**

The Loan will only be used to fund hard and soft costs relating to construction of the Palm Beach Project.

### 2.03 **Account of Record**

The Lender will open and maintain books of account evidencing the Loan and all other amounts owing by the Borrower to the Lender hereunder. The Lender will enter in the foregoing accounts details of all amounts from time to time owing, paid or repaid by the Borrower hereunder. The information entered in the foregoing accounts will, in the absence of manifest error, constitute prima facie evidence of the obligations of the Borrower to the Lender hereunder.

## **ARTICLE 3 - DISBURSEMENT CONDITIONS**

### 3.01 **Conditions Precedent to Disbursement of Loan**

The obligation of the Lender to make the Loan available to the Borrower is subject to and conditional upon the prior satisfaction of the following conditions precedent:

- (a) the representations and warranties set out in Section 6.01 will be true and correct in all material respects;

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- (b) no Default or Event of Default will have occurred and be continuing, or would result from making the Loan available;
- (c) a Material Adverse Change will not have occurred and be existing;
- (d) the Lender will have received certified copies of the Organizational Documents of the Guarantors, the resolutions authorizing the execution and delivery of, and performance of the Guarantors' respective obligations under, the applicable Loan Documents and the transactions contemplated herein, and a certificate as to the incumbency of the officers of the Guarantors executing the applicable Loan Documents and any other documents to be provided pursuant to the provisions hereof;
- (e) certificates of status of the Guarantors will have been delivered to the Lender;
- (f) the Lender will have completed their due diligence with respect to the Borrower, the Guarantors, the Palm Beach Project, and the Project, and will have received all financial, corporate and other information requested by the Lender, including receipt and review of:
  - (i) the most recent financial statements of the Guarantors and net worth statement of the Borrower;
  - (ii) all Material Project Agreements;
  - (iii) all Permitted Encumbrances;
  - (iv) a Phase I environmental report and a Phase II environmental report if required by the Phase I environmental report for the Project and, if available, the Palm Beach Project;
  - (v) an appraisal of the Project and, if available, the Palm Beach Project;
  - (vi) the Project Budget, the Plans and Specifications, and the Construction Schedule;
  - (vii) the Construction Loan and related security;
  - (viii) all existing or draft Condominium Documents, which shall include the Disclosure Statement;
  - (ix) the DBC Agreements and the DBC Mortgage, if available;
  - (x) the Tarion bond with respect to Purchaser Deposits (which bond shall act as confirmation that the Project is registered and in good standing with the Tarion Home Warranty Program);
  - (xi) the Project Management Agreement;

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- (xii) all existing Condominium Sales Agreements;
- (xiii) all subdivision, servicing, development, site plan and similar agreements with Governmental Authorities that are required to be in place from time to time during each stage of the Construction of the Project in order to ensure the completion or delivery of possession of the Project;
- (xiv) any other documents related to the Project that the Lender deems necessary, including, without limitation, pro-forma offer to purchase documentation, purchaser directed upgrades, permits, and development and zoning approvals;
- (xv) the Shareholders Agreement;
- (xvi) title to the Palm Beach Project;
- (xvii) title to the Project Lands;

and the results of such due diligence will be satisfactory to the Lender in its Sole and Absolute Discretion;

- (g) the Lender will have received and be satisfied with copies of all reports from the Independent Cost Consultant (with appropriate backup certificates and reports from other Consultants as required) satisfactory to the Lender, acting reasonably:
  - (i) confirming that it has reviewed and is satisfied with the Project Budget (including confirmation of interest on deposits, Contingency Amounts, and revisions made to the Project Budget), the Plans and Specifications and the Construction Schedule and that the Project can be completed in accordance with same;
  - (ii) containing a projected cash flow estimate for the Construction (including occupancy income) and confirming the amount and nature of any Project Gross Revenue received by the Borrower
  - (iii) confirming that all necessary zoning and development approvals, including all necessary permits, have been obtained;
  - (iv) certifying the amount of Hard Costs and Soft Costs incurred on the Project to date on a line by line basis and identifying whether such costs have been incurred in accordance with the Project Budget or are Cost Overruns;
  - (v) estimating the Cost to Complete on a line by line basis;
  - (vi) confirming that any Cost Overruns that have been incurred on the Project have been funded in their entirety by the Borrower;

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- (vii) confirming that the Borrower has made all required Holdbacks with respect to the Construction completed to date and containing its recommendation on Holdback release (if any);
  - (viii) confirming that fixed price Construction Contracts, firm quotes, or binding letters of intent have been entered into with or provided by the relevant contractor or subcontractor representing not less than, in the aggregate, 65% of Hard Costs (net of contingencies and general conditions and inclusive of all major contracts, including structural, mechanical, electrical, forming and concrete), such Construction Contracts to be in form and content acceptable to the Independent Cost Consultant;
  - (ix) confirming that all Construction to date has been completed in all material respects in accordance with the Plans and Specifications and complies with Applicable Laws;
  - (x) confirming that it has received and satisfactorily reviewed copies of all existing Condominium Sales Agreements and including a schedule of presales, including purchaser name and address, unit number of the Unit being acquired, HST payable on such Unit, Unit model, square footage, asking price, sale price, Purchaser Deposit status (including location of Purchaser Deposit with DBC's trust account holder, amount paid to date, amount and timing of Purchaser Deposit yet to be paid, Purchaser Deposits released to the Borrower in respect of the Construction, and portion of Purchaser Deposit relating to purchaser upgrades), mortgage financing, CMHC insurance (if applicable), closing date and any special conditions;
  - (xi) confirming that the aggregate of the projected Project Gross Revenue under the then existing Condominium Sales Agreements is not less than \$56,135,045;
  - (xii) confirming that Purchaser Deposits in an aggregate amount of not less than \$11,960,346.00 have been contracted for under Condominium Sales Agreements; and
  - (xiii) confirming that not less than \$9,966,947.50 of Purchaser Deposits have been received by the Borrower and deposited to the trust account of the DBC;
- (h) the Lender will have received and be satisfied with the terms of a binding commitment letter issued to the Wellington Guarantor from the Construction Lender in respect of the Construction Loan, the security for the Construction Loan will be in place, and the initial advance under the Construction Loan shall have occurred or, subject to Section 10.01(t), will be scheduled to occur imminently;
- (i) the Lender will have received and be satisfied with all Governmental Authority, shareholder, and third party consents and other approvals, if any, required in

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connection with the Loan and in order for the Borrower to enter into this Agreement and the other Loan Documents and to perform its obligations hereunder and thereunder;

- (j) duly executed copies of the Security and all other Loan Documents and deliveries in connection therewith will have been delivered to the Lender;
- (k) a currently dated letter of opinion of Borrower's counsel as to such matters (including due authorization, execution, delivery, and enforceability in respect of the Borrower and Guarantors and subject to customary assumptions and qualifications) and in such form as Lender's Counsel may agree, acting reasonably, addressed to the Lender and to Lender's Counsel will have been delivered to the Lender;
- (l) the Lender shall have received all other reports and deliveries required hereunder for the period prior to the advance of the Loan;
- (m) the Lender will have received from the Borrower and the Guarantors all required identification and other due diligence materials required to allow the Lender to comply with its obligations under all applicable anti-money laundering and anti-terrorism laws and regulations to which the Lender may be subject (including, without limitation, the AMLA);
- (n) the Lender will have received payment of all out-of-pocket fees and expenses (including the fees and disbursements of the Lender's Counsel) payable to the Lender that are due and payable at such time incurred in respect of the preparation and negotiation of the Loan Documents, any diligence costs or closing costs in respect of the Loan; and
- (o) the advance of the Loan shall have occurred on or before October 31, 2019 or such later date agreed to by the Lender,

and further provided that all documents delivered pursuant to this Section 3.01 must be in full force and effect, and in form and substance satisfactory to the Lender, acting reasonably.

### 3.02 Waiver

The conditions set forth in Sections 3.01 are inserted for the sole benefit of the Lender and may be waived by the Lender, in whole or in part (with or without terms or conditions). Upon the Lender advancing any part of the Loan, all disbursement conditions contained in Section 3.01, shall be deemed to have been waived by the Lender



#### **ARTICLE 4 - PAYMENTS OF INTEREST AND FEES**

##### **4.01 Interest**

(1) The Borrower will pay interest on the Loan at a rate of ten percent (10%) per annum, compounded annually, and payable monthly in arrears on the first day of each calendar month.

(2) Any amount of principal of, or interest on, the Loan which is not paid when due (whether at the stated Maturity Date, by acceleration or otherwise) shall be payable on demand and shall bear interest (both before and after judgment), from the date on which such amount is due until such amount is paid in full, at a rate per annum equal to sixteen percent (16%) per annum, compounded annually, to the extent permitted by law.

##### **4.02 Maximum Rate of Interest**

Notwithstanding anything contained herein to the contrary, the Borrower will not be obliged to make any payment of interest or other amounts payable to the Lender hereunder in excess of the amount or rate that would be permitted by Applicable Law or would result in the receipt by the Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)). If the making of any payment by the Borrower would result in a payment being made that is in excess of such amount or rate, the particular Lender will determine the payment or payments that are to be reduced or refunded, as the case may be, so that such result does not occur.

#### **ARTICLE 5- REPAYMENT**

##### **5.01 Mandatory and Voluntary Repayments and Distribution of Project Cash Flow**

(1) The Borrower will repay in full the outstanding principal of the Loan and all Obligations including the unpaid interest (being the accrued interest as of the Maturity Date) on the Maturity Date.

(2) The Borrower may prepay the full outstanding principal of the Loan on not less than five (5) Business Days' notice to the Lender and in a minimum amount of \$1,000,000 provided that, in addition to the full outstanding principal of the Loan, the Borrower shall pay the Lender the greater of (i) all interest accrued and outstanding as at the date of prepayment, and (ii) the Prepayment Premium.

(3) Notwithstanding section 5.01(1), any and all Project Cash Flow available for distribution shall be paid and distributed in the following order of priority:

- (a) payment to the trades of amounts owing under the Construction Contracts in accordance with the Project Budget;
- (b) payment to the Construction Lender of mandatory payments of accrued and unpaid interest and outstanding principal and other unpaid expenses under the Construction Loan;

- (c) payment to the Lender of accrued and unpaid interest and other unpaid expenses and outstanding principal under the Loan in accordance with this Agreement and for greater certainty, any such repayment shall not be subject to payment of a Prepayment Premium;
- (d) payment to the Borrower of the remaining Project Cash Flow.

5.02 **Place of Payment of Principal, Interest and Fees**

All payments of principal, interest, fees and other amounts to be made by the Borrower to the Lender pursuant to this Agreement will be made by deposit or transfer thereof to the account of the Lender at such other place as the Borrower and the Lender may from time to time agree.

**ARTICLE 6- REPRESENTATIONS AND WARRANTIES**

6.01 **Representations and Warranties**

Each of the Borrower and the Guarantors represents and warrants to the Lender and acknowledges and confirms that the Lender is relying upon such representations and warranties:

(1) **Existence and Qualification** Each Guarantor (a) has been duly incorporated, amalgamated or continued, as the case may be, and is validly subsisting as a corporation under the laws of its jurisdiction of incorporation, amalgamation, or continuance, as the case may be, and (b) is duly qualified to carry on business in all jurisdictions in which it carries on its business and has all Material Licences required to conduct such business, except to the extent that failure to be so duly qualified or to have such Material Licences would not reasonably be expected to cause a Material Adverse Change.

(2) **Power and Authority** Each Guarantor has the power, authority and right (a) to enter into and deliver, and to exercise its rights and perform its obligations under, the Loan Documents and all other instruments and agreements delivered by it pursuant to any of the Loan Documents, and (b) to own its Property and carry on its business as currently conducted and as currently proposed to be conducted by it.

(3) **Execution, Delivery, Performance and Enforceability of Loan Documents** The execution, delivery and performance of each of the Loan Documents, and every other instrument or agreement delivered by it pursuant to any Loan Document, has been duly authorized by all actions, if any, required on its part and by its shareholders and directors (or where applicable partners, members or managers), and each of such documents has been duly executed and delivered and constitutes a valid and legally binding obligation of the Borrower and the Guarantors enforceable against it in accordance with its terms subject to bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium and other similar laws of general application limiting the enforcement of creditors' rights generally and to general equitable principles.

(4) Loan Documents Comply with Applicable Laws, Organizational Documents and Contractual Obligations Neither the entering into nor the delivery of, and neither the consummation of the transactions contemplated in nor compliance with the terms, conditions and provisions of, the Loan Documents by the Borrower or the Guarantors conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under or contravention of, any Requirements of Law applicable to it or any of its Organizational Documents, or results or will result in the creation or imposition of any Encumbrance on the Project Lands or any personal property of the Borrower or the Guarantors, other than Permitted Encumbrances and Encumbrances in favour of the Lender or on the Shares other than Encumbrances in favour of the Lender.

(5) Consents Respecting Loan Documents Other than any consents that may be required from the Construction Lender and that may be required from the Board in connection with the pledge of the FarmCo Shares, the Borrower has obtained, made or taken all consents, approvals, authorizations, declarations, registrations, filings, notices and other actions whatsoever required as to the date hereof in connection with the execution and delivery by it of each of the Loan Documents and the consummation of the transactions contemplated in the Loan Documents.

(6) Taxes The Borrower has paid or made adequate provision for the payment of all Taxes levied on it or on its Property (including, in the case of the Borrower, the Palm Beach Project and in the case of the Wellington Guarantor, the Project) or income that are due and payable, including interest and penalties, or has accrued such amounts in its financial statements for the payment of such Taxes, except Taxes that are not material in amount or that are not delinquent (or if delinquent are being contested in good faith, and in respect of which non-payment would not individually or in the aggregate constitute, or be reasonably likely to cause, a Material Adverse Change, and so long as the Lender is satisfied that its Security is not in jeopardy), and there is no material action, suit, proceeding, investigation, audit or claim now pending, or to its knowledge threatened, by any Governmental Authority regarding any Taxes that is reasonably likely to cause a Material Adverse Change nor has it agreed to waive or extend any statute of limitations with respect to the payment or collection of Taxes.

(7) Judgments, Etc. The Borrower and each Guarantor is not subject to any judgment, order, writ, injunction, decree or award, or to any restriction, rule or regulation (other than customary or ordinary course restrictions, rules and regulations consistent or similar with those imposed on other Persons engaged in similar businesses) that has not been stayed or of which enforcement has not been suspended and that individually or in the aggregate constitutes, or is reasonably likely to cause, a Material Adverse Change.

(8) Absence of Litigation There are no actions, suits or proceedings pending or, to the best of the Borrower's knowledge after due inquiry and all reasonable investigation, threatened against or affecting the Borrower or any Guarantor that are reasonably likely to cause, either separately or in the aggregate, a Material Adverse Change. The Borrower and each Guarantor is not in default with respect to any Applicable Law in a manner or to an extent that could reasonably be expected to cause a Material Adverse Change.

(9) Title to Project and Palm Beach Project The Wellington Guarantor is the registered and beneficial owner of the Project with good and marketable title thereto, and any other real and

personal property of any nature which is part of the Project, in each case free and clear of all Encumbrances except Permitted Encumbrances; no Person has any agreement or right to acquire an interest in the Project. The Borrower and his wife are the registered and beneficial owners of the Palm Beach Project with good and marketable title thereto, and any other real and personal property of any nature which is part of the Palm Beach Project, in each case free and clear of all Encumbrances except Permitted Encumbrances; no Person has any agreement or right to acquire an interest in the Palm Beach Project.

(10) Labour Relations The Borrower and each Guarantor is not engaged in any unfair labour practice that could reasonably be expected to cause a Material Adverse Change; and there is no unfair labour practice complaint pending against the Borrower or, to the best of its knowledge after due inquiry, threatened against it, before any Governmental Authority that if adversely determined could reasonably be expected to cause a Material Adverse Change. No grievance or arbitration arising out of or under any collective bargaining agreement is pending against the Borrower or any Guarantor or to the best of the Borrower's knowledge after due inquiry, threatened against any of them that is reasonably likely to cause a Material Adverse Change.

(11) Compliance with Laws The Borrower and each Guarantor has not failed to comply with any Applicable Law except to the extent any such non-compliance could not reasonably be expected to cause a Material Adverse Change. The Project is in compliance in all material respects with all Applicable Law, including, without limitation, all Environmental Law, except as disclosed to and accepted by the Lender. Further, there are no facts known or which ought reasonably to be known, in either case after due enquiry, by the Borrower or any Guarantor, which could give rise to a notice of material non-compliance to such extent with any Applicable Law.

(12) Changes to Applicable Law To the knowledge of the Borrower, there are no pending or proposed changes to Applicable Law which would render illegal or materially restrict the Construction or operation of the Project.

(13) No Default Except for any consent from the Construction Lender that may be required in connection with the execution and delivery by the Obligors of each of the Loan Documents and the consummation of the transactions contemplated in the Loan Documents and from the Board in connection with the pledge of the FarmCo Shares, no Default or Event of Default has occurred and is continuing and the Borrower and each Guarantor is not in default under any agreement, guarantee, indenture or instrument to which it is a party or by which it is bound, the breach of which could reasonably be expected to cause a Material Adverse Change.

(14) Ownership Structure The ownership structure of each Guarantor is as set out in Schedule B.

(15) Relevant Jurisdictions The Relevant Jurisdictions for the Guarantors is Ontario.

(16) Security The Security, once registered, is effective to create in favour of the Lender as security for the Obligations described therein, a legal, valid, binding and enforceable security interest in the collateral described therein and proceeds thereof.

(17) Material Project Agreements and Material Licences

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- (a) True copies of each of the Material Project Agreements and Material Licences existing as of the date of this Agreement have been delivered to the Lender.
- (b) Except for any consent from the Construction Lender that may be required in connection with the execution and delivery by the Obligor of each of the Loan Documents and the consummation of the transactions contemplated in the Loan Documents, no event has occurred and is continuing that would constitute a material breach of or a material default under any of the Material Project Agreements, or any Material Licence and each Material Project Agreement is binding upon it and is a binding agreement of each other Person who is a party thereto.

(18) Financial Statements All of the annual financial statements that have been furnished to the Lender in connection with this Agreement are complete in all material respects and such financial statements fairly present the financial position of the Borrower or the applicable Guarantor, as of the dates referred to therein and have been prepared in accordance with GAAP.

(19) Environmental Matters

- (a) The Project is in full compliance in all material respects with all Environmental Law except as otherwise disclosed in writing by the Borrower to the Lender and accepted by the Lender or in the environmental reports delivered in connection with this Agreement (including any updates or amendments to such reports from time to time) accepted by the Lender. The Borrower and each Guarantor is not aware, after due enquiry, of, nor has it received notice of, any past, present or future condition, event, activity, practice or incident that may interfere with or prevent the compliance or continued compliance of the Project or the Borrower and each Guarantor in all respects with all Environmental Law except as otherwise disclosed in writing by the Borrower to the Lender and accepted by the Lender or in the environmental reports delivered in connection with this Agreement (including any updates or amendments to such reports from time to time) accepted by the Lender; and the Wellington Guarantor has obtained all licences, permits and approvals in connection with the Project that are currently required under all Environmental Law and is in full compliance with the provisions of such licences, permits and approvals, in each case except to the extent that the non-compliance would not or could not reasonably be expected to cause a Material Adverse Change.
- (b) The use which the Wellington Guarantor has made and intends to make of the Project will not result in the use, generation, storage, transportation, accumulation, disposal, or Release of any Hazardous Substances on, in or from the Project except in accordance and compliance with all Environmental Law, except to the extent that the non-compliance would not or could not reasonably be expected to cause a Material Adverse Change.
- (c) Except as disclosed in writing to the Lender and accepted by the Lender, there is no action, suit or proceeding, or, to its knowledge, any investigation or inquiry,

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before any Governmental Authority pending or, to its knowledge, threatened against the Borrower or any Guarantor relating in any way to any Environmental Law that would or could reasonably be expected to cause a Material Adverse Change.

- (d) The Wellington Guarantor has not (i) with respect to the Project, incurred any current and outstanding liability for any clean-up or remedial action under any Environmental Law with respect to current or past operations, events, activities, practices or incidents relating thereto, (ii) received any outstanding written request for information (other than information to be provided in the normal course in connection with applications for licences, permits or approvals) by any Person under any Environmental Law with respect to the condition, use or operation of the Project, (iii) received any outstanding written notice or claim under any Environmental Law with respect to any material violation of or liability under any Environmental Law or relating to the presence of Hazardous Substance on or originating from the Project, that, in any such case, would or could reasonably be expected to cause a Material Adverse Change, or (iv) ever been convicted of an offence or subjected to any judgment, injunction or other proceeding for non-compliance with any Environmental Law with respect to the Project or been fined or otherwise sentenced or settled such prosecution or other proceeding short of conviction for non-compliance with any Environmental Law with respect to the Project.
- (e) Copies of all material analysis and monitoring data for soil, ground water, surface water and the like and reports pertaining to any environmental assessments/audits, including without limitation any inspections, investigations and tests, relating to the Project that were obtained, are in the possession or control of, or were carried out on behalf of, the Wellington Guarantor have been delivered to the Lender.
- (f) Since acquiring its interest in the Project Lands, the Wellington Guarantor has maintained all environmental and operating documents and records relating to the Project substantially in the manner and for the time periods required by Environmental Law.
- (g) The Wellington Guarantor has not defaulted in reporting in any material respect to any applicable Governmental Authority in relation to the Project on the happening of an occurrence which it is or was required by any Environmental Law to report.

(20) Material Licenses All Material Licences from third parties and Governmental Authorities have been obtained other than those not required or able to be obtained until a later stage of Construction or after Substantial Completion and those not obtained may be reasonably expected to be received in the ordinary course of business prior to the date when required to permit the Wellington Guarantor to complete the transactions provided for in the Material Project Agreements and to construct and operate the Project.

(21) Zoning, Uses and Expropriation

- (a) The Project is zoned to permit the Construction and operation of the Project in accordance with the Plans and Specifications.
- (b) The existing and proposed uses of the Project comply in all material respects with all Applicable Law.
- (c) It has not received notice of any proposed rezoning of all or any part of the Project that would be reasonably likely to cause a Material Adverse Change in respect of the Construction of the Project or otherwise.
- (d) It has not received notice of any expropriation of all or any part of the Project that would reasonably be expected to cause a Material Adverse Change.

(22) Insolvency The Borrower and each Guarantor, (i) has not committed any act of bankruptcy, (ii) is not insolvent, or has proposed, or given notice of its intention to propose, a compromise or arrangement to its creditors generally, (iii) has not made any petition for a receiving order in bankruptcy filed against it, made a voluntary assignment in bankruptcy, taken any proceeding with respect to any compromise or arrangement, taken any proceeding to have itself declared bankrupt or wound-up, taken any proceeding to have a receiver appointed of any part of its assets, has had any Encumbrancer take possession of any of its property, or (iv) has had an execution or distress become enforceable or become levied on any portion, of its assets and property.

(23) No Infringement The Construction and operation of the Project does not infringe and will not infringe upon any patents, trademarks, trade names, service marks, or copyrights, domestic or foreign, or any other intellectual property of any other Person, which infringement would likely have a Material Adverse Change.

(24) Real Property The only real property interests necessary for the Construction of the Project in accordance with the Plans and Specifications are the real property interests comprising the Project Lands and any easements, interests or rights appurtenant thereto.

(25) Assignment of Contracts Subject to any assignments of the Construction Contracts and the Material Project Agreements to the Construction Lender, each of the Construction Contracts and Material Project Agreements are freely assignable by the Wellington Guarantor without the consent of the counterparties thereto or consent for such assignment has been obtained by the Wellington Guarantor as required, and any required notices of assignment have been provided to the counterparties thereof by the Wellington Guarantor.

(26) Full Disclosure All information provided or to be provided to the Lender in connection with the Loan is true and correct in all material respects and none of the documentation furnished to the Lender, to the best its knowledge after due inquiry, omits or will omit as of such time, a material fact necessary to make the statements contained therein not misleading in any material way, and all expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds by it after due enquiry (and any other Person who furnished such material on behalf of it).

(27) **Terra Shares** The Borrower is the sole legal and beneficial owner of all of the issued and outstanding shares of FarmCo and FarmCo is the sole legal and beneficial owner of 25,000,000 issued and outstanding shares in the capital of TerraFarma Inc., free and clear from any Encumbrance, and such shares have been duly and validly issued and no Person has or will have any right, agreement or option, present or future, contingent or absolute, or any right capable of becoming a right, agreement or option to acquire such shares or to require FarmCo to allot or issue any further or other shares or any other security or other instrument convertible or exchangeable into shares.

(28) **MDI Shares** The Borrower is the sole legal and beneficial owner of all issued and outstanding shares in the capital of MDI, free and clear from any Encumbrance, and such shares have been duly and validly issued and no Person has or will have any right, agreement or option, present or future, contingent or absolute, or any right capable of becoming a right, agreement or option to acquire such shares or to require the Borrower to allot or issue any further or other shares or any other security or other instrument convertible or exchangeable into shares.

#### 6.02 **Survival and Repetition of Representations and Warranties**

The representations and warranties set out in Section 6.01 survive the execution and delivery of this Agreement and all other Loan Documents.

### **ARTICLE 7 - COVENANTS**

#### 7.01 **Positive Covenants**

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Lender, the Borrower and each Guarantor, as applicable, will:

(1) **Timely payment** Make due and timely payment of the Obligations required to be paid by it hereunder.

(2) **Conduct of Business, Maintenance of Existence, Compliance with Laws** Engage in business of the same general type as now conducted by it; carry on and conduct its business and operations in a proper, efficient and businesslike manner, in accordance with good business practice; subject to Section 7.03(3), preserve, renew and keep in full force and effect its existence; and take all reasonable action to maintain all rights, privileges and franchises necessary in the normal conduct of its business and to comply in all material respects with all Material Project Agreements, Material Licences and Requirements of Law, including Requirements of Environmental Law. Without limiting the rights and remedies of the Lender hereunder and under the Security, including without limitation pursuant to an Event of Default under Section 10.01(r), the Lender acknowledges that no consent has been obtained from the Construction Lender in connection with the execution and delivery by the Obligors of each of the Loan Documents and the consummation of the transactions contemplated in the Loan Documents and that no consent has been obtained from the Board in connection with the pledge of the FarmCo Shares, and the failure to obtain any such required consents shall not be considered a Default hereunder, provided that, for greater certainty, if the Construction Lender enforces on its security as a result of such



failure to obtain consent, an Event of Default under Section 10.01(r) shall have occurred and the Lender shall have all remedies available to it hereunder and under the Security.

(3) Further Assurances Use reasonable efforts to provide the Lender with such other documents, opinions, consents, acknowledgments and agreements as are reasonably necessary to implement this Agreement and the other Loan Documents from time to time upon reasonable request of the Lender.

(4) Access to Information Promptly provide the Lender and the Independent Cost Consultant with all information reasonably requested by any of them from time to time in connection with this Agreement concerning its financial condition, its Property and the Project (including, without limitation, the Plans and Specifications, the Project Budget, the status of Construction, all Material Project Agreements and Material Licences), and during normal business hours and from time to time upon reasonable notice, permit representatives of the Lender to inspect any of its Property (including the Project) and to examine and take extracts from its financial records, including records stored in computer data banks and computer software systems, and to discuss its financial condition with its senior officers and (in the presence of such of its representatives as it may designate) its auditors. All such examinations, visits and inspections of the Lender shall be coordinated through the Lender for logistics purposes in order to minimize the number of such examinations, visits and inspections.

(5) Obligations and Taxes Pay or discharge, or cause to be paid or discharged, before the same will become delinquent (i) all Taxes imposed upon it or upon its income or profits or in respect of its business or Property (including the Project) and file all tax returns required by law in respect thereof, (ii) all lawful claims for labour, materials and supplies, (iii) all required payments under any of its Debt, and (iv) all other material obligations; provided, however that it will not be required to pay or discharge or to cause to be paid or discharged any such amount so long as the validity or amount thereof is being contested in good faith by appropriate proceedings.

(6) Use of Loan Use the proceeds of the Loan only for the purposes specified in Section 2.02.

(7) Construction Insurance From the date hereof (unless otherwise specified) until the earlier of (a) Substantial Completion of each portion of the Project, or (b) indefeasible payment in full by the Borrower of all Obligations owing under the Loan Documents, the Wellington Guarantor shall maintain or cause to be maintained insurance coverage in such form and amounts and with such deductibles as are customary in the case of owners of projects similar to the Project and maintained with insurance companies that are acceptable to the Lender.

(8) Proceeds of Insurance With regard to the insurance described in Sections 7.01(7) or (7), subject to the terms of the Permitted Encumbrances and Material Project Agreements having priority over the Security, the following shall apply:

- (a) So long as no Default or Event of Default has occurred and is continuing, the proceeds of all such insurance (other than workers' compensation insurance, errors & omissions insurance, directors and officers liability insurance, and third

party liability insurance which may be remitted to the Borrower without condition or further action by the Lender) shall be dealt with as follows:

- (i) If the total amount of such proceeds equals or exceeds Cdn. \$1,000,000, they shall be payable directly into an escrow account of the Wellington Guarantor (which account shall be held with the Lender and subject to the security interest created by the Security) to be disbursed by the Lender against receipts payable in not more than 30 days for expenses incurred in repairing the damage or destruction or replacing property in respect of which the insurance is payable, for release by the Lender to the Wellington Guarantor to be applied by the Wellington Guarantor in repairing the damage or destruction or replacing property in respect of which the insurance is payable upon receipt of:
    - (A) an Officer's Certificate of the Wellington Guarantor stating that the proceeds of such insurance together with other funds held or arranged by the Wellington Guarantor are sufficient to fully repair, rebuild or replace the damage or destruction in respect of which the insurance proceeds are payable;
    - (B) a letter of undertaking of the Wellington Guarantor to fully repair, rebuild and replace the damage or destruction in respect of which the insurance proceeds are payable; and
    - (C) evidence satisfactory to the Lender that the proceeds of insurance together with the other funds held or arranged by the Wellington Guarantor will be sufficient to repair, replace or rebuild the damage or destruction in respect of which the insurance proceeds are payable.
  - (ii) The proceeds of any business interruption insurance shall be payable to the Wellington Guarantor, as its interests may appear, to be applied on account of ongoing obligations of the Wellington Guarantor hereunder or in respect of the Project as the same fall due from time to time.
  - (iii) The proceeds of all insurance held by the Lender shall, unless and until the same are applied or released to the Wellington Guarantor as aforesaid, constitute continuing collateral security for the Wellington Guarantor's obligations and liabilities in respect of amounts outstanding hereunder. The Lender shall place such funds in interest-bearing term deposits with the interest thereon to accrue to the benefit of the Wellington Guarantor.
  - (iv) If the total amount of such proceeds is less than Cdn. \$1,000,000, they shall be released to the Wellington Guarantor subject to delivery of the documents set out in Section 7.01(8)(a)(i)(A), (B) and (C).
- (b) If an Event of Default has occurred and is continuing:

- (i) The proceeds of all insurance other than workers' compensation insurance, errors and omissions insurance, directors and officers liability insurance and third party liability insurance shall be payable to the Lender and subject to the Security, to be applied by it, at its option, in reduction of the amounts outstanding hereunder or released by the Lender to the Wellington Guarantor upon receipt of:
    - (A) an Officer's Certificate of the Borrower and the Wellington Guarantor stating that the proceeds of such insurance together with other funds held or arranged by the Borrower and the Wellington Guarantor are sufficient to fully repair, rebuild or replace the damage or destruction in respect of which the insurance proceeds are payable;
    - (B) a letter of undertaking of the Wellington Guarantor to fully repair, rebuild and replace the damage or destruction in respect of which the insurance proceeds are payable; and
    - (C) evidence satisfactory to the Lender that the proceeds of insurance together with the other funds held or arranged by the Wellington Guarantor will be sufficient to repair, replace or rebuild the damage or destruction in respect of which the insurance proceeds are payable.
  - (ii) The proceeds of any business interruption insurance shall be payable to the Lender to be held by the Lender as additional security for the payment of all amounts payable hereunder, to be applied on account of ongoing obligations of the Wellington Guarantor hereunder or in respect of the Project as the same fall due from time to time and, to the extent of any surplus, firstly to arrears of such payments and thereafter, if the Lender has opted to release proceeds of insurance to the Wellington Guarantor pursuant to and in accordance with Section 7.01(8)(b)(i), then the balance of the proceeds of business interruption insurance shall be payable to the Wellington Guarantor, failing which the balance, if any, remaining after application of such proceeds as aforesaid shall be paid to the Lender as partial prepayment of the Loan.
  - (iii) The proceeds of all insurance held by the Lender shall, unless and until the same are applied or released to the Wellington Guarantor as aforesaid, constitute continuing collateral security for the Wellington Guarantor's obligations and liabilities in respect of amounts outstanding hereunder. The Lender shall place such funds in interest-bearing term deposits with the interest thereon to accrue to the benefit of the Wellington Guarantor (but subject to the security interest created under the Security).
- (9) Notices Promptly notify the Lender on becoming aware:

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- (a) of any Default or Event of Default that would apply to it of which it becomes aware, using reasonable diligence;
- (b) of any Material Adverse Change or any matter that is likely to have a Material Adverse Change that would apply to it of which it becomes aware, using reasonable diligence;
- (c) of the occurrence of any litigation, dispute, arbitration or other proceeding the result of which if determined adversely would be a judgement or award against it that would result in a Material Adverse Change to it, and from time to time provide the Lender with all reasonable information requested by the Lender concerning the status of any such proceeding;
- (d) of any Change of Control;
- (e) if at any time the aggregate Project Costs are expected to exceed the current Budgeted Project Costs in any material respect, as set out in the most recent Project Budget approved by the Lender;
- (f) of the occurrence of an event of Force Majeure, describing in reasonable detail the effects of such event on the Construction or operation of the Project, the action which the Wellington Guarantor intends to take to remedy such event and the estimated date when the event of Force Majeure will be remedied and will cease to impair Construction or operation of the Project;
- (g) of the cessation of any event of Force Majeure;
- (h) of any circumstance of which it has notice or is aware which could result in a material breach of or default or non-performance by any party under the Material Project Agreements, or of any condition entitling any party to terminate its obligations thereunder;
- (i) of any damage to or destruction of any Property that forms part of the Project, which might give rise to an insurance claim, if the cost of any repairs to or replacement of assets of any Wellington Guarantor exceeds \$500,000;
- (j) of any material instrument related to the Project of which the Wellington Guarantor has notice or is registered against title to the Project and provide to the Lender a true copy of such instrument;
- (k) of any amendment to the Shareholders Agreement;
- (l) of any threatened expropriation or notice of expropriation with respect to the Project, such notice to be delivered forthwith upon either Wellington Guarantor becoming aware of such threatened expropriation or its receipt of notice of such proceedings and the Wellington Guarantor hereby covenants and agrees that no such claim shall be compromised or settled without the prior written consent of the Lender; or

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(m) of any non-compliance in any material respect with Environmental Law relating to the Project, and of any notice, investigation, non-routine inspection or material inquiry by any Governmental Authority in connection with any Environmental Law relating to the Project.

(10) Environmental Compliance

(a) Operate the Project in a manner such that no obligation (other than those obligations existing at the date of this Agreement disclosed in the environmental reports delivered to the Lender pursuant to this Agreement or disclosed in writing to the Lender and accepted by the Lender), including a clean-up or remedial obligation, will arise under any Environmental Law, which obligations individually or in the aggregate would have, or would be reasonably likely to cause, a Material Adverse Change; provided, however, that if any such claim is made or any such obligation arises, it will immediately satisfy or contest such claim or obligation at its own cost and expense, and promptly notify the Lender upon learning of (a) the existence of Hazardous Substances located on, above or below the surface of the Project Lands or contained in the soil or water constituting such land (except those being stored, used, contained or otherwise handled in substantial compliance with Environmental Law), or (b) the occurrence of any reportable Release of Hazardous Substances into the air, land surface water or ground water that has occurred on or from such land that, as to either (a) or (b), would be reasonably likely to result in a Material Adverse Change, or (c) any other event or occurrence relating to the Project which, in the opinion of the Borrower and the Wellington Guarantor, acting reasonably, is likely to give rise to a notice of non-compliance in any material respect with any Environmental Law.

(b) Comply, and cause any other party that is acting under its authority to comply, in all material respects with all Environmental Law (including, but not limited to, obtaining any Material Licences or similar authorizations) relating to the Project.

(c) Use its reasonable commercial efforts not to cause or permit a Release of any Hazardous Substance at, on, under or near the Project except in compliance with Environmental Law.

(d) Not use the Project, or permit it to be used, to generate, manufacture, refine, treat, transport, store, handle, dispose, transfer, produce or process Hazardous Substances except in compliance with all Environmental Law.

(11) Security Provide the Lender with the Security required from time to time pursuant to Article 8 in accordance with the provisions of such Article, accompanied by supporting resolutions, certificates and opinions in form and substance satisfactory to the Lender, acting reasonably, and, subject to Section 8.01, do all such further acts and execute and deliver all such documents and instruments as may from time to time be requested by the Lender, acting reasonably, to ensure that the Security constitutes at all times valid, enforceable, and perfected priority Encumbrances (subject only to Permitted Encumbrances).

(12) Maintenance of Property Keep all Property necessary for its business in good working order and condition, normal wear and tear excepted, except to the extent that the failure to do so would not individually or in the aggregate be reasonably likely to cause a Material Adverse Change.

(13) Adequate Books Maintain adequate books, accounts and records in accordance with GAAP consistently applied.

(14) Material Project Agreements

(a) At all times be and remain in full compliance in all material respects with all of its covenants, agreements and obligations in and diligently enforce all its material rights under all Material Project Agreements if non-compliance would have a Material Adverse Change. The Wellington Guarantor shall not alter, amend or waive, in any material respect, any of its rights under or permit any termination or surrender of any Material Project Agreements, without the prior written consent of the Lender, acting reasonably, provided that in respect of Material Project Agreements other than the Project Management Agreement, such actions may be taken without the consent of the Lender provided such alterations, amendments, waivers, terminations or surrenders, as applicable, reflect, in all material respects, good business practice, are in the ordinary course of business, and such material terms as a prudent owner of a similar property would accept having regard to all relevant factors at the time.

(b) The Wellington Guarantor shall advise the Lender in writing of all new Material Project Agreements (or any amendments of existing Material Project Agreements) entered into forthwith following the entering into thereof and shall deliver forthwith a copy thereof to the Lender. The Borrower shall provide written notice to the Lender of any assignment made by a contracting party to a Material Project Agreement.

(15) Access Permit the Lender (through its agents, officers or employees), for the purposes of monitoring compliance with the covenants and obligations of the Borrower hereunder, at their risk, to visit and inspect the Project to conduct tests, measurements and surveys in relation to the Project, provided that such tests, measurements and surveys are conducted in accordance with prudent industry practice and Applicable Law and/or are required as a result of the reasonable concerns of the Lender as to non-compliance with such covenant and obligation, and to be advised as to the same by the officers, engineers and advisers of the Borrower or the Wellington Guarantor (or such other Persons as may be appropriate), all at such reasonable times and intervals as the Lender may desire upon reasonable prior notice and in the presence of the Borrower if they so desire. Such visits, inspections, measurements, reviews and tests etc. shall be at the cost of the Borrower, provided such expenses are reasonably incurred and the Lender has reasonable grounds to believe that the Borrower or any Guarantor is not complying with a covenant under this Agreement or other Obligation. Any such visit, inspection, examination, discussion or tests shall not be deemed to be supervision, charge, management, control or occupation by the Lender for purposes of any environmental or other liabilities.

(16) Independent Cost Consultant Permit the Lender, and the Lender shall have the right, to receive true and complete copies of all reports prepared by the Independent Cost Consultant, and the Borrower shall forthwith provide to the Lender upon receipt, including but not limited to any reports with respect to: (i) reviewing and approving the Project Budget, the Construction Schedule, the Plans and Specifications and the Material Project Agreements, (ii) projecting the Cost to Complete, and (iii) performing such additional functions as the Lender shall reasonably request. The Borrower shall pay all fees, costs and expenses of the Independent Cost Consultant.

(17) Remedy of Force Majeure Use its reasonable commercial efforts to remedy or cause to be remedied any event of Force Majeure or causes thereof to the extent capable of doing so; provided that notwithstanding the foregoing, no party shall be required to settle strikes of its employees or of employees of its contractors, sub-contractors and others on terms which it reasonably regards as unreasonable.

(18) Management and Control of Project Manage the Construction of, and operate, the Project in all material respects in accordance with: (i) prudent industry practice; (ii) the Material Project Agreements and Material Licences; (iii) the Project Budget; (iv) all warranties; (v) the Plans and Specifications; and (vi) the Construction Schedule. Subject to Force Majeure, it shall not abandon (for a single period of 30 days or more), and shall ensure that there is no abandonment of, the Project.

(19) Construction Act Comply with the provisions of the Construction Act, including, without limitation, retaining the Holdbacks required thereby. In the event that any lien is registered under the Construction Act against the Project Lands (or notice of such lien is provided to the Lender), the Wellington Guarantor shall cause such lien to be vacated or discharged within 10 days of the earlier of: (i) the date the Wellington Guarantor has received written notice thereof, or (ii) the date that the Wellington Guarantor has been provided written notice thereof by the Lender.

(20) Operating Account Deposit all funds relating to the Project in the Project Account (which account shall be segregated from any other accounts maintained by the Borrower or any Affiliate thereof) and only transactions related to the Project shall be processed through the Project Account.

(21) Cost Overruns Fund any Cost Overruns on a line by line basis (after allocation of contingencies and demonstrable savings) by an additional contribution of Project Equity.

(22) Postponement to Material Project Agreements The Wellington Guarantor shall use its commercially reasonable efforts to cause each counterparty to a Material Project Agreement which Material Project Agreement will be, or notice thereof will be, registered on title to such counterparty's land, to cause such counterparty to register such Material Project Agreement or notice thereof and any mortgagee of such counterparty to postpone its mortgage to such Material Project Agreement, or notice thereof, as applicable.

(23) Condominium Registration Diligently pursue registration of the Project under the Condominium Act for registration as a condominium thereunder to ensure that the Units may be delivered in a timely basis in accordance with the planned schedule of closings of the Units.

(24) Performance and Payment Bonds During Construction, obtain and maintain all Performance and Payment Bonds required hereunder (if any).

(25) Building Permits Obtain all necessary permits to facilitate Construction in accordance with the Construction Schedule having regard to the staged Construction of the Project.

(26) Notice of Purchaser Deposit Defaults Promptly inform the Lender and the Independent Cost Consultant of any default by a purchaser beyond all applicable notice or cure periods of payment of any of the contracted Purchaser Deposit instalments due under a Condominium Sales Agreement with respect to a Residential Unit.

(27) Single Purpose Entity Each of the Wellington Guarantor and FarmCo will remain a Single Purpose Entity.

(28) Financial Covenant MDI shall maintain a minimum Shareholder's Equity, as disclosed in its quarterly financial statements, of no less than \$20,000,000, such to be tested quarterly as at the end of each calendar quarter.

## 7.02 Reporting Requirements

So long as this Agreement is in force, the Borrower and each Guarantor, as applicable, will deliver to the Lender:

(1) Realty Taxes Delivery of evidence (satisfactory to the Lender) of the payment of all realty taxes relating to the Project (except where such payment is being contested in good faith, in which case item (i) of the definition of Permitted Encumbrances shall apply), such evidence to be delivered as required by the Lender (but no less than annually).

### (2) Financial Statements

(a) Within 120 days from the last day of each calendar year, the annual unaudited financial statements of the Project, including, in each case, where applicable, balance sheet, statement of income and retained earnings, statement of changes in financial position and source and application of funds for such calendar year, which will be prepared in accordance with GAAP.

(b) Within 120 days from the last day of each calendar year, the annual unaudited financial statements of MDI, including, in each case, where applicable, balance sheet, statement of income and retained earnings, statement of changes in financial position and source and application of funds for such calendar year, which will be prepared in accordance with GAAP.

(c) Within 120 days from the last day of each calendar year, the annual net worth statements of the Borrower, in form acceptable to the Lender which the Lender may require be accompanied by the most recent Notice of Assessment from Canada Revenue Agency.

### (3) Monthly Reports The following reports at the end of each month:



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- (a) a report showing Hard Costs and Soft Costs incurred to date, the cumulative positive or negative value of any change orders, the amount of any Holdbacks and the current Cost to Complete (which may be included in a report from the Independent Cost Consultant);
- (b) an update to the Project Budget and Construction Schedule together with comments on any material variances from the original Project Budget and Construction Schedule provided to the Lender (which may be included in a report from the Independent Cost Consultant);
- (c) comments on any material changes to the Project or any potential or actual problem areas which have been identified and may affect completion of the Project in accordance with the Project Budget and Construction Schedule provided to the Lender (which may be included in a report from the Independent Cost Consultant);
- (d) an updated schedule of pre-sales, including purchaser name and current address, unit number of the Unit being acquired, sale price, Purchaser Deposit status on a unit by unit basis (which shall include a deposit trust account statement prepared by the solicitor holding the Purchaser Deposits together with a scheduled showing the breakdown of total Purchaser Deposits received in respect of each Unit, Purchaser Deposits to be received in respect of each Unit and Purchaser Deposits released to the Wellington Guarantor in respect of the Construction or repayment of Loans, as applicable) and closing date and any special conditions together with a copy of all new Condominium Sales Agreements (and any amendments thereto or any amendments to previously delivered Condominium Sales Agreements) entered into since the last report made by the Borrower.

(4) Quarterly Reports As soon as available and in any event within 60 days of the end of each calendar quarter unaudited financial statements of MDI, including, in each case, where applicable, balance sheet, statement of income and retained earnings, statement of changes in financial position and source and application of funds for such calendar year, which will be prepared in accordance with GAAP, and a Compliance Certificate concurrently with the delivery of the financial statements.

(5) Other Information Such other information as the Lender may reasonably request respecting the Borrower, any Guarantor or the Project.

(6) KYC Documentation and Anti-Money Laundering Each of the Borrower and each Guarantor acknowledges that the Lender has certain anti-money laundering and anti-terrorism responsibilities under various laws and regulations and that from time to time the Lender (including any prospective assignee or participant) may request information in order to comply with Applicable Laws and internal requirements (including any applicable “know your customer” or “know your client” requirements). Each of the Borrower and each Guarantor covenants and agrees, upon request, to promptly provide the Lender such additional information as may be reasonably requested. Each of the Borrower and each Guarantor shall also provide the Lender with prompt written notice of any change in beneficial ownership, key officers, or directors after the

date of this Agreement. Each of the Borrower and each Guarantor covenants and agrees that the proceeds of the Loan shall not be required or invested in order to support domestic or international terrorism and shall not be directly or indirectly derived from activities that may contravene Applicable Laws, including anti-money laundering laws and regulations.

7.03 **Negative Covenants**

So long as this Agreement is in force and except as otherwise permitted by the prior written consent of the Lender, each of the Borrower and each Guarantor, as applicable, will not:

(1) **No Sale of Project** Other than Dispositions of Units made pursuant to the terms of Condominium Sales Agreements in accordance with the terms hereunder, Dispose of the Project or any part thereof or interest therein except as contemplated herein or of the Palm Beach Project, unless approved by the Lender but, for greater certainty, the Wellington Guarantor may Dispose of machinery or equipment and machinery and equipment that is being replaced, obsolete or unnecessary relating to the Project and otherwise in accordance with the provisions of this Agreement. Notwithstanding the foregoing or anything to the contrary contained herein, a Disposition of a Residential Unit may not be made at less than 95% of the *pro forma* sale price for such Residential Unit agreed to by the Lender prior to the advance of the Loan without the Lender's consent.

(2) **No Transfer of Interest in any Guarantor or TerraFarma Inc. or MDI** Permit any Disposition of, or Encumber, any Equity Interest in any Guarantor, and any Equity Interest in TerraFarma Inc. owned by FarmCo or any Affiliate thereof or any Affiliate of the Borrower, without the prior written consent of the Lender, acting reasonably.

(3) **No Consolidation, Amalgamation, etc.** Consolidate, amalgamate or merge with any other Person, enter into any corporate reorganization or other transaction intended to effect or otherwise permit a change in its existing corporate structure, liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution without the consent of the Lender, which consent will not be unreasonably withheld provided the Lender is satisfied the proposed resulting entity will be in at least the same, or better, financial position and project development and management ability as the Person prior to such transaction.

(4) **No Change of Name** Change its name without providing the Lender with 30 days' prior written notice thereof.

(5) **No Distributions** Except for payments as provided for in Section 5.01(2)(a) and (b) hereof, make any Distribution or withdraw any Project Equity until all Obligations have been fully repaid.

(6) **No Encumbrances** Create, incur, assume or permit to exist any Encumbrance upon the Project or the Palm Beach Project except Permitted Encumbrances or create, incur, assume or permit to exist any Encumbrance upon the Shares.

(7) **No Continuance** Continue into any other jurisdiction.

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(8) Amendments to Organizational Documents Amend any of its Organizational Documents in a manner that would be reasonably likely to cause a Material Adverse Change.

(9) Amendments to Material Project Agreements Amend, vary or alter in any way, consent to any assignment or transfer of, or waive or surrender any of its material rights or material entitlements under, any Material Project Agreements.

(10) Amendment of Project Budget Make any cumulative positive or negative changes to the Project Budget, including, for greater certainty, cumulative positive or negative changes to individual line items within the Project Budget (whether or not resulting in a change to the aggregate Budgeted Project Costs) which exceed \$1,000,000, regardless of whether such changes are within the Contingency Amount or any change of 10% or more of any line item, provided that all other changes to the Project Budget may be made upon notice to but without the requirement of consent from the Lender. Upon any revision of the Project Budget, the Borrower will forthwith provide a copy to the Lender.

(11) Amendment of Plans and Specifications Revise the Plans and Specifications in any material respect. Upon revision of the Plans and Specifications, the Borrower and the Wellington Guarantor will forthwith provide a copy to the Lender.

(12) Amendment of Construction Schedule Revise the Construction Schedule to permit completion of Construction later than that contemplated in the then-current Construction Schedule, except with the consent of the Lender and provided, if required, the Borrower and the Wellington Guarantor can demonstrate that it has contributed additional Project Equity sufficient to cover any increased Budgeted Project Costs arising in connection therewith. Upon revision of the Construction Schedule, the Borrower will forthwith provide a copy to the Lender.

(13) Assignment of Condominium Sales Agreements Consent to any assignment by a purchaser under a Condominium Sales Agreement unless the Wellington Guarantor retains the Purchaser Deposits paid thereunder or a replacement Purchaser's Deposit has been received in at least the same amount.

(14) Leasing Enter into any Leases.

(15) New Debt Incur any Debt other than the Obligations and amounts payable to (i) the Construction Lender pursuant to the Construction Loan, (ii) DBC pursuant to the DBC Agreements, and (iii) in the case of the Borrower, FarmCo and MDI, unsecured Debt in the ordinary course of business.

(16) Investments The Wellington Guarantor will not, directly or indirectly, acquire, make or purchase, any Investment.

(17) Hedge Arrangements Enter into or make or permit to be outstanding at any time any Hedge Arrangements other than Hedge Arrangements entered into for *bona fide* hedging purposes and not for speculative purposes.

(18) Financial Assistance The Wellington Guarantor and FarmCo will not provide any Financial Assistance.

(19) Related Party Transactions Except for the Project Management Agreement, enter into any transaction for the purchase, sale or exchange of any property or the rendering of any services, with any Related Party (other than on arm's length terms).

(20) No Subsidiaries The Wellington Guarantor and FarmCo will not create any Subsidiary.

(21) Accountants Change its accountants.

(22) Residency Become a non-resident of Canada within the meaning of Section 116 of the *Income Tax Act* (Canada).

(23) Construction Loan. Amend, vary or alter in any way, consent to any assignment or transfer of, or waive or surrender any of its rights or entitlements under the Construction Loan and related security.

(24) DBC Agreements. Amend, vary or alter in any way, consent to any assignment or transfer of, or waive or surrender any of its rights or entitlements under the DBC Agreements and related security.

(25) Palm Beach Project. Amend, vary or alter in any way, the terms of the construction loan on the Palm Beach Project.

(26) Shares Will not issue any shares in MDI.

(27) Shareholders Agreements Will not amend the shareholders agreement governing TerraFarma Inc.

## **ARTICLE 8- SECURITY**

### **8.01 Security**

(1) As general and continuing security for the payment and performance of the Obligations, the security described below will be granted to the Lender and will be in form acceptable to the Lender and Lender's Counsel, acting reasonably:

- (a) the Charge (and any Replacement Charge granted to the Lender pursuant to Section 8.06);
- (b) the Environmental Indemnity;
- (c) a Pledge from the Borrower of the FarmCo Shares;
- (d) a Pledge from the Borrower of the MDI Shares;
- (e) the Assignment of Project Management Agreement and all Material Project Agreements and all Condominium Sales Agreements;

- (f) the assignment of insurance;
- (g) a direction from the Borrower and the Wellington Guarantor to counsel to the Borrower and the Wellington Guarantor in connection with the sale of any Units, to pay all proceeds of the sales of all Units, following receipt by the Construction Lender of all outstanding obligations under the Construction Loan and related security, to the Lender, which direction shall not be delivered to the counsel to the Borrower and the Wellington Guarantor until the earlier of (i) an Event of Default; and (ii) the registration of the Condominium Documents; and
- (h) such other security as the Lender requires, which is contemplated by this Agreement or which security more fully gives effect to the security contemplated by this Agreement.

Notwithstanding the foregoing or anything to the contrary contained herein, the Security referred to in paragraphs (c) and (d) will be perfected by possession and shall not be registered in the personal property registry system. The Security referred to in paragraphs (a), (e) and (f) shall be subordinate to any security securing the Construction Loan and the DBC Mortgage, and shall not be enforced nor registered on title to the Project Lands or in the personal property registry system, provided that upon a default hereunder or under the Security, the Lender may, in its sole discretion, register any or all of the Security on title to the Project Lands and/or in the personal property registry system and proceed to enforce such Security against the Project and other secured assets. Immediately following such default that is continuing, the Borrower and the Wellington Guarantor shall use best efforts to obtain the consent of the lender to the Construction Loan and from the holder of the DBC Mortgage to the registration of the Security, provided that such consent shall not be a condition to the registration, or enforcement, of such Security following the occurrence of a default hereunder that is continuing. Notwithstanding the foregoing, upon the earlier of: (i) a discharge of the security securing the Construction Loan and (ii) the date that all outstanding obligations under the Construction Loan and related security have been satisfied, the Lender may, in its sole discretion, register any or all of the Security on title to the Project Lands and/or in the personal property registry system (except in respect of the Security in Sections 8.01(c) and 8.01(d)) and proceed to enforce such Security against the Project and other secured assets.

#### 8.02 **After Acquired Property and Further Assurances**

Subject to the perfection requirements of Section 8.01, the Wellington Guarantor will from time to time execute and deliver all such further deeds or other instruments of conveyance, assignment, transfer, mortgage, pledge or charge in connection with all Property acquired by the Wellington Guarantor after the date hereof, or as may be required to properly perfect the security interest of the Lender in any of its Property.

#### 8.03 **Non-Material Dealings with Project Generally**

Unless there is an Event of Default that is continuing, the Wellington Guarantor may in the ordinary course of business at any time and from time to time:

- (a) without receiving any consideration therefor, Dispose of, exchange, surrender or grant any part or parts of any of the then existing Project (not constituting a material portion thereof) or any licenses, easements, rights-of-way or rights in the nature of easements in respect of any part or parts of any of the then existing Project (not constituting a material portion thereof) to a municipality or other Governmental Authority or transit commission or utility, or to an owner, lessee or licensee of any lands adjacent to a then existing Project or separated therefrom by a public street or to such other Person as shall be designated by a Governmental Authority or such aforementioned owner, lessee or licensee (which may or may not include the grant or Disposition to the Borrower of any land or any license or licenses, or easements, rights of way or rights in the nature of easements in, over, under or in respect of other lands), and the Lender shall release same from the Security or postpone the Security, as applicable, upon receipt of a written request of the Borrower and the Wellington Guarantor to the Lender stating that such grant, exchange, surrender or Disposition is necessary or desirable without regard to any consideration received by the Borrower and the Wellington Guarantor therefor for the servicing, development or operation of the Project and would not cause a Material Adverse Change;
- (b) accept any ancillary lands, licenses, easements, rights-of-way or rights in the nature of easements, which shall thereafter form part of the Project on such terms as the Wellington Guarantor may determine (provided such additional lands or rights shall be made subject to the charge of the Security on terms and conditions satisfactory to the Lender, acting reasonably); and
- (c) create or permit to be created any Encumbrance of the type referred to in the definition of Permitted Encumbrances provided any applicable provisions of this Agreement are complied with.

#### 8.04 **Performance of Obligations Under Permitted Encumbrances**

The Wellington Guarantor may at any time and from time to time enter into any instrument or agreement described in items (iv), (viii), (x), (xi), (xii) and (xiii) of the definition of Permitted Encumbrances without the consent of the Lender, and the Lender shall, without receiving any consideration therefor, postpone or subordinate the Security to such instrument or agreement and, if required by the other party to such instrument or agreement, concur in and/or consent to such instrument or agreement (for greater clarity, the Lender shall not be bound to perform any obligations under such instrument or agreement unless it is a mortgagee in possession), in each case upon receipt by the Lender of the following:

- (a) a written request of the Borrower's counsel so to do; and
- (b) such other evidence and information as the Lender may reasonably require in respect thereof.

**8.05 Condominium Discharge Program**

Provided no Event of Default has occurred and is continuing, the Wellington Guarantor shall be entitled to a partial discharge of the Security as it relates to the applicable Residential Units (and the corresponding parking, locker, communication units, sign units and common areas of the Residential Component) upon a sale of such Residential Unit pursuant to a Condominium Sales Agreement provided the sale proceeds are distributed in accordance with this Agreement and provided that no sale of a Residential Unit can take place at less than 95% of the pro forma sale price for such Residential Unit without the Lender's consent.

**8.06 Replacement Charge**

Provided that no Default or Event of Default is continuing, the Lender agrees, from time to time upon the request of and at the expense of the Borrower, to execute and deliver a consent to the Wellington Guarantor registering the Declaration pursuant to the Condominium Act, provided that all Condominium Documents are provided to and found in all respects satisfactory to the Lender and provided further that, as a condition of such consent, the Wellington Guarantor shall, where requested by the Lender, deliver to the Lender a further charge of the Project (in substantially the same form as the Charge) with respect to all Units and the pro-rata share of common elements (the "**Replacement Charge**"), which charge shall be, subject to Section 8.01, registered after the date of registration of the Declaration on title to the Project.

**ARTICLE 9 - GUARANTEE****9.01 Guarantees and Indemnity**

(1) The Guarantors, jointly and severally, unconditionally and irrevocably, guarantee payment of the Obligations (including, without limitation, any Obligation of the Borrower to indemnify the Lender hereunder).

(2) If any or all of the Obligations are not duly paid and are not recoverable under Section 9.01(1) for any reason whatsoever, the Guarantors, jointly and severally, unconditionally and irrevocably, will, as a separate and distinct obligation, indemnify and save harmless the Lender from and against any losses resulting from the failure of the Borrower to pay the Obligations.

(3) If any or all of the Obligations are not duly paid and are not recoverable under Section 9.01(1) or the Lender is not indemnified under Section 9.01(1), in each case, for any reason whatsoever, the Obligations will be recoverable jointly and severally from the Guarantors as primary obligors.

**9.02 Obligations Absolute**

The liability of each Guarantor hereunder is absolute and unconditional and is not affected by:

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- (a) any lack of validity or enforceability of this Agreement or any other Loan Document;
- (b) any impossibility, impracticability, frustration of purpose, illegality, *force majeure* or act of Governmental Authority;
- (c) the bankruptcy, winding-up, liquidation, dissolution, arrangement, insolvency or other similar proceeding affecting the Borrower or any Guarantor or any other Person;
- (d) the amalgamation of or any change in the status, function, control or ownership of the Borrower or any Guarantor or any other Person;
- (e) any lack or limitation of power, incapacity or disability on the part of the Borrower or any Guarantor or of the directors, partners or agents thereof or any other irregularity, defect or informality on the part of the Borrower or any Guarantor in its Obligations; or
- (f) any other law, regulation or other circumstance that might otherwise constitute a defence available to, or a discharge of, the Borrower in respect of any or all of the Obligations.

### 9.03 **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 Lender, or any other Person in connection with any duties or liabilities of the Borrower or any Guarantor to the Lender 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 Lender may, subject to the terms of this 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 the Borrower or any Guarantor to carry out any of its obligations under any Loan Document;
- (c) grant time, renewals, extensions, indulgences, releases and discharges to the Borrower or any Guarantor;
- (d) take or abstain from taking or enforcing the Security or from perfecting Security;
- (e) accept compromises from the Borrower or any Guarantor;
- (f) apply all money at any time received from the Borrower or any Guarantor or from the Security upon such part of the Obligations as the Lender 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 the Borrower or any Guarantor and all other Persons and the Security as the Lender may see fit.

9.04 **No Exhaustion of Remedies**

The Lender is not bound or obligated to exhaust its or their recourse against the Borrower or any Guarantor or other Person or any Security it or they may hold, or take any other action before being entitled to demand payment from any Guarantor hereunder.

9.05 **Prima Facie Evidence**

Any account settled or stated in writing by or between the Lender and the Borrower or any Guarantor will be, in the absence of manifest error, prima facie evidence that the balance or amount thereof appearing due to the Lender is so due.

9.06 **No Set-Off**

In any claim by the Lender against any Guarantor, such Guarantor may not assert any set-off or counterclaim that either such Guarantor or the Borrower may have against the Lender.

9.07 **Continuing Guarantee**

The Obligations of each Guarantor hereunder will constitute and be continuing obligations and will apply to and secure any ultimate balance due or remaining due to the Lender and will not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to any such Person. The Obligations of each Guarantor hereunder will continue to be effective even if at any time any payment of any of the Obligations is rendered unenforceable or is rescinded or must otherwise be returned by the recipient of such payment upon the occurrence of any action or event including the insolvency, bankruptcy or reorganization of the Borrower or any Guarantor or otherwise, all as though such payment had not been made.

9.08 **Waivers by Guarantors**

Each Guarantor hereby irrevocably waives acceptance hereof, presentation, demand, protest and any notice, as well as any requirement that at any time any action be taken by any Person against such Guarantor, the Borrower or any other Person.

9.09 **Demand**

Each Guarantor will make payment to the Lender of the full amount of the Obligations, and all other amounts payable by it hereunder forthwith after demand therefor is made to it. Each Guarantor will also make payment to the Lender in enforcing the provisions of this Section.

**9.10 Interest**

Each Guarantor will pay interest to the Lender at the interest rate applicable to Loan on the unpaid portion of all amounts payable by such Guarantor hereunder (without duplication of any interest due and payable by the Borrower hereunder), such interest to accrue from and including the date of demand on the Guarantor, and will be compounded monthly.

**9.11 Subrogation; Contribution**

No Guarantor will be entitled to subrogation or to contribution from any other Guarantor by reason of any payment hereunder until indefeasible payment in full of all Obligations of all Guarantors. Thereafter, the Lender will, at each Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation and warranty, except as to the amount owing, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the Obligations and any Security held therefor resulting from such payment by such Guarantors.

**9.12 Stay of Acceleration**

If acceleration of the payment of any Obligations payable by any Guarantor is stayed upon the insolvency, bankruptcy or reorganization of such Guarantor or otherwise, all such Obligations otherwise subject to acceleration under the laws of any Loan Document will nonetheless be payable by each other Guarantor herewith in accordance with the terms hereof.

**ARTICLE 10- DEFAULT****10.01 Events of Default**

The occurrence of any one or more of the following events (each such event being referred to as an "Event of Default") will constitute a default under this Agreement:

- (a) if the Borrower fails to pay any amount of principal of the Loan when due and, with the exception of principal due on the Maturity Date, such default continues for five (5) Business Days after notice of such default has been given by the Lender to the Borrower;
- (b) if the Borrower fails to pay any interest, fees, or other Obligations, when due and such default continues for five (5) Business Days after notice of such default has been given by the Lender to the Borrower;
- (c) if the Borrower or any Guarantor neglects to observe or perform, in any material respect, any covenant or obligation contained in this Agreement or any other Loan Document on its part to be observed or performed (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 10.01 or such Loan Document) and the Borrower or Guarantor fails to remedy such default within 30 days from the earlier of (i) the date the Borrower or Guarantor becomes aware of such default, and (ii) the date the

Lender delivers written notice of the default to the Borrower, or where the Lender (having regard to the subject matter of the default) have agreed, acting reasonably, that such default cannot be cured within such 30 days, such longer period as is required so long as the Borrower or Guarantor is diligently proceeding at all times to cure such default and provided that, in any event, such cure period shall not extend longer than two months without the consent of the Lender, acting in its Sole and Absolute Discretion;

- (d) if any information, representation or warranty given or made by the Borrower or the Guarantors in this Agreement, any Loan Document or in any certificate or other document at any time delivered hereunder to the Lender proves to have been incorrect or misleading in any material respect on and as of the date that it was made or was deemed to have been made and, except where such misrepresentation was made wilfully or grossly negligently (in which case there shall be no cure period) the Borrower fails to remedy such default within ten (10) Business Days of the occurrence of such event (or such longer period as the Lender may agree to having regard to the nature of such default and provided the Borrower is proceeding diligently to cure such default);
- (e) if the Borrower or any Guarantor ceases or threatens to cease to carry on business generally or admits its inability or fails to pay its Debts generally;
- (f) if the Borrower or any Guarantor denies, to any material extent, its obligations under any Loan Document or claims any of the Loan Documents to be invalid or withdrawn in whole or in part;
- (g) any of the Loan Documents or any material provision of any of them becomes unlawful or is changed by virtue of legislation or by a Governmental Authority, if the Borrower or any Guarantor does not, within 15 Business Days of receipt of notice of such Loan Document or material provision becoming unlawful or being changed, replace such Loan Document with a new agreement that is in form and substance satisfactory to the Lender acting reasonably, or amend such Loan Document to the satisfaction of the Lender acting reasonably;
- (h) if a decree or order of a court of competent jurisdiction is entered adjudging the Borrower or any Guarantor a bankrupt or insolvent or approving as properly filed a petition seeking the winding-up of any Guarantor under any Debtor Relief Law or any other bankruptcy, insolvency or analogous laws or issuing sequestration or process of execution against any substantial part of the assets of the Borrower or any Guarantor or ordering the winding-up or liquidation of its affairs, and any such decree or order continues unstayed and in effect for a period of 30 days;
- (i) if the Borrower or any Guarantor becomes insolvent, makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under any other Debtor Relief Law or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to

take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, custodian, sequestrator or other Person with similar powers of itself or of all or any substantial portion of its assets, or files a petition or otherwise commences any proceeding seeking any reorganization, arrangement, composition or readjustment under any applicable bankruptcy, insolvency, moratorium, reorganization or other similar law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition;

- (j) if an Encumbrancer takes possession, by appointment of a receiver, receiver and manager or otherwise, of: (i) all or any part of the Project Lands, or (ii) all or any material part of any personal property forming part of the Project; or (iii) all or any part of the Shares; or (iv) all or any part of the Palm Beach Project;
- (k) if proceedings are commenced for the dissolution, liquidation or voluntary winding-up of the Borrower or any Guarantor, or for the suspension of the operations of the Borrower unless such proceedings are being actively and diligently contested in good faith;
- (l) if a final judgment or decree for the payment of money due (that is not a Project Cost) has been obtained or entered against the Borrower or any Guarantor in an amount, when combined with any other such judgment or decrees, is in an amount in excess of Cdn. \$250,000, and such judgment or decree has not been and remained vacated, discharged or stayed pending appeal within the applicable appeal period and the Borrower or any Guarantor is not proceeding to diligently and in good faith dispute such acceleration, default or obligation or the Borrower or any Guarantor has not demonstrated to the satisfaction of the Lender that it has the financial ability to satisfy such judgement or decree without adversely affecting in any material way, the Borrower's or Guarantor's ability to perform its obligations under the Loan Documents;
- (m) if an event of default as defined in any indenture or instrument evidencing, or under which, any indebtedness for borrowed money of the Borrower or any Guarantor is outstanding shall happen and be continuing and such debt shall have been accelerated and such acceleration shall not have been stayed, rescinded or annulled within 10 days after notice thereof shall have been given to the Borrower or any Guarantor and the Borrower or any Guarantor is not proceeding to diligently and in good faith dispute such acceleration, default or obligation; provided, however, that if such event of default under such indenture or instrument shall be remedied or cured by the Borrower or any Guarantor before any final judgment or decree for the payment of the money due shall have been obtained or entered, then the Event of Default hereunder by reason thereof shall be deemed likewise to have been thereupon remedied, cured or waived without further action upon the part of the Lender;
- (n) if an event of default occurs under any Material Project Agreement resulting in, or is likely to result in, a Material Adverse Change;

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- (o) if Construction ceases for a single period of thirty (30) days or more, except as the result of Force Majeure;
- (p) if any Cost Overrun is not paid within ten (10) days of written notice by the Lender to the Borrower of such Cost Overrun;
- (q) if an event of default occurs under the DBC Mortgage which is not cured within any cure period afforded therefor;
- (r) if an event of default occurs under the Construction Loan which is not cured within any cure period afforded therefor;
- (s) if in the opinion of the Lender, acting reasonably, a Material Adverse Change has occurred; and
- (t) if the Construction Lender does not provide the initial advance of the Construction Loan to the Wellington Guarantor on or before November 29, 2019.

#### 10.02 **Acceleration and Enforcement**

- (1) If any Event of Default occurs and is continuing:
  - (a) the outstanding principal amount of the Loan and all other Obligations will, at the option of the Lender or upon the request of the Lender, become immediately due and payable with interest thereon, at the rate or rates determined as herein provided, to the date of actual payment thereof, all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by the Borrower and Guarantors; provided, if any Event of Default described in Section 10.01(h) or (i) occurs, the outstanding principal amount of the Loan and all other Obligations will automatically be and become immediately due and payable; and
  - (b) the Lender may exercise any right or recourse and proceed by any action, suit, remedy or proceeding against the Borrower or any Guarantor authorized or permitted by law for the recovery of all the Obligations to the Lender and, whether or not the Lender has exercised any of their respective rights under the foregoing clause (a), proceed to exercise any and all rights hereunder and under the Security.

(2) The Lender is not under any obligation to the Borrower or any Guarantor or any other Person to realize upon any collateral or enforce the Security or any part thereof or to allow any of the collateral to be dealt with or Disposed of. The Lender is not responsible or liable to the Borrower or any Guarantor or any other Person for any loss or damage arising from such realization or enforcement or the failure to do so or for any act or omission on their respective parts or on the part of any director, officer, employee, agent or adviser of any of them in connection with any of the foregoing.

**10.03 Remedies Cumulative**

For greater certainty, it is expressly understood that the respective rights and remedies of the Lender hereunder or under any other Loan Document or instrument executed pursuant to this Agreement are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity; and any single or partial exercise by the Lender of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Agreement or any other Loan Document will not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Lender may be lawfully entitled in connection with such default or breach.

**10.04 Perform Obligations**

If an Event of Default has occurred and is continuing and if the Borrower or any Guarantor has failed to perform any of its covenants or agreements in the Loan Documents, the Lender, may, but will be under no obligation to, instruct the Borrower or any Guarantor to perform any such covenants or agreements in any manner deemed fit by the Lender without thereby waiving any rights to enforce the Loan Documents. The expenses (including any legal costs) paid by the Lender in respect of the foregoing will be an Obligation and will be secured by the Security.

**10.05 Third Parties**

It is not necessary for any Person dealing with the Lender or any agent of the Lender to inquire whether the Security has become enforceable, or whether the powers that the Lender is purporting to exercise may be exercised, or whether any Obligations remain outstanding upon the security thereof, or as to the necessity or expediency of the stipulations and conditions subject to which any sale is to be made, or otherwise as to the propriety or regularity of any Disposition or any other dealing with the collateral charged by such Security or any part thereof.

**10.06 Application of Payments Upon Event of Default**

From and after the occurrence of an Event of Default which is continuing, all payments made by the Borrower hereunder or received from proceeds of realization of any Security will be applied to amounts due under the Obligations, all as determined by the Lender.

**ARTICLE 11 - YIELD PROTECTION, TAXES, MITIGATION****11.01 Increased Costs**

(1) Delay in Requests. Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation, except that the Borrower shall not be required to compensate the Lender pursuant to this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefore, unless the Change in Law giving rise to such increased costs or reductions is retroactive, in which

case the nine-month period referred to above shall be extended to include the period of retroactive effect thereof.

## 11.02 Taxes

(1) Payments Subject to Taxes. If the Borrower or the Lender is required by Applicable Law to deduct or pay any Indemnified Taxes (including any Other Taxes) in respect of any payment by or on account of any obligation of the Borrower hereunder or under any other Loan Document, then (i) the sum payable shall be increased by the Borrower when payable as necessary so that after making or allowing for all required deductions and payments (including deductions and payments applicable to additional sums payable under this Section) the Lender receives an amount equal to the sum it would have received had no such deductions or payments been required, (ii) the Borrower shall make any such deductions required to be made by it under Applicable Law and (iii) the Borrower shall timely pay the full amount required to be deducted to the relevant Governmental Authority in accordance with Applicable Law. Notwithstanding anything herein, in no case will the Borrower be responsible for any Taxes charged or exigible on the income of the Lender.

(2) Payment of Other Taxes by the Borrower. Without limiting the provisions of paragraph (1) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(3) Indemnification by the Borrower. The Borrower shall indemnify the Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) paid by the Lender and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

(4) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(5) Treatment of Certain Refunds and Tax Reductions. If the Lender determines, in its sole discretion, acting reasonably, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section or that, because of the payment of such Taxes or Other Taxes, it has benefited from a reduction in Taxes otherwise payable by it, it shall pay to the Borrower an amount equal to such refund or reduction (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section with respect to the Taxes or Other Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Lender and without interest (other than any net after-Tax interest paid by the relevant Governmental Authority with respect to such refund). The Borrower upon the request of the

Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Lender if the Lender is required to repay such refund or reduction to such Governmental Authority. This paragraph shall not be construed to require the Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person, to arrange its affairs in any particular manner or to claim any available refund or reduction.

## **ARTICLE 12- GENERAL**

### **12.01        Notices**

Any demand, notice or communication to be made or given hereunder shall be in writing and may be made or given by personal delivery or by transmittal by electronic transmission addressed to the respective parties per the mailing addresses are set out on the signature pages of this Agreement (or in the case of the Borrower and each Guarantor at 189 Forest Hill Road, Toronto, Ontario M5P 2N3) or to such other address as any party may from time to time notify the others in accordance with this Section 12.01. Any demand, notice or communication made or given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof, or, if made or given by electronic transmission or other electronic means of communication, on the first Business Day following the transmittal thereof.

### **12.02        Expenses; Indemnity; Damage Waiver**

(1)    **Costs and Expenses.** The Borrower shall pay (i) all out-of-pocket expenses incurred by the Lender and its Affiliates, including the fees, charges and disbursements of counsel for the Lender, in connection with the preparation, negotiation, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all out-of-pocket expenses incurred by the Lender, including but not limited to, fees and expenses in connection with the administration of this Agreement or the other Loan Documents, appraisals, engineering reports, sub-searches, and costs and expenses in connection with the enforcement or protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Agreement, or in connection with the Loan made hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Loan, and (iii) the fees of the Independent Cost Consultant. Notwithstanding anything to the contrary contained herein if the Loan is not advanced for any reason, the Lender shall have the right to direct the Borrower to pay the out-of-pocket expenses it is obligated to pay to the Lender pursuant to this Agreement directly to the counterparties thereto, or as further directed by the Lender.

(2)    **General Indemnification by the Borrower.** Subject to Section 11.02(1), the Borrower shall indemnify the Lender (and any sub-agent thereof) and its Related Party (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by any Indemnitee or asserted against any Indemnitee by any third party or by the Borrower arising out of, in connection with, or as a



result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance or non-performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation or non-consummation of the transactions contemplated hereby or thereby, (ii) the Loan or the use or proposed use of the proceeds therefrom, or (iii) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower and regardless of whether any Indemnitee is a party thereto, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or wilful misconduct of such Indemnitee or (y) result from a claim brought by the Borrower against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower has obtained a final and non-appealable judgment in its favour on such claim as determined by a court of competent jurisdiction nor shall it be available in respect of matters specifically addressed in Section 11.01, 11.02 and 12.02(1). The indemnity of contained this Section 12.02(2) shall survive any exercise by the Lender of the Security, including, without limitation, any foreclosure, power of sale proceeding or other enforcement action.

(3) Waiver of Consequential Damages. Etc. To the fullest extent permitted by Applicable Laws, the Borrower shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for indirect, consequential, punitive, aggravated or exemplary damages (as opposed to direct damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby (or any breach thereof), the transactions contemplated hereby or thereby, the Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.

(4) Payments. All amounts due under this Section shall be payable promptly after demand therefor. A certificate of the Lender setting forth the amount or amounts owing to the Lender, or a sub-agent or Related Party, as the case may be, as specified in this Section, including reasonable detail of the basis of calculation of the amount or amounts, and delivered to the Borrower shall be conclusive absent manifest error.

### 12.03 Successors and Assigns

(1) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Lender.

(2) Assignments by Lender. The Lender may at any time, without the consent of the Borrower, assign all or a portion of its rights and obligations under this Agreement, including, without limitation, a partial assignment of some or all of the Security, to any Person.

(3) Certain Pledges. The Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of the Lender.

#### 12.04 Governing Law: Jurisdiction: Etc.

(1) 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 in that Province.

(2) Submission to Jurisdiction. The Borrower irrevocably and unconditionally submits, for itself and its property, to the non-exclusive jurisdiction of the courts of the Province of Ontario, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any other Loan Document, or for recognition or enforcement of any judgment, and each of the parties hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or its properties in the courts of any jurisdiction.

(3) Waiver of Venue. The Borrower irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (2) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Laws, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

#### 12.05 Waiver of Jury Trial

Each party hereto hereby irrevocably waives, to the fullest extent permitted by applicable laws, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this agreement or any other loan document or the transactions contemplated hereby or thereby (whether based on contract, tort or any other theory). Each party hereto (a) certifies that no representative, agent or attorney of any other person has represented, expressly or otherwise, that such other person would not, in the event of litigation, seek to enforce the foregoing waiver and (b) acknowledges that it and the other parties hereto have been induced to enter into this agreement and the other loan documents by, among other things, the mutual waivers and certifications in this section.

#### 12.06 Counterparts: Integration: Effectiveness: Electronic Execution

(1) Counterparts: Integration: Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in the conditions precedent Section(s) of this Agreement, this Agreement shall become effective when it has been executed by

the Lender and when the Lender has received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or by sending a scanned copy by electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

(2) **Electronic Execution of Assignments.** The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada), the *Electronic Commerce Act, 2000* (Ontario) and other similar federal or provincial laws based on the *Uniform Electronic Commerce Act of the Uniform Law Conference of Canada* or its *Uniform Electronic Evidence Act*, as the case may be.

12.07 **Severability**

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

12.08 **Whole Agreement**

(1) This Agreement constitutes the whole and entire agreement between the Borrower and the Lender and cancels and supersedes any prior agreements, undertakings, declarations, commitments, representations, written or oral, in respect thereof.

(2) To the extent of any conflict or inconsistency between the provisions of this Agreement and the provisions of any of the Loan Documents, the provisions of this Agreement shall prevail.

12.09 **Further Assurances**

The Borrower and the Lender shall promptly cure any default by it in the execution and delivery of this Agreement, the other Loan Documents or of any the agreements provided for hereunder. The Borrower, at the Borrower's expense, shall promptly execute and deliver to the Lender, upon request by the Lender, all such other and further documents, agreements, opinions, certificates and instruments in compliance with, or accomplishment of the covenants and agreements of the Borrower, hereunder or more fully to state the Obligations of the Borrower, as set out herein or to make any recording, file any notice or obtain any consent, all as may be reasonably necessary or appropriate in connection therewith.

12.10 **Time of the Essence**

Time shall be of the essence of this Agreement.

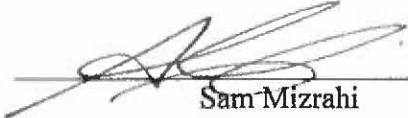
**12.11 Paramountcy**

In the event of a conflict between the provisions of this Agreement and the provisions of any other Loan Document, then, unless such Loan Document or an acknowledgement from the Borrower and the Lender relative to such Loan Document expressly states that this Section is not applicable to such Loan Document, notwithstanding anything else contained in such other Loan Document, the provisions of this Agreement will prevail and the provisions of such other Loan Document will be deemed to be amended to the extent necessary to eliminate such conflict.

*[Signature pages follow]*

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

**BORROWER:**

  
\_\_\_\_\_  
Sam Mizrahi


**LENDER:**

c/o Bayshore Capital Inc.  
Commerce Court West  
199 Bay Street, Suite 2900  
P.O. Box 459  
Toronto, Ontario M5L 1G4

Attention: Henry Wolfond  
Email:  
hwolfond@bayshorecapital.com

**V2 INVESTMENT HOLDINGS INC.**

By:

  
Name: HENRY WOLFOND  
Title: DIRECTOR/PRESIDENT

By:

\_\_\_\_\_  
Name:  
Title:

**GUARANTOR:**

**MIZRAHI DEVELOPMENTS INC.**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GUARANTOR:**


**MIZRAHI DEVELOPMENTS GROUP (1451 WELLINGTON) INC.**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GUARANTOR:**

**2659100 ONTARIO INC.**

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Schedule A****Legal Description of Project Lands****PIN 04030-0155 (LT)**

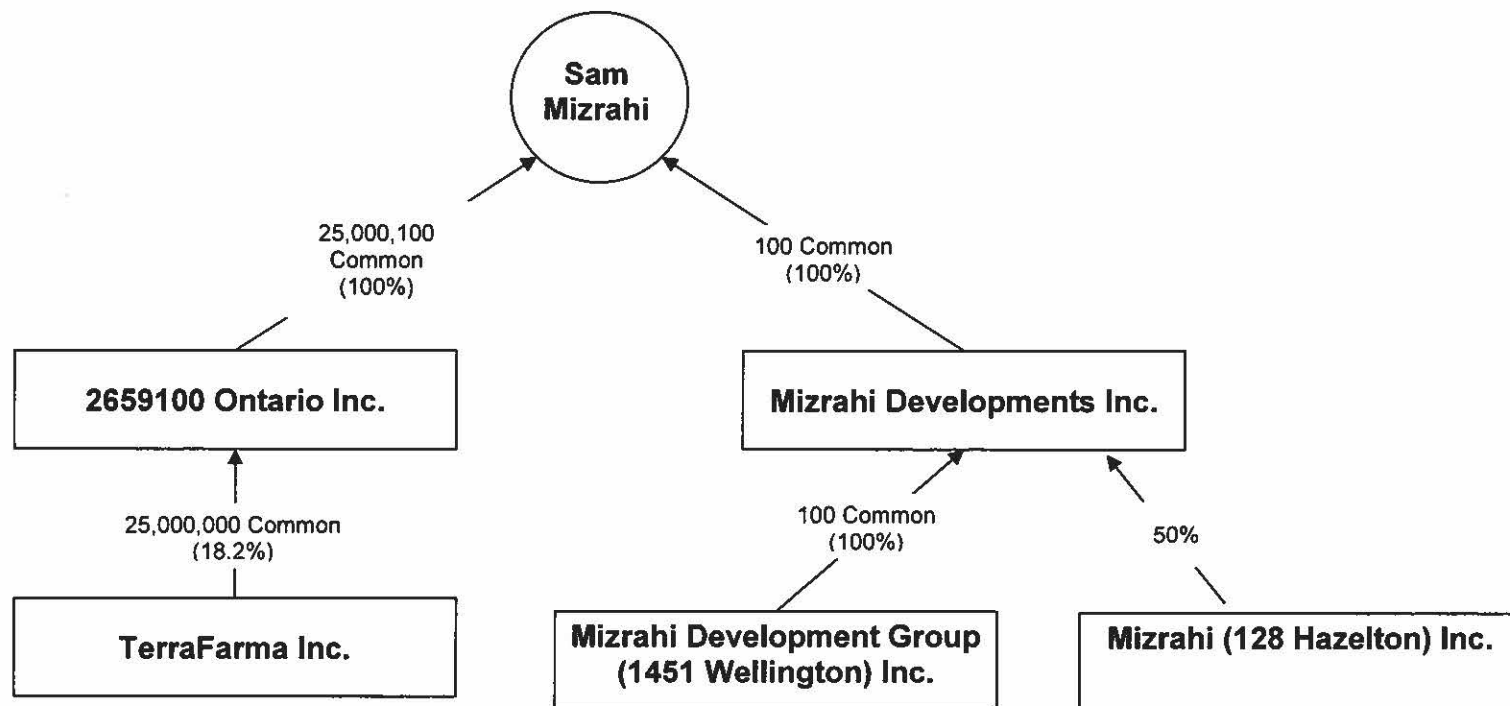
LT 3 & PT LT 4, PL 145 , BEING THE W 1/2, N/S RICHMOND RD (NOW WELLINGTON ST); OTTAWA

**PIN 04030-0154 (LT)**

LTS 1 & 2, PL 145 , N/S RICHMOND RD (NOW WELLINGTON ST); OTTAWA



**Schedule B**  
**Ownership Structure**



**Schedule C****Compliance Certificate**

**TO: V2 Investment Holdings Inc. (the “Lender”)**

**FROM: Mizrahi Developments Inc. (“MDI”)**

**DATE: •**

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This Compliance Certificate is delivered to you, as Lender, pursuant to Section 7.02(4) of the loan agreement made as of October 31, 2019 between, among others, Sam Mizrahi (the “Borrower”), as borrower, you, as lender, and MDI, as guarantor, as amended, restated, supplemented or otherwise modified from time to time (the “Agreement”). All terms used in this Compliance Certificate that are defined in the Agreement have the same meanings herein.

I, Sam Mizrahi, as Borrower, and as an officer of MDI certify in my capacity as Borrower and for and on behalf of MDI that:

I have made or caused to be made such examinations or investigations as are, in my opinion, necessary to furnish this Compliance Certificate and I have furnished this Compliance Certificate with the intent that it may be relied upon by the Lender as a basis for determining compliance by MDI with the covenants and obligations under the Agreement of the Borrower and MSI.

All of the representations and warranties of the Borrower and the Guarantors contained in the Agreement are true and correct on and as of the date hereof as though made on and as of the date hereof, subject to changes thereto given to the Lender by the Borrower and accepted in writing by the Lender.

All of the terms, covenants and conditions of the each of the Loan Documents to be performed or complied with by the Borrower and/or the Guarantors in all material respects at or prior to the date hereof have been performed or complied with.

No Default or Event of Default has occurred and is continuing on the date hereof.

Attached hereto are the financial statements of most recent date (“Reference Date”). Such financial statements when read with the notes thereto and the reconciliation accompanying such financial statements, represents fairly the consolidated financial position of MDI as of the date of such statements and for the reporting period included in such statements, and such financial statements, and all calculations of financial covenants and financial ratios and presentation of financial information in this Compliance Certificate have been prepared in accordance with GAAP.

MDI is in compliance with the minimum equity maintenance requirement of Section 7.01(28) of the Agreement as demonstrated in the calculations attached to this Compliance Certificate. MDI has Shareholder’s Equity of not less than \$20,000,000.

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Sam Mizrahi

*[Faint, illegible handwritten text]*

This is Exhibit M to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits

**THIS AMENDING AGREEMENT made the 31<sup>st</sup> day of March , 2023**

**BETWEEN:**

***SAM MIZRAHI***  
(the "**Borrower**")

**AND**

***V2 INVESTMENT HOLDINGS INC.***  
(the "**Lender**")

**WHEREAS:**

- A. Pursuant to a loan agreement (the "**Loan Agreement**") made October 31, 2019, the Lender provided a loan to the Borrower upon and subject to the terms set out in the Loan Agreement; and
- B. The Borrower and the Lender have agreed to amend the Loan Agreement in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Landlord and the Tenant hereby agree as follows:

1. The Loan Agreement is amended as follows:

- a. to delete from Section 1.01 the definition of "Maturity Date" in its entirety and replace it with the following:

**"Maturity Date"** means December 31, 2023.

- b. To add the following to the end of Subsection 4.01(1):

Notwithstanding the foregoing Mizrahi will use its best efforts to catch up on the interest payments from July 1, 2022 to March 1, 2023, in the interim no monthly interest payments shall be payable for the months of July 2022, August 2022, September 2022, October 2022, November 2022, December 2022, January 2023, February 2023 and March 2023. Interest from July 1, 2022 to December 1, 2023 shall accrue and be paid in accordance with the Schedule attached hereto.

2. This Agreement shall be read together with the Loan Agreement and the parties confirm that, except as modified herein, all covenants and conditions in the Loan Agreement remain unchanged, unmodified and in full force and effect.
3. Any capitalized word or term not otherwise defined herein shall have the meaning given thereto in the Loan Agreement.
4. The parties agree to do or cause to be done, from time to time, all such things, and shall execute and deliver all such documents, agreements and instruments reasonably requested by any other party, as may be necessary or desirable to carry out the provisions and intention of this Agreement.
5. This Agreement may be executed and delivered in counterparts and by facsimile transmission or other electronic means (including but not limited to email and/or document signature software such as DocuSign) and the parties hereto may rely upon all such signatures as though they were original signatures. Upon request of any party the parties will exchange a copy of this Agreement with original signatures.
6. This Agreement shall ensure to the benefit of and be binding upon the parties and their legal representatives, heirs, executors, administrators, successors and permitted assigns, as the case may be.

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**BORROWER:**



\_\_\_\_\_  
**Sam Mizrahi**

**LENDER:**

**V2 INVESTMENT HOLDINGS INC.**

By: \_\_\_\_\_  
Name:  
Title:





Amount Owed 11,900,000.00 end of May 2022  
 Maturity 31-Dec-24  
 Interest Rate 10% per annum, calculated and payable monthly based on act/365

Month Start	Month End	Interest Payable Date	Interest Accrued (1)	Interest Paid	Loan Balance, Month End
					11,900,000.00
01-May-22	31-May-22	01-Jun-22	99,166.67	99,166.67	11,900,000.00
01-Jun-22	30-Jun-22	01-Jul-22	99,166.67	0	11,999,166.67
01-Jul-22	31-Jul-22	01-Aug-22	99,993.06	0	12,099,159.72
01-Aug-22	31-Aug-22	01-Sep-22	100,826.33	0	12,199,986.05
01-Sep-22	30-Sep-22	01-Oct-22	101,666.55	0	12,301,652.60
01-Oct-22	31-Oct-22	01-Nov-22	102,513.77	0	12,404,166.38
01-Nov-22	30-Nov-22	01-Dec-22	103,368.05	0	12,507,534.43
01-Dec-22	31-Dec-22	01-Jan-23	104,229.45	0	12,611,763.88
01-Jan-23	31-Jan-23	01-Feb-23	105,098.03	0	12,716,861.91
01-Feb-23	28-Feb-23	01-Mar-23	105,973.85	0	12,822,835.76
01-Mar-23	31-Mar-23	01-Apr-23	106,856.96	106,856.96	12,822,835.76
01-Apr-23	30-Apr-23	01-May-23	106,856.96	106,856.96	12,822,835.76
01-May-23	31-May-23	01-Jun-23	106,856.96	106,856.96	12,822,835.76
01-Jun-23	30-Jun-23	01-Jul-23	106,856.96	106,856.96	12,822,835.76
01-Jul-23	31-Jul-23	01-Aug-23	106,856.96	106,856.96	12,822,835.76
01-Aug-23	31-Aug-23	01-Sep-23	106,856.96	106,856.96	12,822,835.76
01-Sep-23	30-Sep-23	01-Oct-23	106,856.96	106,856.96	12,822,835.76
01-Oct-23	31-Oct-23	01-Nov-23	106,856.96	106,856.96	12,822,835.76
01-Nov-23	30-Nov-23	01-Dec-23	106,856.96	106,856.96	12,822,835.76
01-Dec-23	31-Dec-23	01-Jan-24	106,856.96	106,856.96	12,822,835.76

This is Exhibit N to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits

**DEMAND DEBENTURE**

(1451 Wellington Street West, Ottawa, Ontario)

**PRINCIPAL SUM: \$12,900,000.00****DATE: October 31, 2019****ARTICLE 1****PROMISE TO PAY**

1.1 **Promise to Pay: MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.** (the “**Chargor**”), for value received, hereby acknowledges itself indebted and covenants and promises: (i) to pay to V2 Investment Holdings Inc. (the “**Chargee**”), as Chargee, its successors and assigns, at such place in Canada the Chargee may designate in writing to the Chargor, ON DEMAND the maximum principal amount of Twelve Million Nine Hundred Thousand Dollars (\$12,900,000.00) in the lawful money of Canada and interest thereon, from and including the date hereof (or from and including the last interest payment date to which interest shall have been paid), at a rate of 25% per annum calculated semi-annually, not in advance, as well after as before maturity and both before and after demand, default and judgment, with interest on overdue interest at the same rate, and on all other amounts secured hereby; and (ii) to perform the Secured Obligations (as hereinafter defined).

1.2 **Interpretation:** In this Debenture, unless there is something in the subject matter or text that is inconsistent therewith, all capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement. In addition, the following terms shall have the following meanings:

“**Account**” has the meaning set out in Section 3.9 hereof.

“**Act**” has the meaning set out in Section 2.1(b) hereof.

“**Charged Premises**” has the meaning set out in Section 2.1 hereof.

“**Chargee**” has the meaning set out in Section 1.1 hereof.

“**Chargor**” has the meaning set out in Section 1.1 hereof.

“**Contract**” has the meaning set out in Section 3.9 hereof.

“**Credit Agreement**” means the loan agreement made as of October \_\_\_, 2019, between, *inter alia*, the Borrower (as defined therein), the Chargor and the Chargee, as the same may be refinanced, amended, restated, supplemented or otherwise modified from time to time.

“**Excluded Collateral**” has the meaning set out in Section 2.2 hereof.

“**Real Property**” has the meaning set out in Section 2.1(a) hereof.

“**Revenues**” has the meaning set out in Section 2.1(b)(vi) hereof.

“**Secured Obligations**” means, without limitation or duplication, the Obligations and the covenant of the Chargor herein contained, and the principal, interest and other amounts payable hereunder or secured hereby.

“**Secured Property**” means the lands and premises described in Schedule A attached hereto, together with all rights and privileges appertaining thereto and all buildings, improvements and structures now or hereafter constructed or placed therein, thereunder or thereon.

“**Security Interests**” has the meaning set out in Section 2.1 hereof.

“**Tenant**” means any lessee, sublessee, licensee or grantee of a right of use or occupation under a Lease and its successors and permitted assigns.

## ARTICLE 2

### SECURITY

2.1 Security: As security for the due and timely payment of the principal amount, interest and all other amounts from time to time payable hereunder and of any and all of the Secured Obligations and performance of the Secured Obligations, but subject to the Permitted Encumbrances, the Chargor:

- (a) mortgages and charges as and by way of a fixed specific mortgage and charge to and in favour of the Chargee, all of its right, title, estate and interest, present and future, in and to: (i) the Secured Property; (ii) all buildings, erections, structures, improvements and fixtures now or hereafter constructed or placed in, under or upon the Secured Property; (iii) all easements, rights-of-way, licences and privileges appurtenant or appertaining to the Secured Property; and (iv) all interests in any of the foregoing and all benefits and rights to be derived by the Chargor in respect thereof (collectively, the “**Real Property**”);
- (b) grants, conveys, mortgages, charges, pledges, assigns and creates a security interest in, as and by way of a fixed and specific mortgage, charge, pledge, assignment and security interest to and in favour of the Chargee of all of its right, title, estate and interest, present and future, in and to any and all personal property in which a security interest can be taken, reserved, created or granted whether under the *Personal Property Security Act* (Ontario) (the “**Act**”), any similar personal property security legislation in any jurisdiction in which any of the Charged Premises is located or otherwise under any statute or law or in equity and which is now or at any time hereafter owned by the Chargor or in which the Chargor now has or at any time hereafter acquires any interest of any nature whatsoever, without in any way limiting the generality of the foregoing, the interest of the Chargor in:
  - (i) all materials, supplies, machinery, equipment, fixtures, inventory, vehicles, furniture, tools, accessories and appliances now or hereafter owned or acquired by or on behalf of the Chargor and every interest therein which the Chargor now has or hereafter acquires, wheresoever situate;
  - (ii) all present and future accounts (including, without limitation, cash collateral accounts), accounts receivable, money (including, without limitation, all money in any bank accounts), intangibles, claims, contract rights, demands, chattel papers, instruments, documents, warehouse receipts, bills of lading, notes and choses in action, together with any and all security therefor, including, without limiting the generality of the foregoing, all present and future mortgages receivable, debentures, bonds, promissory notes, bills of exchange, judgments and book debts, now due or hereafter to become due to or owned by the Chargor, together with all securities, documents, computer disks, tapes, software or records now or hereafter owned by the Chargor and representing or evidencing the said debts, accounts, accounts receivable, claims, contract rights, demands and choses in action and all other rights and benefits in respect thereof, including, without limitation, all Material Project Agreements and Material Licences;
  - (iii) all rights, agreements, licenses, permits, consents, policies, approvals, development agreements, building contracts, performance bonds, purchase orders, plans, patents, trademarks, trade names, copyrights and other industrial and intellectual property, goodwill, know-how, management agreements, rights to carry on business and specifications presently owned and hereafter acquired by the Chargor;
  - (iv) all present and future computer hardware, software, programs and electronically stored data, and all rights, agreements, licences, permits and consents in respect of or in any way relating to such computer hardware, software and programs including, without limitation, all paper cards, magnetic tapes, discs, diskettes, drums or magnetic bubbles and whether

permanently installed in hardware or crystallized in firmware, and all codes, passwords and security devices in respect thereof;

- (v) all shares, stocks, warrants, bonds, debentures, debenture stock, partnership interests, joint venture interests or other securities investments now or hereafter owned by the Chargor;
- (vi) all rents, revenues, income, insurance proceeds, expropriation proceeds, other proceeds and other monies to which the Chargor may from time to time be entitled from all sources including, without limitation, all income and proceeds (whether in cash or on credit) received or receivable by or on behalf of the Chargor in respect of the use, occupancy or enjoyment of the Real Property or any part thereof or for the sale of goods or the provision of services on, at or from the Real Property or from judgments, settlements or other resolutions of disputes relating to the ownership, use, construction, development, operation, maintenance or management of the Real Property (collectively, “**Revenues**”); and
- (vii) the benefit of any guarantees or indemnities relating to all or part of the property referred to in paragraph 2.1(b)(vi); and
- (viii) all investment property (as defined in the Act);

and with respect to paragraphs 2.1(b)(i) to (viii) inclusive, in, to and under all amendments, extensions, renewals, replacements and substitutions of any of the foregoing, all increases, additions and accessions thereto and all rights, remedies, powers, easements, privileges and claims of the Chargor thereunder (whether arising pursuant thereto or available to the Chargor at law or in equity) including without limitation, the right of the Chargor to enforce the foregoing and the obligations of the other parties thereto and to give or withhold any and all consents, requests, directions, approvals, extensions and/or waivers thereunder, save and except for the deposit monies held in the designated trust account monitored by the DBC in respect of which it has a first priority security interest and the unilateral right to give or withhold any and all consents or directions to release same (in whole or in part) from said designated trust account;

- (c) assigns, transfers and sets over unto and in favour of the Chargee, as and by way of a fixed and specific assignment, all of its right, title, estate and interest, present and future, in and to:
  - (i) all Material Project Agreements, Material Licences, Permitted Encumbrances and any agreements relating in any way to the Real Property (including, without limitation, those relating to construction or development on, or operation of, the Real Property) or the business, undertaking and operations of the Chargor; and
  - (ii) all amendments, extensions, renewals, replacements and substitutions of any of the property referred to in paragraph 2.1(c)(i) and all benefits, rights, remedies, privileges, claims, powers and advantages of the Chargor to be derived therefrom or thereunder (whether arising pursuant thereto or available to the Chargor at law or in equity) and all covenants, obligations and agreements of the other parties thereto including, without limitation, the right of the Chargor to enforce any of the foregoing and the obligations of the other parties thereto and to give or withhold any and all consents, requests, directions, approvals, extensions and/or waivers thereunder;
- (d) assigns, transfers and sets over unto and in favour of the Chargee, as and by way of a general assignment, all of its right, title, estate and interest present and future, in and to:
  - (i) the Leases and all benefits, powers and advantages of the Chargor to be derived therefrom and all covenants, obligations and agreements of the Tenants thereunder or in any agreement collateral thereto including, without limitation, the benefit of any right, option or obligation of any Tenant or other person to acquire any of the Real Property or an interest therein, to

renew or extend any Lease, to lease other space and any other collateral advantage or benefit to be derived from the Leases or any of them;

- (ii) all rents and other moneys now due and payable or hereafter to become due and payable under the Leases and each guarantee of or indemnity in respect of the obligations of the Tenants thereunder with full power to demand, sue for recovery, receive and give receipts for all such rents and other moneys and otherwise to enforce the rights of the Chargor thereto in the name of the Chargor;
- (iii) all present and future intangibles arising from or out of the Real Property or any part or parts thereof and the property and assets referred to in subsections 2.1(b) and (c) above including, without limiting the generality of the foregoing, all of its rights, title and interest in all present and future book debts, accounts and other accounts receivable, contract rights and choses in action;
- (iv) any and all existing or future agreements, contracts, licences, permits, plans and specifications, bonds, letters of credit, letters of guarantee or other documents or instruments relating to the Real Property or any part or parts thereof and all extensions, amendments, renewals or substitutions thereof or therefor which may hereafter be effected or entered into and all benefit, power and advantage of the Chargor to be derived therefrom, including, without limitation, all Material Project Agreements and Material Licences;
- (v) any and all existing or future agreements of purchase and sale, options to purchase and mortgage, loan or other financing commitments relating to the Real Property each of the Condominium Sales Agreements, including, without limitation, a security interest in all of the right title and interest of the Chargor in and to the Purchaser Deposits, subject to the prior security interest of DBC and the Construction Lender, or any part or parts thereof and all proceeds and other moneys now due and payable or hereafter to become due and payable thereunder and all benefit, power and advantage of the Chargor to be derived therefrom; Chargee acknowledges that such assignment is subject to the relevant provisions of the *Condominium Act*, 1998 (Ontario), as amended, and the interest of Tarion, the DBC and/or the Construction Lender; Chargee acknowledges that “proceeds and other moneys” does not include those moneys which must be held in trust for the proposed condominium corporation(s) with relation to the reserve fund component required by the *Condominium Act*, 1998 (Ontario), as amended; and
- (vi) the proceeds of any and all existing or future insurance policies pertaining to the Real Property or the property and assets referred to in subsections 2.1(b) and (c) and paragraphs 2.1(d)(i) to (v) inclusive, including, without limitation, the insurance referred to in the Credit Agreement and all proceeds of expropriation or similar taking of the Real Property or any part or parts thereof and all benefit, power and advantage of the Chargor to be derived therefrom provided that all such proceeds shall be held and applied in accordance with the Credit Agreement;
- (vii) the Construction Contracts;
- (viii) the Consultant Contracts;
- (ix) all money, rents, revenue, claims, rights, demands, judgements, securities, privileges, powers and the like whatsoever which the Chargor may now or at any time hereafter have or be entitled to under or by virtue of or in respect of, or incidental to, the Construction Contracts and Consultant Contracts;
- (x) any and all benefits and advantages due or at any time after the date hereof to become due under the Construction Contracts and Consultant Contracts, and any extensions or renewals thereof;

- (xi) the benefit of all covenants, guarantees, representations, warranties and indemnities and rental income-loss, public liability and other insurance policies which have been or in the future are granted to, received or negotiated by the Chargor, or any agent of the Chargor, in respect of the Construction Contracts and Consultant Contracts;
- (xii) all letters, papers, insurance policies, performance bonds, labour and material payment bonds, other bonds and other documents in any way evidencing or relating to or which may at any time be received by the Chargor as security for or on account of any of the Construction Contracts and Consultant Contracts; all proceeds arising in respect of the Construction Contracts and Consultant Contracts, that are goods, intangibles, securities, documents of title, chattel paper, instruments or money (words used in this subparagraph that are defined in the Personal Property Security Act (Ontario) (the "PPSA") shall have the meaning ascribed thereto in the PPSA unless otherwise defined herein);
- (xiii) all letters of credit or performance bonds in connection with the Project pursuant to which the Chargor is a beneficiary, including (without limitation) the Performance and Payment Bonds, as the same may be renewed, amended or replaced from time to time;
- (xiv) all benefit, power and advantage of the Chargor to be derived from the Performance and Payment Bonds, and all covenants, obligations, agreements and undertakings of the Chargor, and otherwise the right to enforce the rights of the Chargor thereunder in the name of the Chargor;
- (xv) all revenues, proceeds and other moneys now due and payable or hereafter to become due and payable to the Chargor in respect of the Performance and Payment Bonds or to be derived therefrom, if any, with full power and authority to demand, sue for, recover, receive and give receipts for all such revenues and other moneys;
- (xvi) all books, accounts, invoices, letters, papers and documents in any way evidencing or relating to the Performance and Payment Bonds;

all amendments, extensions, renewals, replacements and substitutions of any of the property referred to in paragraph 2.1(d)(i) – (xvi) and all benefits, rights, remedies, privileges, claims, powers and advantages of the Chargor to be derived therefrom or thereunder (whether arising pursuant thereto or available to the Chargor at law or in equity) and all covenants, obligations and agreements of the other parties thereto including, without limitation, the right of the Chargor to enforce any of the foregoing and the obligations of the other parties thereto and to give or withhold any and all consents, requests, directions, approvals, extensions and/or waivers thereunder;

- (e) grants, conveys, mortgages, charges, pledges, assigns and creates a security interest in, as and by way of a fixed and specific mortgage, charge, pledge, assignment and security interest to and in favour of the Chargee, all of its right, title, estate and interest, present and future, in and to all personal property in any form (including money) derived, directly or indirectly, from any dealing with the property referred to in subsections 2.1(a) to (d) inclusive, or proceeds therefrom or that indemnifies or compensates for all or part of such property or proceeds therefrom that is destroyed and damaged; and
- (f) grants, conveys, mortgages, charges, pledges and assigns as and by way of a floating charge to and in favour of the Chargee all of the undertaking, property, assets, rights, entitlements, benefits and privileges, both real and personal, moveable and immovable, of every nature and kind, now or at any time and from time to time hereafter existing and owned by the Chargor (except such property and assets as are validly and effectively subject to any fixed and specific mortgage and charge or assignment, transfer or security interest created hereby);

provided that the said grants, conveyances, mortgages, charges, pledges, transfers, assignments and security interests created pursuant to this Section 2.1 (the “**Security Interests**”) shall not: (i) extend or apply to any personal property which is “consumer goods”, as such term is defined in the Act; or (ii) extend to the last day of the term of any Lease or any agreement therefor now held or hereafter acquired by the Chargor, but should such Security Interests become enforceable the Chargor shall thereafter stand possessed of such last day and shall hold it in trust for the Chargee for the purpose of this Debenture and assign and dispose thereof as the Chargee shall, for such purpose, direct. Upon any sale of such leasehold interest or any part thereof, the Chargee, for the purpose of vesting the aforesaid one day residue of such term or renewal thereof in any purchaser or purchasers thereof, shall be entitled by deed or writing to appoint such purchaser or purchasers or any other person or persons as new trustee or trustees of the aforesaid residue of any such term or renewal thereof in the place of the Chargor and to vest the same accordingly in the new trustee or trustees so appointed free and discharged from any obligation respecting the same.

All the undertaking, property and assets mortgaged and charged pursuant to Subsection 2.1(a) and all of the undertaking, property and assets granted, conveyed, assigned, transferred, mortgaged, pledged and charged pursuant to Subsections 2.1(b), (e) and (f) hereof being hereinafter collectively referred to as the “**mortgaged property**”; all the undertaking, property and assets assigned, transferred and set over pursuant to Subsections 2.1(c) and (d) being hereinafter collectively referred to as the “**assigned property**”; and the mortgaged property and assigned property being hereinafter collectively referred to as the “**Charged Premises**”. Wherever used herein in relation to the rights and remedies of the Chargee the terms “Real Property”, “mortgaged property”, “assigned property” and “Charged Premises” shall, where the context permits, mean the whole or any part or parts thereof.

TO HAVE AND TO HOLD the Charged Premises and all rights hereby conferred unto the Chargee, its successors and assigns, for the uses and purposes and with the powers and authorities and subject to the terms and conditions set forth herein and in the Credit Agreement.

2.2 Excluded Collateral: Notwithstanding anything contained in this Debenture, the Security Interests contained herein in respect of the Charged Premises, other than the Charged Premises referred to in Section 2.1(a), shall not extend or attach to the right, title, interest or benefit of the Chargor in any of the Charged Premises which by the terms thereof or by law cannot be assigned or charged or which requires the consent of any third party or Governmental Authority to such assignment or charge or which, if assigned or charged, would give rise to a default, penalty or right of termination (collectively the “**Excluded Collateral**”). The Chargor agrees that, at the reasonable request of the Chargee from time to time, it will obtain such consents in respect of the Excluded Collateral and to obtain consents to the transfer or assignment of the Excluded Collateral to any third party who may acquire an interest in the Charged Premises as a result of the exercise by the Chargee of its remedies hereunder. Upon such consent being obtained, the Security Interests contained herein shall apply to such Excluded Collateral without regard to this Section 2.2 and without the necessity of any further assurance to effect the Security Interests contained herein in respect thereto. Until such consent is obtained, the Chargor shall, to the extent that it may do so by law or under the terms of the Excluded Collateral and without giving rise to any default, penalty or right of termination, hold all right, title, benefit and interest to be derived therefrom in trust for the Chargee as additional security, as if the Security Interests contained herein applied, and shall deliver up such right, title, benefit and interest to the Chargee forthwith upon the occurrence and during the continuance of an Event of Default.

2.3 Delivery of Instruments, Securities, Etc.: The Chargor shall, upon reasonable request from the Chargee, following the occurrence of an Event of Default which is continuing, forthwith deliver to the Chargee to be held by the Chargee hereunder all instruments, securities, letters of credit, advices of credit and negotiable documents of title in its possession or control which pertain to or form part of the Charged Premises, and shall, where appropriate, duly endorse the same for transfer in blank or as the Chargee may direct and shall make all reasonable efforts to deliver forthwith to the Chargee any and all consents or other instruments or documents necessary to comply with any restrictions on the transfer thereof in order to transfer the same to the Chargee.

2.4 Representations and Warranties of the Chargor: The Chargor represents and warrants to the Chargee as follows:

- (a) French Name: The Chargor does not have or use a French form of name or a combined English and French form of name;



- (b) Address: The address of the Chargor's chief executive office is 125 Hazelton Avenue, Toronto, ON M5R 2E4;
- (c) Location of Charged Premises: With the exception of inventory in transit, all material tangible assets comprising the Charged Premises are situated at the Real Property, the Chargor's chief executive office or a location disclosed in the Credit Agreement;

With respect to the Condominium Sales Agreements:

- (d) as at the date hereof, there is no default or any material outstanding dispute between it and any purchaser under any of the terms of any existing Condominium Sales Agreement or other documentation executed relating thereto, except as already disclosed to the Chargee;
- (e) it shall at all times observe and perform all of its covenants and obligations under the Condominium Sales Agreements in all material respects;
- (f) it has full capacity, power and authority to enable it to enter into the Condominium Sales Agreements and this Agreement and to carry on its business as now conducted and to carry out its obligations under the Condominium Sales Agreements and this Agreement;
- (g) as at the date hereof, each of the existing Condominium Sales Agreements has been duly executed and delivered by it and is in full force and effect and constitutes a valid and legally binding obligation of it;
- (h) except in the ordinary course of business acting prudently and in such case only if an Event of Default is not subsisting under the Credit Agreement, it shall not terminate, forfeit, cancel, alter, amend or modify any of the Condominium Sales Agreements or any of the terms or conditions thereof nor waive any default by any of the other parties thereto without the consent of the Chargee which consent shall not be unreasonably withheld or delayed unless the Chargor is required to do so by law or contract;
- (i) it shall notify the Chargee within a reasonable period of time upon becoming aware of any claim or litigation in respect of any of the Condominium Sales Agreements which may (if any such claim was pursued, or if any such litigation was judicially determined against the Chargor) have a material adverse impact on (i) the ability of the Chargor to complete the Project; or (ii) the ability of the Chargor to fully repay the outstanding indebtedness owed to the Chargee and the other chargees; and
- (j) in entering into Condominium Sales Agreements and holding Purchaser Deposits, it shall at all times comply with the *Condominium Act, 1998* (Ontario) and shall ensure that a proper disclosure statement is delivered to each purchaser, together with copies of all amendments thereto, as required by the *Condominium Act, 1998* (Ontario).

The foregoing representations and warranties shall survive for so long as any of the Secured Obligations remain unpaid and, notwithstanding any investigation made by or on behalf of the Chargee, shall continue in full force and effect for the benefit of the Chargee during such period.

2.5 Covenants of the Chargor: So long as any of the Secured Obligations shall remain unpaid and the Chargee has obligations to provide credit facilities pursuant to the Credit Agreement, the Chargor covenants and agrees with the Chargee as follows:

- (a) No Accessions: The Chargor shall prevent any Charged Premises from being or becoming an accession to any property not subject to Security Interests created by this Debenture;
- (b) Change of Name/Chief Executive Office: The Chargor shall not change its name or the location of its chief executive office without giving prior written notice to the

Chargee of the new name or chief executive office location and the date upon which such change of name or chief executive office location is to take effect;

- (c) Location of Charged Premises: Except as may be permitted by the Credit Agreement, the Chargor shall not keep, store, locate or install any Charged Premises at, or move, transport or transfer any Charged Premises to, any location other than those locations set out in Section 2.4(c) without the prior written consent of the Chargee; and
- (d) Registrations: The Chargor will, from time to time at the request of the Chargee, promptly effect all registrations, filings, recordings and all renewals thereof and all re-registrations, re-filings and re-recordings of or in respect of this Debenture and the Security Interests created hereby in such offices of public record and at such times as may be necessary or of advantage in perfecting, maintaining and protecting the validity, effectiveness and priority hereof and of the Security Interests created hereby; provided that the Chargee may effect all such registrations, filings, recordings, renewals, re-registrations, re-filings and re-recordings from time to time in its sole discretion at the expense of the Chargor.
- (e) Comply with Obligations: The Chargor will comply with all obligations, covenants, liabilities and conditions under the assigned property, and any of the assigned property.

2.6 Enlargement: Each Security Interest created by this Article 2 is intended to be a mortgage, pledge and charge of, and a security interest in, the entire estate, right, title and interest of the Chargor of its interests, whether such interests are leasehold or freehold interests, in and to each and every part of the Real Property and, if the estate, right, title and interests of the Chargor, whether leasehold or freehold, in and to the Real Property or any part thereof enlarges, the charges created by this Article 2 will be enlarged and extended to be a mortgage, pledge and charge of, and security interest in, such enlarged estate, right, title and interest promptly upon the acquisition thereof by the Chargor, and without any further act on the part of the Chargor, and will become and be subject to the charges created by this Article 2 as fully and completely as though now owned by the Chargor.

### ARTICLE 3

#### RIGHTS AND REMEDIES

3.1 Remedies Upon Default: Upon the occurrence of any Event of Default which is continuing, the Chargee may do any one or more of the following:

- (a) by written notice to the Chargor, declare the Secured Obligations to be immediately due and payable without the necessity of presentment for payment, or notice of non-payment and of protest (all of which are hereby expressly waived by the Chargor);
- (b) proceed to exercise any and all rights under this Debenture, the other Loan Documents and any other document or instrument executed pursuant to this Debenture or any other rights otherwise available to it whether under this Debenture, the other Loan Documents or otherwise, including enforcement of this Debenture;
- (c) take any action or proceeding authorized or permitted by this Debenture, the other Loan Documents or by law or equity, and file or cause to be filed on its behalf such proofs of claim and other documents as may be necessary or desirable to have its claims lodged in any bankruptcy, winding-up or other judicial proceeding relative to the Chargor;
- (d) take proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;

- (e) immediately enter upon and take possession of, disable or remove all of the Charged Premises or any part or parts thereof with power, among other things, to exclude the Chargor, to preserve and maintain the Charged Premises and make additions and replacements thereto, to receive rents, income and profits of all kinds in connection with the Charged Premises and pay therefrom all reasonable expenses of maintaining, completing, repairing, preserving and protecting and operating the Charged Premises and all charges, payment of which may be necessary to preserve or protect the Charged Premises, and enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including, without limitation, power to advance its own moneys at the rate of interest paid on the outstanding amount of the Loan under the Credit Agreement and enter into contracts and undertake obligations for the foregoing purposes upon the security hereof;
- (f) exercise all powers and rights of the Chargee under any of the Charged Premises;
- (g) enjoy all benefits of the Chargee under any of the Charged Premises;
- (h) whether or not the Chargee has taken possession of the Charged Premises or any of it, sell, lease or otherwise dispose thereof, either as a whole or in separate parcels, at public auction, by public tender or by private sale, with only such notice as may be required by law, either for cash or upon credit, at such time and upon such terms and conditions as the Chargee may determine (including a term that a reasonable commission shall be payable to the Chargee or any related corporation in respect thereof) and enter into, rescind or vary any contract for the sale, lease or other disposition of any of the Charged Premises and sell, lease or dispose thereof again without being answerable for any loss occasioned thereby and the Chargee may execute and deliver to any purchaser of the Charged Premises or any part thereof good and sufficient deeds and documents for the same;
- (i) require the Chargor, at the Chargor's expense, to assemble the Charged Premises at a place or places designated by notice in writing given by the Chargee to the Chargor, and the Chargor agrees to so assemble the Charged Premises;
- (j) require the Chargor, by notice in writing given by the Chargee to the Chargor, to disclose to the Chargee the location or locations of the Charged Premises and the Chargor agrees to make such disclosure when so required by the Chargee;
- (k) without legal process, enter any premises where the Charged Premises may be situated and take possession of the Charged Premises by any method permitted by law;
- (l) carry on all or any part of the business or businesses of the Chargor relating to the Real Property and, to the exclusion of all others including the Chargor, enter upon, occupy and, subject to any requirements of law and subject to any leases or agreements then in place, use all or any of the Real Property, premises, buildings, plant, undertaking, assets and other property comprising the Charged Premises for such time and in such manner as the Chargee sees fit, free of charge and, except to the extent required by law, the Chargee shall not be liable to the Chargor for any act, omission or negligence in so doing or for any rent, charges, depreciation or damages or other amounts incurred in connection therewith or resulting therefrom;
- (m) borrow money for the purpose of carrying on the business of the Chargor relating to the Charged Premises or for the maintenance, preservation or protection of the Charged Premises and mortgage, charge, pledge or grant a security interest in the Charged Premises, whether or not in priority to the security interests created by this Debenture to secure repayment of any money so borrowed;
- (n) where the Chargee has taken possession of the Charged Premises, retain the Charged Premises irrevocably, to the extent not prohibited by law, by giving

notice thereof to the Chargor and to any other persons required by law in the manner provided by law;

- (o) send or employ inspectors or agents to inspect, audit and report upon the value, state and condition of the Charged Premises;
- (p) subject to applicable law, seize, collect, retain and administer the Charged Premises or any part or parts thereof in the Chargee's discretion;
- (q) pay any encumbrance, lien, claim or charge that validly exists or has been threatened against any of the Charged Premises and any amounts determined to be validly existing shall, when so paid, together with any costs, charges and expenses incurred by the Chargee (including, without limitation, legal fees and disbursements on a solicitor-client basis), be added to the Secured Obligations hereby and shall bear interest at the rate provided for in the Credit Agreement;
- (r) take proceedings in any court of competent jurisdiction to enforce payment by the Chargor of the Secured Obligations or any deficiency remaining upon application of proceeds of realization which are actually received by the Chargee;
- (s) exercise or pursue any other remedy or proceeding authorized or permitted hereby or by the Act or any similar personal property security legislation or by any other legislation in any jurisdiction in which any of the Charged Premises is located or otherwise permitted by law or equity;
- (t) with or without entry into possession of the Charged Premises, or any part thereof, appoint a receiver (which term shall include a receiver and manager) of the Charged Premises or any part thereof and of the rents and profits thereof pursuant to and in accordance with the provisions of the Loan Documents and this Debenture and with or without security for the performance of the receiver's obligations and from time to time remove any receiver and appoint another in its stead. Upon the appointment of any such receiver or receivers from time to time, subject to Applicable Laws, the following provisions shall apply:
  - (i) every such receiver shall be the irrevocable agent of the Chargor for all purposes with respect to the Charged Premises including, without limitation, for the collection of all Revenues owing or earned in respect of the Real Property or any part thereof;
  - (ii) every such receiver may, in the discretion of the Chargee, be vested with all or any of the powers and discretion of the Chargee under this Debenture and the Loan Documents, including, without limitation, the power to carry on all or any part of the business of the Chargor relating to the Real Property and to sell, lease or otherwise dispose of the Charged Premises, either as a whole or in separate parcels, at public auction, by public tender or by private sale, with only such notice as may be required by Applicable Laws, either for cash or on credit, at such time and upon such terms and conditions as the receiver may determine (including a term that a reasonable commission shall be payable to the receiver, or any related corporation in respect thereof) and enter into, rescind or vary any contract for the sale, lease or other disposition of any of the Charged Premises and sell, lease or dispose thereof again without being answerable for any loss occasioned thereby and the receiver may execute and deliver to any purchaser of the Charged Premises or any part thereof good and sufficient deeds and documents for the same and such receiver shall also have the power to take proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;
  - (iii) the Chargee may from time to time fix the remuneration of every such receiver and every such receiver shall be entitled to deduct the same out of the income from the Charged Premises or the proceeds of disposition of the Charged Premises;

- (iv) the appointment of every such receiver by the Chargee shall not, to the extent permitted by law, incur or create any liability on the part of the Chargee to the receiver in any respect and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the Real Property or any part thereof;
- (v) every such receiver shall, from time to time, have the power to lease or otherwise deal with any portion of the Real Property which may become vacant or available for lease on such terms and conditions as such receiver may deem advisable and shall have full power to complete any unfinished construction upon the Real Property (such power of the receiver to include, without limitation, the power to borrow funds in the name of and on the credit of the Chargor for such purposes, which borrowings may be secured by the Charged Premises, or any part thereof, and which security shall have such priority as the receiver deems appropriate);
- (vi) every such receiver shall have full power to fully manage, develop, operate, lease, deal with agreements (including, without limitation, the Material Project Agreements, Project Management Agreement, Construction Contracts, Consultant Contracts, Condominium Sales Agreements, the Material Licences, and the Permitted Encumbrances) and Leases, construct, complete, repair, renovate or alter the Real Property or any part thereof on behalf of the Chargor and to take all such actions as are required in the exercise of such powers including, without limitation, entering into, amending and terminating such contracts and other agreements relating to the Charged Premises as are necessary or advisable, in the opinion of the receiver, and the entering into, renewal, amendment, supplement or termination of any agreements and Leases as the receiver may deem appropriate in its sole and absolute discretion; the aforementioned power shall include the power to borrow money in the name of and on the credit of the Chargor for all such purposes (which borrowings may be secured by the Charged Premises, or any part thereof, and which security shall have such priority as the receiver deems appropriate);
- (vii) no such receiver shall be liable to the Chargor to account for monies other than monies actually received by or in respect of Charged Premises or any part thereof and out of such monies so received, every such receiver shall, subject to the further direction of the Chargee, in the following order pay:
  - (A) his remuneration aforesaid;
  - (B) all payments made or incurred by him in connection with the management, operation, construction, completion, repair or alteration of the Charged Premises or any part thereof in accordance with the provisions thereof;
  - (C) all payments of interest, principal and other money which may, from time to time, be or become charged upon the Charged Premises in priority to this Debenture or the Loan Documents and all taxes, insurance premiums and every other proper expenditure made or incurred by him in respect of the Charged Premises or any part thereof and in payment of all interest, fees and other similar amounts due or falling due hereunder and the balance to be applied upon the Secured Obligations; and
  - (D) at the discretion of the receiver, interest, principal and other monies which may from time to time constitute an encumbrance on the Charged Premises subsequent or subordinate to this Debenture or the Loan Documents;

and every receiver may in its discretion retain reasonable reserves to pay accruing amounts and anticipated payments in connection with any of the foregoing; and any surplus remaining in the hands of every such receiver after payments made as aforesaid shall be accountable to the Chargor and upon termination of the receivership such receiver shall pay such surplus to the Chargor or pay it into court, as the receiver may elect;

- (viii) the Chargee may at any time and from time to time terminate any such receivership by notice in writing to the Chargor and to any such receiver; and
- (ix) the receiver may carry out all actions and do all things that the Chargee may do under this Debenture and the Loan Documents as if it were the Chargee (it being agreed that such powers are not in any way limited by the foregoing provisions of this Subsection 3.1(r)).

3.2 Sale of Charged Premises: The Chargor agrees that any sale referred to in Section 3.1 may be either a sale of all or any portion of the Charged Premises and may be by way of public auction, public tender, private contract or otherwise without notice, advertisement or any other formality, except as required by law, all of which the Chargor waives to the extent permitted by law. To the extent not prohibited by law, any such sale may be made with or without any special condition as to the upset price, reserve bid, title or evidence of title or other matter and from time to time as the Chargee in its sole discretion think fit with power to vary or rescind any such sale or buy in at any public sale and resell. The Chargee may sell the Charged Premises for a consideration payable by instalments either with or without taking security for the payment of such instalments and may make and deliver to any purchaser thereof good and sufficient deeds, assurances and conveyances of the Charged Premises and give receipts for the purchase money, and any such sale shall be a perpetual bar, both at law and in equity, against the and all those claiming an interest in the Charged Premises by, from, through or under the Chargor.

3.3 References to the Chargee Include Receiver: For the purposes of Sections 3.2, 3.4, 3.7, 3.8, 3.10, 3.11 and 3.14 a reference to the Chargee shall, where the context permits, include any receiver or receiver and manager or other agent on behalf of the Chargee.

3.4 Chargor's Rights: Subject to the terms of the Credit Agreement, until the security hereby constituted shall become and remains enforceable, the Chargor shall be entitled to deal with the Charged Premises and enforce, use and enjoy all of the benefits, advantages and powers thereunder as if this Debenture had not been made. Upon the security hereby constituted becoming and remaining enforceable, the Chargee may, but shall not be obligated to, exercise all rights, powers, authority and discretions of the Chargor in respect of the Charged Premises in its place and stead.

3.5 Judgment: Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liabilities of the Chargor to make payment of the principal hereby secured or interest thereon or other moneys owing hereunder nor shall such operate as a merger of any covenant or affect the right of the Chargee to interest at the rate hereinbefore specified and any judgment shall bear interest at such rate.

3.6 Interest: If any amount payable to the Chargee under this Debenture is not paid when due, the Chargor will pay to the Chargee, immediately on demand, interest on such amount from the date due until paid, at an annual rate equal to the interest rate stipulated therefor in the Credit Agreement. All amounts payable by the Chargor to the Chargee under this Debenture, and all interest on all such amounts will form part of the Secured Obligations and will be secured by the security interests created by this Debenture.

3.7 Charge as Security:

- (a) It is expressly acknowledged and agreed that nothing herein contained shall obligate the Chargee to assume or perform any obligation of the Chargor to any third party in respect of or arising out of any of the Charged Premises. The Chargee may, however, only after an Event of Default and only after the occurrence of an Event of Default which is continuing, at its option, assume or perform any such obligations as the Chargee considers necessary or desirable to obtain the benefit of

the Charged Premises free of any set-off, deduction or abatement and any money expended by the Chargee in this regard shall form part of and shall be deemed to form part of the Secured Obligations and bear interest at the rate stipulated in Section 3.6.

- (b) The exercise by the Chargee of its rights under this Debenture or the assumption after any Event of Default of certain obligations of the Chargor as referred to in Subsection 3.7(a) above shall not constitute or have the effect of making the Chargee a mortgagee in possession and the Chargee shall be liable to account only for such rents or monies as shall actually come into its hands, less all reasonable costs and expenses and other proper deductions as allowed by law. Care, control and management of the Charged Premises shall remain and shall be deemed to be with the Chargor in the absence of clear and unequivocal action by the Chargee depriving the Chargor of such care, control and management and the assumption thereof by the Chargee.

3.8 Limitations on Chargee's Liability: The Chargee will not be liable to the Chargor or any other Person for any failure or delay in exercising any of the rights of the Chargee under this Debenture (including any failure to take possession of, collect, sell, lease or otherwise dispose of any Charged Premises, or to preserve rights against prior parties). Neither the Chargee, nor any receiver or agent of the Chargee is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Charged Premises in its possession. Neither the Chargee nor any receiver or agent will be liable for any, and the Chargor will bear the full risk of all, loss or damage to any and all of the Charged Premises (including any Charged Premises in the possession of the Chargee or any receiver or agent) caused for any reason other than the gross negligence or wilful misconduct of the Chargee or such receiver or agent.

3.9 Chargor Remains Liable under Accounts and Contracts: Notwithstanding any provision of this Debenture, the Chargor will remain liable under each of the agreements, contracts, Leases, Material Project Agreements, Material Licences, Construction Contracts, Consultant Contracts and other documents comprising the Charged Premises (each a "**Contract**") to pay and satisfy all indebtedness, liabilities and other monetary obligations and to observe and perform all the covenants, obligations and conditions which are to be paid, satisfied, observed and performed by the Chargor thereunder, all in accordance with the terms of each such Contract. The Chargee and its successors and assigns will have no obligation or liability under any account or monetary obligation (an "**Account**") (or any Contract giving rise thereto) or Contract by reason of or arising out of this Debenture or the receipt by the Chargee of any payment relating to such Account or Contract pursuant hereto, and in particular (but without limitation), the Chargee will not be obligated in any manner to perform any of the covenants, obligations or conditions of the Chargor under or pursuant to any Account (or any Contract giving rise thereto) or under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any Contract giving rise thereto) or under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

3.10 Dealings by Chargee: The Chargee will not be obliged to exhaust its recourse against the Chargor or any other Person or against any other security it may hold in respect of the Secured Obligations before realizing upon or otherwise dealing with the Charged Premises in such manner as the Chargee may consider desirable. The Chargee may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Chargor and any other Person, and with any or all of the Charged Premises, and with other security and sureties, as the Chargee may see fit, all without prejudice to the Secured Obligations or to the rights and remedies of the Chargee under this Debenture or the other Loan Documents. The powers conferred on the Chargee under this Debenture are solely to protect the interests of the Chargee in the Charged Premises and will not impose any duty upon the Chargee to exercise any such powers.

3.11 Possession of Charged Premises: Where any Charged Premises is in the possession of the Chargee or any receiver or agent:

- (a) the Chargee shall only have the duty of care with respect to such Charged Premises as would a reasonable and prudent owner, including the duty to use reasonable care in the custody and preservation thereof, provided that the Chargee need not take any steps of any nature to defend or preserve the rights of the Chargor therein against the claims or demands of others or to preserve rights therein against prior parties;
- (b) the Chargee may, at any time following the occurrence of an Event of Default which is continuing, grant or otherwise create a security interest in such Charged Premises upon any terms provided that such terms do not impair the Chargor's right to redeem such Charged Premises; and
- (c) the Chargee may, at any time following the occurrence of an Event of Default which is continuing, use such Charged Premises in any manner and to such extent as it deems necessary or desirable.

3.12 After Acquired Property: The Chargor covenants and agrees that, if and to the extent that any of its respective rights, titles, estates and interests in any of the Charged Premises is not acquired until after delivery of this Debenture, this Debenture shall nonetheless apply thereto and the security interest of the Chargee hereby created shall attach to such Charged Premises at the same time as the Chargor acquires rights therein, without the necessity of any further mortgage, charge, pledge, assignment or assurance and thereafter such Charged Premises shall be subject to the security interests created hereby in accordance with the provisions of Section 2.1 hereof.

3.13 Attachment: The Chargor hereby acknowledges and agrees that value has been given for the granting of the security interests created hereby and that there is no agreement between the Chargor and the Chargee, express or implied, to postpone the attachment of the security interests created hereby except in respect of after-acquired property forming part of the Charged Premises with respect to which the security interests created hereby shall attach at the same time as the Chargor acquires rights therein or thereto.

3.14 Indemnity: The Chargor agrees to indemnify the Chargee from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Chargee and arising by reason of (i) any action (including any action referred to in this Debenture) or inaction or omission to do any act legally required by the Chargor; and (ii) any non-compliance with or breach of the Chargor's obligations, liabilities, covenants or conditions under any of the assigned property. This indemnification will survive the satisfaction, release or extinguishment of the Secured Obligations and the security interests created by this Debenture.

3.15 PPSA Clauses: The Chargor acknowledges that (i) value has been given, (ii) the Chargor has rights in each of the assigned property to which they are a party, (iii) the Chargor has not agreed to postpone the time of attachment hereof, (iv) the Chargor has each received a copy of this Debenture, and (v) the Chargor waives any right to receive from the Chargee a copy of any financing statement, financing change statement or verification statement filed in respect of this Debenture.

## ARTICLE 4

### GENERAL PROVISIONS

4.1 Remedies Cumulative and Waivers: For greater certainty, it is expressly understood and agreed that the rights and remedies of the Chargee hereunder or under any other document or instrument executed pursuant to this Debenture are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity; and any single or partial exercise by the Chargee of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Debenture or other document or instrument executed pursuant to this Debenture or the Loan Documents shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the



Chargee may be lawfully entitled for such default or breach. Any waiver by the Chargee of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained and any indulgence granted either expressly or by course of conduct by the Chargee shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the Chargee under this Debenture or other document or instrument executed pursuant to this Debenture as a result of any other default or breach hereunder or thereunder.

4.2 Termination: The Chargee covenants and agrees with the Chargor that, if the Chargor pays the Secured Obligations and the Chargor performs, satisfies and extinguishes all Secured Obligations and if the Chargee no longer has any further obligation to provide or continue to provide the Loan to, *inter alia*, the Chargor and the Chargor pursuant to the Credit Agreement, this Debenture shall be and become fully ended and terminated and all right, title, interest and benefit of the Chargor in, to, under or in respect of the Charged Premises, assigned by it to, or held by it in trust for, the Chargee hereunder shall automatically revert and be re-assigned to the Chargor or its successors or assigns, and, subject to Section 3.14 hereof, all covenants and agreements of the Chargor hereunder shall be at an end and the Chargee, upon the request and at the expense of the Chargor, shall execute such instruments, discharges or re-assignments and give such notification or assurances as the Chargor may properly require to fully release, discharge and cancel this Debenture in the circumstances.

4.3 Notice: Any demand, notice, consent or other communication to be made or given hereunder shall be in writing and shall be deemed to have been sufficiently given for all purposes when given in accordance with the provisions of the Credit Agreement.

4.4 Further Assurances: Each party shall, at its own expense, promptly execute and deliver to the other upon request all such other and further documents, agreements, opinions, certificates and other instruments in compliance with or accomplishment of their covenants and agreements hereunder or under any document to be delivered pursuant hereto or otherwise necessary to make any recording, file any notice or obtain any consent, all as may be reasonably necessary and appropriate in connection herewith.

4.5 Continuing Security: This Debenture and the rights and remedies it creates are a continuing agreement and security and shall bind the parties until discharge of this Debenture as provided in Section 4.2 hereof. No payment by the Chargor of the whole or any part of any Secured Obligations by this Debenture shall reduce the amount secured hereby unless specifically appropriated to and noted on this Debenture by the Chargee.

4.6 No Marshalling: This Debenture shall be in addition to and not in substitution for any other security which the Chargee may now or hereafter hold in respect of the Secured Obligations or any other Loan Documents and the Chargee shall be under no obligation to marshal in favour of the Chargor, any other Obligor or other lender or holder of security, any monies or other assets which the Chargee may be entitled to receive or upon which the Chargee may have a claim.

4.7 Agreement Paramount: This Debenture is issued subject to the terms of the Credit Agreement. In the event of any inconsistency or conflict between the terms of this Debenture and the Credit Agreement, the terms of the Credit Agreement shall govern. Notwithstanding the foregoing, in the event that this Debenture contains remedies which are in addition to the remedies set forth in the Credit Agreement, the existence of such additional remedies in this Debenture shall not constitute a conflict or inconsistency with the provisions of the Credit Agreement.

4.8 Amendment of Agreement: No supplement, modification, amendment, waiver or termination of this Debenture shall be binding unless executed in writing by all parties hereto. No waiver of any provision of this Debenture shall be deemed or shall constitute a waiver of any other provision of this Debenture (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise so expressed or provided.

4.9 Invalidity of Provisions: If any of the provisions in this Debenture should be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

4.10 Time: Time shall be of the essence in this Debenture.

4.11 Successors and Assigns: This Debenture and all its provisions shall enure to the benefit of and shall be binding upon the Chargee and the Chargor and their respective permitted successors and permitted assigns, as provided for in the Credit Agreement.

4.12 Assignment by Chargee: The rights of the Chargee under this Debenture may be assigned by the Chargee to a person to whom the Chargee is also assigning its rights under the Credit Agreement to the same extent, and on and subject to the same terms and conditions, as the Chargee may assign its rights under the Credit Agreement. The Chargor may not assign its obligations under this Debenture except in accordance with the provisions of the Credit Agreement.

4.13 Attorney: The Chargor hereby irrevocably nominates, constitutes and appoints the Chargee and each of its officers holding office from time to time as the true and lawful attorney of the Chargor with power of substitution in the name of the Chargor to, after the occurrence and during the continuance of an Event of Default and so long as it is continuing, do any and all such acts and things or execute and deliver all such agreements, documents and instruments as the Chargee reasonably considers necessary or desirable to carry out the provisions and purposes of this Debenture or any of the Charged Premises or to exercise any of its rights and remedies hereunder or under any of the Charged Premises and the Chargor hereby ratifies and agrees to ratify all reasonable acts of any such attorney taken or done in accordance with this Section 4.13. Without in any way limiting the generality of the foregoing, the Chargee shall have the right to execute for and in the name of the Chargor all financing statements, financing change statements, conveyances, transfers, assignments, consents and other instruments as may be required for such purposes. This power of attorney is coupled with an interest and shall not be revoked or terminated by any act or thing other than the discharge of this Debenture in accordance with Section 4.2. The cost of all action taken by the Chargee pursuant to the foregoing power of attorney shall form part of the Obligations and bear interest at the rate applicable from time to time to the outstanding balance of the Obligations.

The Chargor hereby directs each surety under the Performance and Payment Bonds, upon the occurrence and during the continuance of an Event of Default, subject to the terms of the Credit Agreement, to perform all bonded obligations under the Performance and Payment Bonds and to pay all sums of money assigned to the Chargee hereunder to the Chargee at the address of the Chargee set out in the Credit Agreement or at such other place as the Chargee may further direct the Chargor from time to time.

During the continuance of an Event of Default, the Chargor hereby irrevocably directs each purchaser under a Condominium Sales Agreement to thereupon:

- (a) cease to deal with the Chargor; and
- (b) subject to the rights of the DBC and the Construction Lender, deal with the Chargee, its nominee or any receiver/manager appointed by the Chargee, or a court having jurisdiction, as if it was the vendor under such Condominium Sales Agreement.

4.14 Acknowledgement by Chargor: The Chargor acknowledges receipt of a copy of this Debenture and hereby expressly waives the right to receive a copy of any financing statement or a copy of the statement confirming the registration of any financing statement that may be registered in connection with any security interest created under this Debenture.

4.15 Waiver of Default: The Chargee may by written notice to the Chargor waive any default of the Chargor hereunder on such terms and conditions as the Chargee may determine, but no such waiver shall be taken to affect any subsequent default or the rights resulting therefrom.

4.16 Applicable Laws: This Debenture shall be governed in all respects by the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract save in respect of the security created pursuant hereto upon real property and personal property situate in any province of Canada other than Ontario, and upon income therefrom, which shall be governed by the laws of the province of in which such property is situate.

4.17 Attornment: The Chargor submits to the non-exclusive jurisdiction of any court in the Province of Ontario in any action or proceeding arising out of or relating to this Debenture, and the Chargor irrevocably agrees that all claims in respect of any such action or proceeding may be

heard and determined in any such court or in any other court of competent jurisdiction selected by the Chargee.

4.17 Land Registration Reform Act: The implied covenants deemed to be included in a charge under Subsection 7(1) of the *Land Registration Reform Act* (Ontario) are hereby expressly excluded and replaced by the terms of this Debenture, to the extent that same are inconsistent with the terms hereof.

4.18 Condominium Provisions:

- a) This section applies to those parts of the Real Property that are or become a condominium unit created under the *Condominium Act, 1998* (Ontario).
- b) The Chargor gives to the Chargee the right, after and during the continuance of an Event of Default, to vote for the Chargor under the by-laws of the condominium corporation, but the Chargee is not required to do so or to attend or vote at any meeting or to protect the Chargor's interest.
- c) At the request of the Chargee, the Chargor will give the Chargee copies of all notices, financial statements and other documents given by the condominium corporation to the Chargor.
- d) The Chargor appoints the Chargee to be the Chargor's agent to inspect or obtain copies of any records or other documents of the condominium corporation that the Chargor is entitled to inspect or obtain.
- e) Nothing done by the Chargee under this Section 4.18 will make the Chargee a "mortgagee in possession".
- f) For greater clarity, when there is no Event of Default, the Chargor shall be entitled to exercise the right to vote or consent attributable to each Unit in all matters relating to the affairs of the condominium corporation, provided that the Chargor exercises such voting rights in good faith, for the purposes of organizing the affairs of the condominium corporation in a commercially reasonable manner, and to cause the condominium corporation to formally enact, ratify and/or approve all of the by-laws, rules and agreements referred to in the Chargor's disclosure statement issued with respect to the condominium (or in any corrigenda issued with respect thereto).

4.19 Chargor's Development: The Chargor, its agents, employees or contractors, may conduct building operations upon the Secured Property including, without limiting the generality of the foregoing, demolition or removal of any existing building, surveying, grading, excavation, installation of services and all acts incidental to the development of the Secured Property at any time and from time to time and without payment and without such acts being deemed acts of waste, provided such acts are reasonably necessary to facilitate the development of the Secured Property in accordance with the terms and conditions of the Credit Agreement.

4.20 Counterparts and Electronic Execution: This Debenture may be executed in several counterparts and delivered by electronic means, 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 Debenture

**[SIGNATURE LINES FOLLOW ON THE NEXT PAGE]**

**MIZRAHI DEVELOPMENTS GROUP (1451 WELLINGTON) INC.**

By:   
\_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**Schedule A****Legal Description of the Secured Property****PIN 04030-0155 (LT)**

LT 3 & PT LT 4, PL 145 , BEING THE W 1/2, N/S RICHMOND RD (NOW WELLINGTON ST); OTTAWA

**PIN 04030-0154 (LT)**

LTS 1 & 2, PL 145 , N/S RICHMOND RD (NOW WELLINGTON ST); OTTAWA

This is Exhibit O to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits

## FIXED RATE PROMISSORY NOTE – VARIABLE PAYMENTS

\$675,930.46

PRINCIPAL

CWB Maxium Financial Inc.

Suite #1 – 30 Vogell Road

Richmond Hill, Ontario

L4B 3K6

DATE

### 1. PROMISE TO PAY AND INTEREST

For value received, MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC. (referred to in this Promissory Note (the “Note”) as “you”, “your” and “yours”) with offices located at 125 HAZELTON AVE., TORONTO ON M5R 2E4 promises to pay to CWB Maxium Financial Inc. and/or its successors and assigns (referred to in this Note as “we”, “our”, “ours” and “us”), the sum of Six Hundred Seventy Five Thousand Nine Hundred Thirty Dollars and Forty Six Cents (\$675,930.46) (“Principal”) in lawful money of Canada, with interest calculated and compounded monthly not in advance at 8.25% per annum (“Interest Rate”) (“Interest”) and interest on overdue Interest at 18% per annum. In the event the Principal balance, if any, is not paid in full at maturity, Interest shall accrue on the outstanding Principal thereafter amount at the rate of 18% per annum until paid. Provided that if such rate of interest exceeds the maximum permitted by law, the interest on overdue Interest shall be the maximum rate permitted by law.

### 2. CALCULATION OF INTEREST AND REPAYMENT

Interest shall be computed from the day the Principal is advanced (the “Commencement Date”). Principal and Interest shall be paid on the 1<sup>st</sup> day of the month commencing on the 1<sup>st</sup> day of February 2023 and up to and including the 1<sup>st</sup> day of February, 2025 (“Term Date”) when the balance, if any, of the Principal and Interest shall be paid. Principal and Interest shall be repaid in 3 consecutive yearly instalments as set out in the Schedule of Instalments below (the “Instalments”).

No. of Instalments	Date From (inclusive)	Date To (inclusive)	Amount of Each Instalment
1	February 1, 2023	February 1, 2023	\$84,845.86
1	February 1, 2024	February 1, 2024	\$87,391.24
1	February 1, 2025	February 1, 2025	\$612,764.90

Each Instalment under this Note shall be applied first in payment of Interest and the balance, if any, shall be applied in reduction of Principal. Your obligations under this Note shall be absolute and unconditional and shall not be subject to any counter-claim, set-off or other claim whatsoever of yours against us.

### 3. ACCELERATION

In the event that (a) you default in making any payment when due hereunder or under any other agreement with us, (b) you fail to observe or perform any other covenant or obligation herein or in any other agreement with us, and such failure continues for seven days after the earlier of the day that you first have knowledge of such failure and the day on which we give you notice of such failure, (c) a default occurs under any agreement under which you have outstanding indebtedness or under which indebtedness is guaranteed by you, or any indebtedness of or guaranteed by you which is payable on demand is not paid on demand, (d) an order is made or a resolution passed for your winding-up or a notice of intention to make a proposal is filed or a proposal is made by you to your creditors under the *Bankruptcy and Insolvency Act* (the “Act”) or a petition is filed by or against you or an authorized assignment is made by you under the Act or a receiver or agent is appointed with respect to you under any bankruptcy or insolvency legislation or by or on behalf of a secured creditor of yours or an application is made under the *Companies’ Creditors’ Arrangement Act* or any successor or similar legislation, (e) any circumstance changes or any event occurs which has or could have a material adverse effect on your financial condition, business, assets, properties or prospects, or (f) if you are a corporation, partnership or sole proprietorship, as the case may be, you permit any change of ownership or change your capital structure subsequent to the Commencement Date, you shall be required to pay us on demand, whereupon you shall immediately pay us, as a genuine pre-estimate of liquidated damages and not as a penalty, the present value of all Instalments required to be paid to and including the Term Date that have not been paid at the date of calculation (whether or not accrued or due and payable), discounted from the respective dates on which the Instalments would otherwise be payable to the date of calculation, at the lesser of (i) 3% per annum, compounded monthly or (ii) the then current yield prevailing for a Government of Canada bond with term remaining most closely approximating the period of time remaining hereunder at such time to the Term Date, and all other accrued and then unpaid Interest.

### 4. NON-WAIVER

The extension of the time for making any payment which is due and payable under this Note at any time or times or the failure, delay or omission on our part to exercise or enforce any of our rights or remedies hereunder or under any instrument securing payment of the indebtedness evidenced by this Note shall not constitute a waiver of our right to enforce such rights and remedies thereafter.

**5. INTEREST ACT**

For the purposes hereof, whenever interest is calculated on the basis of a period other than a calendar year (the "Relevant Period"), each rate of interest determined pursuant to such calculation expressed as an annual rate for the purposes of the *Interest Act* (Canada) is equivalent to such rate as so determined multiplied by the actual number of days in the calendar year in which the same is to be ascertained and divided by the number of days in the Relevant Period.

**6. OTHER INFORMATION**

You will from time to time provide us with any information or document which we may reasonably request. You authorize us to conduct credit investigations and authorize us to release any credit information to credit reporting agencies and any of our assignees.

**7. NOTICE**

Notice must be in writing. Any document in connection with this Note will be considered to have been delivered to or served upon, and received by, you or us upon the earlier of actual receipt by an employee or an officer of the receiving party and (if mailed and there has been no interruption of postal service) the expiry of 10 days after the date the document was posted by prepaid ordinary mail to the receiving party's address as set out on the first page of this Note (or such other address as the receiving party may have last notified the sender).

**8. LANGUAGE**

It is your wish and ours that this Note and all related documents be drawn up and signed in English. C'est votre désire et le notre que le présent Contrat et tous documents s'y rapportant soient rédigés et signés en anglais.

**9. MISCELLANEOUS**

(a) Time is of the essence in respect of this Note. (b) This Note will be governed by and construed in accordance with the laws of the province or territory where you are located. (c) This Note is the entire agreement between you and us with respect to the subject matter hereof and may be varied only by written documents signed by both parties. (d) If more than one person, firm, or corporate body signs this Note as the borrower, each is jointly and severally liable (which allows us, at our option, to require performance or payment of all obligations under this Note from any one of them or a portion from each). (e) A provision of this Note which is void or unenforceable in a jurisdiction is, as to that jurisdiction, ineffective to that extent without invalidating the remaining provisions. (f) You may not assign your rights and obligations under this Note, unless we give you our prior written approval. We may assign, in our sole discretion at any time, without your consent, our right, title and interest in this Note. You hereby consent to the delivery by us to any prospective assignee of such information concerning you as may be in our possession and requested by such assignee. Upon notice of an assignment you shall unconditionally pay to our assignee all instalment payments and other amounts due hereunder and shall not assert any defense against our assignee in any action for instalment payments or other amounts due and payable hereunder and you will not assert against our assignee any claim by way of abatement, defense, set-off, compensation or the like. (g) You agree to make payments under a pre-authorized payment plan which may be withdrawn on or about each Instalment payment due date, including arrears or other penalties which may be withdrawn at any time without notice. (h) You hereby waive the benefits of division and discussion, demand and presentment for payment, notice of non-payment, protest and notice of protest of this Note. (i) You have received a copy of this Note.

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

BY:  \_\_\_\_\_

Name: Sam Mizrahi

Title: President

BY: \_\_\_\_\_

Name:

Title:



**LETTER OF DIRECTION**

To: **CWB MAXIUM FINANCIAL INC. ("CWB MAXIUM")**

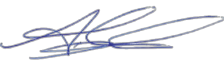
Re: PROMISSORY NOTE MFPN1-1 dated \_\_\_\_\_ BETWEEN MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC. AND CWB MAXIUM FINANCIAL INC.

Please accept this Letter of Direction as your good and sufficient authority to make the following payments from the proceeds of the above noted agreement:

<u>Payee</u>	<u>Amount</u>
MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC. LOAN PROCEEDS	\$663,122.22
WILSON VUKELICH LLP INVOICE NO. 566539 – LEGAL FEES	\$2,769.28
CWB MAXIUM FINANCIAL INC. LOAN FEE	\$10,038.96

Dated this 1 day of Dec, 2022.

MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

By:   
Name: Sam Mizrahi  
Title: President

By: \_\_\_\_\_  
Name:  
Title:

This is Exhibit P to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits

**General Security Agreement**Customer: **MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**Date: **Dec 1 2022****SECURITY INTEREST**

In consideration of our dealing with or continuing to deal with you, you grant to us a continuing security interest in all of your Assets and Undertakings (defined below) and an assignment of your Accounts (defined below). The Assets and Undertakings over which you have granted us a security interest hereby, the Accounts assigned to us, together with the Proceeds (defined below) thereof, are herein collectively called the "Collateral". You agree that we have not agreed to postpone the time for attachment of the security interest granted hereby with respect to your presently existing Collateral, that such security interest shall attach to any Collateral acquired after the date hereof as soon as you obtain rights in such Collateral and that value has been given.

**INDEBTEDNESS AND LIABILITY SECURED**

You agree that the obligations secured by the security interest granted hereby (collectively, the "Obligations") include, without limitation, all your present and future obligations, indebtedness and liability to us, direct and indirect, absolute and contingent, whether matured or not matured, and include all costs and expenses (including legal fees and expenses) incurred by us in connection with our dealings with you.

**1. DEFINITIONS OF COLLATERAL**

**ASSETS AND UNDERTAKINGS** - all of your present and after acquired personal property and undertakings including without limitation, Inventory, Equipment, Deposits and Credit Balances, Investment Property, Life Insurance (all as defined herein), all intangible and intellectual property, and all real and immovable property both freehold and leasehold, except for the last day of the term of any lease.

**INVENTORY** - all presently owned and after acquired goods and other property held for sale or lease or that have been leased or that are to be furnished or have been furnished under a contract of service, or that are raw materials, work in process, or materials used or consumed in your business or profession.

**EQUIPMENT** - all presently owned and after acquired goods that are owned by you other than Inventory and consumer goods.

**DEPOSITS AND CREDIT BALANCES** - all monies and credit balances which are now or may hereafter be on deposit with or standing to your credit with us, and/or with any of our subsidiaries and affiliates, up to the amount set out on Schedule A (or all deposit and credit balances, if no amount is set out on Schedule A) and any amount of interest due or accruing due to you in connection with any such deposit or credit balance.

**INVESTMENT PROPERTY** - all present and future investment property held by you, including securities, shares, options, rights, warrants, joint venture interests, interests in limited partnerships, trust units, bonds, debentures and all other documents which constitute evidence of a share, participation or other interest of yours in property or in an enterprise or which constitute evidence of an obligation of the issuer (collectively called "Investment Property") including, without limitation, any Investment Property specifically identified in Schedule A; and all substitutions therefor and, subject to Section 5, dividends and income derived therefrom.

**LIFE INSURANCE** - the life insurance policy or policies described on Schedule A and any proceeds derived therefrom, and any amounts held by the insurer as pre-paid premiums or for the payment of future premiums.

**2. ACCOUNTS**

You absolutely assign and transfer to us all debts, accounts, choses in action, claims, demands, and moneys now due, owing, accruing, or which may hereafter become due, owing or accruing to you, together with all rights, benefits, security interests, mortgages, instruments, rights of action, deeds, books and records and documents now or hereafter belonging to you in respect of or as security for any of the foregoing (collectively called "Accounts"). This assignment is and shall be a continuing security to us for the Obligations. All money or any other form of payment received by you in payment of any Accounts shall, following any continuing Event of Default under this Agreement, be received and held by you in trust for us.

**3. INVESTMENT PROPERTY**

If any of the Collateral consists of Investment Property, (a) you authorize us to transfer such Collateral or any part thereof into our own name or that of our nominee so that we or our nominee may appear of record as the sole owner of such Collateral; provided, that until the occurrence of any continuing Event of Default, we shall deliver promptly to you all notices, statements or other communications received by us or our nominee as such registered owner, and upon demand and receipt of payment of necessary expenses thereof, shall give you or your designee a proxy or proxies to vote and take all action with respect to such Collateral; provided further that after the occurrence of any continuing Event of Default, you waive all rights to be advised of or to receive any notices, statements or communications received by us or our nominee as such registered owner, and agree that no proxy or proxies given to you or your designee by us shall thereafter be effective; and (b) you further agree to execute such other documents and to perform such other acts, and to cause any issuer or securities intermediary

to execute such other documents and to perform such other acts as may be necessary or appropriate in order to give us "control" of such Investment Property, as defined in the *Securities Transfer Act, 2006* (Ontario), which "control" shall be in such manner as we shall designate in our sole judgment and discretion, including, without limitation, an agreement by any issuer or securities intermediary that it will comply with instructions in the case of an issuer or entitlement orders in the case of a securities intermediary,

originated by us, whether before or after the occurrence of any continuing Event of Default, without further consent from you.

**4. PROCEEDS**

You grant us a security interest on all of your property in any form derived directly or indirectly from any use or dealing with any Assets and Undertakings or Accounts or that indemnifies or compensates for Assets and Undertakings destroyed or damaged (all of which property is herein collectively called "Proceeds"). Proceeds shall be received and held by you in trust for us.

**5. INCOME AND INTEREST ON INVESTMENT PROPERTY**

Until the occurrence of any continuing Event of Default, you reserve the right to receive all income from or interest on the Collateral consisting of Investment Property, and if we receive any such income or interest prior to the occurrence of any continuing Event of Default, we agree to pay you such income or interest promptly. After the occurrence of any continuing Event of Default, you will not demand or receive any income from or interest on such Collateral, and if you receive any such income or interest, such income or interest shall be held by you in trust for us in the same medium in which received, shall not be commingled with any of your other assets and shall be delivered to us in the form received, properly endorsed to permit collection, not later than the next business day following the day of its receipt. We may apply the net cash receipts from such income or interest to payment of any of the Obligations, provided that we account for and pay over to you any such income or interest remaining after payment in full of the Obligations.

**6. COSTS AND EXPENSES**

You agree to pay the costs and expenses we incur to enforce this Agreement, register this Agreement or notice of it, repossess, maintain, preserve, repair or sell the Collateral, or appoint a consultant, receiver, receiver and manager or agent, and to pay interest thereon. You also agree to pay all legal costs and fees (including in-house legal fees, charges and expenses), incurred by us to do any of the above or to defend any legal claim or counterclaim by you or others respecting the manner of our enforcement of, or our right to enforce, this Agreement. You will pay the legal fees incurred by us on a solicitor and own client basis.

**7. FREE AND CLEAR**

You hereby represent and warrant to us that you are the owner of the Collateral free from any hypothec, mortgage, lien, charge, security interest or any other interest or claim including any proprietary or trust interest or encumbrance claimed by any third party. You hereby covenant and agree to keep the Collateral free and clear of all taxes, assessments, and security or proprietary interests in favour of third parties. You hereby covenant and agree to not sell, give away, part with possession of or otherwise dispose of any part of the Collateral, (except Inventory sold in the normal course of business and obsolete equipment) without our prior written consent

**8. INSURANCE**

You will, at your cost, keep the Collateral insured from all risk of loss, theft or damage as are customarily insured by businesses in the industry in which you are engaged. If requested, you will provide us with a copy of the insurance policy. The insurance policy will name us as first loss payee and additional insured. We may, in our absolute discretion, pay any premium due on any insurance policy, including any life insurance policy forming part of the Collateral, and the amount of any premium we pay will be added to and form part of the Obligations.

**9. LOCATION OF COLLATERAL**

You will keep the Collateral at the location or locations set out on Schedule A. You will not remove the Collateral from this location (except in the ordinary course of your business) without our prior written consent. If no location is set out on Schedule A, you will keep the Collateral at the address shown below your signature to this Agreement.

**10. LIMITATION ON OBLIGATIONS OF CWB MAXIMUM**

Our sole obligation with respect to the custody, safekeeping and physical preservation of Collateral in our possession shall be to use reasonable care in the custody and safekeeping thereof, and we shall be deemed to have used reasonable care if we deal with such Collateral in the same manner as we deal with similar property for our own account. Neither we nor any of our directors, officers, employees or agents shall be liable for failure to demand, collect or realize upon the Collateral or any part thereof or for any delay in doing so, or shall be under any obligation to sell or otherwise dispose of any Collateral whether at your request or otherwise.

**11. REPRESENTATIONS AND WARRANTIES**

You hereby represent and warrant to us that:

- (a) if applicable, you are a corporation duly existing, or a partnership duly established, under the laws of the jurisdiction of your incorporation or establishment, have all necessary power and authority to own your property and assets, to carry on your business as currently carried on by you and hold all necessary licenses, permits and consents as are required so to own your property and assets and so to carry on business in each jurisdiction in which you do so;
- (b) you have the capacity, power and authority and the legal right to execute and deliver, to perform your obligations under, this Agreement, and have taken all necessary action, corporate or otherwise, to authorize the execution and delivery of this Agreement and the performance of your obligations hereunder;
- (c) this Agreement constitutes a legal, valid and binding obligation of yours enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity;
- (d) except for consents which have been obtained and are in full force and effect, no consent of any person is required, or purports to be required, in connection with the execution and delivery of this Agreement by you or the performance of your obligations hereunder;
- (e) the execution and delivery by you of this Agreement and the performance of your obligations hereunder will not violate any applicable law or contractual obligation applicable to you; and
- (f) the representations and warranties set out in clauses (a) through (e) above or in any certificate or other document delivered to us by you or on your behalf are material, shall be deemed to have been relied upon by us notwithstanding any investigation heretofore or hereafter made by us or on our behalf, shall survive the execution and delivery of this Agreement and shall continue in full force and effect without time limit.

## 12. REPORTING

You will:

- (a) if you are a corporation, a partnership or a sole proprietorship, provide to us accountant-prepared financial statements within 120 days of each of your fiscal year ends;
- (b) if you are a pharmacy, provide to us RX reports within 120 days of each of your fiscal year ends;
- (c) if you are an individual, provide to us your personal net worth statement upon request by us;
- (d) advise us of any Event of Default immediately upon the occurrence of such event;
- (e) inform us of any actual or probable material litigation and provide us with copies of all relevant documents upon request; and
- (f) provide us with such other information and financial data as we may request from time to time.
- (g) Certificates for Payment within 15 days of issuance
- (h) Quarterly receipt of compliance certificate mentioning
  - a) No event of default has occurred regarding the loan document and any other agreement of the borrower with any third party.
  - b) report from quantity surveyor mentioning no time and cost overrun from the initial envisaged estimates
  - c) Receipt of any grant from the city
  - d) Any material change which can have negative effect on our exposure

## 13. POSITIVE COVENANTS

You agree to:

- (a) make all payments when due or demanded to us (without any condition, deduction, set-off or holdback) at our address noted above (or any other address that we advise);
- (b) if applicable, maintain your existence as a corporation, partnership, or sole proprietorship, as the case may be, and keep all material agreements, rights, franchises, licences, operations, contracts or other arrangements in full force and effect;
- (c) pay all taxes, which may result in a lien or charge on any of your property and assets;
- (d) maintain, protect and preserve the Collateral in good repair and working condition;
- (e) provide such security as we may require;
- (f) continue to carry on, and maintain in good standing, the business being carried on by you at the date hereof;
- (g) permit us or our authorized representatives full and reasonable access to your premises, business, financial and computer records and allow the duplication or extraction of pertinent information therefrom;
- (h) notify us in writing at least 20 days prior to any change of your name or your continuance in a different jurisdiction; and

- (i) notify us in writing promptly of any significant loss of or damage to the Collateral.
- (j) maintenance of property / liability insurance in amounts consistent with the nature of the business;
- (k) inform CWB Maxium regarding any notices of known defaults, litigation, governmental or regulatory complaints or investigations and other material events

## 14. NEGATIVE COVENANTS

You will not:

- (a) create, incur, assume, or suffer to exist, any mortgage, deed of trust, pledge, lien, security interest, assignment, charge, or encumbrance (including without limitation, any conditional sale, or other title retention agreement, or finance lease) of any nature, upon or with respect to the Collateral, or sign or file under the *Personal Property Security Act* (Ontario) (the "PPSA") or similar registry system of any jurisdiction a financing statement which names you as a debtor, or sign any security agreement authorizing any secured party thereunder to file such financing statement creating a security interest in the Collateral;
- (b) if you are a corporation, a partnership or a sole proprietorship, as the case may be, permit any change of ownership or change your capital structure without our prior written consent, such consent not to be unreasonably withheld; or
- (c) transfer your interest in any part of the Collateral not expressly permitted under this Agreement or change the location(s) of the Collateral without our prior written consent;
- (d) make any investment in or acquisition of, or provide any guarantee or other financial assistance to, any other business entity or person without our prior written consent; or
- (e) make any payments or distributions including but not limited to dividends, redemption or retraction payments or any other amounts in respect to any of your common shares, preferred shares or any other outstanding capital stock if there is an outstanding default or Event of Default, or any such payment causes a default or an Event of Default.
- (f) no additional debt (including no new credit limit or limit enhancement) for borrower and corporate guarantors, except for Permitted Debt (as approved by the Lender, from time to time); Permitted Debt is all debt as mentioned in the B/S of Dec 2021
- (g) no loans or advances to third parties/related parties and other restrictions on financial assistance;
- (h) Restrictions on distributions; except as allowed by the Lender subject to covenant compliance pre and post payment

## 15. DEFAULT

You shall be in default under this Agreement upon the happening of any of the following events (each, an "Event of Default"):

- (a) you or any other person liable for the Obligations is in default under any agreement relating to the Obligations or any part thereof;
- (b) you or any other person liable for the Obligations is in default under any other loan, debt or obligation owed to anyone else, subject to the passage of any applicable grace period;
- (c) you fail to perform any of the terms or conditions of this Agreement or any other agreement between you and us;
- (d) you become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver, or a trustee or receiver shall be appointed for you or for a substantial part of your property without your consent;
- (e) bankruptcy, reorganization or insolvency proceedings shall be instituted by or against you;
- (f) any statement made by you to induce us to extend credit to you was false in any material respect when made, or becomes false;
- (g) anyone takes possession of or applies to any court for possession of the Collateral, or anyone claims to have rights in the Collateral superior to our rights;
- (h) if you are an individual, you are declared incompetent by a court, or you die, or, if you are a partnership, a partner dies;
- (i) if you are an individual, and your certificate of registration from your professional governing body is suspended or revoked;
- (j) you pledge, encumber, mortgage or otherwise create or permit the continued existence of any lien or any other interest or claim including any proprietary or trust interest or encumbrance claimed by any third party with respect to any of the Collateral, except for any lien granted by you in our favour;
- (k) you incur any indebtedness for borrowed money (including, without limitation, by guaranteeing the obligations of others) outside of the ordinary course of business;
- (l) you fail to deliver to us on a timely basis the financial information required by any agreement between us; or
- (m) any other event occurs which causes us in good faith, to deem ourselves insecure, or to believe that the Collateral, or any part thereof, or the value thereof, is or is about to be placed in jeopardy.

## 16. REMEDIES

Upon the occurrence of an Event of Default, we may require you to repay any or all of the Obligations in full, whether matured or not, and we may enforce this Agreement by any method permitted by law, and we may exercise any rights and remedies under applicable law, and we may appoint any person, including our employee, to be an agent, a receiver or receiver and manager (the "Receiver") of the Collateral. We and the Receiver shall be entitled to:

- (a) seize and possess the Collateral;
- (b) carry on your business;

- (c) sell, lease or otherwise dispose of the Collateral;
- (d) foreclose on the Collateral;
- (e) in the case of Life Insurance, exercise any options available to you under the Life Insurance;
- (f) demand, sue for and receive Accounts, give effectual receipts and discharges for the Accounts, compromise any Accounts which may seem bad or doubtful to us and give time for payment thereof with or without security;
- (g) make any arrangement or compromise in our interest, or
- (h) take any other action deemed necessary to carry into effect the provisions of this Agreement.

The Receiver shall be your agent and you shall be solely responsible for the Receiver's actions. We shall not be in any way responsible for any misconduct or negligence on the part of the Receiver. If the proceeds of the realization of the Collateral are insufficient to repay us the Obligations in full, then you forthwith shall pay us such deficiency. The rights and powers in this paragraph are supplemental to and not in substitution for any other rights we may have from time to time.

**17. POWER OF ATTORNEY**

You irrevocably appoint us your attorney, with power of substitution and appointment, to sign for you, at our option, all documents necessary or desirable to permit us to exercise any of our rights and remedies under this Agreement and to complete the Schedule attached hereto, with the right to use your name and to take proceedings in your name.

**18. NON WAIVER BY US**

Any breach by you of this Agreement or the occurrence of an Event of Default may only be waived by us in writing. Any waiver by us does not mean that any subsequent breach or Event of Default is also waived. Any failure by us to notify you of an Event of Default shall not be deemed to be a waiver of such Event of Default. No course of conduct or omission on our part or on your part shall give rise to any expectation by you that we will not insist on strict compliance with the terms of this Agreement.

**19. DEALING WITH SECURITY INTEREST**

We may take and give up any of the Collateral or modify or abstain from perfecting or taking advantage of our security interest in the Collateral and otherwise deal with any of the Collateral as we shall see fit without prejudice to your liability or to our rights under this Agreement or at law.

**20. PAY ENCUMBRANCES**

We or the Receiver may pay any encumbrance that may exist or be threatened against the Collateral. In addition, we or the Receiver may borrow money required for the maintenance, preservation or protection of the Collateral and may grant further security interests in the Collateral in priority to the secured interest created hereby as security for the money so borrowed. In every such case, the amounts so paid or borrowed together with costs, charges, and expenses incurred in connection therewith shall become part of the Obligations, shall bear interest at the highest rate per annum charged by us on the Obligations and shall be secured by this Agreement.

**21. PAYMENTS**

We shall have the right to appropriate any payment made by you to any of your Obligations as we see fit, and to revoke or alter any such appropriation.

**22. DEFINITIONS**

In this agreement "you", "your" and "yours" refer to the Customer named above. "We", "our", "ours", and "us" refer to CWB Maxium Financial Inc.

**23. CONTINUING EFFECTIVENESS**

This Agreement shall be a continuing agreement in every respect, securing the payment of the Obligations. If any part of this Agreement is invalid or void, the remaining terms and provisions of this Agreement shall remain in full force and effect.

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

BY:   
 Name: Sam Mizrahi  
 Title: President

Address: 125 HAZELTON AVE., TORONTO, ON M5R 2E4

**24. ACKNOWLEDGEMENT & WAIVER**

You acknowledge receipt of a copy of this Agreement. You waive any right you may have to receive a copy of any financing statement, verification statement, or similar document we register or that we may receive by way of confirmation of a security registration in respect of this Agreement or any agreement amending, supplementing or replacing it.

**25. SUCCESSORS AND ASSIGNS**

This Agreement shall be binding upon you, your heirs and your successors and assigns and shall enure to our benefit and to the benefit of our successors and assigns; provided that you shall not assign any of your rights or obligations hereunder without our prior written consent. We may assign our rights under this Agreement without your consent and without providing you notice of such assignment. This Agreement shall continue in full force and effect notwithstanding any change in the composition of or membership of any firm or corporation, which is a party hereto.

**26. NOTICES**

Any notice required to be given under this Agreement may be delivered directly to you or us or may be sent by prepaid registered mail addressed to our address shown above or your address shown below, or such further address as we or you may notify to the other in writing from time to time, and if so given the notice shall be deemed to have been given on the day of delivery or the day when it is deemed or otherwise considered to have been received for the purposes of the PPSA, as the case may be.

**27. DISCHARGE**

If you pay us all of the Obligations secured by this Agreement and otherwise observe and perform the terms and conditions hereof, then we shall, at your request and expense, release and discharge the security interest created by this Agreement and execute and deliver to you such deeds and other instruments as shall be required to effect any such release and discharge.

**28. ENTIRE AGREEMENT**

You acknowledge that this is the entire agreement between you and us and there are no other written or oral representations or warranties, which apply to the Collateral or to this Agreement. This Agreement may only be amended by an agreement in writing signed by us.

**29. NO MERGER**

Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish your liability to make payment of or satisfy the Obligations.

**30. FURTHER ASSURANCES**

You shall at all times do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered every such further act, deed, conveyance, instrument, transfer, assignment, security agreement and assurance as we may reasonably require in order to give effect to the provisions and purposes of this Agreement.

**31. GOVERNING LAW**

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

BY: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**SCHEDULE A**

**DEPOSITS AND CREDIT BALANCES**

Unlimited

**INVESTMENT PROPERTY**

N/A

**LIFE INSURANCE POLICIES**

N/A

**LOCATIONS OF COLLATERAL**

125 HAZELTON AVE., TORONTO, ON M5R 2E4

This is Exhibit Q to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits



- Web Page ID: **WEnqResult**
- System Date: **04OCT2024**
- Last Modified: July 14, 2024

**Note: All pages have been returned.**

<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.								
<b>File Currency</b>	03OCT 2024								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	746812161	1	4	1	9	13DEC 2028			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
746812161		001	2		20181213 1039 1590 5583	P PPSA	10		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	125 HAZELTON AVENUE				TORONTO	ON	M5R 2E3		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	WESTMOUNT GUARANTEE SERVICES INC. AS ADMINISTRATIVE AGENT FOR THE								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	SUITE 205, 600 COCHRANE DRIVE				MARKHAM	ON	L3R 5K3		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
				X	X				
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>	<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	SECURITY INTEREST IN THOSE ITEMS SET OUT IN A DEPOSIT TRUST AGREEMENT								
	DATED DECEMBER 7, 2018 WITH RESPECT TO THE PROJECT KNOWN AS 1451								
	WELLINGTON, LOCATED AT 1445 AND 1451 WELLINGTON STREET WEST, OTTAWA,								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	HARRIS SHEAFFER LLP (GHH/LT - MATTER NO. 181031)								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
	610-4100 YONGE STREET				TORONTO	ON	M2P 2B5		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.								
<b>File Currency</b>	03OCT 2024								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	746812161	1	4	2	9	13DEC 2028			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
746812161		002	2		20181213 1039 1590 5583				



Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address					City	Province	Postal Code	
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address					City	Province	Postal Code	
Secured Party	Secured Party / Lien Claimant								
SURETIES									
Address					City	Province	Postal Code		
Collateral Classification	Consumer Goods	Inventory	Equipment	Accounts	Other	Motor Vehicle Included	Amount	Date of Maturity or	No Fixed Maturity Date
Motor Vehicle Description	Year	Make			Model	V.I.N.			
General Collateral Description	General Collateral Description								
	ONTARIO.								
Registering Agent	Registering Agent								
Address					City	Province	Postal Code		
Type of Search	Business Debtor								
Search Conducted On	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.								
File Currency	03OCT 2024								
	File Number	Family	of Families	Page	of Pages	Expiry Date	Status		
	756919467	2	4	3	9	25OCT 2024			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
File Number	Caution Filing	Page of	Total Pages	Motor Vehicle Schedule	Registration Number	Registered Under	Registration Period		
756919467		001	3		20191025 1414 9234 8632	P PPSA	5		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.								
Address					City	Province	Postal Code		
125 HAZELTON AVENUE					TORONTO	ON	M5R 2E4		
Individual Debtor	Date of Birth	First Given Name			Initial	Surname			
Business Debtor	Business Debtor Name					Ontario Corporation Number			
	Address					City	Province	Postal Code	
Secured Party	Secured Party / Lien Claimant								
COMPUTERSHARE TRUST COMPANY OF CANADA									

	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
	100 UNIVERSITY AVENUE, 9TH FLOOR					TORONTO	ON	M5J 2Y1	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND								
	AFTER-ACQUIRED PERSONAL PROPERTY WHICH IS RELATED TO, LOCATED ON OR USED IN CONNECTION WITH THE OPERATION, MANAGEMENT, ENJOYMENT,								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	BENNETT JONES LLP (O'GRADY/72996-211/OD)								
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
	3400-1 FIRST CANADIAN PLACE					TORONTO	ON	M5X 1A4	
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.								
<b>File Currency</b>	03OCT 2024								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	756919467	2	4	4	9	25OCT 2024			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>		<b>Registered Under</b>	<b>Registration Period</b>	
756919467		002	3		20191025 1414 9234 8632				
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>	
<b>Business Debtor</b>	<b>Business Debtor Name</b>							<b>Ontario Corporation Number</b>	
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>			<b>Initial</b>		<b>Surname</b>	
<b>Business Debtor</b>	<b>Business Debtor Name</b>							<b>Ontario Corporation Number</b>	
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>					<b>City</b>	<b>Province</b>	<b>Postal Code</b>	
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>		
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	DEVELOPMENT OR USE OF THE LANDS AND BUILDINGS MUNICIPALLY KNOWN AS								
	1445 AND 1451 WELLINGTON STREET WEST, OTTAWA, ONTARIO, AND LEGALLY DESCRIBED UNDER THE FOLLOWING PARCEL IDENTIFICATION NUMBERS PIN								
<b>Registering Agent</b>	<b>Registering Agent</b>								

	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.								
<b>File Currency</b>	03OCT 2024								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	756919467	2	4	5	9	25OCT 2024			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
756919467		003	3		20191025 1414 9234 8632				
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>	<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	04030-0154 (LT) AND PIN 04030-0155 (LT). LOAN NO. 1995/19.								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>		
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.								
<b>File Currency</b>	03OCT 2024								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
	778675995	3	4	6	9	01DEC 2026			
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>		
778675995		001	3		20211201 1053 9234 0157	P PPSA	5		
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>			<b>Initial</b>	<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>					<b>Ontario Corporation Number</b>			
	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.								

	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>				
	125 HAZELTON AVENUE		TORONTO	ON	M5R 2E4				
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>				
<b>Business Debtor</b>	<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>				
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>				
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	COMPUTERSHARE TRUST COMPANY OF CANADA								
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>				
	100 UNIVERSITY AVENUE, 9TH FLOOR		TORONTO	ON	M5J 2Y1				
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>		<b>Model</b>		<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>								
	A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY WHICH IS RELATED TO, LOCATED ON OR USED IN CONNECTION WITH THE OPERATION, MANAGEMENT, ENJOYMENT,								
<b>Registering Agent</b>	<b>Registering Agent</b>								
	BENNETT JONES LLP (VAN GENT/72996-313/OD)								
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>				
	3400-1 FIRST CANADIAN PLACE		TORONTO	ON	M5X 1A4				
<b>Type of Search</b>	Business Debtor								
<b>Search Conducted On</b>	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.								
<b>File Currency</b>	03OCT 2024								
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>		
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<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>									
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>		<b>Registered Under</b>	<b>Registration Period</b>	
778675995		002	3		20211201 1053 9234 0157				
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>				
<b>Business Debtor</b>	<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>				
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>				
<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>		<b>Initial</b>	<b>Surname</b>				
<b>Business Debtor</b>	<b>Business Debtor Name</b>				<b>Ontario Corporation Number</b>				
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>				
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>								
	<b>Address</b>		<b>City</b>	<b>Province</b>	<b>Postal Code</b>				
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>

<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>									
	DEVELOPMENT OR USE OF THE LANDS AND BUILDINGS MUNCIPALLY KNOWN AS									
	1445 AND 1451 WELLINGTON STREET WEST, OTTAWA, ONTARIO, AND LEGALLY DESCRIBED UNDER THE FOLLOWING PARCEL IDENTIFICATION NUMBERS, PIN									
<b>Registering Agent</b>	<b>Registering Agent</b>									
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Type of Search</b>	Business Debtor									
<b>Search Conducted On</b>	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.									
<b>File Currency</b>	03OCT 2024									
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>			
	778675995	3	4	8	9	01DEC 2026				
<b>FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN</b>										
<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>		<b>Registered Under</b>	<b>Registration Period</b>		
778675995		003	3		20211201 1053 9234 0157					
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>		<b>Initial</b>		<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Individual Debtor</b>	<b>Date of Birth</b>		<b>First Given Name</b>		<b>Initial</b>		<b>Surname</b>			
<b>Business Debtor</b>	<b>Business Debtor Name</b>						<b>Ontario Corporation Number</b>			
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>									
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>	
<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>			<b>Model</b>		<b>V.I.N.</b>			
<b>General Collateral Description</b>	<b>General Collateral Description</b>									
	04030-0154 (LT) AND PIN 04030-0155 (LT). LOAN NO. 2272/21.									
<b>Registering Agent</b>	<b>Registering Agent</b>									
	<b>Address</b>				<b>City</b>	<b>Province</b>	<b>Postal Code</b>			
<b>Type of Search</b>	Business Debtor									
<b>Search Conducted On</b>	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.									

<b>File Currency</b>	03OCT 2024						
	<b>File Number</b>	<b>Family</b>	<b>of Families</b>	<b>Page</b>	<b>of Pages</b>	<b>Expiry Date</b>	<b>Status</b>
	786219426	4	4	9	9	29AUG 2032	

**FORM 1C FINANCING STATEMENT / CLAIM FOR LIEN**

<b>File Number</b>	<b>Caution Filing</b>	<b>Page of</b>	<b>Total Pages</b>	<b>Motor Vehicle Schedule</b>	<b>Registration Number</b>	<b>Registered Under</b>	<b>Registration Period</b>
786219426		01	001		20220829 1403 1462 8145	P PPSA	10

<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>

<b>Business Debtor</b>	<b>Business Debtor Name</b>	<b>Ontario Corporation Number</b>		
	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	125 HAZELTON AVE.	TORONTO	ON	M5R2E4

<b>Individual Debtor</b>	<b>Date of Birth</b>	<b>First Given Name</b>	<b>Initial</b>	<b>Surname</b>

<b>Business Debtor</b>	<b>Business Debtor Name</b>	<b>Ontario Corporation Number</b>		
	MIZRAHI INC.			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	189 FOREST HILL RD.	TORONTO	ON	M5P2N3

<b>Secured Party</b>	<b>Secured Party / Lien Claimant</b>			
	CWB MAXIUM FINANCIAL INC.			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	1 - 30 VOGELL ROAD	RICHMOND HILL	ON	L4B3K6

<b>Collateral Classification</b>	<b>Consumer Goods</b>	<b>Inventory</b>	<b>Equipment</b>	<b>Accounts</b>	<b>Other</b>	<b>Motor Vehicle Included</b>	<b>Amount</b>	<b>Date of Maturity or</b>	<b>No Fixed Maturity Date</b>
		X	X	X	X	X			

<b>Motor Vehicle Description</b>	<b>Year</b>	<b>Make</b>	<b>Model</b>	<b>V.I.N.</b>

<b>General Collateral Description</b>	<b>General Collateral Description</b>

<b>Registering Agent</b>	<b>Registering Agent</b>			
	CWB MAXIUM FINANCIAL INC.			
	<b>Address</b>	<b>City</b>	<b>Province</b>	<b>Postal Code</b>
	1 - 30 VOGELL ROAD	RICHMOND HILL	ON	L4B3K6

LAST PAGE

**Note: All pages have been returned.**

This is Exhibit R to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits

**MIZRAHI DEVELOPMENTS INC.  
LOAN FROM DAVID BERRY  
1451 AND 1445 WELLINGTON STREET WEST, OTTAWA**

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**Our File No.: 574606**

**Closing Date: June 29, 2016**

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**BALDWIN SENNECKE HALMAN, LLP**

900-25 Adelaide Street East  
Toronto, Ontario  
M5C 3A1

**Attention: Jeffrey A. Halman**



## LIST OF ENCLOSURES

### MIZRAHI DEVELOPMENTS INC. LOAN FROM DAVID BERRY 1451 AND 1445 WELLINGTON STREET WEST, OTTAWA

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TAB	DOCUMENT
1.	Term Sheet accepted June 6, 2016
2.	Loan Agreement dated June 29, 2016
3.	Copy of Promissory Note for Loan Facility No. 1
4.	Copy of Promissory Note for Loan Facility No. 2
5.	General Security Agreement from Mizrahi Developments Inc.
6.	PPSA Acknowledgment in Blank from Mizrahi Developments Inc.
7.	Guarantee of Mizrahi Development Group (1451 Wellington) Inc.
8.	General Security Agreement from Mizrahi Development Group (1451 Wellington) Inc.
9.	PPSA Acknowledgment in Blank from PPSA Acknowledgment in Blank
10.	Personal Guarantee of Sam Mizrahi
11.	Postponement Agreement from Sam Mizrahi
12.	Acknowledgment and Direction re Charge re Loan Facility No. 1
13.	Acknowledgment of Standard Charge Terms No. 200033
14.	Assignment of Material Agreements
15.	Assignment of Insurance
16.	Environmental Indemnity
17.	Warrant Certificate from Mizrahi Development Group (1451 Wellington) Inc.
18.	Irrevocable Direction re Funds
19.	Officer's Certificate for Mizrahi Developments Inc.
20.	Officer's Certificate for Mizrahi Development Group (1451 Wellington) Inc.
21.	Solicitors' Opinion Letter re: Due Authorization, Execution, Delivery and Enforceability

22. Direction re Funds
23. Undertaking of Lender
24. Undertaking of Lender's Solicitors
25. Clear Execution Certificate against Mizrahi Development Group (1451 Wellington) Inc.
26. Certificate of Insurance

TERM SHEET

1. BORROWER Mizrahi Developments Inc. (the "Borrower")
2. GUARANTORS Mizrahi Development Group (1451 Wellington) Inc. ("1451") as to Loan Facility #1 and Loan Facility #2 and Sam Mizrahi ("Sam"), personally, as to Loan Facility #2 only (collectively, the "Guarantors")  
  
(the Borrower and the Guarantors are hereinafter collectively referred to as the "Credit Parties", and Loan Facility #1 and Loan Facility #2 are collectively referred to as the "Loan")
3. LENDER David Berry, or an affiliate to be named (the "Lender") (the Lender shall have the right to assign all or any part of the Loan at any time after a period of one (1) year following the date of the initial advance of funds pursuant to this loan facility)
4. LOAN FACILITY #1: Commercial Loan Financing [Term Loan, Non-Revolving]
5. LOAN FACILITY #2: Commercial Loan Financing [Term Loan, Non-Revolving]
6. LOAN AMOUNT #1: \$4,000,000(CDN) (available in a single draw of the entire Loan amount)
7. LOAN AMOUNT #2: \$6,000,000(CDN) (available in a single draw of the entire Loan amount)
8. USE OF PROCEEDS: To finance: (a) repayment of any existing mortgages registered on title to the Property (as hereinafter defined), save and except the Vendor-Take-Back Mortgage registered as Instrument No. OC1484155 on June 6, 2013 on title to 1451 Wellington Street West, Ottawa, Ontario, in the principal sum of \$1,000,000.00 in favour of Dacando Enterprises Limited (the "Vendor-Take Back Mortgage"); (b) certain to be agreed upon development costs in respect of the development, construction and sale (the particulars of which are set out on the budget annexed hereto as Schedule "A") relating to a proposed midrise condominium project (the "Project") to be constructed on the properties municipally known as 1445 Wellington and 1451 Wellington, and as more particularly described in Schedule "B" attached hereto (collectively, the "Property"); and (c) a portion of the Borrower's equity in the Project in order to obtain construction financing for the Project. The Borrower covenants not to remove or distribute any equity in or profit from the Project or otherwise compensate any of its shareholders or other persons by way of income, dividend or other payment other than to repay the Loan or as otherwise agreed upon by the parties.

and its subsidiaries and their projects, the Project budget, the draft Project plans and the appraisals.

- (e) The Borrower has provided the Lender to its satisfaction with information or an organizational list or chart setting out (i) all of the subsidiaries of the Borrower; (ii) the properties each one owns, and (iii) confirmation that all such subsidiaries are owned solely by the Borrower.
- (f) The cost consultant for the Project (the "Cost Consultant") shall be acceptable to and approved by the Lender. The Lender hereby confirms that Altus Group is an acceptable Cost Consultant.
- (g) Delivery by the Borrower to the Lender of a statutory declaration (in a form provided by the Lender) executed by Sam Mizrahi, confirming, inter alia, the terms of the leases and that all of the landlord's and tenants' obligations, if any, therein have been complied with and the Lender being satisfied with its review of all of the leases of the Property.
- (h) Delivery by the Borrower to the Lender of evidence of all-risk and liability insurance (inclusive of IBC standard mortgage clauses) naming the Lender as mortgagee and additional loss payee.
- (i) Delivery by the Borrower to the Lender of evidence that all realty taxes for the Property have been paid in full to date.
- (j) The Lender having received officer's certificates and certified copies of resolutions of the board of directors for each of the Credit Parties concerning the due authorization, execution and delivery of all of the Security Documents and such other related matters as may be required by the Lender.
- (k) The Lender receiving an opinion from the Borrower's counsel regarding the corporate status of each of the Credit Parties, the due authorization, execution, delivery and enforceability of the Security Documents and such other matters as the Lender may require, in form and substance satisfactory to the Lender.
- (l) A title insurance policy issued by a recognized title insurer in Ontario, in a form satisfactory to the Lender, in respect of the Property which title insurance policy insures the interest of the Lender for the full amount of the Loan. The Borrower will pay all premiums and costs associated with the title insurance policy. The Lender may deduct such premiums and costs from the initial advance.
- (m) The Borrower has provided evidence, satisfactory to the Lender of the current zoning of the Property.
- (n) Satisfactory ruling from the OMB.
- (o) 1451 shall have delivered to the Lender a warrant (or similar contractual

the deposit bond facility and excess deposit bond facility for the Project

- (d) a general security agreement from the Borrower and 1451 being a first priority security interest in all present and after-acquired personal property of the Borrower and 1451 pursuant to the provisions of the *Personal Property Security Act* (Ontario) ("PPSA");
- (e) A pre-signed acknowledgement and direction witnessed by counsel for 1451, irrevocably authorizing the Lender to register a mortgage on title to the Property should all amounts due and owing under Loan Facility #1 not be repaid to the Lender in full by the Two Year Deadline;
- (f) an assignment of any/all contracts relating to the Project, which shall not be the subject of a registration under the PPSA unless there is an event of default which has not been remedied;
- (g) an assignment of all policies of insurance, which shall not be the subject of a registration under the PPSA unless there is an event of default which has not been remedied;
- (h) a joint and several guarantee and postponement of claim from the Guarantor for all indebtedness which shall not be the subject of a registration under the PPSA;
- (i) a guarantee from Sam for all indebtedness under Loan Facility #2 only which shall not be the subject of a registration under the PPSA (the "Sam Guarantee");
- (j) a postponement of claim from Sam in respect of all indebtedness of the Borrower and 1451 in favour of Sam Mizrahi; and
- (k) an environmental indemnity from the Borrower and Guarantor.

Save and except for the Vendor-Take-Back Mortgage, the construction loan security and the deposit bond and excess bond security, no additional encumbrances shall be permitted to be registered on title to the Property without the prior written consent of the Lender.

The Borrower acknowledges and agrees that any default by the Borrower or any of its subsidiaries to any permitted lender shall be a default under this Loan Facility.

For greater certainty, a default by the Borrower shall not constitute an event of default unless: (a) in the case of a default in payment of money by the Borrower, which has continued for at least ten (10) days after receiving notice of such monetary default; and (b) in the case of a default in performance of any other obligation, it has continued for at least ten (10) days after notice thereof has been given to the Borrower. Notwithstanding the foregoing, the Borrower shall be deemed to have committed a default, without having received notice of such default and an opportunity to cure same, in the event the Borrower gives or creates a mortgage, charge, lien (save and except for construction liens, in

annum (for a maximum of eighteen (18) months from the date of advance of the Mizrahi Bridge Payment (the "Interest End Date") calculated and compounding annually and payable on the Mizrahi Bridge Repayment Date (as defined below). It is understood that notwithstanding that the Mizrahi Bridge Repayment Date may occur after the Interest End Date, the Mizrahi Bridge Payment shall only bear interest for a maximum of eighteen (18) months from the date of advance of the Mizrahi Bridge Payment, and after such time shall be non-interest bearing;

- (iii) Repayment of the Mizrahi Bridge Payment by the Lender to Sam shall occur immediately subsequent to full confirmed repayment by the Borrower to the Lender of all amounts due and owing to the Lender pursuant to Loan Facility #2 (such repayment date referred to as the "Mizrahi Bridge Repayment Date").

#### SUCCESSION:

In the event of the death or incapacity (for a period of 120 days) of Sam Mizran, prior to repayment in full of the Loan, the Credit Parties acknowledge and agree that the Lender shall be appointed (and the Security Documents shall contain such power of appointment) to act as the sole manager of the Project, with the authority, but not the obligation and liability, to administer and manage the completion of the Project and the sale or disposition the rest or completion of unit sales and the terms and conditions herein shall remain in full force and effect.

#### 20. CONFIDENTIALITY:

The matters set forth in this Term Sheet and any information provided with respect to the transaction are confidential. Any party may disclose such information to their respective parties who need to know such information in order to conclude the transaction contemplated by this Letter of Intent and who are informed of the obligation to keep such information confidential or as may be required by applicable law.

#### 21. COUNTERPARTS:

This Term Sheet may be executed: (i) by electronic transmission, including facsimile, scanned or email, and scanned electronic or facsimile signatures shall be treated as originals for all purposes; and (ii) in counterparts and all counterparts taken together shall constitute an executed copy of this Letter of Intent.

#### 22. SUCCESSORS AND ASSIGNS

This Term Sheet shall be binding upon the parties hereto and their respective heirs, executors, administrators, representatives, successors and permitted assigns.

Signature page follows

**LOAN AGREEMENT**

THIS AGREEMENT dated as of June 29, 2016 is between:

**Mizrahi Developments Inc.**

(the "Borrower")

and

**David Berry**

(the "Lender")

and

**Mizrahi Development Group (1451 Wellington) Inc.**

("1451")

and

**Sam Mizrahi**

("Sam")

**RECITALS**

- A. The Borrower has applied to the Lender for the Loan (as hereinafter defined).
- B. The Lender has agreed to lend the Borrower the Loan for such purposes on the terms and conditions set out herein.

**AGREEMENTS**

For good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

**PART 1 - DEFINITIONS AND INTERPRETATION**

- 1.1 **Definitions.** In this Agreement, unless the context otherwise requires:

- (a) "**Assets**" means collectively all of the property, personal or real, and assets of the Credit Parties as of the date of this Agreement, including, without limitation, the Property, or hereafter acquired or otherwise obtained by the Credit Parties in any manner whatsoever;
- (b) "**Business Day**" means a day other than a Saturday or Sunday or any day banks in the City of Toronto are not open for business;
- (c) "**Closing**" means the date of the first advance of any portion of the Loan;
- (d) "**Collateral**" means all of the Credit Parties' rights, title and interests in and to the Assets and all cash flow therefrom and all other property and assets subject to the Security;
- (e) "**Cost Consultant**" means the Altus Group;
- (f) "**Credit Parties**" means collectively the Borrower and the Guarantors;
- (g) "**Encumbrance**" means any mortgage, lien, pledge, assignment, charge, security interest, title retention agreement, hypothec, levy, execution, seizure, attachment, garnishment, right of distress or other claim in respect of property of any nature or kind whatsoever howsoever arising (whether consensual, statutory or arising by operation of law or otherwise) and includes arrangements known as sale and lease back, sale and buy back and sale with option to buy back;
- (h) "**Environmental Laws**" means all applicable federal, provincial, regional, state, municipal or local laws, common law, statutes, regulations, ordinances, codes, rules, guidelines, requirements, certificates of approval, licences or permits relating to Hazardous Substances or the use, consumption, handling, transportation, storage or release thereof including, without limitation and in addition to any such laws relating to the environment generally, any such laws relating to public health, occupational health and safety, product liability or transportation;
- (i) "**Environmental Order**" means any prosecution, order, decision, notice, direction, report, recommendation or request issued, rendered or made by any Governmental Authority in connection with Environmental Laws or Environmental Orders;
- (j) "**Financial Indebtedness**" of the Borrower means any of the following:
  - (i) money borrowed, indebtedness represented by notes payable, and drafts accepted representing extensions of credit (including, as regards any note or draft issued at a discount, any amount that could reasonably be regarded as being the amortized portion of such discount as at the date of determination);
  - (ii) all obligations which are evidenced by bonds, debentures, notes or other similar instruments or not so evidenced but which would be considered to be indebtedness for borrowed money;
  - (iii) all indebtedness upon which interest charges are customarily paid;
  - (iv) net amounts payable pursuant to interest swap arrangements;



- (v) capital lease obligations and all other indebtedness issued or assumed as full or partial payment for property or services or by way of capital contribution;
- (vi) all letters of credit and letters of guarantee issued by a financial institution at the request of or for the benefit of the Borrower;
- (vii) any guarantee (other than by endorsement of negotiable instruments for collection or deposit in the ordinary course of business) in any manner, directly or indirectly, of any part or all of any obligation of a type referred to in any of paragraphs (i) to (v) above; and
- (viii) any of the foregoing amounts in respect of any of 1451 whose accounts are not required under generally accepted accounting principles to be consolidated with the accounts of the Borrower;

including, without limitation, all Obligations, but excluding:

- (i) trade payables, expenses accrued in the ordinary course of business, customer advance payments and deposits received in the ordinary course of business unless the time for due payment of which extends, or is intended to extend, more than twelve (12) months from the date as of which the determination of Financial Indebtedness is being made; and
  - (ii) the Permitted Encumbrances;
- (k) "**Governmental Authority**" means any nation, government, province, state, region, municipality or other political subdivision or any governmental department, ministry, commission, board, agency or instrumentality or other public authority or person, domestic or foreign, exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing and includes any court of competent jurisdiction;
  - (l) "**Guarantor**" or "**Guarantors**" means 1451 as to Loan Facility No. 1 and Loan Facility No. 2; and Sam Mizrahi ("**Sam**"), personally, as to Loan Facility No. 2 only;
  - (m) "**Hazardous Substances**" means any substance, combination of substances or by-product of any substance which is or may become hazardous, toxic, injurious or dangerous to any person, property, air, land, water, flora, fauna or wildlife; and includes but is not limited to contaminants, pollutants, wastes and dangerous, toxic, deleterious or designated substances as defined in or pursuant to any Environmental Laws or Environmental Orders;
  - (n) "**Loan**" means collectively Loan Facility No. 1 and Loan Facility No. 2;
  - (o) "**Loan Documents**" means, collectively, this Agreement and all other agreements and other instruments delivered to the Lender by the Borrower (whether now existing or presently arising) for the purpose of establishing, perfecting, preserving or protecting any security held by the Lender in respect of any Obligations, including, without limitation those listed in Section 5.1;

- (p) "Loan Facility No. 1" means a loan facility of \$4,000,000, as set out under Section 2.1;
- (q) "Loan Facility No. 2" means a loan facility of \$6,000,000 as set out under Section 2.4;
- (r) "Net Profits" means the aggregate net income ("Net Income") of the Project (including, without limitation, that net income emanating from the sale of condominium units) calculated and reported upon in accordance with Canadian generally accepted accounting principles ("GAAP") and as initially projected in the draft Project budget in the Cost Consultant's Report, appended hereto as Schedule "C", accompanied by a written report of an auditor jointly approved by the Lender and the Borrower. Notwithstanding the application of GAAP, the calculation of Net Income shall be made without reference to the following items:
- (i) Executive compensation in any form that exceeds the aggregate sum of \$900,000 per year, it being understood that, included in such aggregate number shall be a monthly fee of \$5,000 for a one (1) year period, commencing on such date as the Lender shall advise the Borrower;
  - (ii) Related party transactions that have not been consented to in writing by the Lender or as disclosed in the Project budget attached hereto as Schedule C, and, for greater certainty, Mizrahi Inc. shall be the builder of the Project. Notwithstanding the foregoing, it is understood that any permitted or disclosed related party transactions shall be at prices and on terms not less favourable to the Borrower or 1451, as the case may be, than could be obtained in a comparable arm's length transaction with another person; and
  - (iii) Expenses incurred prior to the advance of the Loan that have not been consented to in writing by the Lender

The parties agree that, subject to the written consent of the Lender (not to be unreasonably withheld or delayed), the calculation of Net Profits shall be subject to any changes which may occur in the development process, and subject further to any act of force majeure.

- (s) "Obligations" means all monies now or at any time and from time to time hereafter owing or payable by the Borrower to the Lender and all other obligations (whether now existing, presently arising or created in the future) of the Borrower in favour of the Lender, and whether direct or indirect, absolute or contingent, matured or not, whether arising from agreement or dealings between the Lender and the Borrower and whether the Borrower be bound alone or with another or others and whether as principal or surety and without limiting the generality of the foregoing, specifically including the obligations of the Borrower under this Agreement and the Security;
- (t) "Permitted Encumbrances" means the following:
- (i) liens, the validity of which are being contested by the Borrower in good faith by appropriate legal proceedings and in respect of which either:
    - (A) security adequate in the opinion of the Lender has been provided to it to ensure payment of such liens; or

- (B) the Lender is of the opinion that such liens are not materially prejudicial to the security hereof;
- (ii) agreements with any governmental authority, easements, rights-of-way and other similar rights in real property, or any interest therein, for a development similar in nature and with respect to the Property, provided the same are not of such nature as to materially adversely affect the use of the Property, and provided that such matters are reviewed by the Lender, acting reasonably;
- (iii) any reservations, limitations, provisos and conditions expressed in any original grant from the Crown which do not in the Lender's opinion materially detract from the value of the property concerned or materially impair its use in the operation of the business of the Borrower;
- (iv) title defects or irregularities which, in the opinion of counsel to the Lender, are of a minor nature and in the aggregate will not in the Lender's opinion materially detract from the value of the property concerned or materially impair its use in the operation of the business of the Borrower; and
- (v) those specific permitted encumbrances set out in Schedule "B" annexed hereto;
- (u) "**Person**" means an individual, company, partnership (whether or not having separate legal personality), corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture or other entity, or a government, state or political subdivision thereof or any agency of such government, state or political subdivision;
- (v) "**Project**" means the proposed midrise residential and retail condominium project to be constructed by the Borrower and/or 1451 on the Property;
- (w) "**Property**" means collectively the lands and premises in the City of Ottawa, Province of Ontario, municipally known as 1451 Wellington Street West and 1445 Wellington Street West, as more particularly described on Schedule "A" attached hereto;
- (x) "**Related Party**" means in respect of each of the Borrower and 1451 (i) a person which alone or in combination with others holds a sufficient number of securities or has contractual rights sufficient to affect materially the control of the Borrower or 1451, (ii) a person in respect of which a person referred to in clause (i) alone or in combination with others holds a sufficient number of securities or has contractual rights sufficient to affect materially its control, (iii) a person in respect of which the Borrower or 1451 alone or in combination with others holds a sufficient number of securities or has contractual rights sufficient to affect materially its control, (iv) a person who beneficially owns, directly or indirectly, voting securities of the Borrower or 1451 or who exercises control or direction over voting securities of the Borrower or 1451 or a combination of both carrying more than 10% of the voting rights attached to all voting securities of the Borrower or 1451 for the time being outstanding, (v) a director or senior officer of the Borrower or 1451, or related party of the Borrower or 1451, or (vi) an affiliate of any of the foregoing;
- (y) "**Security**" or "**Security Documents**" means all of the security documents to be provided to the Lender under Section 5.1; and

- (z) "**Sum**" has the meaning given in Section 17.8;
  - (aa) "**Term Sheet**" means the binding term sheet between the Borrower, the Guarantors and the Lender, accepted by the Lender on June 6<sup>th</sup>, 2016;
  - (bb) "**Townhome Project**" means the proposed development of town homes or other residential and/or retail spaces on those lands municipally known as 42 Garrison Street, Ottawa, ON, 46 Garrison Street, Ottawa, Ontario, 50 Garrison Street, Toronto, Ontario, and 54 Garrison Street, Toronto, Ontario;
  - (cc) "**Vendor Take Back Charge**" means a charge, registered as Instrument No. OC1484155 on June 6, 2013 on title to 1451 Wellington Street West, Ottawa, Ontario, in the principal sum of \$1,000,000.00 in favour of Dacando Enterprises Limited;
  - (dd) "**Voting Control**" means the direct or indirect ownership or control of a sufficient number of outstanding shares of a corporation to elect a majority of its directors.
- 1.2 **Headings.** The headings are inserted for convenience of reference only and will not affect the construction or interpretation of this Agreement.
- 1.3 **Governing Law.** This Agreement will be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 1.4 **Submission to Jurisdiction.** The Borrower submits to the jurisdiction of the courts of the Province of Ontario and agrees to be bound by any suit, action or proceeding commenced in such courts and by any order or judgment resulting from such suit, action or proceeding, and the foregoing will in no way limit the right of the Lender to commence suits, actions, or proceedings based on this Agreement or any of the Security in any jurisdiction.
- 1.5 **Invalidity of Any Provision.** If any covenant, obligation or provision contained in this Agreement is invalid or unenforceable, the remainder of this Agreement will not be affected and each covenant, obligation or provision of this Agreement will separately be valid and enforceable to the fullest extent permitted by law.
- 1.6 **Conflict with Other Documents.** If the provisions of the Security conflict with, or are inconsistent with, the provisions of this Agreement, the provisions of this Agreement will prevail, provided that in the event of conflict between the provisions of the Term Sheet and the terms of this Agreement, the provisions of this Agreement will prevail.
- 1.7 **Amendments.** This Agreement may only be amended from time to time in writing and any such amendment may be evidenced by memoranda or letters signed by an authorized officer of the respective parties without the necessity of such amendment being executed under seal.
- 1.8 **Currency.** Unless otherwise indicated, all references in this Agreement to "dollars" or \$ means lawful funds of Canada.

## PART 2 – LOAN FACILITIES

- 2.1 **Loan Facility No. 1.** Subject to the terms and conditions of this Agreement, the Lender hereby agrees to establish a term, non-revolving credit facility in favour of the Borrower in the principal

sum of \$4,000,000.00 (CDN).

- 2.2 **Advance.** The Loan Facility No. 1 shall be available in a single draw or advance of the entire Loan Facility No. 1 amount on or before July 8, 2016.
- 2.3 **Term.** The Loan Facility No. 1 shall mature the earlier of: (a) 2 years from the date of the initial advance of Loan Facility No. 1 (the "**Two Year Deadline**"); (b) issuance of the above-grade building permit; and (c) receipt of any proceeds or funds from the Construction Lender (as defined herein)..
- 2.4 **Loan Facility No. 2.** Subject to the terms and conditions of this Agreement, the Lender hereby agrees to establish a term, non-revolving credit facility in favour of the Borrower in the principal sum of \$6,000,000.00 (CDN).
- 2.5 **Advance.** The Loan Facility No. 2 shall be available in a single draw or advance of the entire Loan Facility No. 2 amount on or before July 8, 2016.
- 2.6 **Term.** The Loan Facility No. 2 shall mature the earlier of: (a) 45 days following the date of registration of the condominium corporation resulting from the Project on the Property; and (b) December 31, 2021.
- 2.7 **Purpose.** The Borrower covenants that the Loan shall only be used by the Borrower to finance:
- (a) repayment of all loans and existing mortgages registered on title to the Property (save and except the Vendor Take Back Charge);
  - (b) the soft costs relating to the Project, the particulars of which are set out on the Project budget annexed hereto as Schedule "C"; and
  - (c) a portion of the Borrower's equity in the Project, provided that the Borrower shall not and the Borrower covenants not to remove or distribute any equity in or profit from the Project or otherwise compensate any of its shareholders or other persons by way of income, dividend or other payment other than to repay the Loan or otherwise as agreed upon in writing by the Lender.

### PART 3 – INTEREST, REPAYMENT AND RIGHT TO AUDIT

- 3.1 **Interest Rate.** Interest on any outstanding principal amount of the Loan shall be calculated and compounded annually and shall be payable as follows:
- (a) Loan Facility No. 1: 14% per annum.
  - (b) Loan Facility No. 2: 14% per annum.
- 3.2 **Payment- Loan Facility No. 1 and Loan Facility No. 2.** The full amount of the outstanding principal together with accrued interest for Loan Facility No. 1 shall be due and payable on the maturity date of Loan Facility No. 1. The full amount of the outstanding principal together with accrued interest for Loan Facility No. 2 shall be due and payable on the maturity date of Loan Facility No. 2.
- 3.3 **Payment Options.** The Lender shall have the right to exercise an option within six (6) months

from the date of Closing by giving notice to the Borrower of his intention to apply any or all of the accrued interest (for either or both of Loan Facility No. 1 and/or Loan Facility No. 2) and/or the Net Profits to which the Lender is entitled (pursuant to the warrant described in this Agreement) towards the purchase of a residential unit in the Project (the "Unit"), based upon the sale price of \$900 per square foot for a penthouse unit, and \$875 per square foot for a sub-penthouse unit. The Lender covenants to execute the Borrower's (or its related party's) standard form of Agreement of Purchase and Sale and to pay a minimum of 20% down payment. The parties agree that the balance of the purchase price of the Unit less the Interim Net Profit Calculation (as defined below) shall be funded by the Lender from his own sources. Notwithstanding the exercise of the option and subject to section 3.4, interest will continue to accrue (and payable by the Borrower) at the interest rate noted herein until such time as the principal to which such interest applies is repaid in full. For clarity and as an example, should the Lender decide, through exercise of the option within the time period set out in this Section 3.3, that the right to the interest from Loan Facility No. 1 should be applied to the purchase of a Unit, and the principal from Loan Facility No. 1 is not repaid until the maturity date for Loan Facility No. 1, the amount of interest deemed applied into a Unit shall be equal to the amount of interest which the Borrower would have had to repay to the Lender on the maturity date for Loan Facility No. 1.

It is understood by the parties hereto that Net Profits for the Project may not have been finally determined by that point in time when the Lender is required to make any interim or final payment for the Unit. In the event that Net Profits for the Project have not been finally determined by the respective time period as aforesaid, the parties shall mutually agree on an estimate of Net Profits for the Project (the "**Interim Net Profit Calculation**"), and such estimate shall be used for determining the monetary amount to be applied to the Unit in accordance with this section (the "**Interim Applied Amount**"). In the event that the parties cannot come to an agreement on the Interim Net Profit Calculation, the parties agree to appoint MNP LLP (or such other firm as the Lender may determine should MNP LLP be unable or unwilling to act) to make such estimation, which shall be final and binding until the Adjustment Date (as defined below).

The Lender shall execute a promissory note (the "**Unit Purchase Note**") on the closing of the Unit purchase promising to pay an amount equal to the Interim Applied Amount. The Unit Purchase Note shall contain a right of set-off. Once the Final Net Profit Calculation (as defined below) is determined, the Lender shall have the right to set-off his rights to the Net Profits (as determined pursuant to the Final Net Profit Calculation) against the amounts owing under the Unit Purchase Note. Any difference between the Interim Net Profit Calculation and the Final Net Profit Calculation shall be adjusted as set out below.

At such point in time when Net Profits can be finally determined (or such earlier date should the Lender notify the Borrower in writing that he wishes to finally calculate Net Profits at that point in time) (the "**Adjustment Date**"), the Borrower shall engage an auditor to provide an opinion as to the final determination of Net Profits, which determination shall be final and binding (the "**Final Net Profit Calculation**"). Upon such determination, to the extent that the Interim Net Profit Calculation exceeds the Final Net Profit Calculation, the Lender shall pay to the Borrower (or 1451), within 10 days of the determination of the Final Net Profit Calculation, twenty-five percent (25%) of the difference between the Interim Net Profit Calculation and the Final Net Profit Calculation. To the extent that the Final Net Profit Calculation exceeds the Interim Net Profit Calculation, the Borrower shall pay to the Lender, within 10 days of the determination of the Final Net Profit Calculation, twenty-five percent (25%) of the difference between the Final Net Profit Calculation and the Interim Net Profit Calculation. This section shall survive termination or expiration of this Agreement without limit of time.

- 3.4 **Prepayment.** Notwithstanding anything else contained herein, the Borrower shall have the right to pay all or part of the principal outstanding on Loan Facility No. 1 after six (6) months from the date of advance of Loan Facility No. 1, and/or Loan Facility No. 2 after one (1) year from the date of advance of Loan Facility No. 2, at any time or times upon at least 30 day's written notice provided to the Lender. Notwithstanding the foregoing and notwithstanding anything to the contrary which may be contained in this Agreement or any document delivered in connection with the Loan, in no event regardless of the timing of any prepayment) shall the Lender receive less than one (1) years interest for the full amount of Loan Facility No. 1 and three (3) years interest for the full amount of Loan Facility No. 2 (collectively, the "**Minimum Interest**").
- 3.5 **Payments.** All payments made by the Borrower will be applied first to interest accrued to the date of payment, second to costs and other charges payable hereunder and third to principal, except that any such payment will not be taken in substitution or reduction of interest payments required hereunder.
- 3.6 **Purchase at 128 Hazelton.** The Credit Parties and Lender acknowledge that the Lender has executed an Agreement of Purchase and Sale, as the same may be amended from time to time (the "**APS**") for the purchase of Suite PH 901, at 128 Hazelton Avenue, Toronto (the "**Lender's Unit**"), being a condominium project to be developed by Mizrahi (128 Hazelton) Inc. ("**Hazelton Inc.**"), a company affiliated with and controlled by Sam. In the event that the final closing of the Lender's Unit occurs before Loan Facility No. 1 and Loan Facility No. 2 are repaid to the Lender in full, then Sam unconditionally agrees to pay to Hazelton Inc. (or any successor or assignees) any and all amounts due and owing by the Lender to Hazelton Inc. for the Lender's Unit pursuant to the APS (such payment referred to herein as the "**Mizrahi Bridge Payment**") up to a maximum amount of that amount of principal that remains outstanding under Loan Facility No. 2 plus all accrued interest, and such Mizrahi Bridge Payment shall bear the following terms:
- (a) The Mizrahi Bridge Payment will bear interest at a rate of 5% per annum (for a maximum of eighteen (18) months from the date of advance of the Mizrahi Bridge Payment (the "**Interest End Date**")), calculated and compounding annually, and payable on the Mizrahi Bridge Repayment Date (as defined below). It is understood that notwithstanding that the Mizrahi Bridge Repayment Date may occur after the Interest End Date, the Mizrahi Bridge Payment shall only bear interest for a maximum of eighteen (18) months from the date of advance of the Mizrahi Bridge Payment, and after such time shall be non-interest bearing. Notwithstanding the foregoing, it is understood that Sam will obtain a credit facility in order to provide the Mizrahi Bridge Payment, and, in connection therewith, Sam agrees to use his best efforts to obtain the credit facility to support the Mizrahi Bridge Payment at the best possible rate of interest, and the Lender shall pay such rate of interest (up to a maximum rate of 5% per annum, as set out above);
- (b) Repayment of the Mizrahi Bridge Payment by the Lender to Sam shall occur immediately subsequent to full confirmed repayment by the Borrower to the Lender of all amounts due and owing to the Lender pursuant to Loan Facility No. 1 and Loan Facility No. 2 (such repayment date referred to as the "**Mizrahi Bridge Repayment Date**").
- 3.7 **Right to Audit.** The Borrower shall establish and maintain a reasonable accounting system that enables the Lender to readily identify the Borrower's and 1451's assets, expenses, costs of goods, and use of funds. The Lender and his authorized representatives shall have the right, at any time during normal business hours upon two (2) days' advance notice, to attend at the Borrower's and/or 1451's offices to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic,

or other) relating to or pertaining to this Agreement and the calculation of Net Profits, including, but not limited to those kept by the Borrower, 1451, and their employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled cheques; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

The Borrower shall, at all times during the term of this Agreement and for a period of three (3) years after the termination or expiration of this Agreement, maintain such records, together with such supporting or underlying documents and materials. The Borrower shall at any time requested by the Lender, whether during or after completion of this Agreement, and at the Project's own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the Lender. Such records shall be made available to the Lender or his representatives during normal business hours at the Borrower's office or place of business and subject to at least three (3) days' written notice.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the Lender except as otherwise set out herein. If the audit identifies any discrepancies in the calculation of Net Profits, adjustments equal to the discrepancies shall be made to the calculation of Net Profits. If the audit identifies any discrepancy in the calculation of Net Profits equal to or greater than five percent (5%), the Borrower shall reimburse the Lender for the total costs of the audit.

If the auditor reports on findings related to fraud, material misrepresentation or material non-performance, the Lender may recoup the costs of the audit work from the Borrower and such findings shall be considered an immediate Event of Default with no ability to cure.

Notwithstanding anything to the contrary contained herein, the Lender shall be permitted to exercise the audit right contained herein no more than once per year until determination of the Final Net Profit Calculation.

#### **PART 4 - LENDER'S FEES**

- 4.1 **Costs.** All costs incurred by the Lender in connection with the Loan, including interest, legal as well as other costs which may be identified as time progresses, shall be the responsibility of the Project (collectively "Lender's Costs").

#### **PART 5 SECURITY**

- 5.1 **Security from the Borrower.** Repayment of the Loan, interest, costs and all other Obligations owing by the Borrower to the Lender and performance of the covenants, agreements and obligations in this Agreement and the Security will be secured by the following, all to be satisfactory to the Lender in form and substance:
- (a) two promissory notes executed by the Borrower in favour of the Lender reflecting the terms herein;



- (b) 1451 shall execute and deliver an Acknowledgement and Direction in favour of the Lender's solicitors annexing a mortgage against the Property setting out the amounts due and owing under Loan Facility No. 1 which is to be held by the Lender's solicitors in escrow and shall not be registered unless Loan Facility No. 1 has not been repaid in full by the Two Year Deadline;
- (c) a general security agreement securing all present and after-acquired personal property of the Borrower and 1451 for registration pursuant to the provisions of the *Personal Property Security Act* (Ontario) ("PPSA"); provided, however, that the Lender shall not register the Borrower's general security agreement or the security created therein pursuant to the PPSA unless there is an Event of Default which has not been remedied;
- (d) an assignment of any/all contracts relating to the Project, which shall not be the subject of a registration under the PPSA unless there is an Event of Default which has not been remedied;
- (e) an assignment of all policies of insurance, which shall not be the subject of a registration under the PPSA unless there is an Event of Default which has not been remedied;
- (f) guarantee from 1451 for all indebtedness under Loan Facility No. 1 and Loan Facility No. 2;;
- (g) a guarantee from Sam for all indebtedness under Loan Facility No. 2, which shall not be the subject of a registration under the PPSA;
- (h) a postponement of claim from Sam in respect of all indebtedness of the Borrower and 1451 in favour of Sam, if required by the Lender;
- (i) an environmental indemnity from the Borrower and Guarantor;
- (j) a warrant, exercisable by the Lender within 6 months from the date of Closing, respecting the acquisition for \$1.00 of 25% on the Net Profits in the Project, which warrant shall describe, in detail, Net Profit calculations(s), payment terms and the like; and
- (k) an irrevocable direction executed by the Credit Parties, in blank, to be held by Lender's solicitors in escrow, irrevocably authorizing and directing the Construction Lender or Project solicitors, as the case may be, to remit any proceeds or funds from the Construction Lender to the Lender, while the Loan Facility No. 1 remains unpaid, in priority to payment to any of the Credit Parties. The Lender covenants to provide the Construction Lender and Borrower with a copy of the information/payout statement confirming any amounts outstanding.

The Borrower acknowledges and agrees that any default by the Credit Parties to any permitted lender shall be a default under this Agreement.

## PART 6 – CONDITIONS PRECEDENT FOR ADVANCE

- 6.1 **Conditions of Advance.** Subject to the fulfilment of the following conditions precedent, the Loan will be advanced at such time as the Borrower may direct the Lender in writing:

- (a) the Borrower shall have acquired a good and marketable title to the Assets, save and except the property at 1445 Wellington Street West, Ottawa, which is subject to an Agreement of Purchase and Sale which has not been cancelled or revoked, free and clear of any Encumbrance other than Permitted Encumbrances;
- (b) confirmation that the Security has been duly executed, delivered and registered, where applicable, in a form and manner satisfactory to the Lender and its counsel;
- (c) the Lender shall have received credit reports for the Credit Parties and financial statements for 1451 as the Lender may request that are satisfactory to the Lender, in its sole and absolute discretion;
- (d) the Lender being satisfied, in its sole and absolute discretion, with the results of the due diligence searches, enquiries and reports provided by the Borrower to the Lender and in respect of such additional due diligence, searches, enquiries and reports prepared for the Lender, including, without limitation:
  - (i) reliance letters addressed to the Lender with respect to the soil tests and geotechnical reports (already provided to the Lender);
  - (ii) reliance letters addressed to the Lender with respect to the phase 1 environmental tests (and if recommended, Phase 2 environmental tests or audits);
  - (iii) current appraisals of the Property, if available;
- (e) satisfactory review of the draft Cost Consultant report with respect to the Borrower and the Project, the Project budget, the draft Project plans and the appraisals;
- (f) the Borrower has provided the Lender to its satisfaction with information or an organizational list or chart setting out: (i) all of the subsidiaries of the Borrower; (ii) the properties each one owns; and (iii) confirmation that all such subsidiaries are owned solely by the Borrower;
- (g) delivery by the Borrower to the Lender of evidence of all-risk and liability insurance (inclusive of IBC standard mortgage clauses) naming the Lender as mortgagee and additional loss payee;
- (h) delivery by the Borrower to the Lender of evidence that all realty taxes for the Property owned by 1451 has been paid in full to date;
- (i) the Lender having received officer's certificates and certified copies of resolutions of the board of directors for each of the Borrower and 1451 concerning the due authorization, execution and delivery of all of the Security Documents and such other related matters as may be required by the Lender;
- (j) the Lender receiving an opinion from the Borrower's counsel regarding the corporate status of each of the Borrower and 1451, the due authorization, execution, delivery and enforceability of the Security and such other matters as the Lender may require, in form and substance satisfactory to the Lender;

- (k) a title insurance policy issued by a recognized title insurer in Ontario, in a form satisfactory to the Lender, in respect of the Property owned by 1451 which title insurance policy insures the interest of the Lender for the full amount of the Loan. The Borrower will pay all premiums and costs associated with the title insurance policy. The Lender may deduct such premiums and costs from the initial advance. In the event a title insurance policy is not available the Lender will accept a title opinion from the Borrower's solicitors in a form and substance satisfactory to the Lender;
  - (l) the Borrower has provided evidence, satisfactory to the Lender of the current zoning of the Property and confirmation of no adverse municipal or regulatory inspection reports; and
  - (m) a satisfactory ruling from the Ontario Municipal Board.
- 6.2 **Advance.** The net proceeds of the Loan will be paid to the Borrower, or as it may otherwise direct, on Closing. On the Closing, the Lender will hold back for the Lender's Costs.

#### PART 7 – INTERCREDITOR

- 7.1 The Lender hereby acknowledges that the Borrower may enter into a senior construction facility for the Project.
- 7.2 The Lender hereby acknowledges that the Borrower may enter into a charge/mortgage with Tarion and Aviva and/or Westmount Insurance (“**Bond Insurer**”) (or some other entity approved by the Lender, acting reasonably) acting as a deposit bond insurer, as security for the deposit bond facility and/or excess deposit bond facility for the Project.
- 7.3 The Lender hereby agrees to postpone, subordinate and standstill its Security and interest in the Borrower, if required, by either the bona fide senior construction lender with respect to a senior construction facility (the “**Construction Lender**”) and/or Bond Insurer when same becomes available and provided that the Lender shall enter into an intercreditor agreement with the first construction lender and/or Bond Insurer, as the case may be, on terms satisfactory to the Lender, acting reasonably. The Borrower acknowledges and agrees that any default by any of the Credit Parties to the senior construction lender or Bond Insurer shall be a default under this Agreement and the Loan Documents.

#### PART 8 - REPRESENTATIONS AND WARRANTIES

- 8.1 **Representations and Warranties.** The Borrower represents and warrants to the Lender that:
- (a) Each of the Borrower and 1451 is duly incorporated and validly subsisting under the laws of their jurisdiction of incorporation and has the corporate power and capacity to own their properties and assets and to carry on their businesses as presently carried on by the Borrower and 1451 and to hold all material licences, permits and assets as are required to own their assets and to carry on business in each jurisdiction in which they so do.
  - (b) The Borrower and 1451 each has the corporate power and capacity to enter into this Agreement and each of the Loan Documents to which it is a party and to do all acts and

things as are required or contemplated hereunder or thereunder to be done, observed and performed by it.

- (c) The Borrower and 1451 have taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement and each of the Loan Documents and each such document constitutes, or upon execution and delivery will constitute, a valid and binding obligation of the Borrower and 1451 enforceable against each of the Borrower and 1451 in accordance with its terms.
- (d) The execution and delivery of this Agreement and the other Loan Documents and the performance by the Credit Parties of their respective obligations thereunder (i) does not and will not violate any law or any provision of the articles, by laws, constating documents or other organizational documents of the Borrower and 1451 or constitute a breach of any existing contractual or other obligation of the Borrower and 1451 or contravene any licence or permit to which the Borrower and 1451 are subject, (ii) will not result in the creation of, or require the Borrower and 1451 to create, any Encumbrance in favour any Person other than the Lender and other than the Permitted Encumbrances, and (iii) will not result in or permit the acceleration of the maturity of any indebtedness or other obligations of the Borrower or 1451.
- (e) No authorization, consent or approval of, or filing with or notice to, any Person is required in connection with the execution, delivery or performance of this Agreement or any of the other Loan Documents by the Borrower and/or 1451.
- (f) The financial information of the Credit Parties in the form delivered by the Borrower to the Lender fairly, completely and accurately presents the financial condition of the Credit Parties and the financial information presented therein for the period and as at the date thereof. Since the date of the financial information delivered to the Lender there has been no development which has had or will have a material adverse effect upon the business, property, financial condition or prospects of the Credit Parties or upon the ability of the Borrower to perform its obligations under this Agreement or any of the Loan Documents.
- (g) Each of the Credit Parties is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
- (h) Neither the Borrower nor 1451 is in violation of its constating documents, its by-laws or any shareholders' agreement applicable to it.
- (i) There are no actions, suits, judgements, awards or proceedings pending or, to the knowledge of the Borrower, threatened against any of the Credit Parties before any court or government department, commission, board, agency or instrumentality, domestic or foreign, or before any other authority, or before any arbitrator of any kind, which would, if determined adversely to the Credit Parties materially adversely affect their business, property, financial condition or prospects or their ability to perform any of the provisions of this Agreement or any Loan Document to which they are a party or which purports to affect the legality, validity or enforceability of this Agreement or any Loan Documents or the Lender's ability to realize upon the Collateral, and the Credit Parties are not in default with respect to any judgment, order, writ, injunction, award, rule or regulation of any Governmental Authority or any arbitrator, which individually or in the aggregate results in any such material adverse effect.

- (j) Each of the Credit Parties is not in default or breach under any material commitment or obligation or under any order, writ, decree or demand of any Governmental Authority or with respect to any leases, licences or permits to own and/or operate material properties and assets or to carry on business and there exists no state of facts which, after notice or the passage of time or both, would constitute such a default or breach; and there are not any proceedings in progress, pending or threatened, which may result in the revocation, cancellation, suspension or any adverse modification of any such leases, licences or permits.
- (k) The Borrower and 1451 are each in compliance with all material agreements to which it is a party and none of the Borrower nor 1451 or any other party to any material agreement has defaulted under any of the material agreements. No event has occurred which, with the giving of notice, lapse of time or both would constitute a default under, or in respect of, any material agreement. There is no dispute regarding any material agreement;
- (l) All books and records of the Borrower and 1451 have been fully, properly and accurately kept and completed and there are no material inaccuracies or discrepancies of any kind contained or reflected therein.
- (m) The Borrower has provided to the Lender all material information relating to the financial condition, business and prospects of the Credit Parties and all such information is true, accurate and complete in all material respects and does not omit any material fact necessary in order to make such information not misleading, and the Borrower shall give prompt notice of any material change in the business or condition of the Credit Parties to the Lender.
- (n) There are no shareholder loans to the Borrower other than from Sam or direct or indirect subsidiaries, related entities or associates of Sam, in respect of which loans Sam has executed a postponement of claim to and in favour of the Lender.
- (o) There are no shareholder loans to 1451 other than from Sam or direct or indirect subsidiaries, related entities or associates of Sam, in respect of which loans Sam has executed a postponement of claim to and in favour of the Lender.
- (p) The Credit Parties have good title to the Assets, save and except the property at 1445 Wellington Street West, Ottawa, and are the legal and beneficial owners thereof.
- (q) There are no liens, claims, charges or encumbrances whatsoever against the Assets, the Borrower or the Property, other than the Permitted Encumbrances.
- (r) The Credit Parties have good title to, and possession of, the Collateral.
- (s) Sam is the sole shareholder of the Borrower. Borrower is the sole shareholder of 1451. No Person has any right to acquire any shares from the said shareholders thereof, and no Person has any right pursuant to any contract, agreement, option or otherwise to acquire any of the unissued shares of the Borrower or 1451.
- (t) Sam is the sole director of each of the Borrower and 1451.
- (u) The following corporations are the only subsidiaries of the Borrower:

- (a) 1451 – A wholly-owned subsidiary of the Borrower
- (b) Mizrahi (128 Hazelton) Inc. – A subsidiary of the Borrower in which the Borrower owns a fifty percent (50%) equity interest; and
- (c) Sam M Inc. – A wholly-owned subsidiary of the Borrower (which subsidiary owns a fifty percent (50%) equity interest in Mizrahi Development Group (The One) Inc.;
- (v) The chief executive offices of the Borrower and 1451 are located at 189 Forest Hill Road, Toronto, Ontario M5P 2N3. The Borrower has material assets only at the location listed herein.
- (w) All (i) forecasts and projections supplied to the Lender were prepared in good faith, adequately disclosed all relevant assumptions and are reasonable, and (ii) other written information supplied to the Lender is true and accurate in all material respects. There is no fact known to the Borrower which could reasonably be expected to have a material adverse effect and which has not been fully disclosed to the Lender.
- (x) Each of the Credit Parties has filed, or caused to be filed, all tax returns, reports and declarations which are required to be filed. All information in such tax returns, reports and declarations is complete and accurate in all material respects. The Credit Parties have each paid or caused to be paid all taxes due and payable or claimed due and payable in any assessment received by each of them, except taxes the validity of which are being contested by appropriate proceedings diligently pursued and available and with respect to which adequate reserves have been set aside. Adequate provisions have been made for the payment of all accrued and unpaid federal, provincial, municipal, local and foreign and other taxes whether or not yet due and payable and whether or not disputed.
- (y) None of the Borrower or 1451 sponsor or is obligated to contribute to any pension plans.
- (z) None of the Borrower or 1451 is a party to any stock option plan or has any obligation to issue shares to any person;
- (aa) Each of the Borrower and 1451 is the sole and exclusive owner or licensee of, with all right, title and interest in and to (free and clear of any claims by any Person), its Intellectual Property (as hereinafter defined) and has sole and exclusive rights to the use thereof. The Borrower and 1451 have not knowingly infringed or violated and is not aware of any infringement or violation of any Intellectual Property of any other Person. “**Intellectual Property**” shall mean patents, industrial designs, trade-marks, trade names, brand names, service marks, logos and copyrights.

8.2 The representations and warranties in this Agreement and in any certificates or documents delivered to the Lender shall not merge in or be prejudiced by and shall survive any Loan advance and shall continue in full force and effect so long as any amounts are owing by the Borrower and/or 1451 to the Lender under this Agreement or any Loan Document.

## PART 9 - POSITIVE COVENANTS

9.1 **Covenants.** Each of the Borrower and 1451 jointly and severally covenants with the Lender that:

- (a) in the case of the Borrower, it will promptly pay all principal, interest and other amounts due hereunder at the times and in the manner specified herein;
- (b) it will at all times maintain its corporate existence;
- (c) it will comply will all applicable laws (including, without limitation, all Environmental Laws) and obtain and maintain in good standing all contracts, licenses, permits, consents and approvals required in connection with the Project and necessary to carry on business;
- (d) it will carry on and conduct its business in a proper, efficient and businesslike manner so as to preserve and protect the Assets and income therefrom and in accordance with good business practices;
- (e) it will keep or cause to be kept proper books of account in accordance with Canadian generally accepted accounting principles;
- (f) the Project will be undertaken only by the Borrower and/or 1451 and by no other Person;
- (g) it shall punctually pay and discharge every obligation, failure to pay or discharge which might result in any lien or charge or right of distress, forfeiture, termination or sale or any other remedy being enforced against the Assets (other than a Permitted Encumbrance) and provide to the Lender when required satisfactory evidence of such payment and discharge, but the Borrower may, on giving the Lender such security (if any) as the Lender may require, refrain from paying or discharging any obligation so long as it contests in good faith its liability therefor;
- (h) during the term of the Loan, with respect to the Property, the Lender shall be provided with a copy of each survey, appraisal, environmental, geotechnical or soil and/or cost consultant's report, zoning approvals and permits, approvals and agreements with respect to the construction, as applicable, as soon as same is available to the Borrower.
- (i) during the term of the Loan, the Borrower will have monthly meetings to update the Lender with respect to the Property and the Project;
- (j) in addition to the monthly meetings, the Borrower covenants to provide a monthly written report to the Lender regarding the status of the Project, in a format acceptable to the Lender, which report shall include the following information:
  - (i) the aggregate amount of all Project costs (including hard cost, soft costs, property costs, interest and financing costs) incurred to date;
  - (ii) cash flow projections;
  - (iii) estimates of the cost to complete the Project and details regarding any material changes to the Project budget;
  - (iv) zoning, approval and permit status, together with copies of any zoning decisions, approvals or permits, if required by the Lender;

- (v) sales report for the Project together with copies of all unit sales agreements and all amendments thereto together with a report on the status of all deposits received to date;
- (vi) status report regarding construction of the Project and work completed to date;
- (vii) copies of all material project agreements and contracts relating to the construction of the Project; and
- (viii) if required by the Lender, acting reasonably, periodic written reports from the Cost Consultant regarding all of the foregoing, provided the Cost Consultant's report shall not be required more frequently than quarterly.

Notwithstanding the foregoing, the Borrower shall not be required to provide anything in excess of what the Borrower will be required to provide to a senior construction lender;

- (k) it will promptly notify the Lender of any fact which may be construed as constituting an Event of Default, and upon the occurrence of an Event of Default which has not been remedied in accordance with the terms and conditions herein contained, it will register or permit the Lender to register, file and record the Security as provided for herein, and all supplemental instruments at the proper offices where such registration, filing or recording may be necessary or of advantage to protect the security constituted;
- (l) it will pay and discharge all taxes, rates, levies, charges, assessments, statute labour or other imposition whatsoever now or in the future rated, charged, assessed, levied or imposed by any legislative or municipal authority or otherwise on any of the Collateral or on the Borrower or 1451;
- (m) it will insure and keep the Collateral and the Property insured to its full insurable value by a company or companies selected by the Borrower and approved in writing by the Lender, acting reasonably, against extended risks, loss or damage by fire and such other risks as the Lender may from time to time specify and containing loss of income provisions; and the Borrower shall:
  - (i) if requested by the Lender, furnish a certificate by an independent appraiser or insurance adjuster selected by the Borrower and approved by the Lender as to the sufficiency of such insurance, which certificate will be conclusive as against the Borrower and 1451 both as to the amount of insurance required under this Agreement and the perils against which coverage is required and the Borrower and 1451 will immediately insure in accordance with such certificate and provide proof of same to the Lender;
  - (ii) cause to be endorsed in such form as may be required by the Lender on the policies evidencing such insurance a notation that any amounts payable under such policies will be paid to the Lender as its interest may appear, and to cause Lender to be named as a loss payee and additional insured; and
  - (iii) deposit with the Lender every policy and renewal certificate for such insurance or a certified copy of each;



all policies shall provide for at least 30 days prior written notice to Lender of any cancellation or reduction of coverage. The Lender is authorized, but not required, to obtain and maintain such insurance at the expense of the Borrower if the Borrower and 1451 fail to do so.

- (n) it will deliver to the Lender within one hundred and twenty (120) days after the close of each financial year of the Borrower, one copy of the annual financial statements of the Borrower and 1451, which has been duly certified by a chartered accountant (CA) that is a member in good standing with the Canadian Institute of Chartered Accountants, and such financial statements shall include a balance sheet and statements of income and retained earnings. Such financial statements shall also be signed by an authorized officer of the Borrower (and 1451 if applicable). The Borrower and 1451 shall provide the Lender any other information concerning their financial positions and business operations, including but not limited to supporting schedules to the financial statements, which the Lender may from time to time request, acting reasonably. The financial statements referred to herein shall only be reviewed by the Lender and/or its appointed advisor on the premises of the Borrower. Notwithstanding the foregoing, the Borrower, The Borrower and 1451 shall provide the Lender with any financial statement or financial information of the Borrower or 1451 that it is required to provide, and in the same manner that it is required to provide, in connection with the Permitted Encumbrances;
- (o) it will promptly give written notice to the Lender of all claims or proceedings pending or threatened against the Credit Parties, the Collateral or the Property which may give rise to uninsured liability or which may have a material adverse affect on the businesses or operations of the Borrower and 1451;
- (p) save and except for demolition of the existing buildings on the Property pursuant to demolition permits issued by the City of Ottawa (provided the Property is zoned in final form to permit construction of the Project, sufficient pre-sales have been achieved to qualify for construction financing for the Project and all other lender's conditions have been satisfied in order to obtain an initial advance under the Project construction loan facility), it will keep the Collateral in good condition and repair and if it neglects to keep the Collateral or any part of it in good condition and repair or commits or permits any act of waste to be committed in respect of it and if such neglect, commission or default continues for 30 days after written notice of it has been given by the Lender to the Borrower then the Lender may from time to time make such repairs as it in its sole discretion considers necessary and the Lender may add the cost of such repairs to the Loan and the Borrower shall reimburse the Lender for such costs forthwith upon demand;
- (q) it will pay and discharge as they become due all payments due and owing under, or concerning, any indebtedness created or security given by the Borrower to any Person and will observe, perform and carry out all related terms, covenants, provisions and agreements and any default in payment of any monies due and payable under or relating to any indebtedness or security or in the observance, performance or carrying out of any of the related terms, covenants, provisions and agreements that will be considered a default thereunder will be considered to be a default under this Agreement at the option of the Lender and any and all remedies available to the Lender by reason of any default or by law or otherwise be immediately available to the Lender upon any default of the Borrower under the indebtedness or Security;

- (r) it will forthwith advise the Lender in writing, with full particulars, of any material assets, goods, chattels, fixtures, machinery, equipment or effects acquired by the Borrower having a value greater than \$10,000 and will provide the Lender with a good and valid first charge over any such assets and will, if the Lender so requires, extend the general security agreement over such additional goods, chattels, fixtures, machinery, equipment or effects;
- (s) the Borrower will forthwith pay Project costs when due and complete the Project in accordance with the Project budget;
- (t) deposit, and cause the Project marketing agents and realtors and the Project conveyancing solicitors to deposit, all purchaser deposits into the Tarion deposit trust account immediately after the expiry of the respective purchasers' statutory ten-day rescission period and the Borrower shall obtain a deposit bond and/or excess deposit insurance bonding if necessary, and take all other actions as may be necessary or desirable from time to time in order to permit the deposits to be used to pay Project costs;
- (u) co-operate fully with the Cost Consultant at all times, permit the Cost Consultant to inspect the Property from time to time, and provide the Cost Consultant with such information as it may reasonably require from time to time;
- (v) provide a complete copy of each unit sale agreement and each amendment thereto to the Lender within fifteen (15) days after the execution thereof;
- (w) sell all units in the Project in a commercially reasonable manner;
- (x) the Borrower will work diligently to provide the Lender with such further documents or instruments, and do such things as the Lender may reasonably require to perfect or rectify any deficiency in the Security, all within the time reasonably prescribed by the Lender;
- (y) perform and do all things and acts that are necessary to complete the Project materially in accordance with the plans, specifications and budget approved by the Lender, in accordance with the timetable (subject to force majeure) also approved by the Lender and in accordance with all applicable laws, and to provide the Lender with such information respecting the Collateral as Lender may request from time to time;
- (z) each of the Borrower and 1451 shall cooperate and exercise its influence in order to give effect to this Agreement and the Security and shall assist the Lender to the fullest extent possible in the enforcement and realization of its Security upon the occurrence of any Event of Default;
- (aa) at its cost and expense, upon request of the Lender, execute and deliver or cause to be executed and delivered to the Lender such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the Lender to carry out more effectually the provisions and purposes of this Agreement and the Loan Documents;
- (bb) promptly notify the Lender or any delays, inspections or regulatory events that are adverse to the Project; and

- (cc) appoint as the Borrower's accountants a firm of national standing or accountants otherwise acceptable to the Lender.

9.2 The positive covenants in this Agreement and in any certificates or documents delivered to the Lender shall not merge in or be prejudiced by and shall survive any Loan advance and shall continue in full force and effect so long as any amounts are owing by the Borrower and/or 1451 to the Lender under this Agreement or any Loan Document.

#### PART 10 - NEGATIVE COVENANTS

10.1 **Covenants.** The Borrower covenants with the Lender that the Borrower will not, without first obtaining the consent in writing of the Lender:

- (a) make, give or create or attempt to make, give or create any mortgage, charge, lien or encumbrance upon the Collateral or the Property or any part or parts of it save and except for the Permitted Encumbrances;
- (b) create or permit to arise any Encumbrance on any of the Collateral, Assets or Property (other than Permitted Encumbrances), and will not permit 1451 to do the same (other than Permitted Encumbrances) save and except as contemplated under Part 7 hereof;
- (c) change, alter or amend its name or the name of 1451 or of the Borrower's chief place of business without first providing notice to the Lender;
- (d) purchase, establish or acquire in any manner any new business undertaking;
- (e) sell, exchange, lease, release or abandon or otherwise dispose of any of its assets or properties to any person other than (i) bona fide sales, exchanges, leases, abandonments or other dispositions in the ordinary course of business for the purpose of carrying its business, and at fair market value, and (ii) property or assets (other than shares or other securities) which have no material economic value in the Project, as the case may be, or are obsolete;
- (f) remove or distribute any equity in or profit from the Project or otherwise compensate any of its shareholders or other persons by way of income, dividend or other payment other than to repay the Loan;
- (g) materially change the nature of the Borrower's or any of the Credit Parties' businesses as presently carried on;
- (h) amalgamate, consolidate or merge or enter into a partnership, joint venture or syndicate with any other person;
- (i) change its financial year end, or permit 1451 to change its financial year end;
- (j) enter into any transaction, or permit 1451 to do so, outside the ordinary active business operations of the Borrower, other than Permitted Encumbrances and the eventual completion of the Agreement of Purchase and Sale for 1445 Wellington Street West, Ottawa;

- (k) permit the Borrower or any of the Credit Parties to be dissolved whether by act or omission;
- (l) ~~permit any Encumbrance, lien or similar charge to be placed against the Collateral, the Property or any part of it, (other than Permitted Encumbrances) except that the registration of any such lien will not be considered a breach of this covenant if the Borrower contests and notifies the Lender in writing that it desires to contest the same and gives the Lender reasonable security for the due payment of the claim in respect to it in case it will be held to be a valid lien or charge; and that the Lender may (but will not be obliged to) pay and satisfy any such lien (without waiving a breach of this covenant of the Borrower) in the event of the Borrower failing to pay off the same within a reasonable time, and the amount so paid together with all costs, charges and expenses which may be incurred by reason of the necessity of paying off and satisfying any such lien or charge may be added by the Lender to the Loan and the Borrower shall reimburse the Lender for all such costs, charges and expenses forthwith upon demand and the propriety of paying out any such sum in respect of any such claim or lien will be a matter on which the discretion of the Lender will be absolute and final and in the event of the Lender satisfying any such lien or charge it will be entitled to all the equities and securities of the Person or persons so paid off whether any such charge has or has not been in fact discharged;~~
- (m) change the Voting Control of the Borrower or 1451;
- (n) create, issue, incur or otherwise become liable upon, directly or indirectly, any Financial Indebtedness or permit 1451 to do so other than the Permitted Encumbrances;
- (o) reduce or make any distribution of the Borrower or any of Credit Parties' capital, or redeem, purchase or otherwise retire or pay for any shares in their present or future capital stock;
- (p) create, allot or issue any shares in its capital, change its capital structure, enter into any agreement, or make any offer, to do so or permit any 1451 to do any such thing with respect to the capital or capital structure of 1451;
- (q) make or repay or guarantee any loan or advance to any person, or endorse or otherwise become surety or guarantor for or upon, or indemnify against loss arising from, the obligations of any person, except by endorsement of negotiable instruments for deposit or collection, and the Borrower shall not permit 1451 to do any such thing save and except as contemplated under Part 7 hereof;
- (r) in respect of the Borrower and the Credit Parties, make any distribution of profits or other compensation by way of income, dividend or otherwise to its shareholders or any of them;
- (s) directly or indirectly, enter into any agreement with, make any financial accommodation for, or otherwise enter into any transaction with, a Related Party except in the ordinary course of, and pursuant to the reasonable requirements of, business and at prices and on terms not less favourable to the Borrower or 1451, as the case may be, than could be obtained in a comparable arm's length transaction with another person. Notwithstanding the above, the Lender acknowledges that the construction of the Project shall be conducted by a Related Party, namely, Mizrahi Inc., and other Related Parties may be

involved in the Project, provided the amounts paid are as set out in the Project budget attached hereto as Schedule C and are at prices and on terms not less favourable to the Borrower or 1451, as the case may be, than could be obtained in a comparable arm's length transaction with another person;

- (t) in relation to the Project, change any advance, salary, bonus, consulting fee, management fee, incentive compensation or other amount, or grant any other benefits not currently provided to any director, former director, officer, shareholder, employee or affiliate of the Borrower, or 1451, or enter into any contract which would obligate any of the Borrower or 1451 to make any such payment or grant such benefits;
  - (u) Become a participating or sponsoring employer under any employee plan that is or should be subject to applicable pension standards legislation not currently maintained or sponsored by the Borrower or 1451; or
  - (v) redeem or purchase any of the shares of the Borrower or 1451.
- 10.2 The negative covenants in this Agreement and in any certificates or documents delivered to the Lender shall not merge in or be prejudiced by and shall survive any Loan advance and shall continue in full force and effect so long as any amounts are owing by the Borrower and/or 1451 to the Lender under this Agreement or any Loan Document.

#### PART 11 - ENVIRONMENTAL MATTERS

- 11.1 **Environmental Representations.** The Borrower and 1451 represent and warrant to the Lender that, save and except as disclosed to the Lender as of the date hereof, the Assets are in material compliance with all applicable Environmental Laws and each of the Borrower and 1451 has operated its business at all times and have, at all times, received, handled, used, stored, treated, shipped and disposed of all Hazardous Substances, if any, in material compliance with all Environmental Laws;
- 11.2 **Notice of Hazardous Substances Violations.** The Borrower and 1451 will promptly notify the Lender (and provide whatever information the Lender may reasonably request) upon becoming aware of the occurrence of any violation of any Environmental Law or permit related to Hazardous Substances, or the receipt of notice of any alleged violation or the receipt of an order, direction or notice under any Environmental Law with respect to the Assets or the Property.
- 11.3 **Hazardous Substances Indemnity.** The Borrower and 1451 each agrees, at its sole cost and expense, to indemnify, protect, hold harmless and defend (with counsel of the Lender's choice) the Lender and its successors and assigns and their respective directors, officers, agents, attorneys and employees (an "Indemnitee") from and against all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses (including, without limitation, fees, disbursements and costs of lawyers, environmental consultants and experts), of any kind or of any nature whatsoever which may at any time be imposed upon, incurred or suffered by or asserted or awarded against any Indemnitee directly or indirectly relating to or arising from any Hazardous Substance which originated on or from any of the Assets or the Property at any time, past, present or future. This Part 11.3 shall survive the re-payment of the Loan and the termination or expiration of this Agreement and/or any of the Loan Documents.

**PART 12 - EVENTS OF DEFAULT**

- 12.1 **Events of Default.** At the option of the Lender, the whole of the outstanding balance of the Loan will immediately become due and payable and the Security will become enforceable in each and every of the following events (each an “Event of Default”):
- (a) if the Borrower fails to observe or perform any term, condition, covenant or undertaking involving the payment of money contained in this Agreement or the Loan Documents;
  - (b) if any of the Credit Parties fail to observe or perform any term, condition, covenant or undertaking contained in this Agreement, the Loan Documents or any other document, other than a term, condition, covenant or undertaking involving the payment of money after receipt of written notice of default from the Lender;
  - (c) if an order is made or a resolution passed for the dissolution of the Borrower or 1451 or the winding up of the Borrower or 1451;
  - (d) if a petition is filed for the winding up of the Borrower or 1451;
  - (e) if any of the Credit Parties commits or threatens to commit any act of bankruptcy or becomes insolvent or makes an assignment or proposal under the *Bankruptcy and Insolvency Act* or a general assignment in favour of its respective creditors or a bulk sale of its assets;
  - (f) if a bankruptcy petition is filed or served against any of the Credit Parties;
  - (g) if any proceedings concerning the Borrower or 1451 are commenced under the *Companies' Creditors Arrangement Act*;
  - (h) if any proposal is made or any petition is filed by the Borrower or any of the Guarantors under any law having for its purpose the extension of time for payment, composition or compromise of the liabilities of the Borrower or any of the Guarantors or other reorganization or arrangement respecting its liabilities or if the Borrower or any of the Guarantors gives notice of its intention to make or file any such proposal or petition including without limitation an application to any court for an order to stay or suspend any proceedings of creditors pending the making or filing of any such proposal or petition;
  - (i) if any execution, sequestration, extent or any other process of any Court becomes enforceable against any of the Credit Parties;
  - (j) if a distress or analogous process is levied upon all or any part of the Collateral;
  - (k) if a receiver or a receiver manager is appointed to control or conduct the business or assets of the Borrower or any of the Credit Parties any of the Guarantors;
  - (l) if the Borrower permits any sum which has been admitted as due by the Borrower or is not disputed to be due by it and which forms or is capable of being made a charge upon any of the Collateral in priority to, or *pari passu* with, any charge created by the Security to remain unpaid for 30 days after proceedings have been taken to enforce the same as a prior charge;

- (m) if the Borrower defaults in payment of indebtedness or liability to the Lender, whether secured by the Loan Documents or otherwise after receipt of written notice of default from the Lender;
- (n) if any proceedings are taken to enforce any Encumbrance affecting the Borrower, any of the Collateral or the Property;
- (o) if any action is taken or power or right is exercised by any Governmental Authority or if any claim or proceeding is pending or threatened by any Person which may have a material adverse effect on the Borrower, its business or operations, its properties or its prospects;
- (p) if any of the Borrower's covenants or representations in this Agreement, in any of the Loan Documents or in any certificate, statement or report furnished in connection herewith is found to be false or incorrect in any way so as to make it materially misleading when made or when deemed to have been made;
- (q) if any of the Credit Parties sells, agrees to sell or otherwise disposes of the Collateral or any part or parts of it, other than as permitted herein; or
- (r) if, pursuant to Section 3.7, the audit discovers findings related to fraud, misrepresentation or non-performance.

12.2 **Grace Period.** Unless otherwise provided herein, a default referred to in Section 12.1 shall not constitute an Event of Default unless: (a) in the case of default in payment of money, it has continued for at least ten (10) days after the due date for payment; (b) in the case of default in performance of any other obligation, it has continued for at least ten (10) days after notice thereof has been given to the Borrower; or (c) in the case of an Event of Default under Sections 12.1(d), 12.1(f), 12.1(g), 12.1(j) and 12.1(k) it has continued for at least ten (10) days after the date of occurrence of such event thereunder provided that the Borrower and/or 1451 are diligently contesting such Event of Default in a bona fide manner. Notwithstanding the foregoing and save and except for Permitted Encumbrances, the Borrower shall be deemed to have committed an Event of Default, without having received notice of such default and an opportunity to cure same, in the event the Borrower or 1451 gives or creates a mortgage or charge, upon the Property or any Project asset, or in the event the Borrower sells, agrees to sell or otherwise disposes of all or any part of the Project or Collateral outside of the ordinary course of development of the Project, or in the event that, pursuant to section 3.7, the audit discovers findings related to fraud, material misrepresentation or gross non-performance.

12.3 **Waiver.** The Lender may waive any breach by the Borrower or 1451 of any of the provisions contained in this Agreement or any default by the Borrower or 1451 in the observance or performance of any covenant or condition required to be observed or performed by them under the terms of this Agreement or any of the Security, provided always that no waiver by the Lender or any failure to take any action to enforce its rights or any security will extend to or be taken in any manner to affect any subsequent breach or default or the rights resulting from the breach or default.

12.4 **Remedies Not Restrictive.** All remedies stipulated for by the Lender under this Agreement or in any of the Security will be considered to be in addition to and not restrictive of the remedies which the Lender might be entitled to at law or in equity and the Lender may realize any Security or any part of it in such order as it may be advised and any such realization by any means will not

bar realization of any other security or any part or parts of them nor will any single or partial exercise of any right or remedy preclude any other or further exercise of nor will the failure on the part of the Lender or any delay in exercising any rights under this Agreement or any of the Security operate as a waiver.

- 12.5 **Costs Caused By Default.** If any of the Borrower or 1451 defaults in any covenant to be performed by either of them under this Agreement or under the Security, the Lender may perform any covenant of the Borrower or 1451 capable of being performed by the Lender and if the Lender is put to any costs, charges, expenses or outlays to perform any such covenant, the Borrower and 1451 will indemnify the Lender for such costs, charges, expenses or outlays and such costs, charges, expenses or outlays incurred by the Lender (including solicitors' fees and charges incurred by the Lender) will be added to the principal amount of the Loan and secured by the Security.
- 12.6 **Court Costs.** In any judicial proceedings taken to enforce this Agreement and the covenants of the Borrower or 1451 under it or to enforce or redeem the Security or to foreclose the interest of the Borrower in any Collateral the Lender will be entitled to costs on a solicitor and client basis. Any costs so recovered will be credited against any solicitors' fees and charges paid or incurred by the Lender relating to the matters in respect of which the costs were awarded and which have been added to the monies secured pursuant to the Security.
- 12.7 **Enforcement.** Upon the occurrence of any Event of Default, which is continuing, the Lender may by instrument in writing declare that the Security has become enforceable and crystallized and the Lender shall have the following rights and powers:
- (a) to enter into possession of all or any part of the Collateral;
  - (b) to preserve and maintain the Collateral and make such replacements thereof and additions thereto as it deems advisable;
  - (c) to borrow money in the Borrower's name or in the Lender's name or to advance the Lender's own money to the Borrower, in any case upon such terms as the Lender may deem reasonable and upon the Security;
  - (d) to pay or otherwise satisfy in whole or in part any Encumbrances which, in the Lender's opinion, rank in priority to the security hereof; and
  - (e) after entry by its officers or agents or without entry to sell, lease or otherwise dispose in any way whatsoever of all or any part of the Collateral either en bloc or separately at public auction or by tender or by private agreement and at such time or times and on such terms and conditions as the Lender in its absolute discretion may determine and without any notice to or concurrence of the Borrower except as may be required by applicable law.
- 12.8 **Receiver.** And it is further agreed that in addition to all other powers exercisable hereunder or by virtue of any other agreement or at common law and equity, the Lender may by writing under the Lender's own hand or the hand of any solicitor or agent authorized on its behalf, upon any Event of Default, which has not been remedied as per 12.2 above, on the part of the Borrower in payment of the Loan or interest hereby secured, or in the observance of any of the covenants and conditions herein contained of the Borrower and/or 1451, from time to time appoint any Person (including an officer of the Lender) to be a receiver or receiver manager of the Collateral. The



Lender may likewise remove any such receiver or receiver manager and appoint another in his place, and any such receiver or receiver manager appointed, pursuant to the foregoing provisions, shall have the following powers:

- (a) **Possession** - To take possession of the Collateral and, for that purpose, and to do any act and take any proceedings in the name of the Borrower, or otherwise, as he shall deem necessary;
- (b) **Carry on Business** - To carry on or concur in carrying on the business of the Borrower related to the Collateral, and to employ and discharge such agents, managers, clerks, accountants, servants, workmen and others upon such terms and with such wages or remuneration as he shall think proper; and to repair and keep in repair the buildings, plant or other property comprised in the Collateral, and to do all necessary acts and things for the carrying on any business of the Borrower and the protection of the undertaking, property and assets of the Borrower related to the Collateral;
- (c) **Make Arrangements** - To make any reasonable arrangement or compromise which he shall think expedient in the interest of the Lender; and with Court approval to exchange any part or parts of the Collateral for any other property suitable for the purposes of the Borrower, and upon such terms as may seem expedient;
- (d) **Raise Money** - To raise on the security of the Collateral or any part of the undertaking, property and assets of the Borrower related to the Collateral, any sum of money required for the carrying on of the Borrower's business related to the Collateral, or for the repairs, insurance, protection, or any other purpose herein mentioned, or as may be required to pay off or discharge any lien, charge or encumbrance upon the Collateral, or any part thereof, which would, or might, have priority over the charge created by the Security;
- (e) **Sell or Lease** - To sell or lease or to concur in the selling or leasing of the Collateral or any part thereof, and to carry any such sale or lease into effect, by conveying in the name or on behalf of the Borrower, or otherwise; and any such sale may be made either at public auction or private sale as to him may seem appropriate, and any such sale may be made from time to time as to the whole or any part or parts of the Collateral; and he may make any stipulations as to title or conveyance or commitment of title, or otherwise, which he shall deem proper; and he may buy in or rescind or vary any contract for the sale of any part of the Collateral and may resell; and he may sell any of the same on such terms as to credit or part cash and part credit, or otherwise as shall appear to be most advantageous and at such prices as can reasonably be obtained therefor, and in the event of a sale on credit neither he, nor the Lender shall be accountable for, or charged with, any moneys until actually received; and it is agreed that no purchaser at any sale purporting to be made in pursuance of the aforesaid power, shall be bound or concerned to see or enquire whether any default has been made or continues, or whether any notice required hereunder has been given, or as to the necessity or expediency of the stipulation subject to which such sale shall have been made, or otherwise as to the propriety of such sale or regularity of its proceedings, or be affected by notice that no such default has been made or continues, or notice given as aforesaid, or that the sale is otherwise unnecessary, improper or irregular, and notwithstanding any impropriety or irregularity, or notice thereof to such purchaser, the sale as regards such purchaser shall be deemed to be within the aforesaid power and valid accordingly and the remedy (if any) of the Borrower in respect of any impropriety or irregularity whatsoever in any such sale shall be in damages only; and

- (f) Complete Construction - If applicable, to complete or cause to be completed, in whole or in part, or embark on the completion of the construction of such improvements on the Collateral as he shall think proper in the interests of the Lender and to employ and discharge such contractors, subcontractors, materialmen, agents, managers, clerks, accountants, servants, workmen and others upon such terms and in accordance with such contract arrangements, salaries, wages or remuneration as he shall think proper.
- 12.9 **Distribution of Receiver's Income.** The receiver or receiver manager appointed and acting under any of the foregoing provisions shall be entitled out of the moneys to arise out of the taking possession of the Collateral, and the carrying on of any of the Borrower's business related to the Collateral or out of any sale or lease of any part of the Collateral as aforesaid, in the first place to pay and satisfy all the costs and expenses attending such taking of possession, carrying on and managing the Borrower's business, or sale or completing in whole or in part the construction or embarking thereon or otherwise relating to the exercise of his powers under this Agreement, including his remuneration as receiver or receiver manager, and in the second place to pay and satisfy any lien or charge ranking in priority to the Security, and in the third place to pay and satisfy all amounts outstanding under the Loan which shall then be owing hereunder, and in the fourth place to pay and satisfy any arrears of interest which shall then be owing hereunder, and should any surplus remain in the hands of the said Receiver or Receiver Manager after payment as aforesaid, then the Borrower shall be entitled to such surplus.
- 12.10 **Liability of Receiver.** The receiver or receiver manager appointed and exercising his powers hereunder shall not be liable for any loss howsoever arising, unless the same shall be caused by his own negligence or wilful default; and he shall, when so appointed, be deemed to be the agent of the Borrower and the Borrower shall be solely responsible for his acts and defaults and for his remuneration.
- 12.11 **Dealing with Collateral.** In exercising his powers hereunder, any receiver or receiver manager will be free to deal with the Collateral and any assets of the Borrower related thereto in such order or manner as he may be directed by the Lender any rule of law or equity to the contrary notwithstanding, including, without limitation, the equitable principle or doctrine of marshalling.
- 12.12 **Notices.** In this Agreement any notice or other communication to be given by any party hereunder to another party shall be given or made by delivering the same by overnight delivery service, by same-day courier, by hand delivery, by e-mail, or by other means of rapid written or electronic communication ("**Notice**") to the party to whom the notice is directed, in either case, at the address set out below or to such alternative address as may from time to time be designated by Notice given to the other party in the manner provided in this Section:

Borrower addressed to it at:

Mizrahi Developments Inc.  
189 Forest Hill Road  
Toronto, Ontario  
M5P 2N3

Attention: Sam Mizrahi, President  
Email: sam@mizrahidevelopments.ca

-and to-

Baldwin Sennecke Halman LLP  
Barristers and Solicitors  
25 Adelaide Street East  
Suite 900, Victoria Tower  
Toronto, Ontario  
M5C 3A1

Attention: Jeffrey A. Halman  
Email: [jhalman@bashllp.com](mailto:jhalman@bashllp.com)

Lender addressed to it at:

David Berry  
124 Park Rd.  
Toronto, Ontario  
M4W 2N7

Email: [davidmmberry@rogers.com](mailto:davidmmberry@rogers.com)

-and to-

Stikeman Keeley Spiegel Pasternack LLP  
Barristers and Solicitors  
200 Front Street West, Suite 2300  
Toronto, Ontario  
M5V 3K2

Attention: Michael W. Pasternack  
Email: [pasternack@stikeman.to](mailto:pasternack@stikeman.to)

The date of giving Notice shall be the date of delivery thereof if delivered by hand. If sent by overnight delivery service, by same-day courier, by hand delivery, by e-mail or other means of rapid written or electronic communication, the date of giving Notice shall be the date of transmission if transmission occurs prior to 6:00 p.m. (Toronto time) on a Business Day and on the Business Day next following the date of transmission in any other case.

### PART 13 - INDEMNITY

- 13.1 Each of the Borrower and 1451 hereby agrees, on a joint and several liability basis, to indemnify, exonerate and hold Lender (his successors, heirs, administrators, executors, legal personal representatives and permitted assigns) free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection therewith, and including without limitation, reasonable legal fees and out of pocket disbursements and amounts paid in settlement of any and every kind whatsoever paid, incurred or suffered by, or relating to (i) the extension of the Loan; (ii) the direct or indirect use of the proceeds of the Loan, including but not limited to for the purposes as set out in Part 2.7 of this Agreement; (iii) any actual or threatened investigation, litigation or other proceeding relating to the Loan extended herein; (iv) any breach of any representation, warranty, covenant or other obligation of the Borrower and/or 1451 contained in this Agreement, or (v) the execution,

delivery, performance or enforcement of any Loan Documents and any instrument, document or agreement executed pursuant hereto or thereto. This Part 13 shall survive the re-payment of the Loan and the termination or expiration of this Agreement and/or any of the Loan Documents. Any such indemnity payment shall be considered an expense of the Project.

#### **PART 14 – RIGHT OF FIRST REFUSAL**

- 14.1 Sam, the Borrower and 1451 covenant and agree that they (collectively and individually), on their own behalf and on behalf of any Related Party and/or affiliates, shall grant a right of first refusal to the Lender to act as lender, financier or lead investor in respect of any subsequent credit facilities, loan arrangements, private placement of equity or the like by the Borrower, 1451, or any of their Related Parties and/or affiliates in connection with the Townhome Project. Notwithstanding anything set out herein, the Lender acknowledges that this paragraph does not obligate either the Borrower or 1451 or their affiliates or related companies to proceed with or develop the Townhome Project.

#### **PART 15 – PARKING**

- 15.1 In connection with the Lender's Unit (as defined herein), it is understood that notwithstanding anything to the contrary contained herein or in any documentation relating to the purchase of the Lender's Unit, Sam irrevocably agrees to provide to the Lender, at no charge or cost whatsoever, one (1) additional indoor parking space located at 128 Hazelton Avenue, Toronto, Ontario, which parking space, combined with the three (3) existing parking spaces purchased by the Lender pursuant to the APS, shall be separately "walled" (such that, subject to receipt of applicable building permits (which Sam shall use commercially reasonable efforts to obtain), the space is a self-contained four (4) parking space garage unit and only provides access to the Lender or his designee) with an automatic garage door opener.

#### **PART 16 - SUCCESSION**

- 16.1 In the event of the untimely death or incapacity for a period of 120 days in any 180 day period of Sam Mizrahi prior to repayment in full of the Loan prior to expiration of the Term hereof or the completion of the Project, the Credit Parties acknowledge and agree that the Lender shall be appointed (and the Credit Parties grant a power of appointment for such purposes) to act as the sole manager of the Project, with the authority, but not the obligation and liability to administer and manage the completion of the Project and the sales, disposition or completion of the unit sales and the terms and conditions hereof shall remain in full force and effect.

#### **PART 17 - GENERAL**

- 17.1 **Records.** The records of the Lender as to the Borrower and the amount outstanding under this Agreement and under the Security will be final and conclusive without further proof, so long as the Lender is acting reasonably with respect to all such matters.
- 17.2 **Costs.** The Borrower will pay the costs of, and incidental to, the preparation, execution and delivery of this Agreement and of the preparation and registration of the Security or any other security required to or from time to time given by the Borrower to the Lender and, at its option,

the Lender may pay the said costs out of the monies to be advanced on account of the Loan.

- 17.3 **Confidentiality.** The matters set forth in this Agreement and any information provide with respect to the transaction are strictly confidential and shall not be disclosed to any parties without the express written consent of the other party, other than as may be required by law. Notwithstanding the foregoing, the Lender shall be permitted to disclose the Agreement and the information relating to this transaction to its advisors prior to and after the initial advance provided such advisors acknowledge the confidentiality obligations herein contained. Any party may disclose such information to their respective advisors who need to know such information in order to conclude the transaction contemplated by this Agreement and who are informed of the obligation to keep such information confidential or as may be required by applicable law.
- 17.4 **Assignment by Borrower.** The Borrower will not be entitled to assign any of its rights under this Agreement except with the prior written consent of the Lender.
- 17.5 **Assignment by Lender.** The Lender will not be entitled to assign any of its rights under this Agreement except with the prior written consent of the Borrower.
- 17.6 **Enurement.** This Agreement and all its provisions will enure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors and permitted assigns.
- 17.7 **"this Agreement", "herein", "hereof", "hereto"** and similar expressions mean and refer to this Agreement and include any instrument amending, supplementing or modifying the same, and the expression "Section" followed by a number means and refers to the specified Section of this Agreement.
- 17.8 **Maximum Return.** The Borrower and the Lender acknowledge and agree that it is their express intention and desire that in no event will the total payment to the Lender whether for interest, fees, bonus, commission, commitment, stand by or processing fees, or service charges or otherwise (collectively, "Sum") exceed the maximum payment permitted under the *Criminal Code* (Canada) as amended. If the amount of the Sum but for this Section is a criminal rate, then the Sum will be reduced to an effective annual rate which is 1% less than the criminal rate calculated using generally accepted actuarial practices and principles, by reducing the interest rate, fees, bonus, or other changes accordingly. Any overpayment by the Borrower after recalculation under this Section will immediately be returned by the Lender to the Borrower.
- 17.9 **Entire Agreement in Writing.** This Agreement, including the Schedules hereto and the Security, constitutes the entire agreement between the parties hereto. There are no representations, warranties, collateral agreements or conditions which affect this Agreement other than as set out herein.
- 17.10 **Counterparts.** This Agreement may be executed: (i) by electronic transmission, including facsimile, scanned or email, and scanned electronic or facsimile signatures shall be treated as originals for all purposes; and (ii) in counterparts and all counterparts taken together shall constitute an executed copy of this Agreement.

[Signatures to Follow on Next Page]

TO EVIDENCE THEIR AGREEMENT each party has executed this Agreement on the date first above written.

**MIZRAHI DEVELOPMENTS INC.**

X 

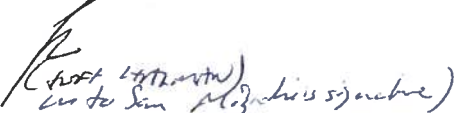
Per:  
Name: Sam Mizrahi  
Title: President  
I have authority to bind the Corporation

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

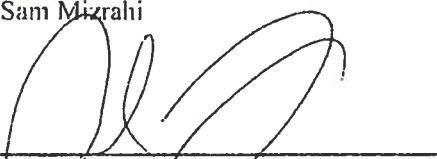
X 

Per:  
Name: Sam Mizrahi  
Title: President  
I have authority to bind the Corporation

Witness:

  
(Michael Pasternack)  
Witness to David Berry's  
Signature

X   
\_\_\_\_\_  
Sam Mizrahi

  
\_\_\_\_\_  
David Berry

**SCHEDULE A**

**LEGAL DESCRIPTION OF THE PROPERTY**

*1451 Wellington Street West, Ottawa*

Lots 1 and 2, Plan 145 N/S Richmond Road (now Wellington Street), being all of PIN 04030-0154.

*1445 Wellington Street West, Ottawa (still under Agreement of Purchase and Sale between Mizrahi Enterprises Inc., in trust for a corporation to be incorporated, as Buyer, and Alfredo Giannuzzi, Mario Giannuzzi and Eugenio Milito, dated April 17, 2013.)*

Lot 3 and Part of Lot 4, Plan 145 N/S Richmond Road (now Wellington Street), being all of PIN 04030-0155.

**SCHEDULE B**

**SPECIFIC PERMITTED ENCUMBRANCES**

**REAL PROPERTY**

1. the Vendor Take Back Charge.
2. a charge/mortgage in favour of a construction lender for the Project that is a Schedule "A" chartered bank, and if the construction lender is not a Schedule "A" chartered bank, the construction lender and the terms and conditions of such construction financing must be approved by the Lender, acting reasonably.
3. a charge/mortgage in favour of Aviva Insurance Company of Canada or Westmount Insurance (or some other entity approved by the Lender), acting as a deposit bond issuer, as security for the deposit bond facility and excess deposit bond facility for the Project.

**PPSA**

Notices of security interest in favour of the construction lender, Tarion, deposit bond insurer and excess deposit bond facility insurer.



**SCHEDULE C**  
**PROJECT BUDGET**

## PROMISSORY NOTE

Cdn. \$4,000,000.00

Toronto, Ontario  
June 29, 2016

**FOR VALUE RECEIVED, MIZRAHI DEVELOPMENTS INC.** (the "**Borrower**") hereby promises to pay to the order of **DAVID BERRY** (the "**Lender**") located at 124 Park Road, Toronto, Ontario M4W 2N7 (or such other place as the Lender may from time to time designate), in accordance with the loan agreement dated as of June 29, 2016, as same may be amended, supplemented, revised, restated or replaced from time to time in accordance with its terms (the "**Loan Agreement**"), the principal sum of **FOUR MILLION (Cdn. \$4,000,000.00) CANADIAN DOLLARS** or such lesser amount as may then constitute the unpaid principal amount of the Advances made by the Lender to the Borrower and to pay interest at the rate of Fourteen (14%) percent per annum in like money at such office or place from the date hereof to the date of payment in full hereof (whether by acceleration or otherwise) on the unpaid principal balance hereof in accordance with the terms set forth in the Loan Agreement. The entire unpaid principal amount of this Promissory Note, and accrued interest thereon, shall be payable when due under the terms of the Loan Agreement.

This Promissory Note is the Promissory Note referred to in, and issued pursuant to the Loan Agreement and identified as Loan Facility No. 1 and is subject to and governed by the terms and conditions thereof. Capitalized terms used but not defined herein shall have the meaning set forth in the Loan Agreement. Reference is made to the Loan Agreement for provisions regarding mandatory and optional payments and prepayments hereof, acceleration of the maturity hereof by the Lender upon the happening of certain stated events, and rates of interest after default.

This Promissory Note is evidence of the advances under the Loan Agreement, and is secured by the Security and the other agreements and instruments referred to in the Loan Agreement, all as more particularly described and provided therein, and is entitled to the benefits thereof.

The Borrower hereby waives diligence, demand, presentment, protest and notice of any kind, and assents to extensions of the time of payment, release, surrender or substitution of security, or forbearance or other indulgence, without notice. The Borrower agrees to pay all amounts of principal, interest and fees under this Promissory Note without offset, deduction, claim, counterclaim, defense or recoupment, all of which are hereby waived by the Borrower.

This Promissory Note may not be changed, modified or terminated orally, but only by an agreement in writing signed by the Borrower or any successor or assign of the Borrower and the Lender or any holder hereof.

This Promissory Note shall be governed by and construed in accordance with the laws of the Province of Ontario, and shall be binding upon the successors and assigns of the Borrower and inure to the benefit of the Lender and its successors, endorsees and assigns. If any term or provision of this Promissory Note shall be held invalid, illegal or unenforceable, the validity of all other terms and provisions hereof shall in no way be affected thereby.

**MIZRAHI DEVELOPMENTS INC.**

Per: 

Name: Sam Mizrahi

Title: President

I have the authority to bind the corporation.

COPY

PROMISSORY NOTE

Cdn. \$6,000,000.00

Toronto, Ontario  
June 29, 2016

**FOR VALUE RECEIVED. MIZRAHI DEVELOPMENTS INC.** (the "**Borrower**") hereby promises to pay to the order of **DAVID BERRY** (the "**Lender**") located at 124 Park Road, Toronto, Ontario M4W 2N7 (or such other place as the Lender may from time to time designate), in accordance with the loan agreement dated as of June 29, 2016, as same may be amended, supplemented, revised, restated or replaced from time to time in accordance with its terms (the "**Loan Agreement**"), the principal sum of **SIX MILLION (Cdn. \$6,000,000.00) CANADIAN DOLLARS** or such lesser amount as may then constitute the unpaid principal amount of the Advances made by the Lender to the Borrower and to pay interest at the rate of Fourteen (14%) percent per annum in like money at such office or place from the date hereof to the date of payment in full hereof (whether by acceleration or otherwise) on the unpaid principal balance hereof in accordance with the terms set forth in the Loan Agreement. The entire unpaid principal amount of this Promissory Note, and accrued interest thereon, shall be payable when due under the terms of the Loan Agreement.

This Promissory Note is the Promissory Note referred to in, and issued pursuant to the Loan Agreement and identified as Loan Facility No. 2 and is subject to and governed by the terms and conditions thereof. Capitalized terms used but not defined herein shall have the meaning set forth in the Loan Agreement. Reference is made to the Loan Agreement for provisions regarding mandatory and optional payments and prepayments hereof, acceleration of the maturity hereof by the Lender upon the happening of certain stated events, and rates of interest after default.


This Promissory Note is evidence of the advances under the Loan Agreement, and is secured by the Security and the other agreements and instruments referred to in the Loan Agreement, all as more particularly described and provided therein, and is entitled to the benefits thereof.

The Borrower hereby waives diligence, demand, presentment, protest and notice of any kind, and assents to extensions of the time of payment, release, surrender or substitution of security, or forbearance or other indulgence, without notice. The Borrower agrees to pay all amounts of principal, interest and fees under this Promissory Note without offset, deduction, claim, counterclaim, defense or recoupment, all of which are hereby waived by the Borrower.

This Promissory Note may not be changed, modified or terminated orally, but only by an agreement in writing signed by the Borrower or any successor or assign of the Borrower and the Lender or any holder hereof.

This Promissory Note shall be governed by and construed in accordance with the laws of the Province of Ontario, and shall be binding upon the successors and assigns of the Borrower and inure to the benefit of the Lender and its successors, endorsees and assigns. If any term or provision of this Promissory Note shall be held invalid, illegal or unenforceable, the validity of all other terms and provisions hereof shall in no way be affected thereby.

**MIZRAHI DEVELOPMENTS INC.**

Per:   
Name: Sam Mizrahi  
Title: President

**COPY**

I have the authority to bind the corporation.

**MIZRAHI DEVELOPMENTS INC.**

as Obligor

and

**DAVID BERRY**

as Creditor

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**SECURITY AGREEMENT**

June 29, 2016

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## SECURITY AGREEMENT

Security agreement dated as of June \_\_, 2016 made by Mizrahi Developments Inc. (the "Obligor"), to and in favour of David Berry (the "Creditor").

### RECITALS:

- (a) The Creditor has agreed to make certain loan facilities available to the Obligor on the terms and conditions contained in the Loan Agreement; and
- (b) It is a condition precedent to the extension of such loan facilities to the Obligor under the Loan Agreement that the Obligor executes and delivers this Agreement in favour of the Creditor as security for the payment and performance of the Obligor's obligations under the Loan Agreement and the other Loan Documents to which it is a party.

In consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Obligor agrees as follows.

## ARTICLE 1 INTERPRETATION

### Section 1.1 Defined Terms.

As used in this Agreement, the following terms have the following meanings:

"Agreement" means this security agreement.

"Collateral" has the meaning specified in Section 2.1.

"Expenses" has the meaning specified in Section 2.2(b).

"Governmental Authority" has the meaning specified in the Loan Agreement.

"Instruments" means (i) a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada) or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or (ii) a letter of credit and an advice of credit if the letter or advice states that it must be surrendered upon claiming payment thereunder, or (iii) chattel paper or any other writing that evidences both a monetary obligation and a security interest in or a lease of specific goods, or (iv) documents of title or any other writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee's possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the Person in possession of it is

entitled to receive, hold and dispose of the document and the goods it covers, or (v) any document or writing commonly known as an instrument, but excludes investment property.

**"Intellectual Property"** means domestic and foreign: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) proprietary and non-public business information, including inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics, formulae and customer lists, and documentation relating to any of the foregoing; (iii) copyrights, copyright registrations and applications for copyright registration; (iv) mask works, mask work registrations and applications for mask work registrations; (v) designs, design registrations, design registration applications and integrated circuit topographies; (vi) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing; (vii) computer software and programs (both source code and object code form), all proprietary rights in the computer software and programs and all documentation and other materials related to the computer software and programs; and (viii) any other intellectual property and industrial property.

**"Lien"** means (i) any mortgage, charge, pledge, hypothecation, security interest, assignment by way of security, encumbrance, lien (statutory or otherwise), hire purchase agreement, conditional sale agreement, deposit arrangement, title retention agreement or arrangement, or any other assignment, arrangement or condition that in substance secures payment or performance of an obligation, (ii) any trust arrangement, (iii) any arrangement which creates a right of set-off out of the ordinary course of business, or (iv) any agreement to grant any such rights or interests.

**"Loan Agreement"** means the loan agreement dated June \_\_, 2016, among the Obligor, Creditor and Mizrahi Development Group (1451 Wellington) Inc. ("**1451**"), as the same may be amended, modified, extended, renewed, replaced, restated, supplemented or refinanced from time to time and includes any agreement extending the maturity of, refinancing or restructuring all or any portion of, the indebtedness under such agreement or any successor agreements, whether or not with the same Creditor.

**"Loan Documents"** means the Loan Agreement, this Agreement and each other Loan Document (as such term is defined in the Loan Agreement).

**"Obligor"** means Mizrahi Developments Inc., a corporation incorporated and existing under the laws of Ontario and its successors and permitted assigns.



**"Registrable Intellectual Property"** means any Intellectual Property in respect of which ownership, title, security interests, charges or encumbrances are capable of registration, recording or notation with any Governmental Authority pursuant to applicable laws.

**"Restricted Asset"** has the meaning specified in Section 2.4(1).

**"Creditor"** means David Berry and his successors and assigns.

**"Secured Obligations"** has the meaning specified in Section 2.2(a).

**"Securities"** means an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer, (a) that is represented by a security certificate in bearer form or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer; (b) that is one of a class or series, or by its terms is divisible into a class or series, of shares, participations, interests or obligations; and (c) that, (i) is, or is of a type, dealt in or traded on securities exchanges or securities markets, or (ii) is a medium for investment and by its terms expressly provides that it is a security for the purposes of the *Securities Transfer Act*, but excludes any ULC Shares.

**"Securities Transfer Act"** means the *Securities Transfer Act* (Ontario), or other similar applicable legislation, as such legislation may be amended or replaced from time to time.

**"Security Documents"** at any time means the agreements, documents and instruments described in the Loan Agreement and each additional agreement, document and instrument delivered to the Creditor as security for the debts, liabilities and obligations owing by the Obligor to the Creditor.

**"Security Interest"** has the meaning specified in Section 2.2.

**"ULC Shares"** means shares in any unlimited company or unlimited liability corporation at any time owned or otherwise held by the Obligor.

### **Section 1.2 Interpretation.**

- (1) Terms defined in the *Personal Property Security Act* (Ontario) ("PPSA") or the *Securities Transfer Act, 2006* (Ontario) ("STA") and used but not otherwise defined in this Agreement have the same meanings. For greater certainty, the terms "account", "chattel paper", "document of title", "equipment", "intangible", "investment property", "money", "personal property" and "proceeds" have the meanings given to them in the PPSA; and the terms "certificated security", "control", "deliver", "entitlement holder", "financial asset", "securities account", "securities intermediary", "security entitlement" and "uncertificated security" have the meanings given to them

in the STA. Capitalized terms used in this Agreement but not defined have the meanings given to them in the Loan Agreement.

- (2) Any reference in any Loan Document to Liens permitted by the Loan Agreement and any right of the Obligor to create or suffer to exist Liens permitted by the Loan Agreement are not intended to and do not and will not subordinate the Security Interest to any such Lien or give priority to any Person over the Creditor.
- (3) In this Agreement the words "including", "includes" and "include" mean "including (or includes or include) without limitation". The expressions "Article", "Section" and other subdivision followed by a number mean and refer to the specified Article, Section or other subdivision of this Agreement.
- (4) Any reference in this Agreement to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (5) The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect its interpretation.
- (6) The schedules attached to this Agreement form an integral part of it for all purposes of it.
- (7) Any reference to this Agreement, any Loan Document or any Security Document refers to this Agreement or such Loan Document or Security Document as the same may have been or may from time to time be amended, modified, extended, renewed, restated, replaced or supplemented and includes all schedules attached to it. Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it as the same may have been or may from time to time be amended or re-enacted.

## ARTICLE 2 SECURITY

### Section 2.1 Grant of Security.

Subject to Section 2.4, the Obligor grants to the Creditor, a security interest in, and assigns, mortgages, charges, hypothecates and pledges to the Creditor, all of the property and undertaking of the Obligor now owned or hereafter acquired and all of the property and undertaking in which the Obligor now has or hereafter acquires any interest (collectively, the "Collateral") including all of the Obligor's:

- (a) present and after-acquired personal property;

- (b) inventory including goods acquired or held for sale, lease or resale, goods furnished or to be furnished to third parties under contracts of lease, consignment or service, goods which are raw materials or work in process, goods used in or procured for packing and materials used or consumed in the business of the Obligor;
- (c) equipment, machinery, furniture, fixtures, plant, vehicles and other goods of every kind and description and all licences and other rights and all related records, files, charts, plans, drawings, specifications, manuals and documents;
- (d) accounts due or accruing and all related agreements, books, accounts, invoices, letters, documents and papers recording, evidencing or relating to them;
- (e) money, documents of title, chattel paper, financial assets and investment property;
- (f) securities accounts, including the securities accounts listed in Schedule A and all of the credit balances, security entitlements, other financial assets and items or property (or their value) standing to the credit from time to time in such securities accounts;
- (g) Instruments and Securities, including the Instruments and Securities listed in Schedule A;
- (h) intangibles including all security interests, goodwill, choses in action, contracts, contract rights, licenses and other contractual benefits;
- (i) Intellectual Property including the Registrable Intellectual Property listed in Schedule B;
- (j) all substitutions and replacements of and increases, additions and, where applicable, accessions to the property described in Section 2.1(a) through Section 2.1(i) inclusive; and
- (k) all proceeds in any form derived directly or indirectly from any dealing with all or any part of the property described in Section 2.1(a) through Section 2.1(j) inclusive, including the proceeds of such proceeds.

## **Section 2.2 Secured Obligations.**

The security interest, assignment, mortgage, charge, hypothecation and pledge granted by this Agreement (collectively, the "Security Interest") secures the payment and performance of:

- (a) all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time or from time to time due or accruing due and owing by or otherwise payable by the Obligor to the Creditor in any currency, however or wherever incurred, and whether incurred by the Obligor alone or jointly with another or others and whether as principal, guarantor or surety and in whatever name or style (collectively, and together with the Expenses, the "Secured Obligations"); and
- (b) all expenses, costs and charges incurred by or on behalf of the Creditor in connection with this Agreement, the Security Interest or the Collateral, including all legal fees, court costs, receiver's or agent's remuneration and other expenses of taking possession of, repairing, protecting, insuring, preparing for disposition, realizing, collecting, selling, transferring, delivering or obtaining payment for the Collateral, and of taking, defending or participating in any action or proceeding in connection with any of the foregoing matters or otherwise in connection with the Creditor's interest in any Collateral, whether or not directly relating to the enforcement of this Agreement or any other Loan Document (collectively, the "Expenses").

**Section 2.3 Attachment.**

- (1) The Obligor acknowledges that (i) value has been given, (ii) it has rights in the Collateral or the power to transfer rights in the Collateral to the Creditor (other than after-acquired Collateral), (iii) it has not agreed to postpone the time of attachment of the Security Interest, and (iv) it has received a copy of this Agreement.
- (2) If the Obligor (i) acquires any Securities, (ii) acquires any other financial assets that have not been credited to a securities account specified in Schedule A, (iii) acquires any Instruments, or (iv) establishes or maintains a securities account that is not specified in Schedule A, the Obligor will notify the Creditor in writing and provide the Creditor with a revised Schedule A recording the acquisition or establishment of and particulars relating to such Securities, financial assets, Instruments or securities account within 15 days after such acquisition. The Obligor will also promptly inform the Creditor in writing of the acquisition by the Obligor of any ULC Shares.
- (3) At the request of the Creditor (acting reasonably), the Obligor will take all action that the Creditor deems advisable to cause the Creditor to have control over any Securities or other investment property that are now or at any time become Collateral, including (i) causing the Collateral to be transferred to or registered in the name of the Creditor or his nominee or otherwise as the Creditor may direct, (ii) endorsing any Collateral to the Creditor or in blank

by an effective endorsement, (iii) delivering the Collateral to the Creditor or someone on his behalf as the Creditor may direct (iv) delivering to the Creditor any and all consents or other documents or agreements which may be necessary to effect the transfer of any Collateral to the Creditor or any third party and (v) entering into control agreements with the Creditor and the applicable securities intermediary or issuer in respect of any Collateral in form and substance satisfactory to the Creditor.

- (4) At the request of the Creditor, the Obligor will (i) deliver to and deposit with the Creditor the Instruments listed in Schedule B, (ii) cause the transfer of any Instruments to the Creditor to be registered wherever such registration may be required or advisable in the opinion of the Creditor, (iii) endorse any Instruments to the Creditor or in blank by an effective endorsement or register them in the name of the Creditor or his nominee or otherwise as the Creditor may direct and (iv) deliver to the Creditor any and all consents or other documents or agreements that may be necessary to effect the transfer of any Instruments to the Creditor or any third party.
- (5) The Obligor will promptly notify the Creditor in writing of the acquisition by the Obligor of any Registrable Intellectual Property. The Obligor will provide the Creditor with a revised Schedule B recording the acquisition and particulars of such additional Intellectual Property.

#### **Section 2.4 Scope of Security Interest.**

- (1) To the extent that an assignment of amounts payable and other proceeds arising under or in connection with, or the grant of a security interest in any agreement, licence, permit or quota of the Obligor would result in the termination of such agreement, licence, permit or quota (each, a "**Restricted Asset**"), the Security Interest with respect to each Restricted Asset will constitute a trust created in favour of the Creditor pursuant to which the Obligor holds as trustee all proceeds arising under or in connection with the Restricted Asset in trust for the Creditor on the following basis:
  - (a) until the Security Interest is enforceable and subject to the Loan Agreement, the Obligor is entitled to receive all such proceeds; and
  - (b) whenever the Security Interest is enforceable, (i) all rights of the Obligor to receive such proceeds cease and all such proceeds will be immediately paid over to the Creditor and (ii) the Obligor will take all actions requested by the Creditor to collect and enforce payment and other rights arising under the Restricted Asset.

The Obligor will use all commercially reasonable efforts to obtain the consent of each other party to any and all Restricted Assets to the assignment of such Restricted Asset to the Creditor in accordance with this Agreement. The

Obligor will also use all commercially reasonable efforts to ensure that all agreements entered into on and after the date of this Agreement do not prohibit assignments of the benefits of such agreements as collateral security to the Creditor in accordance with the terms of this Agreement.

- (2) The Security Interest with respect to trade-marks constitutes a security interest in, and a charge, hypothecation and pledge of, such Collateral in favour of the Creditor, but does not constitute an assignment or mortgage of such Collateral to the Creditor.
- (3) Until the Security Interest is enforceable, the grant of the Security Interest in the Intellectual Property does not affect in any way the Obligor's rights to commercially exploit the Intellectual Property, defend it, enforce the Obligor's rights in it or with respect to it against third parties in any court or claim and be entitled to receive any damages with respect to any infringement of it.
- (4) The Security Interest does not extend to consumer goods or ULC Shares.
- (5) The Security Interest does not extend or apply to the last day of the term of any lease or sublease of real property or any agreement for a lease or sublease of real property, now held or hereafter acquired by the Obligor, but the Obligor will stand possessed of any such last day upon trust to assign and dispose of it as the Creditor may reasonably direct.

#### **Section 2.5 Grant of Licence to Use Intellectual Property.**

- (1) At such time as the Creditor is lawfully entitled to exercise his rights and remedies under Article 3, the Obligor grants to the Creditor an irrevocable, nonexclusive licence (exercisable without payment of royalty or other compensation to the Obligor) to use, assign or sublicense any Intellectual Property in which the Obligor has rights wherever the same may be located, including in such licence access to (i) all media in which any of the licensed items may be recorded or stored, and (ii) all software and computer programs used for compilation or print-out. The license granted under this Section is to enable the Creditor to exercise his rights and remedies under Article 3 and for no other purpose.
- (2) The Creditor acknowledges that the standard of quality for the use, assignment or sublicensing of Intellectual Property of the Obligor shall be no less than the standard of quality employed by the Obligor as of the day before the exercise of rights and remedies under Article 3 by the Creditor in conjunction with wares and/or services sold in association with such Intellectual Property.

**Section 2.6 Care and Custody of Collateral.**

- (1) The Creditor has no obligation to keep Collateral in his possession identifiable.
- (2) The Creditor may, upon the occurrence and during the continuance of an Event of Default, (i) notify any Person obligated on an Instrument, Security or account to make payments to the Creditor, whether or not the Obligor was previously making collections on such accounts, chattel paper, instruments, and (ii) assume control of any proceeds arising from the Collateral.
- (3) The Creditor has no obligation to collect dividends, distributions or interest payable on, or exercise any option or right in connection with, any Collateral. The Creditor has no obligation to protect or preserve any Collateral from depreciating in value or becoming worthless and is released from all responsibility for any loss of value, whether such Collateral is in the possession of, is a security entitlement of, or is subject to the control of, the Creditor, a securities intermediary, the Obligor or any other Person. In the physical keeping of any Securities, the Creditor is only obliged to exercise the same degree of care as it would exercise with respect to his own Securities kept at the same place.
- (4) The Creditor may, upon the occurrence and during the continuance of an Event of Default, sell, transfer, use or otherwise deal with any investment property included in the Collateral over which the Creditor has control, on such conditions and in such manner as the Creditor in his sole discretion may determine.

**Section 2.7 Rights of the Obligor.**

- (1) Until the occurrence of an Event of Default which is continuing, the Obligor is entitled to vote the Securities and other financial assets that are part of the Collateral and to receive all dividends and distributions on such Securities and financial assets. Upon the occurrence and during the continuance of an Event of Default, all rights of the Obligor to vote (under any proxy given by the Creditor (or his nominee) or otherwise) or to receive distributions or dividends cease and all such rights become vested solely and absolutely in the Creditor (except as may be permitted by the Loan Agreement).
- (2) Any distributions or dividends received by the Obligor contrary to Section 2.7(1) or any other moneys or property received by the Obligor after the Security Interest is enforceable will be received as trustee for the Creditor and shall be immediately paid over to the Creditor .

**Section 2.8 Expenses.**

The Obligor is liable for and will pay on demand by the Creditor any and all Expenses.

**ARTICLE 3  
ENFORCEMENT**

**Section 3.1 Enforcement.**

The Security Interest becomes and is enforceable against the Obligor upon the occurrence and during the continuance of an Event of Default.

**Section 3.2 Remedies.**

Whenever the Security Interest is enforceable, the Creditor may realize upon the Collateral and enforce the rights of the Creditor at any time by:

- (a) entry onto any premises where Collateral consisting of tangible personal property may be located;
- (b) entry into possession of the Collateral by any method permitted by law;
- (c) sale, grant of options to purchase, or lease of all or any part of the Collateral;
- (d) holding, storing and keeping idle or operating all or any part of the Collateral;
- (e) exercising and enforcing all rights and remedies of a holder of the Collateral as if the Creditor was the absolute owner thereof (including, if necessary, causing the Collateral to be registered in the name of the Creditor or his nominee if not already done);
- (f) collection of any proceeds arising in respect of the Collateral;
- (g) collection, realization or sale of, or other dealing with, accounts;
- (h) license or sublicense, whether on an exclusive or nonexclusive basis, of any Intellectual Property for such term and on such conditions and in such manner as the Creditor in his sole judgment determines (taking into account such provisions as may be necessary to protect and preserve such Intellectual Property);
- (i) instruction or order to any issuer or securities intermediary pursuant to any control the Creditor has over the Collateral;



- (j) application of any moneys constituting Collateral or proceeds thereof in accordance with Section 5.11;
- (k) appointment by instrument in writing of a receiver (which term as used in this Agreement includes a receiver and manager) or agent of all or any part of the Collateral and removal or replacement from time to time of any receiver or agent;
- (l) institution of proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Collateral;
- (m) institution of proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Collateral;
- (n) filing of proofs of claim and other documents to establish claims to the Collateral in any proceeding relating to the Obligor; and
- (o) any other remedy or proceeding authorized or permitted under the PPSA or otherwise by law or equity.

### **Section 3.3 Additional Rights.**

In addition to the remedies set forth in Section 3.2 and elsewhere in this Agreement, whenever the Security Interest is enforceable, the Creditor may:

- (a) require the Obligor, at the Obligor's expense, to assemble the Collateral at a place or places designated by notice in writing and the Obligor agrees to so assemble the Collateral immediately upon receipt of such notice;
- (b) require the Obligor, by notice in writing, to disclose to the Creditor the location or locations of the Collateral and the Obligor agrees to promptly make such disclosure when so required;
- (c) repair, process, modify, complete or otherwise deal with the Collateral and prepare for the disposition of the Collateral, whether on the premises of the Obligor or otherwise;
- (d) redeem any prior security interest against any Collateral, procure the transfer of such security interest to itself, or settle and pass the accounts of the prior mortgagee, chargee or encumbrancer (any accounts to be conclusive and binding on Obligor);
- (e) pay any liability secured by any Lien against any Collateral (the Obligor will immediately on demand reimburse the Creditor for all such payments);

- (f) carry on all or any part of the business of the Obligor and, to the exclusion of all others including the Obligor, enter upon, occupy and use all or any of the premises, buildings, and other property of or used by the Obligor for such time as the Creditor sees fit, free of charge, and the Creditor is not liable to the Obligor for any act, omission or negligence (other than their own gross negligence or wilful misconduct) in so doing or for any rent, charges, depreciation or damages incurred in connection with or resulting from such action;
- (g) borrow for the purpose of carrying on the business of the Obligor or for the maintenance, preservation or protection of the Collateral and grant a security interest in the Collateral, whether or not in priority to the Security Interest, to secure repayment;
- (h) commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and give good and valid receipts and discharges in respect of the Collateral and compromise or give time for the payment or performance of all or any part of the accounts or any other obligation of any third party to the Obligor; and
- (i) at any public sale, and to the extent permitted by law on any private sale, bid for and purchase any or all of the Collateral offered for sale and upon compliance with the terms of such sale, hold, retain and dispose of such Collateral without any further accountability to the Obligor or any other Person with respect to such holding, retention or disposition, except as required by law. In any such sale to the Creditor, the Creditor may, for the purpose of making payment for all or any part of the Collateral so purchased, use any claim for Secured Obligations then due and payable to it as a credit against the purchase price.

#### **Section 3.4 Exercise of Remedies.**

The remedies under Section 3.2 and Section 3.3 may be exercised from time to time separately or in combination and are in addition to, and not in substitution for, any other rights of the Creditor however arising or created. The Creditor is not bound to exercise any right or remedy, and the exercise of rights and remedies is without prejudice to the rights of the Creditor in respect of the Secured Obligations including the right to claim for any deficiency.

#### **Section 3.5 Receiver's Powers.**

- (1) Any receiver appointed by the Creditor is vested with the rights and remedies which could have been exercised by the Creditor in respect of the

Obligor or the Collateral and such other powers and discretions as are granted in the instrument of appointment and any supplemental instruments. The identity of the receiver, its replacement and its remuneration are within the sole and unfettered discretion of the Creditor.

- (2) Any receiver appointed by the Creditor will act as agent for the Creditor for the purposes of taking possession of the Collateral, but otherwise and for all other purposes (except as provided below), as agent for the Obligor. The receiver may sell, lease, or otherwise dispose of Collateral as agent for the Obligor or as agent for the Creditor as the Creditor may determine in his discretion. The Obligor agrees to ratify and confirm all actions of the receiver acting as agent for the Obligor, and to release and indemnify the receiver in respect of all such actions.
- (3) The Creditor, in appointing or refraining from appointing any receiver, does not incur liability to the receiver, the Obligor or otherwise and is not responsible for any misconduct or negligence of such receiver.

### **Section 3.6 Appointment of Attorney.**

The Obligor hereby irrevocably constitutes and appoints the Creditor (and any officer of the Creditor if applicable) the true and lawful attorney of the Obligor. As the attorney of the Obligor, the Creditor has the power to exercise for and in the name of the Obligor with full power of substitution, upon the occurrence and during the continuance of an Event of Default, any of the Obligor's right (including the right of disposal), title and interest in and to the Collateral including the execution, endorsement, delivery and transfer of the Collateral to the Creditor, his nominees or transferees, and the Creditor and his nominees or transferees are hereby empowered to exercise all rights and powers and to perform all acts of ownership with respect to the Collateral to the same extent as the Obligor might do. This power of attorney is irrevocable, is coupled with an interest, has been given for valuable consideration (the receipt and adequacy of which is acknowledged) and survives, and does not terminate upon, the bankruptcy, dissolution, winding up or insolvency of the Obligor. This power of attorney extends to and is binding upon the Obligor's successors and permitted assigns. The Obligor authorizes the Creditor to delegate in writing to another Person any power and authority of the Creditor under this power of attorney as may be necessary or desirable in the opinion of the Creditor, and to revoke or suspend such delegation.

### **Section 3.7 Dealing with the Collateral.**

- (1) The Creditor is not obliged to exhaust his recourse against the Obligor or any other Person or against any other security it may hold in respect of the Secured Obligations before realizing upon or otherwise dealing with the Collateral in such manner as the Creditor may consider desirable.

- (2) The Creditor may grant extensions or other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Obligor and with other Persons, sureties or securities as he may see fit without prejudice to the Secured Obligations, the liability of the Obligor or the rights of the Creditor in respect of the Collateral.
- (3) Except as otherwise provided by law or this Agreement, the Creditor is not (i) liable or accountable for any failure to collect, realize or obtain payment in respect of the Collateral, (ii) bound to institute proceedings for the purpose of collecting, enforcing, realizing or obtaining payment of the Collateral or for the purpose of preserving any rights of any Persons in respect of the Collateral, (iii) responsible for any loss occasioned by any sale or other dealing with the Collateral or by the retention of or failure to sell or otherwise deal with the Collateral, or (iv) bound to protect the Collateral from depreciating in value or becoming worthless.

### **Section 3.8 Standards of Sale.**

Without prejudice to the ability of the Creditor to dispose of the Collateral in any manner which is commercially reasonable, the Obligor acknowledges that:

- (a) the Collateral may be disposed of in whole or in part;
- (b) the Collateral may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;
- (c) any assignee of such Collateral may be the Creditor or a customer of any such Person;
- (d) any sale conducted by the Creditor will be at such time and place, on such notice and in accordance with such procedures as the Creditor, in his sole discretion, may deem advantageous;
- (e) the Collateral may be disposed of in any manner and on any terms necessary to avoid violation of applicable law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, require that the prospective bidders and purchasers have certain qualifications, and restrict the prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of the Collateral) or in order to obtain any required approval of the disposition (or of the resulting purchase) by any governmental or regulatory authority or official;

- (f) a disposition of the Collateral may be on such terms and conditions as to credit or otherwise as the Creditor, in his sole discretion, may deem advantageous; and
- (g) the Creditor may establish an upset or reserve bid or price in respect of the Collateral.

### **Section 3.9 Dealings by Third Parties.**

- (1) No Person dealing with the Creditor or an agent or receiver is required to determine (i) whether the Security Interest has become enforceable, (ii) whether the powers which such Person is purporting to exercise have become exercisable, (iii) whether any money remains due to the Creditor by the Obligor, (iv) the necessity or expediency of the stipulations and conditions subject to which any sale or lease is made, (v) the propriety or regularity of any sale or other dealing by the Creditor with the Collateral, or (vi) how any money paid to Creditor has been applied.
- (2) Any bona fide purchaser of all or any part of the Collateral from the Creditor or any receiver or agent will hold the Collateral absolutely, free from any claim or right of whatever kind, including any equity of redemption, of the Obligor, which it specifically waives (to the fullest extent permitted by law) as against any such purchaser together with all rights of redemption, stay or appraisal which the Obligor has or may have under any rule of law or statute now existing or hereafter adopted.

## **ARTICLE 4 REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **Section 4.1 General Representations, Warranties and Covenants.**

The Obligor represents and warrants and covenants and agrees, acknowledging and confirming that the Creditor is relying on such representations, warranties, covenants and agreements, that:

- (a) **Continuous Perfection.** Schedule C sets out the Obligor's place of business or, if more than one, the Obligor's chief executive office. Such place of business or chief executive office, as the case may be, has been located at such address for the 60 days immediately preceding the date of this Agreement. Schedule C also sets out the address at which the books and records of the Obligor are located, the address at which senior management of the Obligor are located and conduct their deliberations and make their decisions with respect to the business of the Obligor and the address from which the invoices and accounts of the Obligor are issued. The Obligor will not change the location of any of these items, people or addresses without providing at least 30 days

prior written notice to the Creditor. Except for sales of inventory made in the ordinary course of business, the Collateral, to the extent not delivered to the Creditor pursuant to Section 2.3, has been kept for the 60 days immediately preceding the date of this Agreement and will be kept at those locations listed on Schedule C, and the Obligor will not remove the Collateral from such locations, without providing at least 30 days prior written notice to the Creditor. The Obligor will not change its name in any manner without providing at least 30 days prior written notice to the Creditor.

- (b) **Restriction on Disposition.** The Obligor will not sell, assign, convey, exchange, lease, release or abandon, or otherwise dispose of, any Collateral, except as expressly permitted in the Loan Agreement.
- (c) **Negative Pledge.** The Obligor will not create or suffer to exist any Lien on the Collateral, except for Liens permitted by the Loan Agreement, and will not grant control over any investment property to any Person other than the Creditor.
- (d) **Account Debtors.** None of the account debtors in respect of any accounts, chattel paper or intangibles and none of the obligors in respect of any Instruments included in the Collateral is (i) a Governmental Authority, or (ii) in the case of any account in excess of \$50,000, is located outside of Canada or the United States of America.
- (e) **Investment Property and Instruments.**
  - (i) Schedule A lists all Securities and Instruments owned or held by the Obligor and all securities accounts of the Obligor on the date of this Agreement. Schedule A sets out, for each class of Securities listed in the schedule, the percentage amount that such Securities represent of all issued and outstanding Securities of that class and whether the Securities are certificated securities or uncertificated securities.
  - (ii) Securities and Instruments that are Collateral have been, where applicable, duly and validly issued and acquired and are fully paid and non-assessable.
  - (iii) Except as described in Schedule A, no transfer restrictions apply to the Securities and Instruments listed in Schedule A. The Obligor has delivered to the Creditor copies of all shareholder, partnership or trust agreements applicable to each issuer of such Securities and Instruments which are in the Obligor's possession and confirms that any interest in a partnership or

limited liability company that now, or at any time, forms part of the Collateral is, and will be, a "security" for the purposes of the *Securities Transfer Act*.

- (iv) No Person has or will have any written or oral option, warrant, right, call, commitment, conversion right, right of exchange or other agreement or any right or privilege (whether by law, preemptive or contractual) capable of becoming an option, warrant, right, call, commitment, conversion right, right of exchange or other agreement to acquire any right or interest in any of the Securities and Instruments that are Collateral.
- (v) The Securities and Instruments that are Collateral constitute, where applicable, the legal, valid and binding obligation of the Obligor of such Securities and Instruments, enforceable in accordance with their terms, subject only to any limitation under applicable laws relating to (i) bankruptcy, insolvency, fraudulent conveyance, arrangement, reorganization or creditors' rights generally, and (ii) the discretion that a court may exercise in the granting of equitable remedies.
- (vi) Subject to the terms in the Loan Agreement, the pledge, assignment, delivery to and control by the Creditor of the Collateral consisting of investment property pursuant to this Agreement creates a valid and perfected first ranking security interest in such Collateral, and the proceeds of it. Such Collateral and the proceeds from it are not subject to any prior Lien or any agreement purporting to grant to any third party a Lien on or control of the property or assets of the Obligor which would include the Collateral except as permitted in the Loan Agreement. The Creditor is entitled to all of the rights, priorities and benefits afforded by the PPSA or other relevant personal property security legislation as enacted in any relevant jurisdiction to perfect security interests in respect of such Collateral.
- (vii) The Obligor does not know of any claim to or interest in any Collateral consisting of investment property, including any adverse claims. If any Person asserts any Lien, encumbrance or adverse claim against any investment property that form part of the Collateral, the Obligor will promptly notify the Creditor.
- (viii) The Obligor has not consented to, will not consent to, and has no knowledge of any control by any person with respect to any

Collateral other than the Creditor except as permitted in the Loan Agreement.

- (ix) The Obligor will notify the Creditor immediately upon becoming aware of any change in an "issuer's jurisdiction" in respect of any uncertificated Securities that are Collateral or any change in a "securities intermediary's jurisdiction" in respect of any security entitlements, financial assets or securities accounts that are Collateral.
  - (x) The Obligor will not, after the date of this Agreement, establish and maintain any securities accounts with any securities intermediary unless (1) it gives the Creditor 30 days' prior written notice of its intention to establish such new securities account, (2) such securities intermediary is reasonably acceptable to the Creditor, and (3) the securities intermediary and the Obligor (i) execute and deliver a control agreement with respect to such securities account that is in form and substance, satisfactory to the Creditor, or (ii) transfer the financial assets in such securities account into a securities account in the name of the Creditor.
- (f) **Status of Accounts Collateral.** The Obligor will maintain books and records pertaining to the Collateral in such detail, form and scope as the Creditor reasonably requires, and keep all originals of the chattel paper which evidence accounts at locations specified on Schedule B. The Obligor will immediately notify the Creditor if any account in excess of \$50,000 arises out of contracts with any Governmental Authority, and execute any instruments and take any steps required by the Creditor in order that all moneys due or to become due under the contract are assigned to the Creditor and notice of such assignment is given to the Governmental Authority. The Obligor will also immediately notify the Creditor if any account in excess of \$50,000 is with an account debtor located outside of Canada or the United States of America.
- (g) **Additional Security Perfection and Protection of Security Interest.** The Obligor will grant to the Creditor, security interests, assignments, mortgages, charges, hypothecations and pledges in such property and undertaking of the Obligor that is not subject to a valid and perfected first ranking security interest (subject subject to the terms in the Loan Agreement) constituted by the Security Documents, in each relevant jurisdiction as determined by the Creditor. The Obligor will perform all acts, execute and deliver all agreements, documents and instruments and take such other steps as are requested by the Creditor



at any time to register, file, signify, publish, perfect, maintain, protect, and enforce the Security Interest including: (i) executing, recording and filing of financing or other statements, and paying all taxes, fees and other charges payable, (ii) placing notations on its books of account to disclose the Security Interest, (iii) delivering acknowledgements, confirmations and subordinations that may be necessary to ensure that the Security Documents constitute a valid and perfected first ranking security interest (subject to the terms in the Loan Agreement), (iv) executing and delivering any certificates, endorsements, instructions, agreements, documents and instruments that may be required under the *Securities Transfer Act* and (v) delivering opinions of counsel in respect of matters contemplated by this paragraph. The documents and opinions contemplated by this paragraph must be in form and substance satisfactory to the Creditor.

**Section 4.2 Representations, Warranties and Covenants Concerning Intellectual Property.**

The Obligor represents and warrants and covenants and agrees, acknowledging and confirming that the Creditor is relying on such representations, warranties, covenants and agreements, that:

- (a) Schedule B lists all Registrable Intellectual Property that is owned by the Obligor on the date of this Agreement.
- (b) All Registrable Intellectual Property of the Obligor is valid, subsisting, unexpired and enforceable, has not been abandoned and does not infringe the Intellectual Property rights of any other Person.
- (c) No decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or the Obligor's rights in, any Intellectual Property in any respect.
- (d) No action or proceeding is pending, or, to the knowledge of the Obligor, threatened, on the date hereof seeking to limit, cancel or question the validity of any Intellectual Property or the Obligor's ownership interest therein, or which, if adversely determined, would have a material adverse effect on the value of any Intellectual Property.
- (e) The Obligor will take all reasonable and necessary steps, including in any proceeding before the Canadian Intellectual Property Office or any similar Governmental Authority of any jurisdiction, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of the material Registrable Intellectual Property, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability.

- (f) In the event that any material Intellectual Property of the Obligor is infringed, misappropriated or diluted by a third party, the Obligor will (i) take such actions as the Obligor reasonably deems appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Creditor after it learns thereof and sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution.
- (g) Immediately upon the request of the Creditor, the Obligor will furnish the Creditor in writing the description of all Registrable Intellectual Property or applications for Registrable Intellectual Property of the Obligor. In addition, the Obligor will deliver to the Creditor a copy of the certificate of registration of, or application for, such Registrable Intellectual Property and immediately make all such filings, registrations and recordings as are necessary or appropriate to perfect the Security Interest granted to the Creditor in the Registrable Intellectual Property.

## **ARTICLE 5 GENERAL**

### **Section 5.1 Notices.**

Any notices, directions or other communications provided for in this Agreement must be in writing and given in accordance with the Loan Agreement.

### **Section 5.2 Discharge.**

The Security Interest will not be discharged except by a written release or discharge signed by the Creditor. The Obligor will be entitled to require a discharge by notice to the Creditor upon, but only upon, (i) full and indefeasible payment and performance of the Secured Obligations and (ii) the Creditor having no obligations under any Loan Document. Upon discharge of the Security Interest and at the request and expense of the Obligor, the Creditor will execute and deliver to the Obligor such financing statements and other documents or instruments as the Obligor may reasonably require and the Creditor will redeliver to the Obligor, or as the Obligor may otherwise direct the Creditor, any Collateral in his possession.

### **Section 5.3 No Merger, Survival of Representations and Warranties.**

This Agreement does not operate by way of merger of any of the Secured Obligations and no judgment recovered by the Creditor will operate by way of merger of, or in any way affect, the Security Interest, which is in addition to, and not in substitution for, any other security now or hereafter held by the Creditor in

respect of the Secured Obligations. The representations, warranties and covenants of the Obligor in this Agreement survive the execution and delivery of this Agreement and any advances under the Loan Agreement. Notwithstanding any investigation made by or on behalf of the Creditor these covenants, representations and warranties continue in full force and effect.

**Section 5.4 Further Assurances.**

The Obligor will do all acts and things and execute and deliver, or cause to be executed and delivered, all agreements, documents and instruments that the Creditor may require and take all further steps relating to the Collateral or any other property or assets of the Obligor that the Creditor may require for (i) protecting the Collateral, (ii) perfecting, preserving and protecting the Security Interest, and (iii) exercising all powers, authorities and discretions conferred upon the Creditor. After the Security Interest becomes enforceable, the Obligor will do all acts and things and execute and deliver all documents and instruments that the Creditor may require for facilitating the sale or other disposition of the Collateral in connection with its realization.

**Section 5.5 Supplemental Security.**

This Agreement is in addition to, without prejudice to and supplemental to all other security now held or which may hereafter be held by the Creditor.

**Section 5.6 Successors and Assigns.**

This Agreement is binding on the Obligor and its successors and permitted assigns, and enures to the benefit of the Creditor and his successors and assigns. This Agreement may be assigned by the Creditor without the consent of, or notice to, the Obligor, to such Person as the Creditor may determine and, in such event, such Person will be entitled to all of the rights and remedies of the Creditor as set forth in this Agreement or otherwise. In any action brought by an assignee to enforce any such right or remedy, the Obligor will not assert against the assignee any claim or defence which the Obligor now has or may have against the Creditor. The Obligor may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Creditor which may be unreasonably withheld.

**Section 5.7 Amalgamation.**

The Obligor acknowledges and agrees that in the event it amalgamates with any other corporation or corporations, it is the intention of the parties that the Security Interest (i) subject to Section 2.4, extends to: (A) all of the property and undertaking that any of the amalgamating corporations then owns, (B) all of the property and undertaking that the amalgamated corporation thereafter acquires, (C) all of the property and undertaking in which any of the amalgamating corporations then has any interest and (D) all of the property and undertaking in which the amalgamated corporation thereafter acquires any interest; and (ii) secures the

payment and performance of all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time or from time to time due or accruing due and owing by or otherwise payable by each of the amalgamating corporations and the amalgamated corporation to the Creditor in any currency, however or wherever incurred, and whether incurred alone or jointly with another or others and whether as principal, guarantor or surety and whether incurred prior to, at the time of or subsequent to the amalgamation. The Security Interest attaches to the additional collateral at the time of amalgamation and to any collateral thereafter owned or acquired by the amalgamated corporation when such becomes owned or is acquired. Upon any such amalgamation, the defined term "Obligor" means, collectively, each of the amalgamating corporations and the amalgamated corporation, the defined term "Collateral" means all of the property and undertaking and interests described in (i) above, and the defined term "Secured Obligations" means the obligations described in (ii) above.

**Section 5.8 Severability.**

If any court of competent jurisdiction from which no appeal exists or is taken, determines any provision of this Agreement to be illegal, invalid or unenforceable, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

**Section 5.9 Amendment.**

This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by the Creditor and the Obligor.

**Section 5.10 Waivers, etc.**

- (1) No consent or waiver by the Creditor in respect of this Agreement is binding unless made in writing and signed by the Creditor (or an authorized officer of the Creditor if applicable). Any consent or waiver given under this Agreement is effective only in the specific instance and for the specific purpose for which given. No waiver of any of the provisions of this Agreement constitutes a waiver of any other provision.
- (2) A failure or delay on the part of the Creditor in exercising a right under this Agreement does not operate as a waiver of, or impair, any right of the Creditor however arising. A single or partial exercise of a right on the part of the Creditor does not preclude any other or further exercise of that right or the exercise of any other right by the Creditor.

**Section 5.11 Application of Proceeds of Security.**

All monies collected by the Creditor upon the enforcement of his rights and remedies under the Security Documents and the Liens created by them including any sale or other disposition of the Collateral, together with all other monies received by the Creditor under the Security Documents, will be applied as provided

in the Loan Agreement. To the extent any other Loan Document requires proceeds of collateral under such Loan Document to be applied in accordance with the provisions of this Agreement, the Creditor shall apply such proceeds in accordance with this Section.

**Section 5.12 Conflict.**

In the event of any conflict between the provisions of this Agreement and the provisions of the Loan Agreement which cannot be resolved by both provisions being complied with, the provisions contained in the Loan Agreement will prevail to the extent of such conflict.

**Section 5.13 Governing Law.**

- (1) This Agreement will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

*[Signature page to follow]*

IN WITNESS WHEREOF the Obligor has executed this Agreement.

**MIZRAHI DEVELOPMENTS INC.**

Per:

  
Name: \_\_\_\_\_

Authorized Signing Officer

**SCHEDULE A  
INSTRUMENTS AND SECURITIES**

**SECURITIES**

Issuer	Class of Securities	Number of Securities	% of issued Securities	Certificated or Uncertificated	Certificate Number (where applicable)
1451	Common Shares		100%		

**INSTRUMENTS**

Issuer	Type of Instrument	Original Amount/Face Amount Monetary Obligation Secured	Maturity Date

**TRANSFER RESTRICTIONS**

The only transfer restrictions on the Securities are those set forth in the Articles of Incorporation for the respective corporation to which the Securities pertain.

**OTHER INVESTMENT PROPERTY**

None.

**SCHEDULE B  
INTELLECTUAL PROPERTY**

None.



**SCHEDULE C  
LOCATIONS OF COLLATERAL**

Chief Executive Office:

189 Forest Hill Road, Toronto, ON

Locations of Collateral and Places of Business:

Same as above.

Locations of Books and Records:

Same as above.

Locations of Senior Management:

Same as above.

Address from which Invoices and Accounts are sent:

Same as above.

**ACKNOWLEDGMENT**

**TO: DAVID BERRY ("David")**

**AND TO: STIKEMAN KEELEY SPIEGEL PASTERNAK LLP, his solicitors**


**Re: General Security Agreement dated the date hereof (the "GSA") granted by Mizrahi Developments Inc. in favour of David**

The undersigned hereby acknowledges receipt of (i) the GSA held by David, which was registered as Registration No. \_\_\_\_\_ (File No. \_\_\_\_\_) pursuant to the *Personal Property Security Act* (Ontario).

DATED the 26 day of June, 2016.

**MIZRAHI DEVELOPMENTS INC.**

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

  
Sam Mizrahi  
President

I have authority to bind Mizrahi Developments  
Inc.

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

as Guarantor

and

**DAVID BERRY**

as Creditor

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**GUARANTEE**

June 29, 2016

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## GUARANTEE

Guarantee dated as of June \_\_, 2016 made by Mizrahi Development Group (1451 Wellington) Inc. (the "Guarantor") to and in favour of David Berry (the "Creditor").

### RECITALS:

- (a) The Creditor has agreed to make certain loan facilities available to the Borrower on the terms and conditions contained in the Loan Agreement;
- (b) The Guarantor is a guarantor under the Loan Agreement;
- (c) It is a condition precedent to the extension of such loan facilities to the Borrower under the Loan Agreement that the Guarantor execute and deliver this Guarantee; and
- (d) The Guarantor is a related party of the Borrower and the Guarantor considers it in his best interest to provide this Guarantee.

In consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Guarantor agrees as follows.

## ARTICLE 1 INTERPRETATION

### Section 1.1 Defined Terms.

As used in this Guarantee the following terms have the following meanings:

"**Borrower**" means Mizrahi Developments Inc., a corporation incorporated and existing under the laws of Ontario, and its successors and permitted assigns.

"**Loan Agreement**" means the loan agreement dated [•], between the Borrower, Creditor, Sam Mizrahi and the Guarantor, as the same may be amended, modified, extended, renewed, replaced, restated, supplemented or refinanced from time to time and includes any agreement extending the maturity of, refinancing or restructuring all or any portion of, the indebtedness under such agreement or any successor agreements, whether or not with the same Creditor.

**"Creditor"** means David Berry and his successors, heirs, administrators, executors, legal personal representatives and permitted assigns.

**"Guarantee"** means this guarantee.

**"Guarantor"** means Mizrahi Development Group (1451 Wellington) Inc. and its successors and assigns.

**"Loan Documents"** means the Loan Agreement, this Guarantee and each other Loan Document (as such term is defined in the Loan Agreement).

**"Obligations"** means (i) all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, at any time or from time to time due or accruing due and owing by or otherwise payable by the Borrower to the Creditor, in any currency, under or in connection with or pursuant to the Loan Agreement and any other Loan Documents and whether incurred by the Borrower alone or jointly with another or others and whether as principal, guarantor or surety and in whatever name or style, and (ii) the due performance and compliance by the Borrower with all of the terms and conditions of the Loan Agreement and the other Loan Documents, as such debts, liabilities and obligations may be varied from time to time as contemplated by Section 3.7.

**"Other Taxes"** means present and future stamp and documentary taxes and any other excise and property taxes, charges, financial institutions duties, debits taxes and similar levies which arise from any payment made by the Guarantor under this Guarantee or from the execution, delivery or registration of, or otherwise with respect to, this Guarantee.

**"Taxes"** means all taxes, levies, imposts, deductions, charges or withholdings and all related liabilities imposed by any country (or any political subdivision or taxing authority of it).

## **Section 1.2 Interpretation.**

- (1) Capitalized terms used in this Guarantee but not defined have the meanings given to them in the Loan Agreement.
- (2) In this Guarantee the words **"including"**, **"includes"** and **"include"** mean **"including (or includes or include) without limitation"**. The phrase **"the aggregate of"**, **"the total of"**, **"the sum of"**, or a phrase of similar meaning means **"the aggregate (or total or sum), without duplication, of"**. The expression **"Article"**, **"Section"** or other subdivision followed by a number mean and refer to the specified Article, Section or other subdivision of this Guarantee.



- (3) Any reference in this Guarantee to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (4) The division of this Guarantee into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and are not to affect its interpretation.
- (5) The schedules attached to this Guarantee form an integral part of it for all purposes of it.
- (6) Any reference to this Guarantee or any Loan Document refers to this Guarantee or such Loan Document as the same may have been or may from time to time be amended, modified, extended, renewed, restated, replaced or supplemented and includes all schedules to it. Except as otherwise provided in this Guarantee, any reference in this Guarantee to a statute refers to such statute and all rules and regulations made under it as the same may have been or may from time to time be amended or re-enacted.
- (7) All references in this Guarantee to dollars, unless otherwise specifically indicated, are expressed in Canadian currency.

## **ARTICLE 2 GUARANTEE**

### **Section 2.1 Guarantee.**

The Guarantor irrevocably and unconditionally guarantees to the Creditor the due and punctual payment, and the due performance, whether at stated maturity, by acceleration or otherwise, of the Obligations. The Guarantor agrees that the Obligations will be paid to the Creditor strictly in accordance with their terms and conditions.

### **Section 2.2 Indemnity.**

If any or all of the Obligations are not duly performed by the Borrower and are not performed by the Guarantor under Section 2.1 for any reason whatsoever, the Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Creditor from and against all losses resulting from the failure of the Borrower to duly perform such Obligations.

### **Section 2.3 Primary Obligation**

If any or all of the Obligations are not duly performed by the Borrower and are not performed by the Guarantor under Section 2.1 or the Creditor is not indemnified under Section 2.2, in each case, for any reason whatsoever, such

Obligations will, as a separate and distinct obligation, be performed by the Guarantor as primary obligor.

**Section 2.4 Absolute Liability.**

The Guarantor agrees that the liability of the Guarantor under Section 2.1 and Section 2.3 and, for greater certainty, under Section 2.2, is absolute and unconditional irrespective of:

- (a) the lack of validity or enforceability of any terms of any of the Loan Documents;
- (b) any contest by the Borrower or any other Person as to the amount of the Obligations, the validity or enforceability of any terms of the Loan Documents or the perfection or priority of any security granted to the Creditor;
- (c) any defence, counter claim or right of set-off available to the Borrower;
- (d) any release, compounding or other variance of the liability of the Borrower or any other Person liable in any manner under or in respect of the Obligations or the extinguishment of all or any part of the Obligations by operation of law;
- (e) any change in the time or times for, or place or manner or terms of payment or performance of the Obligations or any consent, waiver, renewal, alteration, extension, compromise, arrangement, concession, release, discharge or other indulgences which the Creditor may grant to the Borrower or any other Person;
- (f) any amendment or supplement to, or alteration or renewal of, or restatement, replacement, refinancing or modification or variation of (including any increase in the amounts available thereunder or the inclusion of an additional borrower thereunder), or other action or inaction under, the Loan Agreement, the other Loan Documents or any other related document or instrument, or the Obligations;
- (g) any discontinuance, termination, reduction, renewal, increase, abstention from renewing or other variation of any credit or credit facilities to, or the terms or conditions of any transaction with, the Borrower or any other Person;
- (h) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Borrower, the Guarantor or any other party to the Loan Agreement ("**Credit Party**") or any

reorganization (whether by way of reconstruction, consolidation, amalgamation, merger, transfer, sale, lease or otherwise) of the Borrower, the Guarantor or any other Credit Party or their respective businesses;

- (i) any dealings with the security which the Creditor holds or may hold pursuant to the terms and conditions of the Loan Documents, including the taking, giving up or exchange of securities, their variation or realization, the accepting of compositions and the granting of releases and discharges;
- (j) any limitation of status or power, disability, incapacity or other circumstance relating to the Borrower, the Guarantor, any other Credit Party or any other Person, including any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, winding-up or other like proceeding involving or affecting the Borrower, the Guarantor, any other Credit Party or any other Person or any action taken with respect to this Guarantee by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantor shall have notice or knowledge of any of the foregoing;
- (k) the assignment of all or any part of the benefits of this Guarantee;
- (l) any impossibility, impracticability, frustration of purpose, force majeure or illegality of any Loan Document, or the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of (i) any governmental entity that amends, varies, reduces or otherwise affects, or purports to amend, vary, reduce or otherwise affect, any of the Obligations or the obligations of the Guarantor under this Guarantee, or (ii) any court order that amends, varies, reduces or otherwise affects any of the Obligations;
- (m) any taking or failure to take security, any loss of, or loss of value of, any security, or any invalidity, non-perfection or unenforceability of any security held by the Creditor, or any exercise or enforcement of, or failure to exercise or enforce, security, or irregularity or defect in the manner or procedure by which the Creditor realizes on such security;
- (n) any application of any sums received to the Obligations, or any part thereof, and any change in such application; and

- (o) any other circumstances which might otherwise constitute a defence available to, or a discharge of, the Guarantor, the Borrower or any other Person in respect of the Obligations or this Guarantee.

### **ARTICLE 3 ENFORCEMENT**

#### **Section 3.1 Remedies.**

The Creditor is not bound to exhaust his recourse against the Borrower or any other Person or realize on any security he may hold in respect of the Obligations before being entitled to (i) enforce payment and performance under this Guarantee or (ii) pursue any other remedy against the Guarantor, and the Guarantor renounces all benefits of discussion and division.

#### **Section 3.2 Amount of Obligations.**

Any account settled or stated by or between the Creditor and the Borrower, or if any such account has not been settled or stated immediately before demand for payment under this Guarantee, any account stated by the Creditor shall, in the absence of manifest error, be accepted by the Guarantor as conclusive evidence of the amount of the Obligations which is due by the Borrower to the Creditor or remains unpaid by the Borrower to the Creditor.

#### **Section 3.3 Payment on Demand.**

The Guarantor will pay and perform the Obligations and pay all other amounts payable by the Guarantor to the Creditor under this Guarantee, and the obligation to do so arises, immediately after demand for such payment or performance is made in writing to the Guarantor. The liability of the Guarantor bears interest from the date of such demand at the rate or rates of interest then applicable to the Obligations under and calculated in the manner provided in the Loan Documents (including any adjustment to give effect to the provisions of the *Interest Act* (Canada)).

#### **Section 3.4 Costs and Expenses.**

Subject to Section 3.14, the Guarantor is liable for and will pay on demand by the Creditor any and all expenses, costs and charges incurred by or on behalf of the Creditor in connection with this Guarantee, including all legal fees, courts costs, receivers or agent's remuneration and other expenses in connection with enforcing any of their rights under this Guarantee.

#### **Section 3.5 Assignment and Postponement.**

- (1) All obligations, liabilities and indebtedness, present and future, of the Borrower to the Guarantor of any nature whatsoever and all security therefor

(the "Intercorporate Indebtedness") are assigned, transferred and pledged to the Creditor as continuing and collateral security for the Guarantor's obligations under this Guarantee and, except as permitted under the Loan Agreement, postponed to the payment in full of all Obligations. The Guarantor will not assign all or any part of the Intercorporate Indebtedness to any Person other than the Creditor.

- (2) No payments of interest or any other direct or indirect payment (whether in cash, property, securities or otherwise or by way of set-off or in any other manner) shall be made by the Borrower or received by the Guarantor on account of, or in respect of, the Intercorporate Indebtedness if at the time of making any such payment there exists an Event of Default or the making of such payment would result in the occurrence of an Event of Default.
- (3) Upon the occurrence and during the continuation of an Event of Default, all Intercorporate Indebtedness will be held in trust for the Creditor and will be collected, enforced or proved subject to, and for the purpose of, this Guarantee. In such event, any payments received by the Guarantor in respect of the Intercorporate Indebtedness will be held in trust for the Creditor and segregated from other funds and property held by the Guarantor and immediately paid to the Creditor on account of the Obligations. No such payment shall have the effect of reducing the Obligations until actually received by the Creditor.
- (4) The Intercorporate Indebtedness shall not be released or withdrawn by the Guarantor without the prior written consent of the Creditor. The Guarantor will not allow a limitation period to expire on the Intercorporate Indebtedness or ask for or obtain any security or negotiable paper for, or other evidence of, the Intercorporate Indebtedness except for the purpose of delivering the same to the Creditor.
- (5) In the event of any insolvency, bankruptcy or other proceeding involving the liquidation, arrangement, compromise, reorganization or other relief with respect to the Borrower or its debts, the Guarantor will, upon the request of the Creditor, make and present a proof of claim or commence such other proceedings against the Borrower on account of the Intercorporate Indebtedness as may be reasonably necessary to establish the Guarantor's entitlement to payment of any Intercorporate Indebtedness. Such proof of claim or other proceeding must be made or commenced prior to the earlier of (i) the day which is 30 days after notice requesting such action is delivered by or on behalf of the Creditor to the Guarantor and (ii) the day which is 10 days preceding the date when such proof of claim or other proceeding is required by applicable law to be made or commenced. Such proof of claim or other proceeding must be in form and substance acceptable to the Creditor.

- (6) If the Guarantor fails to make and file such proof of claim or commence such other proceeding in accordance with this Section, the Creditor is irrevocably authorized, empowered and directed and appointed the true and lawful attorney of the Guarantor (but is not obliged) with the power to exercise for and on behalf of the Guarantor the following rights, upon the occurrence and during the continuance of an Event of Default: (i) to make and present for and on behalf of the Guarantor proofs of claims or other such proceedings against the Borrower on account of the Intercorporate Indebtedness, (ii) to demand, sue for, receive and collect any and all dividends or other payments or disbursements made in respect of the Intercorporate Indebtedness in whatever form the same may be paid or issued and to apply the same on account of the Obligations, and (iii) to demand, sue for, collect and receive each such payment and distribution and give acquittance therefor and to file claims and take such other actions, in its own name or in the name of the Guarantor or otherwise, as the Creditor may deem necessary or advisable to enforce its rights under this Guarantee.
- (7) The Guarantor acknowledges and agrees that the obligations of the Borrower pursuant to the Intercorporate Indebtedness are not as of the date hereof and shall not at any time hereafter be secured by any property and undertaking of the Borrower.
- (8) The Guarantor will execute all subordinations, postponements, assignments and other agreements as the Creditor may reasonably request to more effectively subordinate and postpone the Intercorporate Indebtedness to the payment and performance of the Obligations. The Guarantor shall fully cooperate with the Creditor at all times until the Obligations and all other amounts owing under the Loan Documents are repaid in full.
- (9) The provisions of this Section 3.5 survive the termination of this Guarantee and remain in full force and effect until (i) the Obligations and all other amounts owing under the Loan Documents are repaid in full; and (ii) the Borrower has no further obligations under any of the Loan Documents.

### **Section 3.6 Suspension of Guarantor Rights.**

So long as there are any Obligations, the Guarantor will not exercise any rights which the Guarantor may at any time have by reason of the performance of any of the Guarantor's obligations under this Guarantee (i) to be indemnified by the Borrower, (ii) to claim contribution from any other guarantor of the debts, liabilities or obligations of the Borrower, or (iii) subject to Section 3.8, to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Creditor under any of the Loan Documents.

**Section 3.7 No Prejudice to Creditor.**

The Creditor is not prejudiced in any way in the right to enforce any provision of this Guarantee by any act or failure to act on the part of the Borrower or the Creditor. The Creditor may, at any time and from time to time, in such manner it determines is expedient, without any consent of, or notice to, the Guarantor and without impairing or releasing the obligations of the Guarantor (i) change the manner, place, time or terms of payment or performance of the Obligations, (ii) renew or alter the Obligations, (iii) amend, vary, modify, supplement or replace any Loan Document or any other related document or instrument, (iv) discontinue, reduce, renew, increase, abstain from renewing or otherwise vary any credit or credit facilities to, any transaction with, the Borrower or any other Person, (v) release, compound or vary the liability of the Borrower or any other Person liable in any manner under or in respect of the Obligations, (vi) take or abstain from taking securities or collateral from any other Person, or from perfecting securities or collateral of any other Person, (vii) exercise or enforce or refrain from exercising or enforcing any right or security against the Borrower, the Guarantor or any other Person, (viii) accept compromises or arrangement from any Person, (ix) apply any sums from time to time received to the Obligations, or any part thereof, and change any such application in whole or in part from time to time, (x) otherwise deal with, or waiver or modify their right to deal with, any Person and security. In their dealings with the Borrower, the Creditor need not enquire into the authority or power of any Person purporting to act for or on behalf of the Borrower.

**Section 3.8 No Subrogation.**

The Guarantor irrevocably waives any claim, remedy or other right which the Guarantor may now have or hereafter acquire against the Borrower that arises from the existence, payment, performance or enforcement of the Guarantor's obligations under this Guarantee, including any right of subrogation, reimbursement, exoneration, indemnification or any right to participate in any claim or remedy of the Creditor against the Borrower or any collateral which the Creditor now has or hereafter acquire, whether or not such claim, remedy or other right is reduced to judgment or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, and whether or not such claim, remedy or other right arises in equity or under contract, statute or common law. The Guarantor further agrees that the Borrower is an intended third party beneficiary of the Guarantor's waiver contained in this Section 3.8. If any amount is paid to the Guarantor in violation of this Section and, at such time, the Creditor's claims against the Borrower in respect of the Obligations have not been paid in full, any amount paid to the Guarantor is deemed to have been paid to the Guarantor for the benefit of, and held in trust for the Creditor and will immediately be paid to the Creditor to be credited and applied to such Obligations. The Guarantor acknowledges that it will receive direct and indirect benefits from the transactions contemplated by this

Guarantee and that the waiver in this Section 3.8 is knowingly made in contemplation of such benefits.

**Section 3.9 No Set-off by Guarantor.**

To the fullest extent permitted by law, the Guarantor makes all payments under this Guarantee without regard to any defence, counter-claim or right of set-off available to the Guarantor.

**Section 3.10 Successors of the Borrower.**

This Guarantee will not be revoked by any change in the constitution of the Borrower. This Guarantee extends to any Person acquiring, or from time to time carrying on, the business of the Borrower.

**Section 3.11 Continuing Guarantee and Continuing Obligations.**

The obligation of the Guarantor under Section 2.1 is a continuing guarantee, and the obligations of the Guarantor under Section 2.2 and Section 2.3 are continuing obligations. Each of Section 2.1, Section 2.2 and Section 2.3 extends to all present and future Obligations, applies to and secures the ultimate balance of the Obligations due or remaining due to the Creditor and is binding as a continuing obligation of the Guarantor until the Creditor releases the Guarantor. This Guarantee will continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Creditor upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, all as though the payment had not been made.

**Section 3.12 Supplemental Security.**

This Guarantee is in addition and without prejudice to and supplemental to all other guarantees, indemnities, obligations and security now held or which may hereafter be held by the Creditor.

**Section 3.13 Security for Guarantee.**

The Guarantor acknowledges that this Guarantee is intended to secure payment and performance of the Obligations.

**Section 3.14 Limited Recourse.**

*Intentionally deleted.*

**Section 3.15 Creditor's Right of Set-off.**

Upon the occurrence and during the continuance of any Event of Default, the Creditor is authorized by the Guarantor at any time and from time to time and may, to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Creditor to or for the credit or the account of



the Guarantor against any and all of the obligations of the Guarantor now or hereafter existing irrespective of whether or not (i) the Creditor has made any demand under this Guarantee, or (ii) any of the obligations comprising the Obligations are contingent or unmatured. The rights of the Creditor under this Section 3.14 are in addition and without prejudice to and supplemental to other rights and remedies which the Creditor may have.

**Section 3.16 *Interest Act (Canada).***

The Guarantor acknowledges that certain of the rates of interest applicable to the Obligations may be computed on the basis of a year of 360 days or 365 days, as the case may be and paid for the actual number of days elapsed. For purposes of the *Interest Act (Canada)*, whenever any interest is calculated using a rate based on a year of 360 days or 365 days, as the case may be, such rate determined pursuant to such calculation, when expressed as an annual rate is equivalent to (i) the applicable rate based on a year of 360 days or 365 days, as the case may be, (ii) multiplied by the actual number of days in the calendar year in which the period for such interest is payable (or compounded) ends, and (iii) divided by 360 or 365, as the case may be.

**Section 3.17 *Taxes.***

- (1) All payments to the Creditor by the Guarantor under this Guarantee will be made free and clear of and without deduction or withholding for any and all Taxes, unless such Taxes are required by applicable law to be deducted or withheld. If the Guarantor is required by applicable law to deduct or withhold any such Taxes from or in respect of any amount payable under this Guarantee (i) the amount payable shall be increased (and for greater certainty, in the case of interest, the amount of interest shall be increased) as may be necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to any additional amounts paid under this Section 3.17), the Creditor receives an amount equal to the amount it would have received if no such deduction or withholding had been made, (ii) the Guarantor will make such deductions or withholdings, and (iii) the Guarantor will immediately pay the full amount deducted or withheld to the relevant governmental entity in accordance with applicable law.
- (2) The Guarantor agrees to immediately pay any Other Taxes.
- (3) The Guarantor will indemnify the Creditor for the full amount of Taxes and Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable by the Guarantor under this Section 3.17) paid by the Creditor and any liability (including penalties, interest and expenses) arising from or with respect to such Taxes and Other Taxes, whether or not they were correctly or legally asserted. Payment under

this indemnification will be made within 30 days from the date the Creditor makes written demand for it. A certificate as to the amount of such Taxes and Other Taxes submitted to the Guarantor by the Creditor is conclusive evidence, absent manifest error, of the amount due from the Guarantor to the Creditor.

- (4) The Guarantor will furnish to the Creditor the original or a certified copy of a receipt evidencing payment of any Taxes or Other Taxes made by the Guarantor within 30 days after the date of any payment of such Taxes or Other Taxes.
- (5) The provisions of this Section 3.17 survive the termination of this Guarantee.

#### ARTICLE 4 REPRESENTATIONS, WARRANTIES AND COVENANTS

##### Section 4.1 Representations and Warranties.

The Guarantor represents and warrants, acknowledging and confirming that that the Creditor is relying on such representations and warranties in connection with the acceptance of this Guarantee, that:

- (a) **Capacity.** The Guarantor is a corporation duly incorporated and validly existing under the laws of Ontario and has all requisite legal capacity to (i) own, lease and operate its properties and assets, and (ii) enter into and perform its obligations under the Loan Documents to which it is a party.
- (b) **Conflict With Other Instruments.** The execution and delivery by the Guarantor and the performance by it under, and compliance with the terms, conditions and provisions of, the Loan Documents to which it is a party:
  - (i) do not and will not (or would not with the giving of notice, the lapse of time or the happening or any other event or condition) constitute or result in a breach or violation of, or conflict with or allow any other Person to exercise any rights under, any of the terms or provisions of any contracts, leases or instruments to which it is a party or pursuant to which any of its assets or property may be affected;
  - (ii) do not and will not violate any law or any provision of the articles, by laws, constating documents or other organizational documents of the Guarantor; or

- (iii) do not and will not result in the violation of any law, regulation or rule or any judgment, injunction, order, writ, decision, ruling or award which is binding on it.
- (c) **Execution and Binding Obligation.** This Guarantee and the other Loan Documents to which the Guarantor is a party have been duly executed and delivered by the Guarantor, and the execution, delivery and performance of the Loan Documents is within the Guarantor's corporate power, has been duly authorized by all necessary corporate action, and constitute legal, valid and binding agreements of the Guarantor enforceable against the Guarantor in accordance with their respective terms, subject only to any limitation under applicable laws relating to (i) bankruptcy, insolvency, arrangement and other laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies.
- (d) **No Authorization.** No authorization or approval or other action by, and no notice to or filing with, any governmental body is required for the due execution, delivery and performance by Guarantor of the Loan Documents.
- (e) **Tax Liability.** The Guarantor has filed all tax and information returns which are required to be filed. The Guarantor has paid all taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it other than those in respect of which liability based on such returns is being contested in good faith. There are no tax disputes existing or pending involving the Guarantor.
- (f) **Assets and Liabilities.** The statement of assets and liabilities or financial statements provided by the Guarantor to the Creditor, if any, is true and correct and discloses the extent of any joint interest in any such assets or liabilities.
- (g) **Loan Agreement Representations.** Each representation and warranty made by the Borrower under the Loan Agreement, to the extent it pertains to the Guarantor and the Loan Documents to which the Guarantor is a party, is true, accurate and complete in all respects.

#### **Section 4.2 Covenants.**

Until the Obligations and all other amounts owing under this Guarantee are paid or repaid in full, the Obligations are performed in full and the Creditor has no

obligations under the Loan Documents, the Guarantor covenants and agrees that it shall:

- (a) **Compliance with Laws, etc.** Comply with the requirements of all applicable laws, judgments, orders, decisions and awards.
- (b) **Payment of Taxes and Claims.** Pay or cause to be paid when due, (i) all taxes, assessments and governmental charges or levies imposed upon it, and (ii) all claims which, if unpaid, might by law become a Lien upon the assets, except any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings.
- (c) **Perfection and Protection of Security Interest.** Promptly cure or cause to be cured any defects in the execution and delivery of any of the Loan Documents to which it is a party.
- (d) **Further Assurances.** At the Guarantor's cost and expense, upon request of the Creditor, execute and deliver or cause to be executed and delivered to the Creditor such further documents and instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the Creditor to carry out more effectually the provisions and purposes of the Loan Documents to which the Guarantor is a party, and/or to give full effect to this Guarantee and to perfect and preserve the rights and powers of the Creditor under this Guarantee, including any acknowledgements and confirmations of this Guarantee.
- (e) **Liens.** Not create, incur, assume or suffer to exist any Lien on the shares of the Borrower held by the Guarantor.
- (f) **Pledged Shares.** The Guarantor will not sell, exchange, release or abandon or otherwise dispose of, absolutely or by way of security, any of its right, title or interest in and to the shares of the Borrower held by the Guarantor.
- (g) **Loan Agreement.** The Guarantor will take, or will refrain from taking, as the case may be, all actions that are necessary to be taken or not taken so that no violation of any provision, covenant or agreement contained in the Loan Agreement, and so that no Event of Default, is caused by the actions of the Guarantor.

### Section 4.3 Loan Agreement Covenants

Until the Obligations and all other amounts owing under this Guarantee are paid or repaid in full, the Obligations are performed in full and the Creditor has no obligations under the Loan Documents, the Guarantor covenants and agrees that it will take, or will refrain from taking, as the case may be, all actions that are necessary to be taken or not taken so that no violation of any provision, covenant or agreement contained in Sections, 8, 9 and 10 of the Loan Agreement, and so that no Event of Default, is caused by the actions of the Guarantor.

## ARTICLE 5 GENERAL

### Section 5.1 Notices, etc.

Any notice, direction or other communication (each a "Notice") given regarding the matters contemplated by this Guarantee must be in writing, sent by personal delivery, courier or facsimile (but not by electronic mail) and addressed:

(a) to the Guarantor at:

189 Forest Hill Road, Toronto, Ontario M5P 2N3

Telephone: 416-922-4200

Email: sam@mizrahidevelopments.ca

(b) to the Creditor at:

124 Park Road, Toronto, Ontario

Telephone:

Email: davidmmberry@rogers.com

A Notice is deemed to be delivered and received (i) if sent by personal delivery, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (ii) if sent by same-day service courier, on the date of delivery if sent on a Business Day and delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (iii) if sent by overnight courier, on the next Business Day, or (iv) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile. A party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the party at its changed address.

Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed.

**Section 5.2 No Merger, Survival of Representations and Warranties.**

The representations, warranties and covenants of the Guarantor in this Guarantee and in any certificates or document delivered to the Creditor shall survive the execution and delivery of this Guarantee and each advance under the Loan Agreement. Notwithstanding any investigation made by or on behalf of the Creditor, the representations, warranties and covenants in this Guarantee continue in full force and effect without time limit.

**Section 5.3 Financial Information.**

The Guarantor acknowledges and confirms that the Guarantor itself has established its own adequate means of obtaining from the Borrower on a continuing basis all information desired by the Guarantor concerning the financial condition of the Borrower and that the Guarantor will look to the Borrower and not to the Creditor, in order for the Guarantor to keep adequately informed of changes in the Borrower's financial condition.

**Section 5.4 Successors and Assigns.**

This Guarantee is binding upon the Guarantor, its successors and permitted assigns, and enures to the benefit of the Creditor and its successors and assigns. This Guarantee may be assigned by the Creditor without the consent of, or notice to, the Guarantor, to such Person as the Creditor may determine and, in such event, such Person will be entitled to all of the rights and remedies of the Creditor as set forth in this Guarantee or otherwise. In any action brought by an assignee to enforce any such right or remedy, the Guarantor will not assert against the assignee any claim or defence which the Guarantor now has or may have against the Creditor. The Guarantor may not assign, transfer or delegate any of its rights or obligations under this Guarantee without the prior written consent of the Creditor which may be unreasonably withheld.

**Section 5.5 Amendment.**

This Guarantee may only be amended, supplemented or otherwise modified by written agreement executed by the Creditor and the Guarantor.

**Section 5.6 Waivers, etc.**

- (1) No consent or waiver by the Creditor in respect of this Guarantee is binding unless made in writing and signed by the Creditor (or an authorized officer of the Creditor if applicable). Any consent or waiver given under this Guarantee is effective only in the specific instance and for the specific purpose for which given. No waiver of any of the provisions of this Guarantee constitutes a waiver of any other provision.

- (2) A failure or delay on the part of the Creditor in exercising a right under this Guarantee does not operate as a waiver of, or impair, any right of the Creditor however arising. A single or partial exercise of a right on the part of the Creditor does not preclude any other or further exercise of that right or the exercise of any other right by the Creditor.

**Section 5.7 Severability.**

If any court of competent jurisdiction from which no appeal exists or is taken, determines that any provision of this Guarantee is illegal, invalid or unenforceable, that provision will be severed from this Guarantee and the remaining provisions will remain in full force and effect.

**Section 5.8 Costs**

The Guarantor shall each be responsible for and bear all of the costs and expenses, including all legal expenses, incurred in connection with the preparation of the Guarantee or any other Loan Document.

**Section 5.9 Application of Proceeds.**

All monies collected by the Creditor under this Guarantee will be applied as provided in the Loan Agreement. To the extent any other Loan Document requires proceeds of collateral under such Loan Document to be applied in accordance with the provisions of this Guarantee, the Creditor or holder under such other Loan Document shall apply such proceeds in accordance with this Section.

**Section 5.10 Governing Law.**

This Guarantee will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.


*[Signature page to follow]*

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IN WITNESS WHEREOF the Guarantor has executed this Guarantee.

**MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.**

Per:

  
Name:

I have authority to bind the corporation



**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

as Obligor

and

**DAVID BERRY**

as Creditor

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**SECURITY AGREEMENT**

June 16, 2016

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## SECURITY AGREEMENT

Security agreement dated as of June \_\_, 2016 made by Mizrahi Development Group (1451 Wellington) Inc. (the "Obligor"), to and in favour of David Berry (the "Creditor").

### RECITALS:

- (a) The Creditor has agreed to make certain loan facilities available to Mizrahi Developments Inc. (the "Borrower") on the terms and conditions contained in the Loan Agreement;
- (b) The Obligor is a Guarantor under the Loan Agreement; and
- (c) It is a condition precedent to the extension of such loan facilities to the Borrower under the Loan Agreement that the Obligor executes and delivers this Agreement in favour of the Creditor as security for the payment and performance of the Borrower's and Obligor's obligations under the Loan Agreement and the other Loan Documents to which it is a party.

In consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Obligor agrees as follows.

## ARTICLE 1 INTERPRETATION

### Section 1.1 Defined Terms.

As used in this Agreement, the following terms have the following meanings:

"Agreement" means this security agreement.

"Collateral" has the meaning specified in Section 2.1.

"Expenses" has the meaning specified in Section 2.2(b).

"Governmental Authority" has the meaning specified in the Loan Agreement.

"Instruments" means (i) a bill, note or cheque within the meaning of the *Bills of Exchange Act* (Canada) or any other writing that evidences a right to the payment of money and is of a type that in the ordinary course of business is transferred by delivery with any necessary endorsement or assignment, or (ii) a letter of credit and an advice of credit if the letter or advice states that it must be surrendered upon claiming payment thereunder, or (iii) chattel paper or any other writing that evidences both a monetary obligation and a security interest in or a lease of specific

goods, or (iv) documents of title or any other writing that purports to be issued by or addressed to a bailee and purports to cover such goods in the bailee's possession as are identified or fungible portions of an identified mass, and that in the ordinary course of business is treated as establishing that the Person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers, or (v) any document or writing commonly known as an instrument, but excludes investment property.

**"Intellectual Property"** means domestic and foreign: (i) patents, applications for patents and reissues, divisions, continuations, renewals, extensions and continuations-in-part of patents or patent applications; (ii) proprietary and non-public business information, including inventions (whether patentable or not), invention disclosures, improvements, discoveries, trade secrets, confidential information, know-how, methods, processes, designs, technology, technical data, schematics, formulae and customer lists, and documentation relating to any of the foregoing; (iii) copyrights, copyright registrations and applications for copyright registration; (iv) mask works, mask work registrations and applications for mask work registrations; (v) designs, design registrations, design registration applications and integrated circuit topographies; (vi) trade names, business names, corporate names, domain names, website names and world wide web addresses, common law trade-marks, trade-mark registrations, trade mark applications, trade dress and logos, and the goodwill associated with any of the foregoing; (vii) computer software and programs (both source code and object code form), all proprietary rights in the computer software and programs and all documentation and other materials related to the computer software and programs; and (viii) any other intellectual property and industrial property.

**"Lien"** means (i) any mortgage, charge, pledge, hypothecation, security interest, assignment by way of security, encumbrance, lien (statutory or otherwise), hire purchase agreement, conditional sale agreement, deposit arrangement, title retention agreement or arrangement, or any other assignment, arrangement or condition that in substance secures payment or performance of an obligation, (ii) any trust arrangement, (iii) any arrangement which creates a right of set-off out of the ordinary course of business, or (iv) any agreement to grant any such rights or interests.

**"Loan Agreement"** means the loan agreement dated June \_\_\_, 2016, among the Borrower, Creditor and Obligor, as the same may be amended, modified, extended, renewed, replaced, restated, supplemented or refinanced from time to time and includes any agreement extending the maturity of, refinancing or restructuring all or any portion of, the indebtedness under such agreement or any successor agreements, whether or not with the same Creditor.

**"Loan Documents"** means the Loan Agreement, this Agreement and each other Loan Document (as such term is defined in the Loan Agreement).

"Obligor" means Mizrahi Development Group (1451 Wellington) Inc., a corporation incorporated and existing under the laws of Ontario and its successors and permitted assigns.

"Registrable Intellectual Property" means any Intellectual Property in respect of which ownership, title, security interests, charges or encumbrances are capable of registration, recording or notation with any Governmental Authority pursuant to applicable laws.

"Restricted Asset" has the meaning specified in Section 2.4(1).

"Creditor" means David Berry and his successors and assigns.

"Secured Obligations" has the meaning specified in Section 2.2(a).

"Securities" means an obligation of an issuer or a share, participation or other interest in an issuer or in property or an enterprise of an issuer, (a) that is represented by a security certificate in bearer form or registered form, or the transfer of which may be registered on books maintained for that purpose by or on behalf of the issuer; (b) that is one of a class or series, or by its terms is divisible into a class or series, of shares, participations, interests or obligations; and (c) that, (i) is, or is of a type, dealt in or traded on securities exchanges or securities markets, or (ii) is a medium for investment and by its terms expressly provides that it is a security for the purposes of the *Securities Transfer Act*, but excludes any ULC Shares.

"Securities Transfer Act" means the *Securities Transfer Act* (Ontario), or other similar applicable legislation, as such legislation may be amended or replaced from time to time.

"Security Documents" at any time means the agreements, documents and instruments described in the Loan Agreement and each additional agreement, document and instrument delivered to the Creditor as security for the debts, liabilities and obligations owing by the Borrower to the Creditor.

"Security Interest" has the meaning specified in Section 2.2.

"ULC Shares" means shares in any unlimited company or unlimited liability corporation at any time owned or otherwise held by the Obligor.

## Section 1.2 Interpretation.

- (1) Terms defined in the *Personal Property Security Act* (Ontario) ("PPSA") or the *Securities Transfer Act, 2006* (Ontario) ("STA") and used but not otherwise defined in this Agreement have the same meanings. For greater certainty, the terms "account", "chattel paper", "document of title", "equipment", "intangible", "investment property", "money", "personal property" and "proceeds" have the meanings given to them in the PPSA; and the terms

"certificated security", "control", "deliver", "entitlement holder", "financial asset", "securities account", "securities intermediary", "security entitlement" and "uncertificated security" have the meanings given to them in the STA. Capitalized terms used in this Agreement but not defined have the meanings given to them in the Loan Agreement.

- (2) Any reference in any Loan Document to Liens permitted by the Loan Agreement and any right of the Obligor to create or suffer to exist Liens permitted by the Loan Agreement are not intended to and do not and will not subordinate the Security Interest to any such Lien or give priority to any Person over the Creditor.
- (3) In this Agreement the words "including", "includes" and "include" mean "including (or includes or include) without limitation". The expressions "Article", "Section" and other subdivision followed by a number mean and refer to the specified Article, Section or other subdivision of this Agreement.
- (4) Any reference in this Agreement to gender includes all genders. Words importing the singular number only include the plural and vice versa.
- (5) The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and do not affect its interpretation.
- (6) The schedules attached to this Agreement form an integral part of it for all purposes of it.
- (7) Any reference to this Agreement, any Loan Document or any Security Document refers to this Agreement or such Loan Document or Security Document as the same may have been or may from time to time be amended, modified, extended, renewed, restated, replaced or supplemented and includes all schedules attached to it. Except as otherwise provided in this Agreement, any reference in this Agreement to a statute refers to such statute and all rules and regulations made under it as the same may have been or may from time to time be amended or re-enacted.

## ARTICLE 2 SECURITY

### Section 2.1 Grant of Security.

Subject to Section 2.4, the Obligor grants to the Creditor, a security interest in, and assigns, mortgages, charges, hypothecates and pledges to the Creditor, all of the property and undertaking of the Obligor now owned or hereafter acquired and all of

the property and undertaking in which the Obligor now has or hereafter acquires any interest (collectively, the "Collateral") including all of the Obligor's:

- (a) present and after-acquired personal property;
- (b) inventory including goods acquired or held for sale, lease or resale, goods furnished or to be furnished to third parties under contracts of lease, consignment or service, goods which are raw materials or work in process, goods used in or procured for packing and materials used or consumed in the business of the Obligor;
- (c) equipment, machinery, furniture, fixtures, plant, vehicles and other goods of every kind and description and all licences and other rights and all related records, files, charts, plans, drawings, specifications, manuals and documents;
- (d) accounts due or accruing and all related agreements, books, accounts, invoices, letters, documents and papers recording, evidencing or relating to them;
- (e) money, documents of title, chattel paper, financial assets and investment property;
- (f) securities accounts, including the securities accounts listed in Schedule A and all of the credit balances, security entitlements, other financial assets and items or property (or their value) standing to the credit from time to time in such securities accounts;
- (g) Instruments and Securities, including the Instruments and Securities listed in Schedule A;
- (h) intangibles including all security interests, goodwill, choses in action, contracts, contract rights, licenses and other contractual benefits;
- (i) Intellectual Property including the Registrable Intellectual Property listed in Schedule B;
- (j) all substitutions and replacements of and increases, additions and, where applicable, accessions to the property described in Section 2.1(a) through Section 2.1(i) inclusive; and
- (k) all proceeds in any form derived directly or indirectly from any dealing with all or any part of the property described in Section 2.1(a) through Section 2.1(j) inclusive, including the proceeds of such proceeds.

## Section 2.2 Secured Obligations.

The security interest, assignment, mortgage, charge, hypothecation and pledge granted by this Agreement (collectively, the "Security Interest") secures the payment and performance of:

- (a) all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time or from time to time due or accruing due and owing by or otherwise payable by the Borrower and/or Obligor to the Creditor in any currency, however or wherever incurred, and whether incurred by the Borrower alone or jointly with another or others and whether as principal, guarantor or surety and in whatever name or style (collectively, and together with the Expenses, the "Secured Obligations"); and
- (b) all expenses, costs and charges incurred by or on behalf of the Creditor in connection with this Agreement, the Security Interest or the Collateral, including all legal fees, court costs, receiver's or agent's remuneration and other expenses of taking possession of, repairing, protecting, insuring, preparing for disposition, realizing, collecting, selling, transferring, delivering or obtaining payment for the Collateral, and of taking, defending or participating in any action or proceeding in connection with any of the foregoing matters or otherwise in connection with the Creditor's interest in any Collateral, whether or not directly relating to the enforcement of this Agreement or any other Loan Document (collectively, the "Expenses").

## Section 2.3 Attachment.

- (1) The Obligor acknowledges that (i) value has been given, (ii) it has rights in the Collateral or the power to transfer rights in the Collateral to the Creditor (other than after-acquired Collateral), (iii) it has not agreed to postpone the time of attachment of the Security Interest, and (iv) it has received a copy of this Agreement.
- (2) If the Obligor (i) acquires any Securities, (ii) acquires any other financial assets that have not been credited to a securities account specified in Schedule A, (iii) acquires any Instruments, or (iv) establishes or maintains a securities account that is not specified in Schedule A, the Obligor will notify the Creditor in writing and provide the Creditor with a revised Schedule A recording the acquisition or establishment of and particulars relating to such Securities, financial assets, Instruments or securities account within 15 days after such acquisition. The Obligor will also promptly inform the Creditor in writing of the acquisition by the Obligor of any ULC Shares.

- (3) At the request of the Creditor (acting reasonably), the Obligor will take all action that the Creditor deems advisable to cause the Creditor to have control over any Securities or other investment property that are now or at any time become Collateral, including (i) causing the Collateral to be transferred to or registered in the name of the Creditor or his nominee or otherwise as the Creditor may direct, (ii) endorsing any Collateral to the Creditor or in blank by an effective endorsement, (iii) delivering the Collateral to the Creditor or someone on his behalf as the Creditor may direct (iv) delivering to the Creditor any and all consents or other documents or agreements which may be necessary to effect the transfer of any Collateral to the Creditor or any third party and (v) entering into control agreements with the Creditor and the applicable securities intermediary or issuer in respect of any Collateral in form and substance satisfactory to the Creditor.
- (4) At the request of the Creditor, the Obligor will (i) deliver to and deposit with the Creditor the Instruments listed in Schedule B, (ii) cause the transfer of any Instruments to the Creditor to be registered wherever such registration may be required or advisable in the opinion of the Creditor, (iii) endorse any Instruments to the Creditor or in blank by an effective endorsement or register them in the name of the Creditor or his nominee or otherwise as the Creditor may direct and (iv) deliver to the Creditor any and all consents or other documents or agreements that may be necessary to effect the transfer of any Instruments to the Creditor or any third party.
- (5) The Obligor will promptly notify the Creditor in writing of the acquisition by the Obligor of any Registrable Intellectual Property. The Obligor will provide the Creditor with a revised Schedule B recording the acquisition and particulars of such additional Intellectual Property.

#### Section 2.4 Scope of Security Interest.

- (1) To the extent that an assignment of amounts payable and other proceeds arising under or in connection with, or the grant of a security interest in any agreement, licence, permit or quota of the Obligor would result in the termination of such agreement, licence, permit or quota (each, a "**Restricted Asset**"), the Security Interest with respect to each Restricted Asset will constitute a trust created in favour of the Creditor pursuant to which the Obligor holds as trustee all proceeds arising under or in connection with the Restricted Asset in trust for the Creditor on the following basis:
  - (a) until the Security Interest is enforceable and subject to the Loan Agreement, the Obligor is entitled to receive all such proceeds; and
  - (b) whenever the Security Interest is enforceable, (i) all rights of the Obligor to receive such proceeds cease and all such proceeds will be immediately paid over to the Creditor and (ii) the Obligor will take all



actions requested by the Creditor to collect and enforce payment and other rights arising under the Restricted Asset.

The Obligor will use all commercially reasonable efforts to obtain the consent of each other party to any and all Restricted Assets to the assignment of such Restricted Asset to the Creditor in accordance with this Agreement. The Obligor will also use all commercially reasonable efforts to ensure that all agreements entered into on and after the date of this Agreement do not prohibit assignments of the benefits of such agreements as collateral security to the Creditor in accordance with the terms of this Agreement.

- (2) The Security Interest with respect to trade-marks constitutes a security interest in, and a charge, hypothecation and pledge of, such Collateral in favour of the Creditor, but does not constitute an assignment or mortgage of such Collateral to the Creditor.
- (3) Until the Security Interest is enforceable, the grant of the Security Interest in the Intellectual Property does not affect in any way the Obligor's rights to commercially exploit the Intellectual Property, defend it, enforce the Obligor's rights in it or with respect to it against third parties in any court or claim and be entitled to receive any damages with respect to any infringement of it.
- (4) The Security Interest does not extend to consumer goods or ULC Shares.
- (5) The Security Interest does not extend or apply to the last day of the term of any lease or sublease of real property or any agreement for a lease or sublease of real property, now held or hereafter acquired by the Obligor, but the Obligor will stand possessed of any such last day upon trust to assign and dispose of it as the Creditor may reasonably direct.

#### **Section 2.5 Grant of Licence to Use Intellectual Property.**

- (1) At such time as the Creditor is lawfully entitled to exercise his rights and remedies under Article 3, the Obligor grants to the Creditor an irrevocable, nonexclusive licence (exercisable without payment of royalty or other compensation to the Obligor) to use, assign or sublicense any Intellectual Property in which the Obligor has rights wherever the same may be located, including in such licence access to (i) all media in which any of the licensed items may be recorded or stored, and (ii) all software and computer programs used for compilation or print-out. The license granted under this Section is to enable the Creditor to exercise his rights and remedies under Article 3 and for no other purpose.
- (2) The Creditor acknowledges that the standard of quality for the use, assignment or sublicensing of Intellectual Property of the Obligor shall be no less than the standard of quality employed by the Obligor as of the day before

the exercise of rights and remedies under Article 3 by the Creditor in conjunction with wares and/or services sold in association with such Intellectual Property.

**Section 2.6 Care and Custody of Collateral.**

- (1) The Creditor has no obligation to keep Collateral in his possession identifiable.
- (2) The Creditor may, upon the occurrence and during the continuance of an Event of Default, (i) notify any Person obligated on an Instrument, Security or account to make payments to the Creditor, whether or not the Obligor was previously making collections on such accounts, chattel paper, instruments, and (ii) assume control of any proceeds arising from the Collateral.
- (3) The Creditor has no obligation to collect dividends, distributions or interest payable on, or exercise any option or right in connection with, any Collateral. The Creditor has no obligation to protect or preserve any Collateral from depreciating in value or becoming worthless and is released from all responsibility for any loss of value, whether such Collateral is in the possession of, is a security entitlement of, or is subject to the control of, the Creditor, a securities intermediary, the Obligor or any other Person. In the physical keeping of any Securities, the Creditor is only obliged to exercise the same degree of care as it would exercise with respect to his own Securities kept at the same place.
- (4) The Creditor may, upon the occurrence and during the continuance of an Event of Default, sell, transfer, use or otherwise deal with any investment property included in the Collateral over which the Creditor has control, on such conditions and in such manner as the Creditor in his sole discretion may determine.

**Section 2.7 Rights of the Obligor.**

- (1) Until the occurrence of an Event of Default which is continuing, the Obligor is entitled to vote the Securities and other financial assets that are part of the Collateral and to receive all dividends and distributions on such Securities and financial assets. Upon the occurrence and during the continuance of an Event of Default, all rights of the Obligor to vote (under any proxy given by the Creditor (or his nominee) or otherwise) or to receive distributions or dividends cease and all such rights become vested solely and absolutely in the Creditor (except as may be permitted by the Loan Agreement).
- (2) Any distributions or dividends received by the Obligor contrary to Section 2.7(1) or any other moneys or property received by the Obligor after the Security Interest is enforceable will be received as trustee for the Creditor and shall be immediately paid over to the Creditor .

**Section 2.8 Expenses.**

The Obligor is liable for and will pay on demand by the Creditor any and all Expenses.

**ARTICLE 3  
ENFORCEMENT**

**Section 3.1 Enforcement.**

The Security Interest becomes and is enforceable against the Obligor upon the occurrence and during the continuance of an Event of Default.

**Section 3.2 Remedies.**

Whenever the Security Interest is enforceable, the Creditor may realize upon the Collateral and enforce the rights of the Creditor at any time by:

- (a) entry onto any premises where Collateral consisting of tangible personal property may be located;
- (b) entry into possession of the Collateral by any method permitted by law;
- (c) sale, grant of options to purchase, or lease of all or any part of the Collateral;
- (d) holding, storing and keeping idle or operating all or any part of the Collateral;
- (e) exercising and enforcing all rights and remedies of a holder of the Collateral as if the Creditor was the absolute owner thereof (including, if necessary, causing the Collateral to be registered in the name of the Creditor or his nominee if not already done);
- (f) collection of any proceeds arising in respect of the Collateral;
- (g) collection, realization or sale of, or other dealing with, accounts;
- (h) license or sublicense, whether on an exclusive or nonexclusive basis, of any Intellectual Property for such term and on such conditions and in such manner as the Creditor in his sole judgment determines (taking into account such provisions as may be necessary to protect and preserve such Intellectual Property);
- (i) instruction or order to any issuer or securities intermediary pursuant to any control the Creditor has over the Collateral;

- (j) application of any moneys constituting Collateral or proceeds thereof in accordance with Section 5.11;
- (k) appointment by instrument in writing of a receiver (which term as used in this Agreement includes a receiver and manager) or agent of all or any part of the Collateral and removal or replacement from time to time of any receiver or agent;
- (l) institution of proceedings in any court of competent jurisdiction for the appointment of a receiver of all or any part of the Collateral;
- (m) institution of proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Collateral;
- (n) filing of proofs of claim and other documents to establish claims to the Collateral in any proceeding relating to the Obligor; and
- (o) any other remedy or proceeding authorized or permitted under the PPSA or otherwise by law or equity.

### **Section 3.3 Additional Rights.**

In addition to the remedies set forth in Section 3.2 and elsewhere in this Agreement, whenever the Security Interest is enforceable, the Creditor may:

- (a) require the Obligor, at the Obligor's expense, to assemble the Collateral at a place or places designated by notice in writing and the Obligor agrees to so assemble the Collateral immediately upon receipt of such notice;
- (b) require the Obligor, by notice in writing, to disclose to the Creditor the location or locations of the Collateral and the Obligor agrees to promptly make such disclosure when so required;
- (c) repair, process, modify, complete or otherwise deal with the Collateral and prepare for the disposition of the Collateral, whether on the premises of the Obligor or otherwise;
- (d) redeem any prior security interest against any Collateral, procure the transfer of such security interest to itself, or settle and pass the accounts of the prior mortgagee, chargee or encumbrancer (any accounts to be conclusive and binding on Obligor);
- (e) pay any liability secured by any Lien against any Collateral (the Obligor will immediately on demand reimburse the Creditor for all such payments);

- (f) carry on all or any part of the business of the Obligor and, to the exclusion of all others including the Obligor, enter upon, occupy and use all or any of the premises, buildings, and other property of or used by the Obligor for such time as the Creditor sees fit, free of charge, and the Creditor is not liable to the Obligor for any act, omission or negligence (other than their own gross negligence or wilful misconduct) in so doing or for any rent, charges, depreciation or damages incurred in connection with or resulting from such action;
- (g) borrow for the purpose of carrying on the business of the Obligor or for the maintenance, preservation or protection of the Collateral and grant a security interest in the Collateral, whether or not in priority to the Security Interest, to secure repayment;
- (h) commence, continue or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing or obtaining possession or payment of the Collateral, and give good and valid receipts and discharges in respect of the Collateral and compromise or give time for the payment or performance of all or any part of the accounts or any other obligation of any third party to the Obligor; and
- (i) at any public sale, and to the extent permitted by law on any private sale, bid for and purchase any or all of the Collateral offered for sale and upon compliance with the terms of such sale, hold, retain and dispose of such Collateral without any further accountability to the Obligor or any other Person with respect to such holding, retention or disposition, except as required by law. In any such sale to the Creditor, the Creditor may, for the purpose of making payment for all or any part of the Collateral so purchased, use any claim for Secured Obligations then due and payable to it as a credit against the purchase price.

#### **Section 3.4 Exercise of Remedies.**

The remedies under Section 3.2 and Section 3.3 may be exercised from time to time separately or in combination and are in addition to, and not in substitution for, any other rights of the Creditor however arising or created. The Creditor is not bound to exercise any right or remedy, and the exercise of rights and remedies is without prejudice to the rights of the Creditor in respect of the Secured Obligations including the right to claim for any deficiency.

#### **Section 3.5 Receiver's Powers.**

- (1) Any receiver appointed by the Creditor is vested with the rights and remedies which could have been exercised by the Creditor in respect of the

Obligor or the Collateral and such other powers and discretions as are granted in the instrument of appointment and any supplemental instruments. The identity of the receiver, its replacement and its remuneration are within the sole and unfettered discretion of the Creditor.

- (2) Any receiver appointed by the Creditor will act as agent for the Creditor for the purposes of taking possession of the Collateral, but otherwise and for all other purposes (except as provided below), as agent for the Obligor. The receiver may sell, lease, or otherwise dispose of Collateral as agent for the Obligor or as agent for the Creditor as the Creditor may determine in his discretion. The Obligor agrees to ratify and confirm all actions of the receiver acting as agent for the Obligor, and to release and indemnify the receiver in respect of all such actions.
- (3) The Creditor, in appointing or refraining from appointing any receiver, does not incur liability to the receiver, the Obligor or otherwise and is not responsible for any misconduct or negligence of such receiver.

### **Section 3.6 Appointment of Attorney.**

The Obligor hereby irrevocably constitutes and appoints the Creditor (and any officer of the Creditor if applicable) the true and lawful attorney of the Obligor. As the attorney of the Obligor, the Creditor has the power to exercise for and in the name of the Obligor with full power of substitution, upon the occurrence and during the continuance of an Event of Default, any of the Obligor's right (including the right of disposal), title and interest in and to the Collateral including the execution, endorsement, delivery and transfer of the Collateral to the Creditor, his nominees or transferees, and the Creditor and his nominees or transferees are hereby empowered to exercise all rights and powers and to perform all acts of ownership with respect to the Collateral to the same extent as the Obligor might do. This power of attorney is irrevocable, is coupled with an interest, has been given for valuable consideration (the receipt and adequacy of which is acknowledged) and survives, and does not terminate upon, the bankruptcy, dissolution, winding up or insolvency of the Obligor. This power of attorney extends to and is binding upon the Obligor's successors and permitted assigns. The Obligor authorizes the Creditor to delegate in writing to another Person any power and authority of the Creditor under this power of attorney as may be necessary or desirable in the opinion of the Creditor, and to revoke or suspend such delegation.

### **Section 3.7 Dealing with the Collateral.**

- (1) The Creditor is not obliged to exhaust his recourse against the Borrower, Obligor or any other Person or against any other security it may hold in respect of the Secured Obligations before realizing upon or otherwise dealing with the Collateral in such manner as the Creditor may consider desirable.

- (2) The Creditor may grant extensions or other indulgences, take and give up securities, accept compositions, grant releases and discharges and otherwise deal with the Obligor and with other Persons, sureties or securities as he may see fit without prejudice to the Secured Obligations, the liability of the Obligor or the rights of the Creditor in respect of the Collateral.
- (3) Except as otherwise provided by law or this Agreement, the Creditor is not (i) liable or accountable for any failure to collect, realize or obtain payment in respect of the Collateral, (ii) bound to institute proceedings for the purpose of collecting, enforcing, realizing or obtaining payment of the Collateral or for the purpose of preserving any rights of any Persons in respect of the Collateral, (iii) responsible for any loss occasioned by any sale or other dealing with the Collateral or by the retention of or failure to sell or otherwise deal with the Collateral, or (iv) bound to protect the Collateral from depreciating in value or becoming worthless.

### **Section 3.8 Standards of Sale.**

Without prejudice to the ability of the Creditor to dispose of the Collateral in any manner which is commercially reasonable, the Obligor acknowledges that:

- (a) the Collateral may be disposed of in whole or in part;
- (b) the Collateral may be disposed of by public auction, public tender or private contract, with or without advertising and without any other formality;
- (c) any assignee of such Collateral may be the Creditor or a customer of any such Person;
- (d) any sale conducted by the Creditor will be at such time and place, on such notice and in accordance with such procedures as the Creditor, in his sole discretion, may deem advantageous;
- (e) the Collateral may be disposed of in any manner and on any terms necessary to avoid violation of applicable law (including compliance with such procedures as may restrict the number of prospective bidders and purchasers, require that the prospective bidders and purchasers have certain qualifications, and restrict the prospective bidders and purchasers to Persons who will represent and agree that they are purchasing for their own account for investment and not with a view to the distribution or resale of the Collateral) or in order to obtain any required approval of the disposition (or of the resulting purchase) by any governmental or regulatory authority or official;

- (f) a disposition of the Collateral may be on such terms and conditions as to credit or otherwise as the Creditor, in his sole discretion, may deem advantageous; and
- (g) the Creditor may establish an upset or reserve bid or price in respect of the Collateral.

**Section 3.9 Dealings by Third Parties.**

- (1) No Person dealing with the Creditor or an agent or receiver is required to determine (i) whether the Security Interest has become enforceable, (ii) whether the powers which such Person is purporting to exercise have become exercisable, (iii) whether any money remains due to the Creditor by the Obligor, (iv) the necessity or expediency of the stipulations and conditions subject to which any sale or lease is made, (v) the propriety or regularity of any sale or other dealing by the Creditor with the Collateral, or (vi) how any money paid to Creditor has been applied.
- (2) Any bona fide purchaser of all or any part of the Collateral from the Creditor or any receiver or agent will hold the Collateral absolutely, free from any claim or right of whatever kind, including any equity of redemption, of the Obligor, which it specifically waives (to the fullest extent permitted by law) as against any such purchaser together with all rights of redemption, stay or appraisal which the Obligor has or may have under any rule of law or statute now existing or hereafter adopted.

**ARTICLE 4  
REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 4.1 General Representations, Warranties and Covenants.**

The Obligor represents and warrants and covenants and agrees, acknowledging and confirming that the Creditor is relying on such representations, warranties, covenants and agreements, that:

- (a) **Continuous Perfection.** Schedule C sets out the Obligor's place of business or, if more than one, the Obligor's chief executive office. Such place of business or chief executive office, as the case may be, has been located at such address for the 60 days immediately preceding the date of this Agreement. Schedule C also sets out the address at which the books and records of the Obligor are located, the address at which senior management of the Obligor are located and conduct their deliberations and make their decisions with respect to the business of the Obligor and the address from which the invoices and accounts of the Obligor are issued. The Obligor will not change the location of any of these items, people or addresses without providing at least 30 days



prior written notice to the Creditor. Except for sales of inventory made in the ordinary course of business, the Collateral, to the extent not delivered to the Creditor pursuant to Section 2.3, has been kept for the 60 days immediately preceding the date of this Agreement and will be kept at those locations listed on Schedule C, and the Obligor will not remove the Collateral from such locations, without providing at least 30 days prior written notice to the Creditor. The Obligor will not change its name in any manner without providing at least 30 days prior written notice to the Creditor.

- (b) **Restriction on Disposition.** The Obligor will not sell, assign, convey, exchange, lease, release or abandon, or otherwise dispose of, any Collateral, except as expressly permitted in the Loan Agreement.
- (c) **Negative Pledge.** The Obligor will not create or suffer to exist any Lien on the Collateral, except for Liens permitted by the Loan Agreement, and will not grant control over any investment property to any Person other than the Creditor.
- (d) **Account Debtors.** None of the account debtors in respect of any accounts, chattel paper or intangibles and none of the obligors in respect of any Instruments included in the Collateral is (i) a Governmental Authority, or (ii) in the case of any account in excess of \$50,000, is located outside of Canada or the United States of America.
- (e) **Investment Property and Instruments.**
  - (i) Schedule A lists all Securities and Instruments owned or held by the Obligor and all securities accounts of the Obligor on the date of this Agreement. Schedule A sets out, for each class of Securities listed in the schedule, the percentage amount that such Securities represent of all issued and outstanding Securities of that class and whether the Securities are certificated securities or uncertificated securities.
  - (ii) Securities and Instruments that are Collateral have been, where applicable, duly and validly issued and acquired and are fully paid and non-assessable.
  - (iii) Except as described in Schedule A, no transfer restrictions apply to the Securities and Instruments listed in Schedule A. The Obligor has delivered to the Creditor copies of all shareholder, partnership or trust agreements applicable to each issuer of such Securities and Instruments which are in the Obligor's possession and confirms that any interest in a partnership or

limited liability company that now, or at any time, forms part of the Collateral is, and will be, a "security" for the purposes of the *Securities Transfer Act*.

- (iv) No Person has or will have any written or oral option, warrant, right, call, commitment, conversion right, right of exchange or other agreement or any right or privilege (whether by law, preemptive or contractual) capable of becoming an option, warrant, right, call, commitment, conversion right, right of exchange or other agreement to acquire any right or interest in any of the Securities and Instruments that are Collateral.
- (v) The Securities and Instruments that are Collateral constitute, where applicable, the legal, valid and binding obligation of the Obligor of such Securities and Instruments, enforceable in accordance with their terms, subject only to any limitation under applicable laws relating to (i) bankruptcy, insolvency, fraudulent conveyance, arrangement, reorganization or creditors' rights generally, and (ii) the discretion that a court may exercise in the granting of equitable remedies.
- (vi) Subject to the terms in the Loan Agreement, the pledge, assignment, delivery to and control by the Creditor of the Collateral consisting of investment property pursuant to this Agreement creates a valid and perfected first ranking security interest in such Collateral, and the proceeds of it. Such Collateral and the proceeds from it are not subject to any prior Lien or any agreement purporting to grant to any third party a Lien on or control of the property or assets of the Obligor which would include the Collateral except as permitted in the Loan Agreement. The Creditor is entitled to all of the rights, priorities and benefits afforded by the PPSA or other relevant personal property security legislation as enacted in any relevant jurisdiction to perfect security interests in respect of such Collateral.
- (vii) The Obligor does not know of any claim to or interest in any Collateral consisting of investment property, including any adverse claims. If any Person asserts any Lien, encumbrance or adverse claim against any investment property that form part of the Collateral, the Obligor will promptly notify the Creditor.
- (viii) The Obligor has not consented to, will not consent to, and has no knowledge of any control by any person with respect to any

Collateral other than the Creditor except as permitted in the Loan Agreement.

- (ix) The Obligor will notify the Creditor immediately upon becoming aware of any change in an "issuer's jurisdiction" in respect of any uncertificated Securities that are Collateral or any change in a "securities intermediary's jurisdiction" in respect of any security entitlements, financial assets or securities accounts that are Collateral.
  - (x) The Obligor will not, after the date of this Agreement, establish and maintain any securities accounts with any securities intermediary unless (1) it gives the Creditor 30 days' prior written notice of its intention to establish such new securities account, (2) such securities intermediary is reasonably acceptable to the Creditor, and (3) the securities intermediary and the Obligor (i) execute and deliver a control agreement with respect to such securities account that is in form and substance, satisfactory to the Creditor, or (ii) transfer the financial assets in such securities account into a securities account in the name of the Creditor.
- (f) **Status of Accounts Collateral.** The Obligor will maintain books and records pertaining to the Collateral in such detail, form and scope as the Creditor reasonably requires, and keep all originals of the chattel paper which evidence accounts at locations specified on Schedule B. The Obligor will immediately notify the Creditor if any account in excess of \$50,000 arises out of contracts with any Governmental Authority, and execute any instruments and take any steps required by the Creditor in order that all moneys due or to become due under the contract are assigned to the Creditor and notice of such assignment is given to the Governmental Authority. The Obligor will also immediately notify the Creditor if any account in excess of \$50,000 is with an account debtor located outside of Canada or the United States of America.
- (g) **Additional Security Perfection and Protection of Security Interest.** The Obligor will grant to the Creditor, security interests, assignments, mortgages, charges, hypothecations and pledges in such property and undertaking of the Obligor that is not subject to a valid and perfected first ranking security interest (subject to the terms in the Loan Agreement) constituted by the Security Documents, in each relevant jurisdiction as determined by the Creditor. The Obligor will perform all acts, execute and deliver all agreements, documents and instruments and take such other steps as are requested by the Creditor

at any time to register, file, signify, publish, perfect, maintain, protect, and enforce the Security Interest including: (i) executing, recording and filing of financing or other statements, and paying all taxes, fees and other charges payable, (ii) placing notations on its books of account to disclose the Security Interest, (iii) delivering acknowledgements, confirmations and subordinations that may be necessary to ensure that the Security Documents constitute a valid and perfected first ranking security interest (subject to the terms in the Loan Agreement), (iv) executing and delivering any certificates, endorsements, instructions, agreements, documents and instruments that may be required under the *Securities Transfer Act* and (v) delivering opinions of counsel in respect of matters contemplated by this paragraph. The documents and opinions contemplated by this paragraph must be in form and substance satisfactory to the Creditor.

#### **Section 4.2 Representations, Warranties and Covenants Concerning Intellectual Property.**

The Obligor represents and warrants and covenants and agrees, acknowledging and confirming that the Creditor is relying on such representations, warranties, covenants and agreements, that:

- (a) Schedule B lists all Registrable Intellectual Property that is owned by the Obligor on the date of this Agreement.
- (b) All Registrable Intellectual Property of the Obligor is valid, subsisting, unexpired and enforceable, has not been abandoned and does not infringe the Intellectual Property rights of any other Person.
- (c) No decision or judgment has been rendered by any Governmental Authority which would limit, cancel or question the validity of, or the Obligor's rights in, any Intellectual Property in any respect.
- (d) No action or proceeding is pending, or, to the knowledge of the Obligor, threatened, on the date hereof seeking to limit, cancel or question the validity of any Intellectual Property or the Obligor's ownership interest therein, or which, if adversely determined, would have a material adverse effect on the value of any Intellectual Property.
- (e) The Obligor will take all reasonable and necessary steps, including in any proceeding before the Canadian Intellectual Property Office or any similar Governmental Authority of any jurisdiction, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of the material Registrable Intellectual Property, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability.

- (f) In the event that any material Intellectual Property of the Obligor is infringed, misappropriated or diluted by a third party, the Obligor will (i) take such actions as the Obligor reasonably deems appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Creditor after it learns thereof and sue for infringement, misappropriation or dilution, to seek injunctive relief where appropriate and to recover any and all damages for such infringement, misappropriation or dilution.
- (g) Immediately upon the request of the Creditor, the Obligor will furnish the Creditor in writing the description of all Registrable Intellectual Property or applications for Registrable Intellectual Property of the Obligor. In addition, the Obligor will deliver to the Creditor a copy of the certificate of registration of, or application for, such Registrable Intellectual Property and immediately make all such filings, registrations and recordings as are necessary or appropriate to perfect the Security Interest granted to the Creditor in the Registrable Intellectual Property.

## ARTICLE 5 GENERAL

### **Section 5.1 Notices.**

Any notices, directions or other communications provided for in this Agreement must be in writing and given in accordance with the Loan Agreement.

### **Section 5.2 Discharge.**

The Security Interest will not be discharged except by a written release or discharge signed by the Creditor. The Obligor will be entitled to require a discharge by notice to the Creditor upon, but only upon, (i) full and indefeasible payment and performance of the Secured Obligations and (ii) the Creditor having no obligations under any Loan Document. Upon discharge of the Security Interest and at the request and expense of the Obligor, the Creditor will execute and deliver to the Obligor such financing statements and other documents or instruments as the Obligor may reasonably require and the Creditor will redeliver to the Obligor, or as the Obligor may otherwise direct the Creditor, any Collateral in his possession.

### **Section 5.3 No Merger, Survival of Representations and Warranties.**

This Agreement does not operate by way of merger of any of the Secured Obligations and no judgment recovered by the Creditor will operate by way of merger of, or in any way affect, the Security Interest, which is in addition to, and not in substitution for, any other security now or hereafter held by the Creditor in

respect of the Secured Obligations. The representations, warranties and covenants of the Obligor in this Agreement survive the execution and delivery of this Agreement and any advances under the Loan Agreement. Notwithstanding any investigation made by or on behalf of the Creditor these covenants, representations and warranties continue in full force and effect.

**Section 5.4 Further Assurances.**

The Obligor will do all acts and things and execute and deliver, or cause to be executed and delivered, all agreements, documents and instruments that the Creditor may require and take all further steps relating to the Collateral or any other property or assets of the Obligor that the Creditor may require for (i) protecting the Collateral, (ii) perfecting, preserving and protecting the Security Interest, and (iii) exercising all powers, authorities and discretions conferred upon the Creditor. After the Security Interest becomes enforceable, the Obligor will do all acts and things and execute and deliver all documents and instruments that the Creditor may require for facilitating the sale or other disposition of the Collateral in connection with its realization.

**Section 5.5 Supplemental Security.**

This Agreement is in addition to, without prejudice to and supplemental to all other security now held or which may hereafter be held by the Creditor.

**Section 5.6 Successors and Assigns.**

This Agreement is binding on the Obligor and its successors and permitted assigns, and enures to the benefit of the Creditor and his successors and assigns. This Agreement may be assigned by the Creditor without the consent of, or notice to, the Obligor, to such Person as the Creditor may determine and, in such event, such Person will be entitled to all of the rights and remedies of the Creditor as set forth in this Agreement or otherwise. In any action brought by an assignee to enforce any such right or remedy, the Obligor will not assert against the assignee any claim or defence which the Obligor now has or may have against the Creditor. The Obligor may not assign, transfer or delegate any of its rights or obligations under this Agreement without the prior written consent of the Creditor which may be unreasonably withheld.

**Section 5.7 Amalgamation.**

The Obligor acknowledges and agrees that in the event it amalgamates with any other corporation or corporations, it is the intention of the parties that the Security Interest (i) subject to Section 2.4, extends to: (A) all of the property and undertaking that any of the amalgamating corporations then owns, (B) all of the property and undertaking that the amalgamated corporation thereafter acquires, (C) all of the property and undertaking in which any of the amalgamating corporations then has any interest and (D) all of the property and undertaking in which the amalgamated corporation thereafter acquires any interest; and (ii) secures the

payment and performance of all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, matured or unmatured, at any time or from time to time due or accruing due and owing by or otherwise payable by each of the amalgamating corporations and the amalgamated corporation to the Creditor in any currency, however or wherever incurred, and whether incurred alone or jointly with another or others and whether as principal, guarantor or surety and whether incurred prior to, at the time of or subsequent to the amalgamation. The Security Interest attaches to the additional collateral at the time of amalgamation and to any collateral thereafter owned or acquired by the amalgamated corporation when such becomes owned or is acquired. Upon any such amalgamation, the defined term "**Obligor**" means, collectively, each of the amalgamating corporations and the amalgamated corporation, the defined term "**Collateral**" means all of the property and undertaking and interests described in (i) above, and the defined term "**Secured Obligations**" means the obligations described in (ii) above.

**Section 5.8 Severability.**

If any court of competent jurisdiction from which no appeal exists or is taken, determines any provision of this Agreement to be illegal, invalid or unenforceable, that provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

**Section 5.9 Amendment.**

This Agreement may only be amended, supplemented or otherwise modified by written agreement executed by the Creditor and the Obligor.

**Section 5.10 Waivers, etc.**

- (1) No consent or waiver by the Creditor in respect of this Agreement is binding unless made in writing and signed by the Creditor (or an authorized officer of the Creditor if applicable). Any consent or waiver given under this Agreement is effective only in the specific instance and for the specific purpose for which given. No waiver of any of the provisions of this Agreement constitutes a waiver of any other provision.
- (2) A failure or delay on the part of the Creditor in exercising a right under this Agreement does not operate as a waiver of, or impair, any right of the Creditor however arising. A single or partial exercise of a right on the part of the Creditor does not preclude any other or further exercise of that right or the exercise of any other right by the Creditor.

**Section 5.11 Application of Proceeds of Security.**

All monies collected by the Creditor upon the enforcement of his rights and remedies under the Security Documents and the Liens created by them including any sale or other disposition of the Collateral, together with all other monies received by the Creditor under the Security Documents, will be applied as provided

in the Loan Agreement. To the extent any other Loan Document requires proceeds of collateral under such Loan Document to be applied in accordance with the provisions of this Agreement, the Creditor shall apply such proceeds in accordance with this Section.

**Section 5.12 Conflict.**

In the event of any conflict between the provisions of this Agreement and the provisions of the Loan Agreement which cannot be resolved by both provisions being complied with, the provisions contained in the Loan Agreement will prevail to the extent of such conflict.

**Section 5.13 Governing Law.**

- (1) This Agreement will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

*[Signature page to follow]*



IN WITNESS WHEREOF the Obligor has executed this Agreement.

**MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.**

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

Name:

Authorized Signing Officer

**SCHEDULE A  
INSTRUMENTS AND SECURITIES**

**SECURITIES**

Issuer	Class of Securities	Number of Securities	% of issued Securities	Certificated or Uncertificated	Certificate Number (where applicable)

**INSTRUMENTS**

Issuer	Type of Instrument	Original Amount/Face Amount Monetary Obligation Secured	Maturity Date

**TRANSFER RESTRICTIONS**

The only transfer restrictions on the Securities are those set forth in the Articles of Incorporation for the respective corporation to which the Securities pertain.

**OTHER INVESTMENT PROPERTY**

None.

**SCHEDULE B  
INTELLECTUAL PROPERTY**

None.

**SCHEDULE C  
LOCATIONS OF COLLATERAL**

Chief Executive Office:

189 Forest Hill Road, Toronto, Ontario M5P 2N3

Locations of Collateral and Places of Business:

Same as above.

Locations of Books and Records:

Same as above.

Locations of Senior Management:

Same as above.

Address from which Invoices and Accounts are sent:

Same as above.

**ACKNOWLEDGMENT**

**TO: DAVID BERRY ("David")**

**AND TO: STIKEMAN KEELEY SPIEGEL PASTERNAK LLP, his solicitors**

**Re: General Security Agreement dated the date hereof (the "GSA") granted by Mizrahi Development Group (1451 Wellington) Inc. in favour of David**

The undersigned hereby acknowledges receipt of (i) the GSA held by David, which was registered as Registration No. \_\_\_\_\_ (File No. \_\_\_\_\_) pursuant to the *Personal Property Security Act* (Ontario).

DATED the 24 day of June, 2016

**MIZRAHI DEVELOPMENT GROUP (1451  
WELLINGTON) INC.**

Per: 

~~Sam Mizrahi~~

President

I have authority to bind Mizrahi Development  
Group (1451 Wellington) Inc.

**SAM MIZRAHI**

as Guarantor

and

**DAVID BERRY**

as Creditor

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**GUARANTEE**

June 25, 2016

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## LIMITED RECOURSE GUARANTEE

Guarantee dated as of June \_\_, 2016 made by Sam Mizrahi (the "Guarantor") to and in favour of David Berry (the "Creditor").

### RECITALS:

- (a) The Creditor has agreed to make certain loan facilities available to the Borrower on the terms and conditions contained in the Loan Agreement;
- (b) The Guarantor is a guarantor under the Loan Agreement;
- (c) It is a condition precedent to the extension of such loan facilities to the Borrower under the Loan Agreement that the Guarantor execute and deliver this Guarantee; and
- (d) The Guarantor is a related party of the Borrower and the Guarantor considers it in his best interest to provide this Guarantee.

In consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Guarantor agrees as follows.

## ARTICLE 1 INTERPRETATION

### Section 1.1 Defined Terms.

As used in this Guarantee the following terms have the following meanings:

**"Borrower"** means Mizrahi Developments Inc., a corporation incorporated and existing under the laws of Ontario, and its successors and permitted assigns.

**"Loan Agreement"** means the loan agreement dated [•], between the Borrower, Mizrahi Development Group (1451 Wellington) Inc. and the Creditor, as the same may be amended, modified, extended, renewed, replaced, restated, supplemented or refinanced from time to time and includes any agreement extending the maturity of, refinancing or restructuring all or any portion of, the indebtedness under such agreement or any successor agreements, whether or not with the same Creditor.

**"Creditor"** means David Berry and his successors, heirs, administrators, executors, legal personal representatives and permitted assigns.

**"Guarantee"** means this guarantee.

**"Guarantor"** means Sam Mizrahi and his successors, heirs, administrators, executors, legal personal representatives and permitted assigns.

**"Loan Documents"** means the Loan Agreement, this Guarantee and each other Loan Document (as such term is defined in the Loan Agreement).

**"Obligations"** means (i) all debts, liabilities and obligations, present or future, direct or indirect, absolute or contingent, at any time or from time to time due or accruing due and owing by or otherwise payable by the Borrower to the Creditor, in any currency, under or in connection with or pursuant to the Loan Agreement and any other Loan Documents and whether incurred by the Borrower alone or jointly with another or others and whether as principal, guarantor or surety and in whatever name or style, and (ii) the due performance and compliance by the Borrower with all of the terms and conditions of the Loan Agreement and the other Loan Documents, as such debts, liabilities and obligations may be varied from time to time as contemplated by Section 3.7.

**"Other Taxes"** means present and future stamp and documentary taxes and any other excise and property taxes, charges, financial institutions duties, debits taxes and similar levies which arise from any payment made by the Guarantor under this Guarantee or from the execution, delivery or registration of, or otherwise with respect to, this Guarantee.

**"Taxes"** means all taxes, levies, imposts, deductions, charges or withholdings and all related liabilities imposed by any country (or any political subdivision or taxing authority of it).

#### **Section 1.2 Interpretation.**

- (1) Capitalized terms used in this Guarantee but not defined have the meanings given to them in the Loan Agreement.
- (2) In this Guarantee the words **"including"**, **"includes"** and **"include"** mean **"including (or includes or include) without limitation"**. The phrase **"the aggregate of"**, **"the total of"**, **"the sum of"**, or a phrase of similar meaning means **"the aggregate (or total or sum), without duplication, of"**. The expression **"Article"**, **"Section"** or other subdivision followed by a number mean and refer to the specified Article, Section or other subdivision of this Guarantee.
- (3) Any reference in this Guarantee to gender includes all genders. Words importing the singular number only include the plural and vice versa.

- (4) The division of this Guarantee into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and are not to affect its interpretation.
- (5) The schedules attached to this Guarantee form an integral part of it for all purposes of it.
- (6) Any reference to this Guarantee or any Loan Document refers to this Guarantee or such Loan Document as the same may have been or may from time to time be amended, modified, extended, renewed, restated, replaced or supplemented and includes all schedules to it. Except as otherwise provided in this Guarantee, any reference in this Guarantee to a statute refers to such statute and all rules and regulations made under it as the same may have been or may from time to time be amended or re-enacted.
- (7) All references in this Guarantee to dollars, unless otherwise specifically indicated, are expressed in Canadian currency.

## **ARTICLE 2 GUARANTEE**

### **Section 2.1 Guarantee.**

The Guarantor irrevocably and unconditionally guarantees to the Creditor the due and punctual payment, and the due performance, whether at stated maturity, by acceleration or otherwise, of the Obligations. The Guarantor agrees that the Obligations will be paid to the Creditor strictly in accordance with their terms and conditions.

### **Section 2.2 Indemnity.**

If any or all of the Obligations are not duly performed by the Borrower and are not performed by the Guarantor under Section 2.1 for any reason whatsoever, the Guarantor will, as a separate and distinct obligation, indemnify and save harmless the Creditor from and against all losses resulting from the failure of the Borrower to duly perform such Obligations.

### **Section 2.3 Primary Obligation**

If any or all of the Obligations are not duly performed by the Borrower and are not performed by the Guarantor under Section 2.1 or the Creditor is not indemnified under Section 2.2, in each case, for any reason whatsoever, such Obligations will, as a separate and distinct obligation, be performed by the Guarantor as primary obligor.

**Section 2.4 Absolute Liability.**

The Guarantor agrees that the liability of the Guarantor under Section 2.1 and Section 2.3 and, for greater certainty, under Section 2.2, is absolute and unconditional irrespective of:

- (a) the lack of validity or enforceability of any terms of any of the Loan Documents;
- (b) any contest by the Borrower or any other Person as to the amount of the Obligations, the validity or enforceability of any terms of the Loan Documents or the perfection or priority of any security granted to the Creditor;
- (c) any defence, counter claim or right of set-off available to the Borrower;
- (d) any release, compounding or other variance of the liability of the Borrower or any other Person liable in any manner under or in respect of the Obligations or the extinguishment of all or any part of the Obligations by operation of law;
- (e) any change in the time or times for, or place or manner or terms of payment or performance of the Obligations or any consent, waiver, renewal, alteration, extension, compromise, arrangement, concession, release, discharge or other indulgences which the Creditor may grant to the Borrower or any other Person;
- (f) any amendment or supplement to, or alteration or renewal of, or restatement, replacement, refinancing or modification or variation of (including any increase in the amounts available thereunder or the inclusion of an additional borrower thereunder), or other action or inaction under, the Loan Agreement, the other Loan Documents or any other related document or instrument, or the Obligations;
- (g) any discontinuance, termination, reduction, renewal, increase, abstention from renewing or other variation of any credit or credit facilities to, or the terms or conditions of any transaction with, the Borrower or any other Person;
- (h) any change in the ownership, control, name, objects, businesses, assets, capital structure or constitution of the Borrower, the Guarantor or any other party to the Loan Agreement ("**Credit Party**") or any reorganization (whether by way of reconstruction, consolidation, amalgamation, merger, transfer, sale, lease or otherwise) of the

Borrower, the Guarantor or any other Credit Party or their respective businesses;

- (i) any dealings with the security which the Creditor holds or may hold pursuant to the terms and conditions of the Loan Documents, including the taking, giving up or exchange of securities, their variation or realization, the accepting of compositions and the granting of releases and discharges;
- (j) any limitation of status or power, disability, incapacity or other circumstance relating to the Borrower, the Guarantor, any other Credit Party or any other Person, including any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, winding-up or other like proceeding involving or affecting the Borrower, the Guarantor, any other Credit Party or any other Person or any action taken with respect to this Guarantee by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantor shall have notice or knowledge of any of the foregoing;
- (k) the assignment of all or any part of the benefits of this Guarantee;
- (l) any impossibility, impracticability, frustration of purpose, force majeure or illegality of any Loan Document, or the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of (i) any governmental entity that amends, varies, reduces or otherwise affects, or purports to amend, vary, reduce or otherwise affect, any of the Obligations or the obligations of the Guarantor under this Guarantee, or (ii) any court order that amends, varies, reduces or otherwise affects any of the Obligations;
- (m) any taking or failure to take security, any loss of, or loss of value of, any security, or any invalidity, non-perfection or unenforceability of any security held by the Creditor, or any exercise or enforcement of, or failure to exercise or enforce, security, or irregularity or defect in the manner or procedure by which the Creditor realizes on such security;
- (n) any application of any sums received to the Obligations, or any part thereof, and any change in such application; and
- (o) any other circumstances which might otherwise constitute a defence available to, or a discharge of, the Guarantor, the Borrower or any other Person in respect of the Obligations or this Guarantee.

### ARTICLE 3 ENFORCEMENT

#### Section 3.1 Remedies.

The Creditor is not bound to exhaust its recourse against the Borrower or any other Person or realize on any security it may hold in respect of the Obligations before being entitled to (i) enforce payment and performance under this Guarantee or (ii) pursue any other remedy against the Guarantor, and the Guarantor renounces all benefits of discussion and division.

#### Section 3.2 Amount of Obligations.

Any account settled or stated by or between the Creditor and the Borrower, or if any such account has not been settled or stated immediately before demand for payment under this Guarantee, any account stated by the Creditor shall, in the absence of manifest error, be accepted by the Guarantor as conclusive evidence of the amount of the Obligations which is due by the Borrower to the Creditor or remains unpaid by the Borrower to the Creditor.

#### Section 3.3 Payment on Demand.

The Guarantor will pay and perform the Obligations and pay all other amounts payable by the Guarantor to the Creditor under this Guarantee, and the obligation to do so arises, immediately after demand for such payment or performance is made in writing to the Guarantor. The liability of the Guarantor bears interest from the date of such demand at the rate or rates of interest then applicable to the Obligations under and calculated in the manner provided in the Loan Documents (including any adjustment to give effect to the provisions of the *Interest Act* (Canada)).

#### Section 3.4 Costs and Expenses.

Subject to Section 3.14, the Guarantor is liable for and will pay on demand by the Creditor any and all expenses, costs and charges incurred by or on behalf of the Creditor in connection with this Guarantee, including all legal fees, courts costs, receivers or agent's remuneration and other expenses in connection with enforcing any of their rights under this Guarantee.

#### Section 3.5 Assignment and Postponement.

- (1) All obligations, liabilities and indebtedness, present and future, of the Borrower to the Guarantor of any nature whatsoever and all security therefor (the "**Related Party Indebtedness**") are assigned, transferred and pledged to the Creditor as continuing and collateral security for the Guarantor's obligations under this Guarantee and, except as permitted under the Loan Agreement, postponed to the payment in full of all Obligations. The

Guarantor will not assign all or any part of the Related Party Indebtedness to any Person other than the Creditor.

- (2) No payments of interest or any other direct or indirect payment (whether in cash, property, securities or otherwise or by way of set-off or in any other manner) shall be made by the Borrower or received by the Guarantor on account of, or in respect of, the Related Party Indebtedness if at the time of making any such payment there exists an Event of Default or the making of such payment would result in the occurrence of an Event of Default.
- (3) Upon the occurrence and during the continuation of an Event of Default, all Related Party Indebtedness will be held in trust for the Creditor and will be collected, enforced or proved subject to, and for the purpose of, this Guarantee. In such event, any payments received by the Guarantor in respect of the Related Party Indebtedness will be held in trust for the Creditor and segregated from other funds and property held by the Guarantor and immediately paid to the Creditor on account of the Obligations. No such payment shall have the effect of reducing the Obligations until actually received by the Creditor.
- (4) The Related Party Indebtedness shall not be released or withdrawn by the Guarantor without the prior written consent of the Creditor. The Guarantor will not allow a limitation period to expire on the Related Party Indebtedness or ask for or obtain any security or negotiable paper for, or other evidence of, the Related Party Indebtedness except for the purpose of delivering the same to the Creditor.
- (5) In the event of any insolvency, bankruptcy or other proceeding involving the liquidation, arrangement, compromise, reorganization or other relief with respect to the Borrower or its debts, the Guarantor will, upon the request of the Creditor, make and present a proof of claim or commence such other proceedings against the Borrower on account of the Related Party Indebtedness as may be reasonably necessary to establish the Guarantor's entitlement to payment of any Related Party Indebtedness. Such proof of claim or other proceeding must be made or commenced prior to the earlier of (i) the day which is 30 days after notice requesting such action is delivered by or on behalf of the Creditor to the Guarantor and (ii) the day which is 10 days preceding the date when such proof of claim or other proceeding is required by applicable law to be made or commenced. Such proof of claim or other proceeding must be in form and substance acceptable to the Creditor.
- (6) If the Guarantor fails to make and file such proof of claim or commence such other proceeding in accordance with this Section, the Creditor is irrevocably authorized, empowered and directed and appointed the true and lawful



attorney of the Guarantor (but is not obliged) with the power to exercise for and on behalf of the Guarantor the following rights, upon the occurrence and during the continuance of an Event of Default: (i) to make and present for and on behalf of the Guarantor proofs of claims or other such proceedings against the Borrower on account of the Related Party Indebtedness, (ii) to demand, sue for, receive and collect any and all dividends or other payments or disbursements made in respect of the Related Party Indebtedness in whatever form the same may be paid or issued and to apply the same on account of the Obligations, and (iii) to demand, sue for, collect and receive each such payment and distribution and give acquittance therefor and to file claims and take such other actions, in its own name or in the name of the Guarantor or otherwise, as the Creditor may deem necessary or advisable to enforce its rights under this Guarantee.

- (7) The Guarantor acknowledges and agrees that the obligations of the Borrower pursuant to the Related Party Indebtedness are not as of the date hereof and shall not at any time hereafter be secured by any property and undertaking of the Borrower.
- (8) The Guarantor will execute all subordinations, postponements, assignments and other agreements as the Creditor may reasonably request to more effectively subordinate and postpone the Related Party Indebtedness to the payment and performance of the Obligations. The Guarantor shall fully cooperate with the Creditor at all times until the Obligations and all other amounts owing under the Loan Documents are repaid in full.
- (9) The provisions of this Section 3.5 survive the termination of this Guarantee and remain in full force and effect until (i) the Obligations and all other amounts owing under the Loan Documents are repaid in full; and (ii) the Guarantor has no further obligations under any of the Loan Documents.

### **Section 3.6 Suspension of Guarantor Rights.**

So long as there are any Obligations, the Guarantor will not exercise any rights which the Guarantor may at any time have by reason of the performance of any of the Guarantor's obligations under this Guarantee (i) to be indemnified by the Borrower, (ii) to claim contribution from any other guarantor of the debts, liabilities or obligations of the Borrower, or (iii) subject to Section 3.8, to take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Creditor under any of the Loan Documents.

### **Section 3.7 No Prejudice to Creditor.**

The Creditor is not prejudiced in any way in the right to enforce any provision of this Guarantee by any act or failure to act on the part of the Borrower or

the Creditor. The Creditor may, at any time and from time to time, in such manner it determines is expedient, without any consent of, or notice to, the Guarantor and without impairing or releasing the obligations of the Guarantor (i) change the manner, place, time or terms of payment or performance of the Obligations, (ii) renew or alter the Obligations, (iii) amend, vary, modify, supplement or replace any Loan Document or any other related document or instrument, (iv) discontinue, reduce, renew, increase, abstain from renewing or otherwise vary any credit or credit facilities to, any transaction with, the Borrower or any other Person, (v) release, compound or vary the liability of the Borrower or any other Person liable in any manner under or in respect of the Obligations, (vi) take or abstain from taking securities or collateral from any other Person, or from perfecting securities or collateral of any other Person, (vii) exercise or enforce or refrain from exercising or enforcing any right or security against the Borrower, the Guarantor or any other Person, (viii) accept compromises or arrangement from any Person, (ix) apply any sums from time to time received to the Obligations, or any part thereof, and change any such application in whole or in part from time to time, (x) otherwise deal with, or waiver or modify their right to deal with, any Person and security. In their dealings with the Borrower, the Creditor need not enquire into the authority or power of any Person purporting to act for or on behalf of the Borrower.

**Section 3.8 No Subrogation.**

The Guarantor irrevocably waives any claim, remedy or other right which the Guarantor may now have or hereafter acquire against the Borrower that arises from the existence, payment, performance or enforcement of the Guarantor's obligations under this Guarantee, including any right of subrogation, reimbursement, exoneration, indemnification or any right to participate in any claim or remedy of the Creditor against the Borrower or any collateral which the Creditor now has or hereafter acquire, whether or not such claim, remedy or other right is reduced to judgment or is liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, and whether or not such claim, remedy or other right arises in equity or under contract, statute or common law. The Guarantor further agrees that the Borrower is an intended third party beneficiary of the Guarantor's waiver contained in this Section 3.8. If any amount is paid to the Guarantor in violation of this Section and, at such time, the Creditor's claims against the Borrower in respect of the Obligations have not been paid in full, any amount paid to the Guarantor is deemed to have been paid to the Guarantor for the benefit of, and held in trust for the Creditor and will immediately be paid to the Creditor to be credited and applied to such Obligations. The Guarantor acknowledges that it will receive direct and indirect benefits from the transactions contemplated by this Guarantee and that the waiver in this Section 3.8 is knowingly made in contemplation of such benefits.

**Section 3.9 No Set-off by Guarantor.**

To the fullest extent permitted by law, the Guarantor makes all payments under this Guarantee without regard to any defence, counter-claim or right of set-off available to the Guarantor.

**Section 3.10 Successors of the Borrower.**

This Guarantee will not be revoked by any change in the constitution of the Borrower. This Guarantee extends to any Person acquiring, or from time to time carrying on, the business of the Borrower.

**Section 3.11 Continuing Guarantee and Continuing Obligations.**

The obligation of the Guarantor under Section 2.1 is a continuing guarantee, and the obligations of the Guarantor under Section 2.2 and Section 2.3 are continuing obligations. Each of Section 2.1, Section 2.2 and Section 2.3 extends to all present and future Obligations, applies to and secures the ultimate balance of the Obligations due or remaining due to the Creditor and is binding as a continuing obligation of the Guarantor until the Creditor releases the Guarantor. This Guarantee will continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Obligations is rescinded or must otherwise be returned by the Creditor upon the insolvency, bankruptcy or reorganization of the Borrower or otherwise, all as though the payment had not been made.

**Section 3.12 Supplemental Security.**

This Guarantee is in addition and without prejudice to and supplemental to all other guarantees, indemnities, obligations and security now held or which may hereafter be held by the Creditor.

**Section 3.13 Security for Guarantee.**

The Guarantor acknowledges that this Guarantee is intended to secure payment and performance of the Obligations.

**Section 3.14 Limited Recourse.**

Notwithstanding that the obligations of the Guarantor under this Guarantee are or will be debts owing by the Guarantor to the Creditor, the Creditor is limited in recourse to a personal guarantee from the Guarantor limited to the amount owing to the Creditor by the Borrower pursuant to Loan Facility No. 2 (as such term is defined in the Loan Agreement), being six million dollars (\$6,000,000), plus all interest accrued thereon, but is not limited with respect to costs of collection and reasonable expenses incurred by or on behalf of the Creditor in enforcing any of their rights against the Guarantor.

**Section 3.15 Creditor's Right of Set-off.**

Upon the occurrence and during the continuance of any Event of Default, the Creditor is authorized by the Guarantor at any time and from time to time and may, to the fullest extent permitted by law, set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Creditor to or for the credit or the account of the Guarantor against any and all of the obligations of the Guarantor now or hereafter existing irrespective of whether or not (i) the Creditor has made any demand under this Guarantee, or (ii) any of the obligations comprising the Obligations are contingent or unmatured. The rights of the Creditor under this Section 3.15 are in addition and without prejudice to and supplemental to other rights and remedies which the Creditor may have.

**Section 3.16 Interest Act (Canada).**

The Guarantor acknowledges that certain of the rates of interest applicable to the Obligations may be computed on the basis of a year of 360 days or 365 days, as the case may be and paid for the actual number of days elapsed. For purposes of the *Interest Act* (Canada), whenever any interest is calculated using a rate based on a year of 360 days or 365 days, as the case may be, such rate determined pursuant to such calculation, when expressed as an annual rate is equivalent to (i) the applicable rate based on a year of 360 days or 365 days, as the case may be, (ii) multiplied by the actual number of days in the calendar year in which the period for such interest is payable (or compounded) ends, and (iii) divided by 360 or 365, as the case may be.

**Section 3.17 Taxes.**

- (1) All payments to the Creditor by the Guarantor under this Guarantee will be made free and clear of and without deduction or withholding for any and all Taxes, unless such Taxes are required by applicable law to be deducted or withheld. If the Guarantor is required by applicable law to deduct or withhold any such Taxes from or in respect of any amount payable under this Guarantee (i) the amount payable shall be increased (and for greater certainty, in the case of interest, the amount of interest shall be increased) as may be necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to any additional amounts paid under this Section 3.17), the Creditor receives an amount equal to the amount it would have received if no such deduction or withholding had been made, (ii) the Guarantor will make such deductions or withholdings, and (iii) the Guarantor will immediately pay the full amount deducted or withheld to the relevant governmental entity in accordance with applicable law.
- (2) The Guarantor agrees to immediately pay any Other Taxes.

- (3) The Guarantor will indemnify the Creditor for the full amount of Taxes and Other Taxes (including, without limitation, any Taxes or Other Taxes imposed by any jurisdiction on amounts payable by the Guarantor under this Section 3.17) paid by the Creditor and any liability (including penalties, interest and expenses) arising from or with respect to such Taxes and Other Taxes, whether or not they were correctly or legally asserted. Payment under this indemnification will be made within 30 days from the date the Creditor makes written demand for it. A certificate as to the amount of such Taxes and Other Taxes submitted to the Guarantor by the Creditor is conclusive evidence, absent manifest error, of the amount due from the Guarantor to the Creditor.
- (4) The Guarantor will furnish to the Creditor the original or a certified copy of a receipt evidencing payment of any Taxes or Other Taxes made by the Guarantor within 30 days after the date of any payment of such Taxes or Other Taxes.
- (5) The provisions of this Section 3.17 survive the termination of this Guarantee.

#### ARTICLE 4 REPRESENTATIONS, WARRANTIES AND COVENANTS

##### Section 4.1 Representations and Warranties.

The Guarantor represents and warrants, acknowledging and confirming that that the Creditor is relying on such representations and warranties in connection with the acceptance of this Guarantee, that:

- (a) **Name and Address.** The full legal name of the Guarantor is Sam Mizrahi, his address is 189 Forest Hill Road, Toronto, Ontario M5P 2N3 and his date of birth is April 7, 1971.
- (b) **Capacity.** The Guarantor has all requisite legal capacity to (i) own, lease and operate his properties and assets, and (ii) enter into and perform his obligations under the Loan Documents to which he is a party.
- (c) **Conflict With Other Instruments.** The execution and delivery by the Guarantor and the performance by him under, and compliance with the terms, conditions and provisions of, the Loan Documents to which he is a party:
  - (i) do not and will not (or would not with the giving of notice, the lapse of time or the happening or any other event or condition) constitute or result in a breach or violation of, or conflict with or

allow any other Person to exercise any rights under, any of the terms or provisions of any contracts, leases or instruments to which it is a party or pursuant to which any of its assets or property may be affected; and

- (ii) do not and will not result in the violation of any law, regulation or rule or any judgment, injunction, order, writ, decision, ruling or award which is binding on it.
- (d) **Execution and Binding Obligation.** This Guarantee and the other Loan Documents to which the Guarantor is a party have been duly executed and delivered by the Guarantor and constitute legal, valid and binding agreements of the Guarantor enforceable against the Guarantor in accordance with their respective terms, subject only to any limitation under applicable laws relating to (i) bankruptcy, insolvency, arrangement and other laws of general application affecting the enforcement of creditors' rights, and (ii) the discretion that a court may exercise in the granting of equitable remedies.
- (e) **Tax Liability.** The Guarantor has filed all tax and information returns which are required to be filed. The Guarantor has paid all taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it other than those in respect of which liability based on such returns is being contested in good faith. There are no tax disputes existing or pending involving the Guarantor.
- (f) **Assets and Liabilities.** The statement of assets and liabilities or financial statements provided by the Guarantor to the Creditor, if any, is true and correct and discloses the extent of any joint interest in any such assets or liabilities.
- (g) **Loan Agreement Representations.** Each representation and warranty made by the Borrower under the Loan Agreement, to the extent it pertains to the Guarantor and the Loan Documents to which the Guarantor is a party, is true, accurate and complete in all respects.

#### **Section 4.2 Covenants.**

Until the Obligations and all other amounts owing under this Guarantee are paid or repaid in full, the Obligations are performed in full and the Creditor has no obligations under the Loan Documents, the Guarantor covenants and agrees that it shall:

- (a) **Compliance with Laws, etc.** Comply with the requirements of all applicable laws, judgments, orders, decisions and awards.
- (b) **Payment of Taxes and Claims.** Pay or cause to be paid when due, (i) all taxes, assessments and governmental charges or levies imposed upon it, and (ii) all claims which, if unpaid, might by law become a Lien upon the assets, except any such tax, assessment, charge, levy or claim which is being contested in good faith and by proper proceedings.
- (c) **Perfection and Protection of Security Interest.** Promptly cure or cause to be cured any defects in the execution and delivery of any of the Loan Documents to which he is a party.
- (d) **Further Assurances.** At the Guarantor's cost and expense, upon request of the Creditor, execute and deliver or cause to be executed and delivered to the Creditor such further documents and instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the Creditor to carry out more effectually the provisions and purposes of the Loan Documents to which the Guarantor is a party, and/or to give full effect to this Guarantee and to perfect and preserve the rights and powers of the Creditor under this Guarantee, including any acknowledgements and confirmations of this Guarantee.
- (e) **Liens.** Not create, incur, assume or suffer to exist any Lien on the shares of the Borrower held by the Guarantor.
- (f) **Pledged Shares.** The Guarantor will not sell, exchange, release or abandon or otherwise dispose of, absolutely or by way of security, any of its right, title or interest in and to the shares of the Borrower held by the Guarantor.
- (g) **Loan Agreement.** The Guarantor will take, or will refrain from taking, as the case may be, all actions that are necessary to be taken or not taken so that no violation of any provision, covenant or agreement contained in the Loan Agreement, and so that no Event of Default, is caused by the actions of the Guarantor.

#### **Section 4.3    Loan Agreement Covenants**

Until the Obligations and all other amounts owing under this Guarantee are paid or repaid in full, the Obligations are performed in full and the Creditor has no obligations under the Loan Documents, the Guarantor covenants and agrees that he will take, or will refrain from taking, as the case may be, all actions that are

necessary to be taken or not taken so that no violation of any provision, covenant or agreement contained in Sections, 8, 9 and 10 of the Loan Agreement, and so that no Event of Default, is caused by the actions of the Guarantor.

## ARTICLE 5 GENERAL

### Section 5.1 Notices, etc.

Any notice, direction or other communication (each a "Notice") given regarding the matters contemplated by this Guarantee must be in writing, sent by personal delivery, courier or facsimile (but not by electronic mail) and addressed:

- (a) to the Guarantor at:

189 Forest Hill Road, Toronto, Ontario M5P 2N3

Telephone: 416-922-4200

Email: sam@mizrahidevelopments.ca

- (b) to the Creditor at:

124 Park Road, Toronto, Ontario

Telephone:

Email: davidmmberry@rogers.com

A Notice is deemed to be delivered and received (i) if sent by personal delivery, on the date of delivery if it is a Business Day and the delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (ii) if sent by same-day service courier, on the date of delivery if sent on a Business Day and delivery was made prior to 4:00 p.m. (local time in place of receipt) and otherwise on the next Business Day, (iii) if sent by overnight courier, on the next Business Day, or (iv) if sent by facsimile, on the Business Day following the date of confirmation of transmission by the originating facsimile. A party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the party at its changed address. Any element of a party's address that is not specifically changed in a Notice will be assumed not to be changed.

### Section 5.2 No Merger, Survival of Representations and Warranties.

The representations, warranties and covenants of the Guarantor in this Guarantee and in any certificates or documents delivered to the Creditor shall



survive the execution and delivery of this Guarantee and each advance under the Loan Agreement. Notwithstanding any investigation made by or on behalf of the Creditor, the representations, warranties and covenants in this Guarantee continue in full force and effect.

**Section 5.3 Financial Information.**

The Guarantor acknowledges and confirms that the Guarantor itself has established its own adequate means of obtaining from the Borrower on a continuing basis all information desired by the Guarantor concerning the financial condition of the Borrower and that the Guarantor will look to the Borrower and not to the Creditor, in order for the Guarantor to keep adequately informed of changes in the Borrower' financial condition.

**Section 5.4 Successors and Assigns.**

This Guarantee is binding upon the Guarantor, its successors and permitted assigns, and enures to the benefit of the Creditor and its successors and assigns. This Guarantee may be assigned by the Creditor without the consent of, or notice to, the Guarantor, to such Person as the Creditor may determine and, in such event, such Person will be entitled to all of the rights and remedies of the Creditor as set forth in this Guarantee or otherwise. In any action brought by an assignee to enforce any such right or remedy, the Guarantor will not assert against the assignee any claim or defence which the Guarantor now has or may have against the Creditor. The Guarantor may not assign, transfer or delegate any of its rights or obligations under this Guarantee without the prior written consent of the Creditor which may be unreasonably withheld.

**Section 5.5 Amendment.**

This Guarantee may only be amended, supplemented or otherwise modified by written agreement executed by the Creditor and the Guarantor.

**Section 5.6 Waivers, etc.**

- (1) No consent or waiver by the Creditor in respect of this Guarantee is binding unless made in writing and signed by the Creditor (or an authorized officer of the Creditor if applicable). Any consent or waiver given under this Guarantee is effective only in the specific instance and for the specific purpose for which given. No waiver of any of the provisions of this Guarantee constitutes a waiver of any other provision.
- (2) A failure or delay on the part of the Creditor in exercising a right under this Guarantee does not operate as a waiver of, or impair, any right of the Creditor however arising. A single or partial exercise of a right on the part of the Creditor does not preclude any other or further exercise of that right or the exercise of any other right by the Creditor.

**Section 5.7 Severability.**

If any court of competent jurisdiction from which no appeal exists or is taken, determines that any provision of this Guarantee is illegal, invalid or unenforceable, that provision will be severed from this Guarantee and the remaining provisions will remain in full force and effect.

**Section 5.8 Costs**

The Guarantor shall be responsible for and shall bear all of the costs and expenses, including all legal expenses, incurred in connection with the preparation of the Guarantee or any other Loan Document.

**Section 5.9 Application of Proceeds.**

All monies collected by the Creditor under this Guarantee will be applied as provided in the Loan Agreement. To the extent any other Loan Document requires proceeds of collateral under such Loan Document to be applied in accordance with the provisions of this Guarantee, the Creditor or holder under such other Loan Document shall apply such proceeds in accordance with this Section.

**Section 5.10 Governing Law.**

This Guarantee will be governed by, interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

*[Signature page to follow]*

IN WITNESS WHEREOF the Guarantor has executed this Guarantee.

Witness

  
**SAM MIZRAHI**

## POSTPONEMENT AGREEMENT

THIS AGREEMENT bearing formal date of the 24 day of June, 2016

WHEREAS David Berry ("Berry") has agreed to lend to Mizrahi Developments Inc. (the "Company"), as guaranteed by Mizrahi Development Group (1451 Wellington) Inc. and Sam Mizrahi (the "Guarantors") the principal amounts of \$4,000,000.00 under Loan Facility No. 1 and \$6,000,000.00 under Loan Facility No. 2 (collectively the "Loan") pursuant to a loan agreement (the "Loan Agreement") dated as of the date hereof;

AND WHEREAS the Company is indebted (the "Existing Indebtedness") as of the date hereof to the undersigned and Mizrahi Development Group (1451 Wellington) Inc. (collectively with the undersigned, the "Related Lender");

AND WHEREAS all present and future indebtedness and other obligations of the Company to the Related Lender, including without limitation the Existing Indebtedness, is herein referred to as the "Indebtedness" and the Indebtedness together with any security at any time held by the Related Lender for any of the Indebtedness is herein referred to as the "Assigned Indebtedness".

FOR good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned hereby represents warrants to and covenants and agrees with Berry as follows:

1. Sam Mizrahi is the sole shareholder, director and officer of the Related Lender.
2. By way of security for all Obligations (as defined in the Loan Agreement), to the fullest extent permitted by law, the undersigned, for and on behalf of the Related Lender, hereby irrevocably postpones any claim or other rights that it may now or hereafter acquire against the Company that arise from the existence, payment, performance or enforcement of the undersigned's obligations under this Agreement including, without limitation, the Assigned Indebtedness and any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy against the Company or any collateral securing any obligation of the Company, whether or not such claim, remedy or right arises under contract, including, without limitation, the right to take or receive from the Company directly or indirectly, in cash or other property or in any other manner, payment or security on account of such claim, remedy or right, until such time as the Obligations and all amounts payable under the Loan Agreement have been paid in full to Berry. If any amount shall be paid to the Related Lender in violation of the preceding sentence at any time prior to the full cash payment of the Obligations and all other amounts payable under the Loan Agreement, such amount shall be held by the Related Lender in trust for the benefit of Berry and shall forthwith be paid to Berry to be credited and applied to the Obligations, whether matured or unmatured, and all other amounts payable under the Loan Agreement.
3. The Assigned Indebtedness is hereby postponed and subordinated to the Obligations without any further act or formality, and all moneys received by the Related Lender in respect thereof shall be received in trust for Berry and forthwith upon receipt shall be paid over to Berry, the whole without in any way limiting or lessening the liability of the Related Lender under this Agreement. This postponement and subordination is independent of the other provisions under the Loan Agreement and shall survive the extinction of the other provisions of the Loan Agreement.
4. Berry's rights and recourse and the undersigned's liabilities under this Agreement shall not be limited in any way and Berry shall have full recourse against the Related Lender for any breach of, or claim under or in respect of, this Agreement.
5. Berry may grant time, renewals, extensions, amendments, modifications and releases to, and otherwise deal with, the Company and others, as Berry may see fit, without notice to the Related Lender and without prejudice to or in any way limiting or affecting the obligations of the undersigned hereunder.
6. The undersigned represents that the Indebtedness is not represented by any negotiable instrument and that in the event that it should be, any such negotiable instrument shall be forthwith delivered to Berry to be held pursuant to the terms hereof.
7. The undersigned agrees that Berry shall not incur any responsibility to the Related Lender or to the Company for any loss whatsoever which they or either of them may suffer arising out of or in any way connected with the Indebtedness or this Agreement (including without limiting the generality of the foregoing, loss resulting from the incidence of prescription).
8. This Agreement shall extend to and be binding upon the undersigned and his heirs, executors, administrators, successors and assigns and shall enure to the benefit of Berry and its successors and assigns.

IN WITNESS WHEREOF the undersigned, for and on behalf of the Related Lender, has executed this Agreement.

  
\_\_\_\_\_  
SAM MIZRAHI

**ACKNOWLEDGMENT**

Mizrahi Developments Inc. hereby acknowledges that it has taken notice of the foregoing postponement of claim and expressly consents thereto and undertakes not to make payment of the said indebtedness otherwise than in accordance with the terms thereof without the prior written approval of Berry.

Borrower:

**MIZRAHI DEVELOPMENTS INC.**

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

I have authority to bind the Corporation

Guarantors:

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

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

I have authority to bind the Corporation

## ACKNOWLEDGEMENT AND DIRECTION

**TO:** Michael Pasternack

**AND TO:** To all the lawyers in the firm of Stikeman Keeley Spiegel Pasternack LLP, Barristers & Solicitors and/or their authorized agent(s) and designees

**RE:** David Berry (the "**Lender**") loan (the "**Loan**") to Mizrahi Developments Inc. (the "**Borrower**") pursuant to a loan agreement between the Lender, the Borrower, Mizrahi Development Group (1451 Wellington) Inc. and Sam Mizrahi dated June \_\_, 2016 (as amended from time to time) in respect of a condominium project to be constructed on the property currently municipally known as 1445 Wellington and 1451 Wellington, Ottawa, Ontario (the "**Real Property**")

### This will confirm that:

1. Each of the undersigned has reviewed the information set out in this Acknowledgement and Direction and in the electronic document described below (the "**Document**"), as well as any other document(s) required to complete the transaction described above, and that this information is accurate;
2. You, your agent or employee are irrevocably authorized and directed to sign, deliver and/or register electronically on behalf of the undersigned the Document in the form attached, and to make any minor changes or additions thereto as to form and content that may be necessary to effect the registration thereof;
3. The effect of the Document has been fully explained to each of the undersigned and each of the undersigned understands that each of the undersigned is a party to and bound by the terms and provisions of the Documents to the same extent as if each of the undersigned had signed the Document; and
4. Each of the undersigned is in fact a party named in the Document and each of the undersigned has not misrepresented each of the undersigned's identity to you.

### DESCRIPTION OF ELECTRONIC DOCUMENT


The Document described in this Acknowledgement and Direction is the document listed below which is attached hereto as "Document in Preparation" and is:

1. A Charge (Loan Facility No. 1).

DATED as of the \_\_\_ day of June, 2016.

SEVERALLY WITNESSED:

**MIZRAHI DEVELOPMENTS INC.**

Per:   
Name: Sam Mizrahi  
Title: President

I have authority to bind the Corporation

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

Per:   
Name: Sam Mizrahi  
Title: President

I have authority to bind the Corporation

  
\_\_\_\_\_  
Sam Mizrahi

**ACKNOWLEDGMENT OF STANDARD CHARGE TERMS**

**TO:** David Berry

**AND TO:** Stikeman Keeley Spiegel Pasternack LLP,  
its solicitors herein

**RE:** David Berry (the "**Lender**") loan (the "**Loan**") to Mizrahi Developments Inc. (the "**Borrower**") pursuant to a loan agreement between the Lender, the Borrower, Mizrahi Development Group (1451 Wellington) Inc. and Sam Mizrahi dated June 24, 2016 (as amended from time to time) in respect of a condominium project to be constructed on the property currently municipally known as 1445 Wellington and 1451 Wellington, Ottawa, Ontario (the "**Real Property**")

I/We, the undersigned, being the Borrower and/or guarantor in the above transaction, hereby acknowledge receiving a copy of the Standard Charge Terms No. 200033 before signing the above charge or mortgage, and I understand that the said Standard Charge Terms are incorporated by reference into such charge or mortgage.

**DATED** as of the 24<sup>th</sup> day of June, 2016.

Borrower:

**MIZRAHI DEVELOPMENTS INC.**

Per:   
Name: Sam Mizrahi  
Title: President

I have authority to bind the Corporation

Guarantors:

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

Per:   
Name: Sam Mizrahi  
Title: President

I have authority to bind the Corporation

Witnessed:

  
Sam Mizrahi



ASSIGNMENT OF MATERIAL AGREEMENTS

THIS AGREEMENT is made as of the 2 day of June, 2016.

BETWEEN:

**MIZRAHI DEVELOPMENTS INC.,  
MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON)  
INC. and SAM MIZRAHI**  
(collectively, the "Assignor")

OF THE FIRST PART

- and-

**DAVID BERRY**  
(the "Assignee")

OF THE SECOND PART

WHEREAS the Assignee has agreed to extend a loan (the "Loan") to the Borrower on the terms and subject to the conditions set out in a loan agreement made as of the \_\_ day of June, 2016, between the Assignor and the Assignee, as may be amended from time to time (the "Loan Agreement");

AND WHEREAS as security for amounts owing to the Assignee on account of the Loan, the Assignor agreed, among other things, to execute and deliver this Agreement in favour of the Assignee;

NOW THEREFORE, in consideration of the Assignee extending credit and making or agreeing to make one or more advances under the Loan and for other good and valuable consideration, the Assignor covenants with the Assignee as follows:

**ARTICLE 1**  
**DEFINITIONS**

1.1 Definitions: Capitalized terms used in this Agreement have the respective meanings ascribed thereto in this Section 1.1:

- (a) "Borrower" means Mizrahi Developments Inc.
- (b) "Contracts" means, in relation to the Project, collectively, all management agreements, construction contracts, project documents, Insurance Policies, licences, and maintenance contracts, including, without limitation, any amendments, extensions, renewals and replacements which have been or may hereafter be made to any of them, all proceeds therefrom, all benefits and advantages which now or hereafter may be derived therefrom, all debts, demands, choses-in-action and claims which now or hereafter may become due, owing or accruing due to or on behalf of the Assignor therefrom and all books, accounts, invoices, letters, papers, drawings, blue prints and documents in any way evidencing or relating thereto;
- (c) "Indebtedness" means all present and future debts and liabilities due or to become due, absolute or contingent, direct or indirect, now existing or hereafter arising owing by the

Assignor to the Assignee pursuant to the Security Documents and includes any extensions, renewals or replacements thereof and includes the Loan;

- (d) "Insurance Policies" means all present and future builder's risk, all risk or property damage, rental income or business interruption loss and public liability policies of insurance now or hereafter obtained or maintained in connection with the Property;
- (e) "Project" means the proposed midrise residential condominium project to be constructed by the Assignor on the Property;
- (f) "Property" means the lands and all buildings and improvements currently municipally known as 1445 Wellington Street West and 1451 Wellington Street West, Ottawa, Ontario; and
- (g) "Security Documents" means all agreements, instruments and other documents made or assigned by the Assignor in favour of the Assignee in connection with the Loan and includes the Loan Agreement relating thereto, as same may be amended from time to time.

## ARTICLE 2 ASSIGNMENT AND ATTACHMENT

2.1 Assignment: As continuing security for the payment of the Indebtedness and the performance, fulfillment and satisfaction of all covenants, obligations and conditions on the part of the Assignor set out herein or set out in the Security Documents, the Assignor assigns and transfers to and in favour of the Assignee all its right, title and interest in and to, and all claims of every nature or kind which the Assignor now or hereafter may have under or pursuant to, the Contracts, and the Assignor also grants to and in favour of the Assignee a security interest in the Contracts.

2.2 Attachment: The Assignor confirms that it has not postponed or agreed to postpone the time for attachment of the security interests constituted by this Agreement and that the Assignor has received value.

## ARTICLE 3 ACKNOWLEDGEMENTS REPRESENTATIONS WARRANTIES AND COVENANTS

3.1 Burdens Not Assigned: The Assignor expressly acknowledges and agrees that all liabilities, obligations and other burdens of the Contracts are reserved exclusively to the Assignor and are not included in the property and assets that are assigned, transferred and otherwise encumbered to or in favour of the Assignee.

3.2 Further Acknowledgement of Assignor: The Assignor acknowledges that neither this Agreement nor the assignment set out herein:

- (a) shall in any way lessen or relieve the Assignor from its obligations to perform, fulfill and satisfy its covenants, obligations and all other provisions set out in the Contracts or any part thereof;
- (b) imposes any obligation on the Assignee to assume any obligation under, or to perform, fulfill or satisfy any covenant, obligation or other provision set out in, the Contracts or any part thereof; and

- (c) imposes any liability on the Assignee for any act or omission on its part in connection with this Agreement, the assignment constituted hereby, the Contracts or any part thereof.

3.3 Positive Covenants of Assignor: The Assignor covenants and agrees:

- (a) to perform, fulfill and satisfy all covenants, obligations and all other provisions set out in the Contracts or any part thereof;
- (b) to deliver to the Assignee copies of all written notices, demands or requests given in connection with the Contracts or any part thereof that are received by the Assignor, forthwith upon receipt of same and that are delivered by the Assignor, contemporaneously with the delivery of same;
- (c) to indemnify and save the Assignee harmless from and against any losses, damages, costs and expenses (including legal fees and disbursements on a full indemnity basis) suffered or incurred by the Assignee in connection with, on account of or by reason of:
  - (i) the assignment to the Assignee of the Contracts and any obligation of the Assignee resulting therefrom to perform, fulfill or satisfy any covenant, obligation or other provision set out in the Contracts or any part thereof;
  - (ii) any failure of the Assignor to observe, perform or satisfy its covenants, obligations and all other provisions set out in this Agreement or set out in the Contracts or any part thereof; and
  - (iii) the enforcement by the Assignee of the assignment constituted by this Agreement;
- (d) to notify the Assignee in writing as soon as the Assignor becomes aware of any Dispute (as hereinafter defined), claim or litigation in respect of the Contracts or any part thereof or of any breach or default by the Assignor or any other person, firm or corporation in the performance or satisfaction of any of the covenants, obligations or other provisions set out in the Contracts or any part thereof;
- (e) to obtain such consents from third parties as may be necessary or required in connection with the assignments constituted by this Agreement and, in addition, such other consents from third parties as the Assignee may require or desire;
- (f) that it will pay to the Assignee upon demand all costs, fees and expenses including, without limitation, legal fees and disbursements on a full indemnity basis, incurred by or on behalf of the Assignee in connection with or arising out of or from this Agreement including, without limitation, any one or more of the following:
  - (i) any act done or taken by or on behalf of the Assignee, or any proceeding instituted by or on behalf of the Assignee, the Assignor or any other person, firm or corporation, in connection with or in any way relating to any one or more of this Agreement or any part thereof, the preservation, protection, enforcement or realization of the Contracts or any part thereof, the recovery of the Indebtedness or any part thereof and responding to enquiries regarding the scope of the security interest perfected by the registration of a financing statement under the *Personal Property Security Act* (Ontario) (the "Act"); and

(ii) all amounts incurred or paid by the Assignee pursuant to Section 4.1 hereof;

together with interest thereon from the date of the incurring of such expenses at the highest rate provided for in any of the Security Documents. Whether any action or any judicial proceedings to enforce the aforesaid payments has been taken or not, the amount owing to the Assignee under this Section 3.3(f) shall be added to the Indebtedness; and

(g) furnish to the Assignee in writing all information requested by the Assignee relating to the Contracts or any part thereof.

3.4 Negative Covenants of Assignor: The Assignor covenants and agrees that it shall not:

(a) sell, assign, transfer, dispose of, collect, receive or accept any of the Contracts or any part thereof nor do, nor permit to be done, any act or thing whereby the Assignee may be prevented or hindered from so doing;

(b) pledge, charge, mortgage, hypothecate, create a security interest in or otherwise encumber the Contracts or any part thereof;

(c) cancel or terminate any of the Contracts or any part thereof;

(d) waive, amend, modify or vary any of the covenants, obligations or other provisions set out in the Contracts or any part thereof or otherwise agree or consent to any waiver, amendment, modification or variation of any of them, whether by way of contract, agreement or otherwise, except in the ordinary course of building the Project or operating the Property as would a prudent owner;

(e) waive or agree to waive any failure of any contractor or subcontractor under any of the Contracts or any other person, firm or corporation to perform, fulfill or satisfy any of the covenants, obligations and other provisions set out in the Contracts or any part thereof, except in the ordinary course of building the Project or operating the Property as would a prudent owner; or

(f) settle or resolve any Dispute.

3.5 Representations and Warranties of Assignor: The Assignor represents and warrants to the Assignee that:

(a) the Contracts and every part thereof are in good standing and in full force and effect and each of the parties to the Contracts is in good standing under the Contracts to which it is a party;

(b) the Assignor has good, valid and legal right to absolutely assign and transfer to the Assignee the Contracts, free and clear of all assignments, mortgages, charges, pledges, security interests and other encumbrances, except as otherwise set out herein;

(c) the Assignor has not received any notice of default or claim for set-off from any party to any of the Contracts; and

(d) none of the Contracts in existence on the date hereof is incapable of assignment to the Assignee in accordance with the provisions of this Agreement, nor is the consent of any third party required for any assignment set out in this Agreement or in connection with any further assignment by the Assignee.

ARTICLE 4  
DEFAULT AND REMEDIES

4.1 Enforcement upon Default: Without limiting in any manner whatsoever the Assignee's rights, remedies and recourses pursuant to this Agreement, by operation of law or otherwise, if any of the representations and warranties set out in this Agreement or in any of the Security Documents is untrue or if the Assignor has defaulted under or pursuant to, or otherwise failed to perform, fulfill or satisfy any covenant, obligation or condition set out in, or upon the occurrence of an event described as an "Event of Default" or a "Default" in, this Agreement or in any of the Security Documents (hereinafter collectively called a "Default"), the Assignee may from time to time and at any time, at its sole discretion, in its own name or in the name of the Assignor and without notice to the Assignor, do any one or more of the following:

- (a) perform, fulfill or satisfy any covenant, obligation or other provision set out in any of the Contracts which could have been performed, fulfilled or satisfied by the Assignor;
- (b) exercise any of the rights, powers, authority and discretion which, pursuant to any of the Contracts, could have been exercised by the Assignor including, without limitation, amending and renewing any of the Contracts and otherwise dealing with any contractor referred to in the Contracts and with others and participating in all settlement negotiations and arbitration proceedings resulting from a dispute (a "Dispute") arising out of, in connection with or pursuant to any of the Contracts; and
- (c) collect any proceeds, receipts or income arising from or out of the Contracts including, without limitation, the institution of proceedings, whether in the name of the Assignor or the Assignee or either of them, for the collection of same;

and in the event that the Assignee does any one or more of the foregoing, for such period of time that the Assignee continues to do so, the rights, powers, authority and discretion of the Assignor with respect thereto shall thereupon be extinguished.

The Assignor acknowledges and agrees that all costs and expenses incurred by the Assignee or any receiver or receiver and manager in connection with doing anything permitted in this Section 4.1 including, without limitation, legal fees and disbursements on a full indemnity basis, shall be forthwith paid by the Assignor to the Assignee.

4.2 Application of Funds: All amounts realized from the Contracts upon the enforcement of this Agreement shall be applied by the Assignee firstly, to the payment of expenses owing under the Security Documents, secondly, to the payment of such part of the Indebtedness as constitutes interest, and thirdly, to the payment of the balance of the Indebtedness; and any deficiency shall be and remain payable by the Assignor to the Assignee. If any surplus remains after the payments itemized herein, such surplus shall be applied in the manner provided for in the Act. Notwithstanding the foregoing, the Assignee reserves the right to interplead or make any appropriate application pursuant to the *Trustee Act* (Ontario) or any successor legislation thereto.

4.3 Authority of Assignor Prior to Default: Until a Default occurs, the Assignor shall have the authority to collect any monies payable or arising out of or from the Contracts and, subject to Section 3.4 hereof, the Assignor shall have the authority to exercise, in good faith, all of the rights, powers, authority and discretion under the Contracts. However, upon the occurrence of a Default, such authority shall immediately cease without further notice to the Assignor. Any monies received by or on behalf of

the Assignor after a Default has occurred shall be received and held in trust for the Assignee and forthwith remitted to the Assignee.

- 4.4 Assignee Not Liable: The Assignee shall not be bound to do any one or more of the following:
- (a) give any notice;
  - (b) exercise any rights, powers, authority, discretion or remedies whatsoever; or
  - (c) institute proceedings for the purpose of seizing, realizing upon, disposing of or obtaining possession of the Contracts or any part thereof or for the purpose of collecting or obtaining payment of the Indebtedness or any part thereof or for the purpose of preserving any rights of the Assignee, the Assignor or any other person, firm or corporation in respect of same;

nor shall the Assignee be liable or accountable for doing or failing to do any one or more of the foregoing. The Assignor shall be liable for all actions, causes of action, proceedings, debts, demands, claims, losses, damages and other liabilities incurred or suffered by the Assignor or the Assignee by reason of or on account of any act or failure to act of the Assignee.

#### ARTICLE 5 GENERAL CONTRACT PROVISIONS

5.1 Further Assurances: The Assignor agrees to execute all such further assignments and other documents and to do all such further acts and things including obtaining any consents which are required by the Assignee, from time to time, to more effectively assign and transfer the Contracts to the Assignee and the Assignee is irrevocably constituted the true and lawful attorney of the Assignor, with full power of substitution, to execute in the name of the Assignor any assignment or other document for such purposes.

5.2 No Novation: This assignment and transfer to the Assignee of the Contracts is continuing security granted to the Assignee, without novation or impairment of any other existing or future security held by the Assignee in order to secure, among other things, payment to the Assignee of the Indebtedness.

5.3 Rights, Powers and Remedies: Each right, power and remedy of the Assignee provided for in this Agreement or available at law or in equity may be exercised separately from or in combination with, and is in addition to and not in substitution for, any other right, power and remedy of the Assignee however created. Without limiting the generality of the foregoing, the taking of judgment or judgments by the Assignee shall not operate as a merger or affect the right of the Assignee to interest as provided herein.

5.4 Re-assignment: Upon the Indebtedness being paid in full, the Assignee shall, within a reasonable time following its receipt of a written request from the Assignor and at the sole cost and expense of the Assignor, reassign the Contracts to the Assignor.

5.5 Waiver: No consent or waiver, express or implied, by the Assignee to or of any breach or default by the Assignor in the performance of its obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default in the performance by the Assignor of its obligations hereunder. Failure on the part of the Assignee to complain of any act or failure to act of the Assignor or to declare the Assignor in default, irrespective of how long such failure continues, shall not constitute a waiver by the Assignee of its rights hereunder.

5.6 Dealings with Persons: The Assignee may grant extensions of time and other indulgences, take and give up securities, accept compositions, grant releases and discharges, release any part of the Contracts

to third parties and otherwise deal with the Contracts, the Assignor, debtors of the Assignor, guarantors, sureties and others, as the Assignee may see fit, without prejudice to the Assignee's rights, powers and remedies whatsoever.

5.7 Notices: Any notice, demand, request, consent, agreement or approval (a "Notice") which may or is required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given or made if delivered personally upon the party for whom it is intended, or transmitted by facsimile transmission, or (except in the case of an actual or pending disruption of postal service) mailed by registered mail, and in the case of:

The Assignor, addressed as follows:

Mizrahi Developments Inc.  
Mizrahi Development Group (1451 Wellington) Inc.; and  
Sam Mizrahi  
189 Forest Hill Road  
Toronto, Ontario 2N3  
  
Attention: Sam Mizrahi, President  
Email:  
sam@mizrahidevelopments.ca

The Assignee, addressed as follows:

David Berry  
  
Email: davidmmberry@rogers.com

Any such Notice, (i) if delivered personally or by email, shall be deemed to be delivered on the date of delivery thereof, or (ii) if mailed as aforesaid, the fourth (4th) Business Day following the date of mailing. For the purposes hereof, personal delivery, including delivery by way of a courier service, shall be made by delivery to an officer, director or responsible employee of the party for whom it is intended at its address set out above. If on the date of mailing or on or before such fourth (4th) Business Day thereafter there is a general interruption in the operation of postal service in Canada, Notices shall be delivered personally or by facsimile transmission. Each party may, from time to time, change its address or stipulate an address different from the address set out above by giving Notice thereof to each other party in the manner provided in this Section 5.7. For purposes hereof, "Business Day" means a day, excluding Saturday and Sunday, on which banks are open for commercial business in Toronto, Ontario.

5.8 Entire Agreement: This Agreement constitutes the entire agreement between the Assignee and the Assignor pertaining to the assignment of the Contracts and may not be amended in any matter except by written instrument signed by them. This Agreement shall enure to the benefit of the successors and assigns of the Assignee and shall be binding upon the successors and permitted assigns of the Assignor.

5.9 Direction: The Assignor authorizes and directs the respective insurers under each of the Insurance Policies to pay to the Assignee all of the proceeds payable under each of the Insurance Policies; and this shall serve as each such insurers' good, sufficient and irrevocable authority to do so.

5.10 Survival: All covenants, undertakings, agreements, representations and warranties made by the Assignor in this Agreement and any instruments delivered pursuant to or in connection herewith, shall survive the execution and delivery of this Agreement and any advances made by the Assignee to the Assignor, and shall continue in full force and effect until the Indebtedness is paid in full. All representations and warranties made by the Assignor shall be deemed to have been relied upon by the Assignee and the Assignee.

5.11 Applicable 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.

5.12 Receipt of Copy: The Assignor acknowledges receipt of a copy of this Agreement.

IN WITNESS WHEREOF the Assignor has executed

**MIZRAHI DEVELOPMENTS INC.**

Per: 

Name: Sam Mizrahi

Title: President

I have authority to bind the Corporation

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

Per: 

Name: Sam Mizrahi

Title: President

I have authority to bind the Corporation

Witness:



  
Sam Mizrahi



**ASSIGNMENT OF INSURANCE**

**TO:** David Berry

**RE:** David Berry (the "Lender") loan (the "Loan") to Mizrahi Developments Inc. (the "Borrower") pursuant to a loan agreement between the Lender, the Borrower, Mizrahi Development Group (1451 Wellington) Inc. and Sam Mizrahi dated June \_\_, 2016 (as amended from time to time) in respect of a condominium project to be constructed on the property currently municipally known as 1445 Wellington and 1451 Wellington, Ottawa, Ontario (the "Real Property")

**IN CONSIDERATION** of the sum of \$2.00 and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the undersigned, the undersigned does hereby transfer, assign and set over to you all of its right, title and interest in any and all present and future insurance policies affecting the Real Property, the Borrower and Mizrahi Development Group (1451 Wellington) Inc. including without limitation, any proceeds therefrom, all benefits to be derived therefrom or included therein and all documents and papers evidencing or relating to such insurance policies.

**DATED** as of the 16 day of June, 2016.

Borrower:

**MIZRAHI DEVELOPMENTS INC.**

Per: 

Name: Sam Mizrahi

Title: President

I have authority to bind the Corporation

Guarantors:

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

Per: 

Name: Sam Mizrahi

Title: President

I have authority to bind the Corporation

  
Sam Mizrahi

## ENVIRONMENTAL INDEMNITY

TO: David Berry

RE: David Berry (the "Lender") loan (the "Loan") to Mizrahi Developments Inc. (the "Borrower") pursuant to a loan agreement between the Lender, the Borrower, Mizrahi Development Group (1451 Wellington) Inc. and Sam Mizrahi dated June \_\_\_\_, 2016 (as amended from time to time) in respect of a condominium project to be constructed on the property currently municipally known as 1445 Wellington and 1451 Wellington, Ottawa, Ontario (the "Real Property")

IN CONSIDERATION of making the Loan and the sum of \$2.00 and for other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the undersigned), the undersigned hereby covenant and agree that there has not been, there are not currently and there will not in the future be any Hazardous Material (as hereinafter defined) on the site.

The undersigned hereby represent and warrant that neither the Borrower, the Guarantors, nor to their knowledge (after due inquiry), any other person, has ever caused or permitted any Hazardous Material to be placed, held, located or disposed of on, under or at the Real Property and that its business and assets are operated in compliance with applicable laws intended to protect the environment (including, without limitation, laws respecting the discharge, emission, spill or disposal of any Hazardous Material) and that no enforcement actions in respect thereof are threatened or pending and covenants to cause any person permitted by the Borrower or the Guarantors to use or occupy the Real Property or any part thereof to continue to so operate.

The undersigned hereby, jointly and severally, indemnify the Lender, its officers, directors, employees, agents and its shareholders and agree to hold each of them harmless from and against any and all losses, liabilities, damages, costs, expenses and claims of any kind and every kind whatsoever which at any time or from time to time may be paid, incurred or asserted against any of them for, with respect to, or as a direct result of, the presence on or under or the discharge, emission, spill or disposal from, the Real Property or into any land, the atmosphere or any water course, body of water or wetland, of any Hazardous Material where it has been proven that the source of the Hazardous Material is the Real Property (including, without limitation: (i) the costs of defending and/or counter claiming or claiming over against third parties in respect of any action or matter; and (ii) any cost, liability or damage arising out of a settlement of any action entered into by the Lender; and the provisions of and undertakings and indemnification set out in this paragraph shall survive the satisfaction and release of the security documents and payment and satisfaction of the Loan and liability of the Borrower to the Lender pursuant to the said Loan. The indemnity contained herein in favour of the Lender shall enure to the benefit of the Lender's successors and assignees of the Loan. For the purposes of this Paragraph "Hazardous Material" means any contaminant or pollutant or any substance that when released into the natural environment is likely to cause at some immediate or future time, material harm or degradation to the natural environment or material risk to human health and without restricting the generality of the foregoing, hazardous waste or dangerous goods as defined by applicable Federal, Provincial or Municipal laws for the protection of the natural environment or human health.

The indemnity contained herein shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of any such liability, claim or loss exists.

**DATED** as of the 29 day of June, 2016.

Borrower:

**MIZRAHI DEVELOPMENTS INC.**

Per: 

Name: Sam Mizrahi

Title: President

I have authority to bind the Corporation

Guarantors:

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

Per: 

Name: Sam Mizrahi

Title: President

I have authority to bind the Corporation

  
\_\_\_\_\_  
Sam Mizrahi

**THIS WARRANT CERTIFICATE IS VOID IF NOT EXERCISED ON OR BEFORE  
SIX (6) MONTHS FROM THE DATE OF ISSUANCE**

**WARRANT CERTIFICATE**

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

(Incorporated under the laws of the Province of Ontario)

WARRANT  
CERTIFICATE

**WARRANT** entitling the holder to acquire Net Profits.

**THIS IS TO CERTIFY THAT DAVID BERRY** of 124 Park Rd., Toronto, Ontario M4W 2N7 (hereinafter referred to as the "**holder**" or the "**Warrantholder**") is entitled to acquire for each Warrant represented hereby, in the manner and subject to the restrictions set forth herein, at any time and from time to time until 5:00 p.m. (Toronto time) (the "**Expiry Time**") on the date that is six (6) months from the date hereof, twenty five percent (25%) of the Net Profits from the Project being developed by Mizrahi Development Group (1451 Wellington) Inc. (the "**Company**").

This Warrant may be exercised at the office of the Company at 189 Forest Hill Road, Toronto, Ontario M5P 2N3 by personal or courier delivery. This Warrant is issued subject to the terms and conditions appended hereto as **Schedule "A"**.

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by a duly authorized officer.

DATED for reference this 15 day of June, 2016.

**MIZRAHI DEVELOPMENT GROUP (1451  
WELLINGTON) INC.**

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

**Authorized Signing Officer**

*(See terms and conditions attached hereto)*

## SCHEDULE "A"

### TERMS AND CONDITIONS FOR WARRANT

Terms and Conditions attached to the Warrant issued by Mizrahi Development Group (1451 Wellington) Inc. and dated for reference June \_\_\_\_, 2016.

#### ARTICLE 1 INTERPRETATION

##### 1.1 Definitions

In these Terms and Conditions, unless there is something in the subject matter or context inconsistent therewith:

- (a) **"Company"** means Mizrahi Development Group (1451 Wellington) Inc. unless and until a successor corporation shall have become such in the manner prescribed in Article 6, and thereafter "Company" shall mean such successor corporation;
- (b) **"Exercise Price"** means the price of \$1.00;
- (c) **"Expiry Time"** means 5:00 p.m. (Toronto time) on on the date that is six (6) months from the date hereof;
- (d) **"herein", "hereby"** and similar expressions refer to these Terms and Conditions as the same may be amended or modified from time to time; and the expression "Article" and "Section" followed by a number refer to the specified Article or Section of these Terms and Conditions;
- (e) **"Issue Date"** means the issue date of the Warrant shown on the face page of the Warrant Certificate;
- (f) **"Net Profits"** means the aggregate net income ("**Net Income**") of the Project (including, without limitation, that net income emanating from the sale of condominium units) calculated and reported upon in accordance with Canadian generally accepted accounting principles ("**GAAP**") and as initially projected in the draft Project budget in the Cost Consultant's Report, appended hereto as Schedule "C", accompanied by a written report of an auditor jointly approved by the Warrantholder and Mizrahi Developments Inc.. Notwithstanding the application of GAAP, the calculation of Net Income shall be made without reference to the following items:
  - (i) Executive compensation in any form that exceeds the aggregate sum of \$900,000 per year, it being understood that, included in such aggregate number shall be a monthly fee of \$5,000 for a one (1) year period, commencing on such date as the Lender shall advise the Borrower;
  - (ii) Related party transactions that have not been consented to in writing by the Warrantholder or as disclosed in the Project budget attached hereto as Schedule C, and, for greater certainty, Mizrahi Inc. shall be the builder of the Project. Notwithstanding the foregoing, it is understood that any permitted or disclosed related party transactions shall be at prices and on terms not less favourable to Mizrahi Developments Inc. or the Company, as the case may be, than could be obtained in a comparable arm's length transaction with another person; and
  - (iii) Expenses incurred prior to the date hereof that have not been consented to in writing by the Warrantholder.

The parties agree that, subject to the written consent of the Warrantholder, the calculation of Net Profits shall be subject to any changes which may occur in the development process, and subject further to any act of force majeure;

- (g) **"person"** means an individual, corporation, partnership, trustee or any unincorporated organization and words importing persons have a similar meaning;
- (h) **"Project"** means the proposed midrise residential and retail condominium project to be constructed by the Company and/or Mizrahi Developments Inc. on the Property;
- (i) **"Property"** means collectively the lands and premises in the City of Ottawa, Province of Ontario, municipally known as 1451 Wellington Street West and 1445 Wellington Street West;
- (j) **"Warrant"** means the warrant to acquire Net Profits evidenced by the Warrant Certificate; and
- (k) **"Warrant Certificate"** means the certificate to which these Terms and Conditions are attached.

### **1.2 Interpretation Not Affected by Headings**

- a) The division of these Terms and Conditions into Articles and Sections, and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation thereof.
- b) words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders.

### **1.3 Applicable Law**

The terms hereof and of the Warrant shall be construed in accordance with the laws of the province of Ontario and the federal laws of Canada applicable therein.

## **ARTICLE 2 ISSUE OF WARRANT**

### **2.1 Issue of Warrants**

The Warrant represented by this Warrant Certificate is hereby created and authorized to be issued.

### **2.2 Issue in Substitution for Lost Warrants**

If the Warrant Certificate becomes mutilated, lost, destroyed or stolen:

- (a) the Company shall issue and deliver a new Warrant Certificate of like date and tenor as the one mutilated, lost, destroyed or stolen, in exchange for and in place of and upon cancellation of such mutilated, lost, destroyed or stolen Warrant Certificate; and
- (b) the holder shall bear the cost of the issue of a new Warrant Certificate hereunder and in the case of the loss, destruction or theft of the Warrant Certificate, shall furnish to the Company such evidence of loss, destruction, or theft as shall be satisfactory to the Company in its discretion and the Company may also require the holder to furnish indemnity in an amount and form satisfactory to the Company in its discretion, and shall pay the reasonable charges of the Company in connection therewith.

### **2.3 Warrantholder Not a Shareholder**

The Warrant shall not constitute the holder a shareholder of the Company, nor entitle it to any right or interest in respect thereof except as may be expressly provided in the Warrant.

**ARTICLE 3  
EXERCISE OF THE WARRANT**

**3.1 Method of Exercise of the Warrant**

The right to acquire Net Profits conferred by the Warrant Certificate may be exercised, prior to the Expiry Time, by the holder surrendering it, with a duly completed and executed exercise form substantially in the form attached hereto as **Schedule "B"** and cash or a cheque payable to or to the order of the Company, at par in Canadian Dollars, for the Exercise Price.

**3.2 Expiration of the Warrant**

After the Expiry Time all rights hereunder shall wholly cease and terminate and the Warrant shall

**ARTICLE 4  
MISCELLANEOUS**

**4.1 Amendment, etc.**

This Warrant Certificate may only be amended by a written instrument signed by the parties hereto.

**4.2 Time**

Time is of the essence of the terms of this certificate.

**4.3 Notice**

Any notice given under or pursuant to this Warrant Certificate will be given in writing and must be delivered, or mailed by prepaid post, and addressed to the party to which notice is to be given at the address of the party set out on page one, or at another address designated by the party in writing. If notice is delivered, it will be deemed to have been given at the time of delivery. If notice is mailed, it will be deemed to have been received on the fourth business day after and excluding the date of mailing.

**4.4 Transfer of Warrants**

The Warrant evidenced hereby (may be assigned or transferred by the holder by duly completing and executing the transfer form attached hereto as Schedule "B". The rights and obligations of the parties hereunder shall be binding upon and enure to the benefit of their successors and permitted assigns.

**SCHEDULE "A"**

**EXERCISE FORM**

**TO: MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

Terms which are not otherwise defined herein shall have the meanings ascribed to such terms in the Warrant Certificate held by the undersigned and issued by Mizrahi Development Group (1451 Wellington) Inc. (the "Company").

The undersigned hereby exercises the right to acquire twenty five percent (25%) of the Net Profits of the Company in accordance with and subject to the provisions of such Warrant Certificate and herewith makes payment of the purchase price in full.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
(Signature of Warrantholder)

\_\_\_\_\_  
Print full name

\_\_\_\_\_  
Print full address



**SCHEDULE "B"**

**TRANSFER FORM**

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

\_\_\_\_\_  
(Please print or typewrite name and address of assignee)

the Warrant represented by the within certificate, and do(es) hereby irrevocably constitute and appoint

\_\_\_\_\_  
\_\_\_\_\_ the attorney of the undersigned to transfer the said Warrant maintained by the transfer agent of the Company with full power of substitution hereunder.

DATED this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Signature of Holder

\_\_\_\_\_  
Name of Holder (please print)

**IRREVOCABLE DIRECTION**

**TO:**

**AND TO:**

its solicitors herein

**RE:**

David Berry (the "**Lender**") loan (the "**Loan**") to Mizrahi Developments Inc. (the "**Borrower**") pursuant to a loan agreement between the Lender, the Borrower, Mizrahi Development Group (1451 Wellington) Inc. and Sam Mizrahi dated June \_\_, 2016 (as amended from time to time) in respect of a condominium project to be constructed on the property currently municipally known as 1445 Wellington and 1451 Wellington, Ottawa, Ontario (the "**Real Property**")

**IN CONSIDERATION** of the sum of \$2.00 and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the undersigned, the undersigned does hereby irrevocably authorize and direct you to forward any proceeds or advances under the construction mortgage/loan to David Berry, in priority to the Borrower, and for so doing this shall be your good and valid authorization.

**DATED** as of the 29 day of June, 2016.

Borrower:

**MIZRAHI DEVELOPMENTS INC.**

Per: 

Name: Sam Mizrahi

Title: President

I have authority to bind the Corporation

Guarantors:

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

Per: 

Name: Sam Mizrahi

Title: President

I have authority to bind the Corporation

  
Sam Mizrahi

**MIZRAHI DEVELOPMENTS INC.  
OFFICER'S CERTIFICATE**

**TO: David Berry**

**AND TO: Stikeman Keeley Speigel Pasternack LLP**

**AND TO: Baldwin Sennecke Halman, LLP**

**RE: David Berry (the "Lender") loan (the "Loan") to Mizrahi Developments Inc. (the "Borrower") pursuant to a loan agreement (the "Loan Agreement") between the Lender, the Borrower, Mizrahi Development Group (1451 Wellington) Inc. and Sam Mizrahi dated June 24, 2016 (as amended from time to time) in respect of a condominium project to be constructed on the property currently municipally known as 1445 Wellington and 1451 Wellington, Ottawa, Ontario (the "Real Property")**

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The undersigned, the duly appointed President of Mizrahi Developments Inc. (the "**Corporation**"), hereby certifies after having made due inquiry, on behalf of the Corporation and not in his personal capacity, that:

1. Attached hereto as **Exhibit "A"** are true and complete copies of the articles of incorporation of the Corporation including any articles of amendment thereof (collectively, the "**Articles**"). The Articles are in full force and effect and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any amendments or variations to the Articles.
2. Attached hereto as **Exhibit "B"** are true and complete copies of the by-laws of the Corporation (the "**By-laws**"). The By-laws comprise all of the by-laws of the Corporation and are in full force and effect, and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.
3. No winding-up, liquidation, dissolution, bankruptcy, merger, continuation, consolidation or amalgamation proceedings have been commenced or are being contemplated by the Corporation and to the best of the knowledge of the Corporation no such proceedings have been commenced or threatened or are being contemplated in respect of the Corporation by any other Person.
4. There are no provisions in the Articles or by-laws of the Corporation or in any unanimous shareholder agreement or in any other agreement binding on the Corporation which restrict or limit the powers of the Corporation or of its officers or directors on its behalf, to borrow money upon the credit of the Corporation, to issue, re-issue, sell or pledge debt obligations of the Corporation, to give a guarantee on behalf of the Corporation to secure the performance of an obligation of any person or party, to mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, now owned or subsequently acquired, to secure any debt or any other obligation (including an obligation

pursuant to a guarantee) of the Corporation or to delegate the powers referred to above to a director, officer or committee thereof.

5. The authorization, execution and delivery of each of the Documents do not, and the performance thereunder, will not, conflict with, result in any breach of, constitute any default under, or result in the creation or imposition of any encumbrance (except in favour of the Lender) upon any of the assets of the Corporation pursuant to, any of the constating documents of the Corporation including, without limitation, the Articles or by-laws, any unanimous shareholder agreement entered into by the shareholders of the Corporation or under any other agreement, contract, debenture or instrument to which the Corporation is a party or is bound.

6. The minute books and corporate records of the Corporation relating to all proceedings of the shareholders of the Corporation, the board of directors of the Corporation and any committee thereof made available to Baldwin Sennecke Halman, LLP, are the original minute books and records of the Corporation. Such minute books and records are true, correct and complete in all material respects and, since being made available to you, there have been no material changes, additions or alterations thereto.


7. The following persons are duly elected and qualified directors of the Corporation and are the only directors of the Corporation as of the date hereof:

Sam Mizrahi

8. The following persons are duly elected and qualified officers of the Corporation and hold the offices set forth below opposite their respective names as of the date hereof:

<u>Name</u>	<u>Office or Position</u>
Sam Mizrahi	President and Secretary

9. The signatures above the names of the following officers of the Corporation are the genuine signatures of such officers:

<b>Name and Signature</b>	<b>Position</b>
 Sam Mizrahi	President and Secretary

This certificate may be relied upon by Stikeman Keeley Speigel Pasternack LLP and Baldwin Sennecke Halman LLP in respect of the opinions to be rendered in connection with the Documents, and may also be relied upon by those permitted to rely on such opinions.

Capitalized terms used herein but not defined herein shall have the meanings ascribed thereto in the Loan Agreement.

DATED this 24 day of June, 2016

  
Name: Sam Mizrahi  
Office: President

**EXHIBIT "A"**  
**ARTICLES OF THE CORPORATION**

Request ID: 017829101  
Demande n°:  
Transaction ID: 058152339  
Transaction n°:  
Category ID: CT  
Catégorie:

Province of Ontario  
Province de l'Ontario  
Ministry of Government Services  
Ministère des Services gouvernementaux

Date Report Produced: 2015/07/09  
Document produit le:  
Time Report Produced: 11:16:36  
Imprimé à:

# Certificate of Incorporation Certificat de constitution

This is to certify that

Ceci certifie que

**MIZRAHI DEVELOPMENTS INC.**

Ontario Corporation No.

Numéro matricule de la personne morale en  
Ontario

**002474220**

is a corporation incorporated,  
under the laws of the Province of Ontario.

est une société constituée aux termes  
des lois de la province de l'Ontario.

These articles of incorporation  
are effective on

Les présents statuts constitutifs  
entrent en vigueur le

**JULY 09 JUILLET, 2015**



Director/Directeur  
Business Corporations Act/Loi sur les sociétés par actions

Request ID / Demande n°

17829101

Ontario Corporation Number  
Numéro de la compagnie en Ontario

2474220

FORM 1

FORMULE NUMÉRO 1

BUSINESS CORPORATIONS ACT

/

LOI SUR LES SOCIÉTÉS PAR ACTIONS

ARTICLES OF INCORPORATION  
STATUTS CONSTITUTIFS

1. The name of the corporation is: *Dénomination sociale de la compagnie:*  
MIZRAHI DEVELOPMENTS INC.

2. The address of the registered office is: *Adresse du siège social:*

c/o SAM MIZRAHI  
189 FOREST HILL ROAD

(Street & Number, or R.R. Number & if Multi-Office Building give Room No.)  
(Rue et numéro, ou numéro de la R.R. et, s'il s'agit édifice à bureau, numéro du bureau)

TORONTO  
CANADA

(Name of Municipality or Post Office)  
(Nom de la municipalité ou du bureau de poste)

ONTARIO  
M5P 2N3

(Postal Code/Code postal)

3. Number (or minimum and maximum  
number) of directors is:  
Minimum 1

*Nombre (ou nombres minimal et maximal)  
d'administrateurs:*  
Maximum 10

4. The first director(s) is/are:

*Premier(s) administrateur(s):*

First name, initials and surname  
*Prénom, initiales et nom de famille*

Resident Canadian State Yes or No  
*Résident Canadien Oui/Non*

Address for service, giving Street & No.  
or R.R. No., Municipality and Postal Code

*Domicile élu, y compris la rue et le  
numéro, le numéro de la R.R., ou le nom  
de la municipalité et le code postal*

\* SAM  
MIZRAHI

YES

189 FOREST HILL ROAD

TORONTO ONTARIO  
CANADA M5P 2N3



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Numéro de la compagnie en Ontario

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5. Restrictions, if any, on business the corporation may carry on or on powers the corporation may exercise.  
*Limites, s'il y a lieu, imposées aux activités commerciales ou aux pouvoirs de la compagnie.*

None

6. The classes and any maximum number of shares that the corporation is authorized to issue:

*Catégories et nombre maximal, s'il y a lieu, d'actions que la compagnie est autorisée à émettre:*

An unlimited number of common shares.

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7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series: *Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions que peut être émise en série:*

1. COMMON SHARES

1.1 Dividends

If in any fiscal year there shall remain any moneys of the Corporation properly applicable to the payment of dividends, in the discretion of the directors, such moneys may be applied to dividends on the common shares as and when declared by the directors.

1.2 Liquidation, Dissolution & Winding-Up

In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, the holders of the common shares shall be entitled to receive the remaining property of the Corporation.

1.3 Voting Rights

The holders of the common shares shall be entitled to receive notice of and to attend and vote at all meetings of the shareholders of the Corporation (except where the holders of another class of shares are entitled to vote separately as a class as provided in the Business Corporations Act (Ontario)) and each common share shall confer the right to one (1) vote in person or by proxy at all meetings of shareholders of the Corporation.

Request ID / Demande n°

17829101

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8. The issue, transfer or ownership of shares is/is not restricted and the restrictions (if any) are as follows:

*L'émission, le transfert ou la propriété d'actions est/n'est pas restreinte. Les restrictions, s'il y a lieu, sont les suivantes:*

No shares shall be transferred without the consent of the board of directors evidenced by a resolution or by their consent in writing.

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9. Other provisions, (if any, are):

*Autres dispositions, s'il y a lieu:*

(a) The board of directors may from time to time, in such amounts and on such terms as it deems expedient:

(i) borrow money on the credit of the Corporation;

(ii) issue, reissue, sell or pledge debt obligations (including bonds, debentures, notes or other evidences of indebtedness or guarantee, secured or unsecured) of the Corporation;

(iii) to the extent permitted by the Business Corporations Act (Ontario) give directly or indirectly financial assistance to any person by means of a loan, a guarantee or otherwise on behalf of the Corporation to secure performance of any present or future indebtedness, liability or obligation of any person; and

(iv) charge, mortgage, hypothecate, pledge or otherwise create a security interest in all or any of the currently owned or subsequently acquired real or personal, movable or immovable property of the Corporation, franchises and undertaking, to secure any debt obligations or any money borrowed, or other debt or liability of the Corporation.

(b) To the extent permitted by the Business Corporations Act (Ontario), the board of directors may from time to time delegate to such one or more of the directors and officers of the Corporation as may be designated by the board all or any of the powers conferred on the board above to such extent and in such manner as the board shall determine at the time of each such delegation.

(c) The number of beneficial owners of securities of the Corporation, exclusive of employees and former employees of the Corporation or its affiliates, is limited to not more than fifty, provided that each person is counted as one beneficial owner unless the person is created or used solely to purchase or hold securities of the Corporation in which case each beneficial owner or each beneficiary of the person, as the case may be, shall be counted as a separate beneficial owner.

(d) Subject to the provisions of the Business Corporations Act (Ontario), the Corporation may purchase any of its issued shares.

Request ID / Demande n°

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Numéro de la compagnie en Ontario

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10. The names and addresses of the incorporators are  
*Nom et adresse des fondateurs*

First name, initials and last name  
or corporate name

*Prénom, initiale et nom de  
famille ou dénomination sociale*

Full address for service or address of registered office or of principal place of business  
giving street & No. or R.R. No., municipality and postal code

*Domicile élu, adresse du siège social au adresse de l'établissement principal, y compris  
la rue et le numéro, le numéro de la R.R., le nom de la municipalité et le code postal*

\* SAM MIZRAHI

189 FOREST HILL ROAD

TORONTO ONTARIO  
CANADA M5P 2N3

Name of Corporation  
MIZRAHI DEVELOPMENTS INC.

Ontario Corporation Number  
2474220

Request ID  
17829101

ADDITIONAL INFORMATION FOR ELECTRONIC INCORPORATION

CONTACT PERSON

First Name Last Name  
Mati Pajo  
Name of Law Firm  
Baldwin Sennecke Halman LLP

ADDRESS

Street # Street Name Suite #  
25 Adelaide St. E. 900  
Additional Information City  
Victoria Building Toronto  
Province Country Postal Code  
ONTARIO CANADA M5C 3A1

TELEPHONE #: 416-601-0221

NUANS SEARCH DETAILS

Corporate Name Searched on NUANS (1)  
MIZRAHI DEVELOPMENTS INC.

NUANS Reservation Reference #  
115970915

Date of NUANS Report  
2015/07/09

Name of Corporation  
**MIZRAHI DEVELOPMENTS INC.**

Ontario Corporation Number  
**2474220**

Request ID  
**17829101**

## **ELECTRONIC INCORPORATION TERMS AND CONDITIONS**

The following are the terms and conditions for the electronic filing of Articles of Incorporation under the Ontario *Business Corporations Act* (OBCA) with the Ministry of Government Services.

Agreement to these terms and conditions by at least one of the incorporators listed in article 10 of the Articles of Incorporation is a mandatory requirement for electronic incorporation.

- 1) The applicant is required to obtain an Ontario biased or weighted NUANS search report for the proposed name. The applicant must provide the NUANS name searched, the NUANS reservation number and the date of the NUANS report. The NUANS report must be kept in electronic or paper format at the corporation's registered office address.
- 2) All first directors named in the articles must sign a consent in the prescribed form. The original consent must be kept at the corporation's registered office address.
- 3) A Corporation acquiring a name identical to that of another corporation must indicate that due diligence has been exercised in verifying that the Corporation meets the requirements of Subsection 6(1) of Regulation 62 made under the OBCA. Otherwise, the Corporation is required to obtain a legal opinion on legal letterhead signed by a lawyer qualified to practise in Ontario that clearly indicates that the corporations involved comply with Subsection 6(2) of that Regulation by referring to each clause specifically. The original of this legal opinion must be kept at the Corporation's registered office address. The applicant must complete the electronic version of this legal opinion provided by one of the Service Providers under contract with the Ministry.
- 4) The date of the Certificate of Incorporation will be the date the articles are updated to the ONBIS electronic public record database. Articles submitted electronically outside MGS, ONBIS access hours, will receive an endorsement date effective the next business day when the system resumes operation, if the submitted Articles of Incorporation meet all requirements for electronic incorporation. Articles of Incorporation submitted during system difficulties will receive an endorsement date effective the date the articles are updated to the ONBIS system.
- 5) The electronic Articles of Incorporation must be in the format approved by the Ministry and submitted through one of the Service Providers under contract with the Ministry.
- 6) Upon receipt of the Certificate of Incorporation issued by the ONBIS system, a duplicate copy of the Articles of Incorporation with the Ontario Corporation Number and the Certificate of Incorporation must be kept in paper or electronic format. The Ministry will print and microfilm copies of the Certificate of Incorporation, the Articles of Incorporation and any other documentation submitted electronically. These will be considered the true original filed copies.
- 7) The sole responsibility for correctness and completeness of the Articles of Incorporation, and for compliance with the OBCA and all regulations made under it, lies with the incorporator(s) and/or their legal advisor(s), if any.

The incorporator(s) have read the above Terms and Conditions and they understand and agree to them.

I am an incorporator or I am duly authorized to represent and bind the incorporator(s).

First Name  
Sam

Last Name  
Mizrahi

**EXHIBIT "B"**  
**BY-LAWS OF THE CORPORATION**



## BY-LAW NO. 1

A by-law relating generally to the transaction of the business and affairs of

### MIZRAHI DEVELOPMENTS INC.

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## BY-LAW NO. 1

A by-law relating generally to the transaction of the business and affairs of

### MIZRAHI DEVELOPMENTS INC.

**BE IT ENACTED** as a by-law of MIZRAHI DEVELOPMENTS INC. (the "Corporation") as follows:

#### ARTICLE 1. - INTERPRETATION

**SECTION 1.1 - Definitions.** In the by-laws of the Corporation, unless the context otherwise requires:

"Act" means the *Business Corporations Act (Ontario)* and any statute that may be substituted therefor, as from time to time amended.

"appoint" includes "elect" and vice versa.

"articles" means the articles of incorporation of the Corporation as from time to time amended or restated.

"board" means the board of directors of the Corporation and "director" means a member of the board.

"by-laws" means this by-law and all other by-laws of the Corporation from time to time in force and effect.

"cheque" includes a draft.

"Corporation" means the corporation named "MIZRAHI DEVELOPMENTS INC." created by certificate and articles of incorporation under the Act on July 9, 2015.

"day" means a clear day and a period of days shall be deemed to commence the day following the event that began the period and shall be deemed to terminate at midnight of the last day of the period except that if the last day of the period falls on a Sunday or holiday the period shall terminate at midnight of the day next following that is not a Sunday or holiday.

"meeting of shareholders" includes an annual meeting of shareholders and a special meeting of shareholders.

"person" includes an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his capacity as trustee, executor, administrator, or other legal representative.

"non-business day" means Saturday, Sunday and any other day that is a holiday as defined in the Interpretation Act (Ontario) as from time to time amended.

"recorded address" means in the case of a shareholder his address as recorded in the securities register; and in the case of joint shareholders the address appearing in the securities register in respect of such joint holding or the first address so appearing if there are more than one; in the case of an officer, auditor or member of a committee of the board, his latest address as recorded in the records of the Corporation; and, in the case of a director, his latest address as recorded in the records of the Corporation or in the most recent notice filed under the Corporations Information Act, whichever is the more current.

"resident Canadian" means an individual who is

- (a) a Canadian citizen ordinarily resident in Canada.
- (b) a Canadian citizen not ordinarily resident in Canada who is a member of a class of persons prescribed by the regulations under the Act, or
- (c) a permanent resident within the meaning of the Immigration Act (Canada) and ordinarily resident in Canada.

"signing officer" means, in relation to any instrument, any person authorized to sign the same on behalf of the Corporation by or pursuant to section 2.4.

"special meeting of shareholders" includes a meeting of any class or classes of shareholders and a special meeting of all shareholders entitled to vote at an annual meeting of shareholders.

"unanimous shareholder agreement" means a written agreement among all the shareholders of the Corporation or among all such shareholders and one or more persons who are not shareholders, or a written declaration of the beneficial owner of all of the issued shares of the Corporation, that restricts, in whole or in part, the powers of the directors to manage or supervise the management of the business and affairs of the Corporation, as from time to time amended.

**SECTION 1.2 - Terms Defined in the Act.** Save as aforesaid, words and expressions defined in the Act have the same meanings when used herein.

**SECTION 1.3 - Quantity and Gender.** Words importing the singular number include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders.

**SECTION 1.4 - Conflict with Unanimous Shareholder Agreement.** Where any provision in these by-laws conflicts with any provision of a unanimous shareholder agreement the provision of such unanimous shareholder agreement shall govern.

## ARTICLE 2. - BUSINESS OF THE CORPORATION

**SECTION 2.1 - Registered Office.** The registered office of the Corporation shall be in the municipality or geographic township within Ontario initially specified in the articles and thereafter as the shareholders may from time to time determine by special resolution and at such location therein as the board may from time to time determine by resolution.

**SECTION 2.2 - Corporate Seal.** Until changed by the board, the corporate seal of the Corporation shall be in the form impressed in the margin hereof.

**SECTION 2.3 - Financial Year.** Until changed by the board, the financial year of the Corporation shall end on the 31<sup>st</sup> day of October each year.

**SECTION 2.4 - Execution of Instruments.** Deeds, transfers, assignments, contracts, obligations, certificates and other instruments may be signed on behalf of the Corporation by any one of the following: chairman of the board, president, vice-president, secretary, treasurer or director, or any other office created by by-law or by resolution of the board. In addition, the board may from time to time direct the manner in which and the person or persons by whom any particular instrument or class of instruments may or shall be signed. Any signing officer may affix the corporate seal to any instrument requiring the same.

**SECTION 2.5 - Banking Arrangements.** The banking business of the Corporation including, without limitation, the borrowing of money and the giving of security therefor, shall be transacted with such banks, trust companies or other bodies corporate or organizations as may from time to time be designated by or under the authority of the board. Such banking business or any part thereof shall be transacted under such agreements, instructions and delegations of powers as the board may from time to time prescribe or authorize.

**SECTION 2.6 - Voting Rights in Other Bodies Corporate.** The signing officers of the Corporation may execute and deliver proxies and arrange for the issuance of voting certificates or other evidence of the right to exercise the voting rights attaching to any securities held by the Corporation. Such instruments, certificates or other evidence shall be in favour of such person or persons as may be determined by the officers executing such proxies or arranging for the issuance of voting certificates or such other evidence of the right to exercise such voting rights. In addition, the board may from time to time direct the manner in which and the person or persons by whom any particular voting rights or class of voting rights may or shall be exercised.

**SECTION 2.7 - Divisions.** The board may cause the business and operations of the Corporation or any part thereof to be divided or segregated into one or more divisions upon such basis, including without limitation, character or type of businesses or operations, geographical territories, product lines or goods or services as the board may consider appropriate in each case. From time to time the board or, if authorized by the board, the chief executive officer may authorize, upon such basis as may be considered appropriate in each case:

- (a) SUB-DIVISION AND CONSOLIDATION - The further division of the business and operations of any such division into sub-units and the consolidation of the business and operations of any such divisions and sub-units;
- (b) NAME - The designation of any such division or sub-unit by, and the carrying on of the business and operations of any such division or sub-unit under, a name other than the name of the Corporation; provided that the Corporation shall set out its name in legible characters in all contracts, invoices, negotiable instruments and orders for goods or services issued or made by or on behalf of the Corporation; and
- (c) OFFICERS - The appointment of officers for any such division or sub-unit, the determination of their powers and duties, and the removal of any such officer so appointed without prejudice to such officer's rights under any employment contract or in law, provided that any such officers shall not, as such, be officers of the Corporation, unless expressly designated as such.

### ARTICLE 3. - BORROWING AND SECURITIES

**SECTION 3.1 - Borrowing Power.** Without limiting the borrowing powers of the Corporation as set forth in the Act, the board may from time to time on behalf of the Corporation, without authorization of the shareholders:

- (a) borrow money upon the credit of the Corporation;
- (b) issue, reissue, sell or pledge bonds, debentures, notes or other similar obligations or guarantee of such an obligation of a body corporate, whether secured or unsecured;
- (c) to the extent permitted by the Act, give a guarantee on behalf of the Corporation to secure performance of any present or future indebtedness, liability or obligation of any person; and
- (d) mortgage, hypothecate, pledge, or otherwise create a security interest in all or any currently owned or subsequently acquired real or personal, movable or immovable, property of the Corporation, including book debts, rights, powers, franchises and undertakings, to secure any such bonds, debentures, notes or other evidences of indebtedness or guarantee or any other present or future indebtedness, liability or obligation of the Corporation.

Nothing in this section limits or restricts the borrowing of money by the Corporation on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the Corporation.

**SECTION 3.2 - Delegation.** The board may from time to time delegate to a committee of the board, one or more directors or officers of the Corporation or any other person as may be designated by the board all or any of the powers conferred on the board by section 3.1 or by the Act to such extent and in such manner as the board shall determine at the time of each such delegation.

## ARTICLE 4. - DIRECTORS

**SECTION 4.1 - Number of Directors and Quorum.** Until changed in accordance with the Act, the board shall consist of such number of directors within the minimum and maximum number of directors provided for in the articles, as is determined by special resolution or, if such special resolution empowers the board to determine the number, by a resolution of the board, provided, however, that in the latter case the directors may not, between meetings of shareholders, increase the number of directors on the board to a total number greater than one and one-third times the number of directors required to have been elected at the last annual meeting of shareholders. Subject to section 4.8, the quorum for the transaction of business at any meeting of the board shall consist of a majority of the number of directors determined in the manner set forth above or such other number of directors, in compliance with the Act, as the board may from time to time determine. If the Corporation has fewer than three directors, all directors must be present to constitute a quorum.

**SECTION 4.2 - Qualification.** No person shall be qualified for election as a director (i) if he is less than eighteen years of age; (ii) if he is of unsound mind and has been so found by a court in Canada or elsewhere; (iii) if he is not an individual, or; (iv) if he has the status of bankrupt. A director need not be a shareholder. A majority of the directors shall be resident Canadians but where the Corporation has only one or two directors, that director or one of the two directors, as the case may be, shall be a resident Canadian.

**SECTION 4.3 - Election and Term.** The election of directors shall take place at the first meeting and thereafter at each annual meeting of shareholders and all the directors then in office shall retire but, if qualified, shall be eligible for re-election. The number of directors to be elected at any such meeting shall, if a minimum and maximum number of directors is authorized by the articles, be the number of directors determined in accordance with section 4.1 or shall, if a fixed number of directors is authorized, be such fixed number. The election shall be by ordinary resolution. If an election of directors is not held at the proper time, the incumbent directors shall continue in office until their successors are elected.

**SECTION 4.4 - Removal of Directors.** Subject to the provisions of the Act, the shareholders may by ordinary resolution passed at an annual or special meeting called for such purpose remove any director or directors from office and the vacancy created by such removal may be filled at the same meeting failing which, provided a quorum remains in office, it may be filled by the board. Where the holders of any class or series of shares of the Corporation have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series.

**SECTION 4.5 - Vacation of Office.** A director ceases to hold office when he dies; he is removed from office by the shareholders; he ceases to be qualified for election as a director; or his written resignation is received by the Corporation, or, if a time is specified in such resignation, at the time so specified, whichever is later.

**SECTION 4.6 - Vacancies.** Subject to the provisions of the Act, a quorum of the board may fill a vacancy in the board, except a vacancy resulting from an increase in the number or, except as set out hereunder in the maximum number of directors, as the case may be, or a failure to elect the number of directors required



to be elected at any meeting of shareholders. Where the articles of the Corporation provide for a minimum and maximum number of directors and a special resolution has been passed empowering the directors to determine the number of directors, the directors may not, between meetings of shareholders, appoint an additional director if, after such appointment, the total number of directors would be greater than one and one-third times the number of directors required to have been elected at the last annual meeting of shareholders. In the absence of a quorum of the board, or if the vacancy has arisen from a failure of the shareholders to elect the number of directors required by section 4.1 hereof, the directors then in office shall forthwith call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.

**SECTION 4.7 - Action by the Board.** Subject to any unanimous shareholder agreement, the board shall manage or supervise the management of the business and affairs of the Corporation. Subject to sections 4.8 and 4.9, the powers of the board may be exercised by resolution passed at a meeting at which a quorum is present or by resolution in writing signed by all the directors entitled to vote on that resolution at a meeting of the board. Where there is a vacancy in the board, the remaining directors may exercise all the powers of the board so long as a quorum remains in office. Where the Corporation has only one director, that director may constitute a meeting.

**SECTION 4.8 - Canadian Majority at Meetings.** The board shall not transact business at a meeting of directors, other than filling a vacancy in the board, unless a majority of the directors present are resident Canadians or, where the Corporation has fewer than three directors, one of the directors present is a resident Canadian, except where

- (a) a resident Canadian director who is unable to be present approves in writing or by telephone or other communications facilities the business transacted at the meeting; and
- (b) a majority of resident Canadians would have been present had that director been present at the meeting.

**SECTION 4.9 - Meeting by Telephone.** If all the directors of the Corporation present at or participating in a meeting consent, a meeting of the board or of a committee of the board may be held by means of such telephone, electronic or other communications facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a director participating in such a meeting by such means is deemed for the purposes of the Act to be present at that meeting. Any such consent shall be effective whether given before or after the meeting to which it relates and may be given with respect to all meetings of the board and of committees of the board.

**SECTION 4.10 - Place of Meetings.** Meetings of the board may be held at any place within or outside Ontario, and in any financial year of the Corporation, a majority of the meetings of the board need not be held in Canada.

**SECTION 4.11 - Calling of Meetings.** Meetings of the board shall be held from time to time at such time and at such place as the board, the chairman of the board, the managing director, the president, the secretary or any two directors may determine.

**SECTION 4.12 - Notice of Meeting.** Notice of the time and place of each meeting of the board shall be given in the manner provided in section 11.1 to each director not less than 48 hours before the time when the meeting is to be held. A notice of a meeting of directors need not specify the purpose of or the business to be transacted at the meeting except where the Act requires such purpose or business to be specified. A director may in any manner and at any time waive a notice of or otherwise consent to a meeting of the board and, subject to the Act, attendance of a director at a meeting of the board is a waiver of notice of the meeting.

**SECTION 4.13 - First Meeting of New Board.** Provided a quorum of directors is present, each newly elected board may without notice hold its first meeting immediately following the meeting of shareholders at which such board is elected.

**SECTION 4.14 - Adjourned Meeting.** Notice of an adjourned meeting of the board is not required if the time and place of the adjourned meeting is announced at the original meeting.

**SECTION 4.15 - Regular Meetings.** The board may appoint a day or days in any month or months for regular meetings of the board at a place and hour to be named. A copy of any resolution of the board fixing the place and time of such regular meetings shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting except where the Act requires the purpose thereof or the business to be transacted thereat to be specified.

**SECTION 4.16 - Chairman.** The Chairman of any meeting of the board shall be the first mentioned of such of the following officers as have been appointed and who is a director and is present at the meeting: chairman of the board, managing director, president or a vice-president. If no such officer is present, the directors present shall choose one of their number to be chairman.

**SECTION 4.17 - Votes to Govern.** At all meetings of the board every question shall be decided by a majority of the votes cast on the question. In case of an equality of votes the chairman of the meeting shall be entitled to a second or casting vote.

**SECTION 4.18 - Conflict of Interest.** A director or officer of the Corporation who is a party to, or who is a director or officer of or has a material interest in, any person who is a party to, a material contract or transaction or proposed material contract or transaction with the Corporation, shall disclose the nature and extent of his interest at the time and in the manner provided by the Act. Any such contract or transaction or proposed contract or transaction shall be referred to the board or shareholders for approval even if such contract is one that in the ordinary course of the Corporation's business would not require approval by the board or shareholders. Such a director shall not vote on any resolution to approve the same unless the material contract or transaction is:

- (a) an arrangement by way of security for money lent to or obligations undertaken by him for the benefit of the Corporation or an affiliate;
- (b) one relating primarily to his remuneration as a director, officer, employee or agent of the Corporation or an affiliate;

- (c) one for indemnity or insurance as specified under the Act; or
- (d) one with an affiliate.

Notwithstanding the foregoing prohibition on voting by such a director, he may be present at and counted to determine the presence of a quorum at the relevant meeting of directors as provided in the Act.

**SECTION 4.19 - Remuneration and Expenses.** Subject to any unanimous shareholder agreement, the directors shall be paid such remuneration for their services as the board may from time to time determine. The directors shall also be entitled to be reimbursed for traveling and other expenses properly incurred by them in attending meetings of the board or any committee thereof. Nothing herein contained shall preclude any director from serving the Corporation in any other capacity and receiving remuneration therefor.

#### **ARTICLE 5. - COMMITTEES**

**SECTION 5.1 - Committees of the Board.** The board may appoint one or more committees of the board, however designated, and delegate to any such committee any of the powers of the board except those which pertain to items which, under the Act, a committee of the board has no authority to exercise. A majority of the members of any such committee shall be resident Canadians.

**SECTION 5.2 - Transaction of Business.** Subject to the provisions of section 4.8, the powers of a committee of the board may be exercised by a meeting at which a quorum is present or by resolution in writing signed by all members of such committee who would have been entitled to vote on that resolution at a meeting of the committee. Meetings of such committee may be held at such place or places designated in section 4.10.

**SECTION 5.3 - Advisory Bodies.** The board may from time to time appoint such advisory bodies as it may deem advisable.

**SECTION 5.4 - Procedure.** Unless otherwise determined by the board, each committee and advisory body shall have power to fix its quorum at not less than a majority of its members, to elect its chairman, and to regulate its procedure.

**SECTION 5.5 - Limits on Authority.** Notwithstanding any other provision hereof, no managing director and no committee of directors has authority to:

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders;
- (b) fill a vacancy among the directors or in the office of auditor or appoint or remove any of the chief executive officer, however designated, the chief financial officer, however designated, the chairman or the president of the Corporation;

- (c) subject to the Act, issue securities except in the manner and on the terms authorized by the directors;
- (d) declare dividends;
- (e) purchase, redeem or otherwise acquire shares issued by the Corporation;
- (f) pay a commission referred to in the Act;
- (g) approve a management information circular referred to in the Act;
- (h) approve a take-over bid circular, directors' circular, or issuer bid circular referred to in the Securities Act (Ontario);
- (i) approve any financial statements referred to in the Securities Act (Ontario); or
- (j) adopt, amend or repeal by-laws.

## ARTICLE 6. - OFFICERS

**SECTION 6.1 - Appointment.** Subject to any unanimous shareholder agreement, the board may from time to time appoint a president, one or more vice-presidents (to which title may be added words indicating seniority or function), a secretary, a treasurer and such other officers as the board may determine, including one or more assistants to any of the officers so appointed. The board may specify the duties of and, in accordance with this by-law and subject to the provisions of the Act, delegate to such officers powers to manage the business and affairs of the Corporation. Subject to sections 6.2 and 6.3, an officer may but need not be a director and one person may hold more than one office.

**SECTION 6.2 - Chairman of the Board.** The board may from time to time also appoint a chairman of the board who shall be a director. If appointed, the board may assign to him any of the powers and duties that are by any provisions of this by-law assigned to the managing director or to the president, and he shall, subject to the provisions of the Act, have such other powers and duties as the board may specify. During the absence or disability of the chairman of the board, his duties shall be performed and his powers exercised by the managing director, if any, or by the president.

**SECTION 6.3 - Managing Director.** The board may from time to time also appoint a managing director who shall be a resident Canadian and a director. If appointed, he shall be the chief executive officer and, subject to the authority of the board, shall have general supervision of the business and affairs of the Corporation; and he shall, subject to the provisions of the Act and section 5.5, have such other powers and duties as the board may specify. During the absence or disability of the president, or if no president has been appointed, the managing director shall also have the powers and duties of that office.

**SECTION 6.4 - President.** If appointed, the president shall be the chief operating officer and, subject to the authority of the board, shall have general supervision of the business of the Corporation; and he shall

have such other powers and duties as the board may specify. During the absence or disability of the managing director, or if no managing director has been appointed, the president shall also have the powers and duties of that office and shall be the chief executive officer.

**SECTION 6.5 - Vice-President.** A vice-president shall have such powers and duties as the board or the chief executive officer may specify.

**SECTION 6.6 - Secretary.** The secretary shall attend and be the secretary of all meetings of the board (or arrange for another individual to so act), shareholders and committees of the board and shall enter or cause to be entered in records kept for that purpose minutes of all proceedings thereat; he shall give or cause to be given, as and when instructed, all notices to shareholders, directors, officers, auditors and members of committees of the board; he shall be the custodian of the stamp or mechanical device generally used for affixing the corporate seal of the Corporation and of all books, papers, records, documents, and instruments belonging to the Corporation, except when some other officer or agent has been appointed for that purpose; and he shall have such other powers and duties as the board or the chief executive officer may specify.

**SECTION 6.7 - Treasurer.** The treasurer shall keep proper accounting records in compliance with the Act and shall be responsible for the deposit of money, the safekeeping of securities and the disbursement of the funds of the Corporation; he shall render to the board whenever required an account of all his transactions as treasurer and of the financial position of the Corporation; and he shall have such other powers and duties as the board or the chief executive officer may specify.

**SECTION 6.8 - Powers and Duties of other Officers.** The powers and duties of all other officers shall be such as the terms of their engagement call for or as the board or the chief executive officer may specify. Any of the powers and duties of an officer to whom an assistant has been appointed may be exercised and performed by such assistant, unless the board or the chief executive officer otherwise directs.

**SECTION 6.9 - Variation of Powers and Duties.** The board may from time to time and subject to the provisions of the Act, vary, add to or limit the powers and duties of any officer.

**SECTION 6.10 - Term of Office.** The board, in its discretion, may remove any officer of the Corporation, without prejudice to such officer's rights under any employment contract. Otherwise each officer appointed by the board shall hold office until his successor is appointed, or until his earlier resignation.

**SECTION 6.11 - Terms of Employment and Remuneration.** The terms of employment and the remuneration of an officer appointed by the board shall be settled by it from time to time.

**SECTION 6.12 - Conflict of Interest.** An officer shall disclose his interest in any material contract or proposed material contract with the Corporation in accordance with section 4.18 and the Act.

**SECTION 6.13 - Agents and Attorneys.** The Corporation, by or under the authority of the board shall have power from time to time to appoint agents or attorneys for the Corporation in or outside Canada with such powers of management, administration or otherwise (including the power to sub-delegate) as may be thought fit, subject to the provisions of the Act.

**SECTION 6.14 - Fidelity Bonds.** The board may require such officers, employees and agents of the Corporation as the board deems advisable to furnish bonds for the faithful discharge of their powers and duties, in such form and with such surety as the board may from time to time determine.

## **ARTICLE 7. - PROTECTION OF DIRECTORS, OFFICERS AND OTHERS**

**SECTION 7.1 - Limitation of Liability.** Every director and officer of the Corporation in exercising his powers and discharging his duties shall act honestly and in good faith with a view to the best interests of the Corporation and shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Subject to the foregoing, no director or officer shall be liable for the acts, neglects or defaults of any other director, officer or employee, or for joining in any act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any of the monies, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune whatever which shall happen in the execution of the duties of his office or in relation thereto; provided that nothing herein shall relieve any director or officer from the duty to act in accordance with the Act and the regulations thereunder or from liability for any breach thereof.

**SECTION 7.2 - Indemnity.** Subject to the limitations contained in the Act, the Corporation shall indemnify a director or officer, a former director or officer, or a person who acts or acted at the Corporation's request as a director or officer of a body corporate of which the Corporation is or was a shareholder or creditor, and his heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of the Corporation or such body corporate, if

- (a) he acted honestly and in good faith with a view to the best interests of the Corporation; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

The Corporation shall also indemnify such person in such other circumstances as the Act permits or requires. Nothing in this by-law shall limit the right of any person entitled to indemnity to claim indemnity apart from the provisions of this by-law.

**SECTION 7.3 - Insurance.** Subject to the Act, the Corporation may purchase and maintain insurance for the benefit of any person referred to in section 7.2 against such liabilities and in such amounts as the board may from time to time determine and as are permitted by the Act.

## ARTICLE 8. - SHARES

**SECTION 8.1 - Allotment of Shares.** Subject to the Act, the articles and any unanimous shareholder agreement, the board may from time to time allot or grant options to purchase the whole or any part of the authorized and unissued shares of the Corporation at such times and to such persons and for such consideration as the board shall determine, provided that no share shall be issued until it is fully paid as provided by the Act.

**SECTION 8.2 - Commissions.** The board may from time to time authorize the Corporation to pay a reasonable commission to any person in consideration of his purchasing or agreeing to purchase shares of the Corporation, whether from the Corporation or from any other person, or procuring or agreeing to procure purchasers for any such shares.

**SECTION 8.3 - Registration of a Share Transfer.** Subject to the provisions of the Act, no transfer of a share shall be registered in a securities register except upon presentation of the certificate representing such share with an endorsement which complies with the Act made thereon or delivered therewith duly executed by an appropriate person as provided by the Act, together with such reasonable assurance that the endorsement is genuine and effective as the board may from time to time prescribe, upon payment of all applicable taxes and any reasonable fee, not to exceed \$3, prescribed by the board, upon compliance with such restrictions on transfer as are authorized by the articles and upon satisfaction of any lien referred to in section 8.10.

**SECTION 8.4 - Transfer Agents.** The board may from time to time appoint, for each class of securities and warrants issued by the Corporation, (a) a trustee, transfer agent or other agent to keep the securities register and the register of transfers and one or more persons to keep branch registers and (b) a registrar, trustee or agent to maintain a record of issued security certificates and warrants, and, subject to the Act, one person may be appointed for the purposes of both clauses (a) and (b) above in respect of all securities and warrants of the Corporation or any class or classes, thereof. The board may at any time terminate such appointment.

**SECTION 8.5 - Non-recognition of Trusts.** Subject to the provisions of the Act, the Corporation may treat the registered holder of a share as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payments in respect of the share, and otherwise to exercise all the rights and powers of a holder of the share.

**SECTION 8.6 - Share Certificates.** Every shareholder is entitled at his option to a share certificate in respect of the shares held by him that complies with this Act or to a non-transferable written acknowledgment of his right to obtain a share certificate from the Corporation in respect of the shares of the Corporation held by him. A share certificate shall be signed manually by at least one director or officer of the Corporation or by or on behalf of a registrar, transfer agent, branch transfer agent or issuing or other authenticating agent of the Corporation. Additional signatures required on a share certificate may be printed or otherwise mechanically reproduced thereon. If a share certificate contains a printed or mechanically reproduced signature of a person, the Corporation may issue the share certificate notwithstanding that the person has ceased to be a director or an officer of the Corporation, and the share certificate is as valid as if he were a director or an officer at the date of its issue.

**SECTION 8.7 - Replacement of Share Certificates.** The board or any officer or agent designated by the board may in its or his discretion direct the issue of a new share or other such certificate in lieu of and upon cancellation of a certificate that has been mutilated or in substitution for a certificate claimed to have been lost, apparently destroyed or wrongfully taken on payment of such reasonable fee, not to exceed \$3, and on such terms as to indemnity, reimbursement of expenses and evidence of loss and of title as the board may from time to time prescribe, whether generally or in any particular case.

**SECTION 8.8 - Joint Holders.** If two or more persons are registered as joint holders of any share, the Corporation shall not be bound to issue more than one certificate in respect thereof, and delivery of such certificate to one of such persons shall be sufficient delivery to all of them. Any one of such persons may give effectual receipts for the certificate issued in respect thereof or for any dividend, bonus, return of capital or other money payable or warrant issuable in respect of such share.

**SECTION 8.9 - Deceased Shareholders.** In the event of the death of a holder, or of one of the joint holders, of any share, the Corporation shall not be required to make any entry in the securities register in respect thereof or to make any dividend or other payments in respect thereof, except upon production of all such documents as may be required by law and upon compliance with the reasonable requirements of the Corporation and its transfer agents.

**SECTION 8.10 - Lien for Indebtedness.** If the articles provide that the Corporation shall have a lien on shares registered in the name of a shareholder indebted to the Corporation, such lien may be enforced, subject to any other provision of the articles and to any unanimous shareholder agreement, by the sale of the shares thereby affected or by any other action, suit, remedy or proceeding authorized or permitted by law or by equity and, pending such enforcement, the Corporation may refuse to register a transfer of the whole or any part of such shares.

## ARTICLE 9. - DIVIDENDS AND RIGHTS

**SECTION 9.1 - Dividends.** Subject to the provisions of the Act, the board may from time to time declare dividends payable to the shareholders according to their respective rights and interest in the Corporation. Dividends may be paid in money or property or by issuing fully paid shares of the Corporation or options or rights to acquire fully paid shares of the Corporation.

**SECTION 9.2 - Dividend Cheques.** A dividend payable in money shall be paid by cheque drawn on the Corporation's bankers or one of them to the order of each registered holder of shares of the class or series in respect of which it has been declared and mailed by prepaid ordinary mail to such registered holder at his recorded address, unless such holder otherwise directs. In the case of joint holders the cheque shall, unless such joint holders otherwise direct, be made payable to the order of all of such joint holders and mailed to them at their recorded address. The mailing of such cheque as aforesaid, unless the same is not paid on due presentation, shall satisfy and discharge the liability for the dividend to the extent of the sum represented thereby plus the amount of any tax which the Corporation is required to and does withhold.

**SECTION 9.3 - Non-receipt of Cheques.** In the event of non-receipt of any dividend cheque by the person to whom it is sent as aforesaid, the Corporation shall issue to such person a replacement cheque for



a like amount on such terms as to indemnity, reimbursement of expenses, and evidence of non-receipt and of title as the board may from time to time prescribe, whether generally or in any particular case.

**SECTION 9.4 - Record Date for Dividends and Rights.** The board may fix in advance a date, preceding by not more than 50 days the date for the payment of any dividend or the date for the issue of any warrant or other evidence of the right to subscribe for securities of the Corporation, as a record date for the determination of the persons entitled to receive payment of such dividend or to exercise the right to subscribe for such securities; and notice of any such record date, unless waived in accordance with the Act, shall be given not less than seven days before such record date in the manner provided for by the Act. If no record date is so fixed, the record date for the determination of the persons entitled to receive payment of any dividend or to exercise the right to subscribe for securities of the Corporation shall be at the close of business on the day on which the resolution relating to such dividend or right to subscribe is passed by the board.

**SECTION 9.5 - Unclaimed Dividends.** Any dividend unclaimed after a period of six years from the date on which the same has been declared to be payable shall be forfeited and shall revert to the Corporation.

## ARTICLE 10. - MEETINGS OF SHAREHOLDERS

**SECTION 10.1 - Annual Meetings.** The annual meeting of shareholders shall be held at such time in each year and, subject to section 10.3, at such place as the board, the chairman of the board, the managing director, or the president may from time to time determine, for the purpose of considering the financial statements and reports required by the Act to be placed before the annual meeting, electing directors, appointing an auditor (unless the Corporation is exempted under the Act from appointing an auditor), and for the transaction of such other business as may properly be brought before the meeting.

**SECTION 10.2 - Special Meetings.** The board, the chairman of the board, the managing director, or the president shall have power to call a special meeting of shareholders at any time.

**SECTION 10.3 - Place of Meetings.** Subject to the articles and any unanimous shareholder agreement, meetings of shareholders shall be held at such place in or outside Ontario as the directors determine or, in the absence of such a determination, at the place where the registered office of the Corporation is located.

**SECTION 10.4 - Notice of Meetings.** Notice of the time and place of each meeting of shareholders shall be given in the manner provided in section 11.1 not less than ten nor more than fifty days before the date of the meeting to each director, to the auditor, and to each shareholder who at the close of business on the record date for notice is entered in the securities register as the holder of one or more shares carrying the right to vote at the meeting. Notice of a meeting of shareholders called for any purpose other than the consideration of minutes of an earlier meeting, consideration of the financial statements and auditor's report, election of directors and reappointment of the incumbent auditor shall state the nature of such business in sufficient detail to permit the shareholder to form a reasoned judgment thereon and shall state the text of any special resolution or by-law to be submitted to the meeting. A shareholder and any other person entitled to attend a meeting of shareholders may in any manner waive notice of or otherwise consent to a

meeting of shareholders, and, subject to the Act, attendance of any such shareholder or any such other person is a waiver of notice of the meeting.

**SECTION 10.5 - List Of Shareholders Entitled To Notice.** For every meeting of shareholders, the Corporation shall prepare a list of shareholders entitled to receive notice of the meeting, arranged in alphabetical order and showing the number of shares held by each shareholder entitled to vote at the meeting in accordance with the Act. If a record date for the meeting is fixed pursuant to section 10.6, the shareholders listed shall be those registered at the close of business on such record date. If no record date is fixed, the shareholders listed shall be those registered at the close of business on the day immediately preceding the day on which notice of the meeting is given or, where no such notice is given, on the day on which the meeting is held. The list shall be available for examination by any shareholder during usual business hours at the registered office of the Corporation or at the place where the central securities register is maintained and at the meeting for which the list was prepared. Where a separate list of shareholders has not been prepared, the names of persons appearing in the securities register at the requisite time as the holder of one or more shares carrying the right to vote at such meeting shall be deemed to be a list of shareholders.

**SECTION 10.6 - Record Date for Notice.** The board may fix in advance a date, preceding the date of any meeting of shareholders by not more than fifty days and not less than twenty-one days, as a record date for the determination of the shareholders entitled to notice of the meeting, and notice of any such record date shall, unless waived in accordance with the Act, be given not less than seven days before such record date, by newspaper advertisement in the manner provided in the Act. If no record date is so fixed, the record date for the determination of the shareholders entitled to receive notice of the meeting shall be at the close of business on the day immediately preceding the day on which the notice is given or, if no notice is given, the day on which the meeting is held.

**SECTION 10.7 - Meetings Without Notice.** A meeting of shareholders may be held without notice at any time and place permitted by the Act (a) if all the shareholders entitled to vote thereat are present in person or represented by proxy or if those not present or represented by proxy waive notice of or otherwise consent to such meeting being held, and (b) if the auditors and the directors are present or waive notice of or otherwise consent to such meeting being held; so long as such shareholders, auditors or directors present are not attending for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called. At such a meeting any business may be transacted which the Corporation at a meeting of shareholders may transact. If the meeting is held at a place outside Ontario, shareholders not present or represented by proxy, but who have waived notice of or otherwise consented to such meeting, shall also be deemed to have consented to the meeting being held at such place.

**SECTION 10.8 - Chairman, Secretary and Scrutineers.** The chairman of any meeting of shareholders shall be the first mentioned of such of the following officers as have been appointed and who is present at the meeting: managing director, president, chairman of the board, or a vice-president who is a shareholder. If no such officer is present within 15 minutes from the time fixed for holding the meeting, the persons present and entitled to vote shall choose one of their number to be chairman. If the secretary of the Corporation is absent, the chairman shall appoint some person, who need not be a shareholder, to act as secretary of the meeting. If desired, one or more scrutineers, who need not be shareholders, may be appointed by a resolution or by the chairman with the consent of the meeting.

**SECTION 10.9 - Persons Entitled to be Present.** The only persons entitled to be present at a meeting of shareholders shall be those entitled to vote thereat, the directors and auditor of the Corporation and others who, although not entitled to vote, are entitled or required under any provision of the Act or the articles or by-laws to be present at the meeting. Any other person may be admitted only on the invitation of the chairman of the meeting or with the consent of the meeting.

**SECTION 10.10 - Quorum.** Subject to the Act and to Section 10.20, a quorum for the transaction of business at any meeting of shareholders shall be two persons present in person, each being a shareholder entitled to vote thereat or a duly appointed proxyholder or representative for an absent shareholder so entitled, and together holding or representing by proxy more than 50% of the outstanding shares of the Corporation entitled to vote at the meeting. If a quorum is present at the opening of any meeting of shareholders, the shareholders present or represented by proxy may proceed with the business of the meeting notwithstanding that a quorum is not present throughout the meeting. If a quorum is not present at the opening of any meeting of shareholders, the shareholders present or represented by proxy may adjourn the meeting to a fixed time and place but may not transact any other business.

**SECTION 10.11 - Right to Vote.** Subject to the provisions of the Act as to authorized representatives of any other body corporate or association, at any meeting of shareholders for which the Corporation has prepared the list referred to in section 10.5, every person who is named in such list shall be entitled to vote the shares shown thereon opposite his name at the meeting to which such list relates except to the extent that, where the Corporation has fixed a record date in respect of such meeting pursuant to section 10.6, such person has transferred any of his shares after such record date and the transferee, having produced properly endorsed certificates evidencing such shares or having otherwise established that he owns such shares, has demanded not later than 10 days before the meeting that his name be included in such list. In any such case the transferee shall be entitled to vote the transferred shares at the meeting. At any meeting of shareholders for which the Corporation has not prepared the list referred to in section 10.5, every person shall be entitled to vote at the meeting who at the time is entered in the securities register as the holder of one or more shares carrying the right to vote at such meeting.

**SECTION 10.12 - Proxyholders and Representatives.** Every shareholder entitled to vote at a meeting of shareholders may appoint a proxyholder, or one or more alternate proxyholders, who need not be shareholders, to attend and act as his representative at the meeting in the manner and to the extent authorized and with the authority conferred by the proxy. A proxy shall be in writing executed by the shareholder or his attorney or, if the shareholder is a body corporate, by an officer or attorney thereof duly authorized, and shall conform with the requirements of the Act.

Alternatively, every such shareholder which is a body corporate or association may authorize by resolution of its directors or governing body an individual to represent it at a meeting of shareholders and such individual may exercise on the shareholder's behalf all the powers it could exercise if it were an individual shareholder. The authority of such an individual shall be established by depositing with the Corporation a certified copy of such resolution, or in such other manner as may be satisfactory to the secretary of the Corporation or the chairman of the meeting. Any such proxyholder or representative need not be a shareholder.

**SECTION 10.13 - Time for Deposit of Proxies.** The board may by resolution fix a time not exceeding forty-eight hours, excluding Saturdays and holidays, preceding any meeting or adjourned meeting of shareholders before which time proxies to be used at that meeting must be deposited with the Corporation or an agent thereof, and any period of time so fixed shall be specified in the notice calling the meeting. A proxy shall be acted upon only if, prior to the time so specified, it shall have been deposited with the Corporation or an agent thereof specified in such notice or, if no such time is specified in such notice, unless it has been received by the secretary of the Corporation or by the chairman of the meeting or any adjournment thereof prior to the time of voting.

**SECTION 10.14 - Joint Shareholders.** If two or more persons hold shares jointly, any one of them present in person or duly represented by proxy at a meeting of shareholders may, in the absence of the other or others, vote the shares; but if two or more of those persons are present in person or represented by proxy and vote, they shall vote as one the shares jointly held by them.

**SECTION 10.15 - Votes to Govern.** At any meeting of shareholders every question shall, unless otherwise required by the articles or by-laws or by law, be determined by a majority of the votes cast on the question. In case of an equality of votes either upon a show of hands or upon a poll, the chairman of the meeting shall be entitled to a second or casting vote.

**SECTION 10.16 - Show of Hands.** Subject to the provisions of the Act, any question at a meeting of shareholders shall be decided by a show of hands, unless a ballot thereon is required or demanded as hereinafter provided. Upon a show of hands every person who is present and entitled to vote shall have one vote. Whenever a vote by show of hands shall have been taken upon a question, unless a ballot thereon is so required or demanded, a declaration by the chairman of the meeting that the vote upon the question has been carried or carried by a particular majority or not carried and an entry to that effect in the minutes of the meeting shall be prima facie evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against any resolution or other proceeding in respect of the said question, and the result of the vote so taken shall be the decision of the shareholders upon the said question.

**SECTION 10.17 - Ballots.** On any question proposed for consideration at a meeting of shareholders, and whether or not a show of hands has been taken thereon, the chairman or any person who is present and entitled to vote, whether as shareholder, proxyholder or representative, on such questions at the meeting may demand a ballot. A ballot so required or demanded shall be taken in such manner as the chairman shall direct. A requirement or demand for a ballot may be withdrawn at any time prior to the taking of the ballot. If a ballot is taken each person present shall be entitled, in respect of the shares which he is entitled to vote at the meeting upon the question, to that number of votes provided by the Act or the articles, and the result of the ballot so taken shall be the decision of the shareholders upon the said question.

**SECTION 10.18 - Adjournment.** The chairman at a meeting of shareholders may, with the consent of the meeting and subject to such conditions as the meeting may decide, adjourn the meeting from time to time and place to place. If a meeting of shareholders is adjourned for less than thirty days, it shall not be necessary to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned. Subject to the Act, if a meeting of shareholders is adjourned by one or more adjournment for an aggregate of thirty days or more, notice of the adjourned meeting shall be given as for an original meeting.

**SECTION 10.19 - Resolution in Writing.** A resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders unless a written statement or written representation with respect to the subject matter of the resolution is submitted by a director or the auditor, respectively, in accordance with the Act.

**SECTION 10.20 - Only One Shareholder.** Where the Corporation has only one shareholder or only one holder of any class or series of shares, the shareholder present in person or duly represented by proxy constitutes a meeting.

## ARTICLE 11. - NOTICES

**SECTION 11.1 - Method of Giving Notices.** Any notice (which term includes any communication or document) to be given (which term includes sent, delivered, or served) pursuant to the Act, the regulations thereunder, the articles, the by-laws or otherwise to a shareholder, director, officer, auditor or member of a committee of the board shall be sufficiently given if delivered personally to the person to whom it is to be given; or if delivered to his recorded address; or if mailed to him at his recorded address by prepaid ordinary or air mail; or if sent to him at his recorded address by any means of prepaid transmitted or recorded communication. A notice so delivered shall be deemed to have been given when it is delivered personally or to the recorded address as aforesaid; a notice so mailed shall be deemed to have been given when deposited in a post office or public letter box and deemed to have been received on the fifth day after mailing; and a notice so sent by any means of transmitted or recorded communication shall be deemed to have been given when dispatched or delivered to the appropriate communication company or agency or its representative for dispatch. The secretary may change or cause to be changed the recorded address of any shareholder, director, officer, auditor or member of a committee of the board in accordance with any information believed by him to be reliable.

**SECTION 11.2 - Notice To Joint Holders.** If two or more persons are registered as joint holders of any share, any notice shall be addressed to all of such joint holders but notice addressed to one of such persons shall be sufficient notice to all of them.

**SECTION 11.3 - Undelivered Notices.** If any notice given to a shareholder pursuant to section 11.1 is returned on three consecutive occasions because he cannot be found, the Corporation shall not be required to give any further notices to such shareholder until he informs the Corporation in writing of his new address.

**SECTION 11.4 - Omissions and Errors.** The accidental omission to give any notice to any shareholder, director, officer, auditor or member of a committee of the board or the non-receipt of any notice by any such person or any error in any notice not affecting the substance thereof shall not invalidate any action taken at any meeting held pursuant to such notice or otherwise founded thereon.

**SECTION 11.5 - Persons Entitled by Death or Operation of Law.** Every person who, by operation of law, transfer, death of a shareholder or any other means whatsoever, shall become entitled to any share, shall be bound by every notice in respect of such share which shall have been duly given to the shareholder from whom he derives his title to such share prior to his name and address being entered on the securities

register (whether such notice was given before or after the happening of the event upon which he became so entitled) and prior to his furnishing to the Corporation the proof of authority or evidence of his entitlement prescribed by the Act.

**SECTION 11.6 - Waiver of Notice.** Any shareholder, proxyholder, representative, other person entitled to attend a meeting of shareholders, director, officer, auditor or member of a committee of the board may at any time waive any notice, or waive or abridge the time for any notice, required to be given to him under any provision of the Act, the regulations thereunder, the articles, the by-laws or otherwise and such waiver or abridgement, whether given before or after the meeting or other event of which notice is required to be given, shall cure any default in the giving or in the time of such notice, as the case may be. Any such waiver or abridgement shall be in writing except a waiver of notice of a meeting of shareholders or of the board or of a committee of the board which may be given in any manner.


#### ARTICLE 12. - EFFECTIVE DATE

**SECTION 12.1 - Effective Date.** This by-law shall come into force when made by the board in accordance with the Act.

MADE by the board as of July 9, 2015.



Sam Mizrahi  
President



Sam Mizrahi  
Secretary

CONFIRMED by the shareholder in accordance with the Act as of July 9, 2015.



Sam Mizrahi  
Secretary

**EXHIBIT "C"**  
**AUTHORIZING RESOLUTIONS**

**MIZRAHI DEVELOPMENTS INC.**  
(the "Corporation")

**RESOLUTION OF THE DIRECTOR**

**Resolution to Authorize Borrowing and Giving Security related to 1451 and 1445  
Wellington Street West, Ottawa.**

**RECITALS**

- A. The Corporation has the power and capacity to borrow money upon the credit of the Corporation, to issue securities of the Corporation and to mortgage and charge all or any of the real and personal property of the Corporation.
- B. The director of the Corporation is of the opinion that it is in the interest of the Corporation to enter into charges, assignments and agreements as security for its present and future indebtedness, liability, and obligations and therein mortgage, charge, assign, transfer, encumber and grant security interests in its present and future property and assets, all to the extent and as provided for in the Documents (as defined below).
- C. The director of the Corporation wishes to authorize the execution and delivery of such documentation in favour of David Berry (the "Lender").

**RESOLVED THAT:**

- 1. The execution and delivery by the Corporation of the Term Sheet dated June 6, 2016 (the "Credit Agreement") issued by the Lender in favour of the Corporation is confirmed, ratified and approved.
- 2. The Corporation enter into, execute and deliver to the Lender each of the following documents (collectively, the "Documents"), substantially in the form and containing the terms and conditions of the draft documents presented to the director of the Corporation, subject to such alterations, amendments or additions to which any officer or director of the Corporation may agree:
  - (a) Loan Agreement in the aggregate principal amount of \$10,000,000.00 entered into between the Corporation and the Lender.
  - (b) Promissory Note in favour of the Lender.
  - (c) General Security agreement in favour of Lender.
  - (d) Acknowledgment and Direction re Charge over 1451 Wellington Street West, Ottawa.
  - (e) Environmental Indemnity.



- (f) Assignment of Material Contracts.
  - (g) Assignment of Insurance.
  - (h) Irrevocable Direction.
  - (i) Warrant
3. The Corporation mortgage, charge, assign and otherwise transfer and encumber and grant security interests in all its present and future equipment, inventory, intangibles, undertaking and other property and assets as security for the present and future indebtedness and liability of the Corporation to the Lender, all to the extent of and as provided for in the Documents.
  4. Where the registration of any Document against title to any lands of the Corporation is permitted or required to be done electronically as an electronic document, any officer or director of the Corporation, instead of executing and delivering such document in paper form, is authorized to execute and deliver to legal counsel acting for the Corporation or Lender any document required to register such document electronically including, without limitation, written instructions on behalf of the Corporation: (i) confirming the information to be set out in the electronic document, subject to such changes of a clerical nature only as such legal counsel may approve; (ii) authorizing and directing such legal counsel to register or cause to be registered such electronic document; (iii) authorizing such legal counsel to enter into an escrow closing, if required; and (iv) acknowledging that the Corporation will be bound by the electronic document submitted for registration to the same extent as if the Corporation had executed and delivered the same by its duly authorized officers or directors.
  5. The execution by any officer or director of the Corporation of the Documents shall be conclusive proof of his/her agreement to any amendments or additions incorporated therein.
  6. Any officer or director of the Corporation be and each of them is authorized to execute and deliver each of the Documents on behalf of the Corporation and each director and officer of the Corporation is authorized to execute all such other documents and writings and do such acts and things as may be necessary for fulfilling the obligations of the Corporation under the Credit Agreement and each of the Documents.
  7. All acts and things heretofore done by any officer or director of the Corporation in respect of the foregoing matters be and the same are hereby ratified, confirmed and approved.

Pursuant to the *Business Corporations Act (Ontario)*, the foregoing resolution is hereby signed by the sole director of the Corporation, who is a resident Canadian, this 24<sup>th</sup> day of June, 2016.

  
\_\_\_\_\_  
Sam Mizrahi

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**  
**OFFICER'S CERTIFICATE**

**TO:** David Berry

**AND TO:** Stikeman Keeley Speigel Pasternack LLP

**AND TO:** Baldwin Sennecke Halman, LLP

**RE:** David Berry (the "Lender") loan (the "Loan") to Mizrahi Developments Inc. (the "Borrower") pursuant to a loan agreement (the "Loan Agreement") between the Lender, the Borrower, Mizrahi Development Group (1451 Wellington) Inc. and Sam Mizrahi dated June 26, 2016 (as amended from time to time) in respect of a condominium project to be constructed on the property currently municipally known as 1445 Wellington and 1451 Wellington, Ottawa, Ontario (the "Real Property")

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The undersigned, the duly appointed President of Mizrahi Development Group (1451 Wellington) Inc. (the "**Corporation**"), hereby certifies after having made due inquiry, on behalf of the Corporation and not in his personal capacity, that:

1. Attached hereto as **Exhibit "A"** are true and complete copies of the articles of incorporation of the Corporation including any articles of amendment thereof (collectively, the "**Articles**"). The Articles are in full force and effect and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any amendments or variations to the Articles.
2. Attached hereto as **Exhibit "B"** are true and complete copies of the by-laws of the Corporation (the "**By-laws**"). The By-laws comprise all of the by-laws of the Corporation and are in full force and effect, and neither the directors nor the shareholders of the Corporation have passed, confirmed or consented to any resolutions amending or varying the By-laws.
3. No winding-up, liquidation, dissolution, bankruptcy, merger, continuation, consolidation or amalgamation proceedings have been commenced or are being contemplated by the Corporation and to the best of the knowledge of the Corporation no such proceedings have been commenced or threatened or are being contemplated in respect of the Corporation by any other Person.
4. There are no provisions in the Articles or by-laws of the Corporation or in any unanimous shareholder agreement or in any other agreement binding on the Corporation which restrict or limit the powers of the Corporation or of its officers or directors on its behalf, to borrow money upon the credit of the Corporation, to issue, re-issue, sell or pledge debt obligations of the Corporation, to give a guarantee on behalf of the Corporation to secure the performance of an obligation of any person or party, to mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, now owned or subsequently acquired, to secure any debt or any other obligation (including an obligation

pursuant to a guarantee) of the Corporation or to delegate the powers referred to above to a director, officer or committee thereof.

5. The authorization, execution and delivery of each of the Documents do not, and the performance thereunder, will not, conflict with, result in any breach of, constitute any default under, or result in the creation or imposition of any encumbrance (except in favour of the Lender) upon any of the assets of the Corporation pursuant to, any of the constating documents of the Corporation including, without limitation, the Articles or by-laws, any unanimous shareholder agreement entered into by the shareholders of the Corporation or under any other agreement, contract, debenture or instrument to which the Corporation is a party or is bound.

6. The minute books and corporate records of the Corporation relating to all proceedings of the shareholders of the Corporation, the board of directors of the Corporation and any committee thereof made available to Baldwin Sennecke Halman, LLP, are the original minute books and records of the Corporation. Such minute books and records are true, correct and complete in all material respects and, since being made available to you, there have been no material changes, additions or alterations thereto.


7. The following persons are duly elected and qualified directors of the Corporation and are the only directors of the Corporation as of the date hereof:

Sam Mizrahi

8. The following persons are duly elected and qualified officers of the Corporation and hold the offices set forth below opposite their respective names as of the date hereof:

<u>Name</u>	<u>Office or Position</u>
Sam Mizrahi	President and Secretary

9. The signatures above the names of the following officers of the Corporation are the genuine signatures of such officers:

<b>Name and Signature</b>	<b>Position</b>
 Sam Mizrahi	President and Secretary

This certificate may be relied upon by Stikeman Keeley Speigel Pasternack LLP and Baldwin Sennecke Halman LLP in respect of the opinions to be rendered in connection with the Documents, and may also be relied upon by those permitted to rely on such opinions.

Capitalized terms used herein but not defined herein shall have the meanings ascribed thereto in the Loan Agreement.

DATED this 29 day of June, 2016

  
\_\_\_\_\_  
Name: Sam Mizrahi  
Office: President

**EXHIBIT "A"**  
**ARTICLES OF THE CORPORATION**

For Ministry Use Only  
À l'usage exclusif du ministère



Ministry of  
Government Services

Ministère des  
Services gouvernementaux

**Ontario  
CERTIFICATE**

This is to certify that these articles  
are effective on

**CERTIFICAT**

Ceci certifie que les présents statuts  
entrent en vigueur le

Ontario Corporation Number  
Numéro de la société en Ontario

**1894852**

**APRIL 23 AVRIL, 2013**

*K. [Signature]*

Director / Directrice

Business Corporations Act / Loi sur les sociétés par actions

Form 1  
Business  
Corporations  
Act

Formule 1  
Loi sur les  
sociétés par  
actions

**Articles of Incorporation  
Statut Constitutifs**

1. The name of the corporation is: (Set out in BLOCK CAPITAL LETTERS)  
Dénomination sociale de la société : (Écrire en LETTRES MAJUSCULES SEULEMENT)

M	I	Z	R	A	H	I		D	E	V	E	L	O	P	M	E	N	T		G	R	O	U	P		(	1	4	5	
I		W	E	L	L	I	N	G	T	O	N	)		I	N	C	.													

2. The address of the registered office is:  
Adresse du siège social :

**189 Forest Hill Road**

(Street & Number or R.R. Number & if Multi-Office Building give Room No.)  
(Rue et numéro ou numéro de la R.R. et, s'il s'agit d'un édifice à bureaux, numéro du bureau)

**Toronto**

**ONTARIO**

**M 5 P 2 N 3**

(Name of Municipality or Post Office)  
(Nom de la municipalité ou du bureau de poste)

(Postal Code)  
(Code postal)

3. Number of directors is/are:  
Nombre d'administrateurs :

Fixed number  
Nombre fixe

OR minimum and maximum  
OU minimum et maximum

**one (1) ten (10)**

4. The first director(s) is/are:  
Premier(s) administrateur(s) :

First name, middle names and surname  
Prénom, autres Prénoms et nom de famille

Address for service, giving Street & No. or R.R. No.,  
Municipality, Province, Country and Postal Code  
Domicile élu, y compris la rue et le numéro, le numéro de la  
R.R. ou le nom de la municipalité, la province, le pays et le  
code postal

Resident Canadian?  
Yes or No  
Résident canadien?  
Oui/Non

**Sam Mizrahi**

**189 Forest Hill Road  
Toronto, Ontario M5P 2N3**

**Yes**

5. Restrictions, if any, on business the corporation may carry on or on powers the corporation may exercise.  
Limites, s'il y a lieu, imposées aux activités commerciales ou aux pouvoirs de la société.

There are no restrictions on the business the Corporation may carry on or on the powers the Corporation may exercise.

6. The classes and any maximum number of shares that the corporation is authorized to issue:  
Catégories et nombre maximal, s'il y a lieu, d'actions que la société est autorisée à émettre :

1. An unlimited number of Common shares.



7. Rights, privileges, restrictions and conditions (if any) attaching to each class of shares and directors authority with respect to any class of shares which may be issued in series:

Droits, privilèges, restrictions et conditions, s'il y a lieu, rattachés à chaque catégorie d'actions et pouvoirs des administrateurs relatifs à chaque catégorie d'actions qui peut être émise en série :

## 1. COMMON SHARES

### 1.1 Dividends

If in any fiscal year there shall remain any moneys of the Corporation properly applicable to the payment of dividends, in the discretion of the directors, such moneys may be applied to dividends on the common shares as and when declared by the directors.

### 1.2 Liquidation, Dissolution & Winding-Up

In the event of the liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, the holders of the common shares shall be entitled to receive the remaining property of the Corporation.

### 1.3 Voting Rights

The holders of the common shares shall be entitled to receive notice of and to attend and vote at all meetings of the shareholders of the Corporation (except where the holders of another class of shares are entitled to vote separately as a class as provided in the Business Corporations Act) and each common share shall confer the right to one (1) vote in person or by proxy at all meetings of shareholders of the Corporation.

8. The issue, transfer or ownership of shares is/is not restricted and the restrictions (if any) are as follows:  
L'émission, le transfert ou la propriété d'actions est/n'est pas restreint. Les restrictions, s'il y a lieu, sont les suivantes :

No shares shall be transferred without the consent of the board of directors evidenced by a resolution or by their consent in writing.

9. Other provisions if any:  
Autres dispositions, s'il y a lieu :

(a) The number of shareholders of the Corporation, exclusive of persons who are in the employment of the Corporation is limited to fifty (50). Two (2) or more persons holding one (1) or more shares jointly shall be counted as a single shareholder.

(b) Any invitation to the public to subscribe for shares or securities of the Corporation is prohibited.

(c) Subject to the provisions of the Business Corporations Act, the Corporation shall have the right to purchase any of its Common Shares.

10. The names and addresses of the incorporators are:  
Noms et adresses des fondateurs :

First name, middle names and surname or corporate name  
Prénom, autres prénoms et nom de famille ou  
dénomination sociale


Full address for service or if a corporation, the address of  
the registered or head office giving street & No. or R.R.  
No., municipality, province, country and postal code  
Domicile élu au complet ou, dans le cas d'une société,  
adresse du siège social ou adresse de l'établissement  
principal, y compris la rue et le numéro ou le numéro de la  
R.R., la municipalité, la province, le pays et le code postal

**Jeffrey Alan Halman**

**25 Adelaide Street East, Suite 900  
Toronto, Ontario M5C 3A1**

These articles are signed in duplicate.  
Les présents statuts sont signés en double exemplaire.

Full name(s) and signature(s) of incorporator(s). In the case of a corporation set out the name of the corporation and the name and office of the person signing on behalf of the corporation  
Nom(s) au complet et signature(s) du ou des fondateurs. Si le fondateur est une société, indiquer la dénomination sociale et le nom et le titre de la personne signant au nom de la société

  
Signature / signature

**Jeffrey Alan Halman**

Name of incorporator (or corporation name & signatories name and office)  
Nom du fondateur (ou dénomination sociale et nom et titre du signataire)

Signature / signature

Name of incorporator (or corporation name & signatories name and office)  
Nom du fondateur (ou dénomination sociale et nom et titre du signataire)

Signature / signature

Name of incorporator (or corporation name & signatories name and office)  
Nom du fondateur (ou dénomination sociale et nom et titre du signataire)

Signature / signature

Name of incorporator (or corporation name & signatories name and office)  
Nom du fondateur (ou dénomination sociale et nom et titre du signataire)

**EXHIBIT "B"**  
**BY-LAWS OF THE CORPORATION**

## BY-LAW NO. 1

A by-law relating generally to the conduct  
of the business and affairs of

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

### C O N T E N T S

1. - Interpretation
2. - General Business Matters
3. - Directors
4. - Meetings of Directors
5. - Officers
6. - Protection of Directors, Officers and Others
7. - Meetings of Shareholders
8. - Shares
9. - Dividends
10. - Notices
11. - Effective Date

**BE IT ENACTED** as a by-law of Mizrahi Development Group (1451 Wellington) Inc. as follows:

#### **1. INTERPRETATION**

1.1 Definitions - In this by-law and all other by-laws and resolutions of the Corporation, unless the context otherwise requires:

*"Act"* means the *Business Corporations Act (Ontario)*, including the Regulations made pursuant thereto, and any statute or regulations substituted therefor, as amended from time to time;

*"appoint"* includes *"elect"*, and *vice versa*

*"articles"* means the Articles of Incorporation and/or other constating documents of the Corporation as amended or restated from time to time;

*"board"* means the board of directors of the Corporation and *"director"* means a member of the board;

"by-laws" means this by-law and all other by-laws, including special by-laws, of the Corporation as amended from time to time and which are, from time to time, in force and effect;

"Corporation" means this Corporation, being the corporation to which the Articles pertain, and named "**Mizrahi Development Group (1451 Wellington) Inc.**";

"meeting of shareholders" includes an annual meeting of shareholders and a special meeting of shareholders; "special meeting of shareholders" means a special meeting of all shareholders entitled to vote at an annual meeting of shareholders and a meeting of any class or classes of shareholders entitled to vote on the question at issue;

"recorded address" means, in the case of a shareholder, his address as recorded in the shareholders' register; and in the case of joint shareholders, the address appearing in the shareholders' register in respect of such joint holding or the first address so appearing if there is more than one; in the case of a director, officer, auditor or member of a committee of the board, his latest address as shown in the records of the Corporation or in the most recent notice filed under the *Corporations Information Act*, whichever is the more current. The secretary may change or cause to be changed the recorded address of any person in accordance with any information believed by him to be reliable.

1.2 Rules - In the interpretation of this by-law, unless the context otherwise requires, the following rules shall apply:

- a) Except where specifically defined herein, words, terms and expressions appearing in this by-law, including the terms "resident Canadian" and "unanimous shareholder agreement" shall have the meaning ascribed to them under the Act;
- b) Words importing the singular include the plural and *vice versa*;
- c) Words importing gender include the masculine, feminine and neuter genders;
- d) Words importing a person include an individual, sole proprietorship, partnership, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, and a natural person in his capacity as trustee, executor, administrator, or other legal representative.

## 2. GENERAL BUSINESS MATTERS

2.1 Registered Office - The shareholders may, by special resolution, from time to time change the municipality or geographic township within Ontario in which the registered office of the Corporation shall be located, but unless and until such special resolution has been passed, the

registered office shall be where initially specified in the articles. The directors shall from time to time fix the location of the registered office within such municipality or geographic township.

2.2 Corporate Seal - The Corporation may, but need not, have a corporate seal; if adopted, such seal shall be in the form approved from time to time by the board.

2.3 Fiscal Year - Unless and until another date has been effectively determined, the fiscal year or financial year of the Corporation shall end on \_\_\_\_\_ in each year.

2.4 Execution of Documents - Deeds, transfers, assignments, contracts, obligations and other instruments in writing requiring execution by the Corporation may be signed by \_\_\_\_\_. Notwithstanding the foregoing, the board may from time to time direct the manner in which and the person or persons by whom a particular document or class of documents shall be executed. Any person authorized to sign any document may affix the corporate seal thereto.

2.5 Banking - All matters pertaining to the banking of the Corporation shall be transacted with such banks, trust companies or other financial organizations as the board may designate or authorize from time to time. All such banking business shall be transacted on behalf of the Corporation pursuant to such agreements, instructions and delegations of powers as may, from time to time, be prescribed by the board.

### 3. DIRECTORS

3.1 Powers - Subject to the express provisions of a unanimous shareholder agreement, the directors shall manage or supervise the management of the business and affairs of the Corporation.

3.2 Transaction of Business - Business may be transacted by resolutions passed at meetings of directors or committees of directors at which a quorum is present or by resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or a committee of directors. A copy of every such resolution in writing shall be kept with the minutes of the proceedings of the directors or committee of directors.

3.3 Number - Until changed in accordance with the Act, the board shall consist of that number of directors, being a minimum of one (1) and a maximum of ten (10), as determined from time to time by special resolution or, if the special resolution empowers the directors to determine the number, by resolution of the board.

3.4 Resident Canadians - If the board consists of only one director, that director shall be a resident Canadian. If the board consists of two directors, at least one of the two directors shall be a resident Canadian. Except as aforesaid, a majority of the directors of the Corporation shall be resident Canadians.



3.5 Qualifications - Each director shall be an individual who is not less than 18 years of age. No person who is of unsound mind and has been so found by a court in Canada or elsewhere or who has the status of a bankrupt shall be a director. If a director acquires the status of a bankrupt or becomes of unsound mind and is so found, he shall thereupon cease to be a director. A director need not be a shareholder.

3.6 Election and Term - The election of directors shall take place at the first meeting of shareholders and at each succeeding annual meeting of shareholders at which time the term of each director then in office shall expire. Incumbent directors, if qualified, shall be eligible for re-election. If an election of directors is not held at the proper time the incumbent directors shall continue in office until their successors are elected.

3.7 Resignation - A director who is not named in the articles may resign from office upon giving a written resignation to the Corporation and such resignation becomes effective when received by the Corporation or at the time specified in the resignation, whichever is later. A director named in the articles shall not be permitted to resign his office unless at the time the resignation is to become effective a successor is elected or appointed.

3.8 Removal - Subject to the provisions of the Act, the shareholders may, by ordinary resolution passed at an annual or special meeting of shareholders, remove any director from office before the expiration of his term and may elect a qualified individual to fill the resulting vacancy for the remainder of the term of the director so removed, failing which such vacancy may be filled by the board.

3.9 Vacation of office - A director ceases to hold office when he dies, resigns, is removed from office by the shareholders, or becomes disqualified to serve as director.

3.10 Vacancies - Subject to the provisions of the Act, a vacancy on the board may be filled for the remainder of its term by a qualified individual by resolution of a quorum of the board. If there is not a quorum of directors or if a vacancy results from the failure to elect the number of directors required to be elected at any meeting of shareholders, the directors then in office shall forthwith call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.

#### 4. MEETINGS OF DIRECTORS

4.1 Place of Meetings - Meetings of the board may be held at the registered office of the Corporation or at any other place within or outside of Ontario, and it is not necessary that, in any financial year of the Corporation, a majority of such meetings be held in Canada.

4.2 Participation by Telephone - With the unanimous consent of all of the directors present at or participating in the meeting, a director may participate in a meeting of the board or in a meeting

of a committee of directors by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously, and a director participating in such a meeting by such means is deemed for the purposes of the Act and this by-law to be present at that meeting. A consent pursuant to this provision may be given before or after the meeting to which it relates and may be a "blanket" consent, relating to all meetings of the board and/or committees of the board.

4.3 Calling of Meetings - Meetings of the board shall be held from time to time at such place, date and time as the president or any two directors may determine. Where the Corporation has only one director, that director may constitute a meeting.

4.4 Notice of Meeting - Notice of the time and place for the holding of a meeting of the board shall be given to every director of the Corporation not less than two clear days (excluding Sundays and holidays as defined by the *Interpretation Act*) before the date of the meeting. Notwithstanding the foregoing, notice of a meeting shall not be necessary if all of the directors are present, and none objects to the holding of the meeting, or if those absent have waived notice of or have otherwise signified their consent to the holding of such meeting. Notice of an adjourned meeting is not required if the time and place of the adjourned meeting is announced at the original meeting.

4.5 First Meeting of New Board - Provided that a quorum of directors is present, a newly elected board may, without notice, hold its first meeting immediately following the meeting of shareholders at which such board is elected.

4.6 Regular Meetings - The board may appoint a day or days in any month or months for regular meetings of the board at a place and hour to be named. A copy of any resolution of the board fixing the place and time of such regular meetings of the board shall be sent to each director forthwith after being passed, but no other notice shall be required for any such regular meeting except where the Act requires the purpose thereof or the business to be transacted thereat to be specified.

4.7 Quorum - A majority of the directors elected to office constitutes a quorum at any meeting of the board.

4.8 Resident Canadians - Unless expressly permitted by the Act, directors shall not transact business at a meeting of the board unless a majority of the directors present are resident Canadians or, where a corporation has fewer than three directors, one of the directors present is a resident Canadian.

4.9 Chairman - The Chairman of any meeting of the board shall be the first mentioned of such of the following officers as have been appointed and who is a director and is present at the meeting:

Chairman of the Board  
Managing Director  
President, or a Vice-President

If no such officer is present, the directors present shall choose one of their number to be Chairman of such meeting.

4.10 Votes to Govern - At all meetings of the board, every question shall be decided by a majority of the votes cast on the question; and in the case of an equality of votes, the Chairman of the meeting shall not be entitled to a second or casting vote.

4.11 Disclosure- Conflict of Interest - A director or officer of the Corporation who is a party to, or who is a director or an officer of, or has a material interest in any person who is a party to, a material contract or transaction or proposed material contract or transaction with the Corporation, shall disclose in writing to the Corporation or request to have entered in the minutes of meetings of directors the nature and extent of his interest. Disclosure, as aforesaid, shall be made at the time and in the manner required by the Act, and a director so having an interest in a contract or transaction shall, unless expressly permitted by the Act, not vote on any resolution to approve the contract or transaction.

4.12 Delegation by Directors (Committees) - The board may appoint from their number a managing director, who is a resident Canadian, or a committee of directors, a majority of the members of which shall be resident Canadians, and delegate to such managing director or committee any of the powers of the board except those which relate to matters over which a managing director or committee shall, pursuant to the Act, not have authority. Unless otherwise determined by the board, a committee shall have the power to fix its quorum at not less than a majority of its members, to elect its chairman and to regulate its procedure.

4.13 Remuneration and Expenses - Subject to the articles and any unanimous shareholder agreement, the board may fix the remuneration of the directors, which remuneration shall be in addition to any remuneration which may be payable to a director who serves the Corporation in any other capacity. The directors shall also be entitled to be reimbursed for traveling and other expenses properly incurred by them in attending meetings of the board, committees or shareholders and for such other out-of-pocket expenses incurred in respect of the performance of their duties as the board may from time to time determine.

## 5. OFFICERS

5.1 Appointment - The board may from time to time designate the offices of the Corporation, appoint officers (and assistants to officers), specify their duties and, subject to the Act or the provisions of any unanimous shareholder agreement, delegate to such officers powers to manage the business and affairs of the Corporation. A director may be appointed to any office of the Corporation. Except for the chairman of the board and the managing director, an officer may but need not be a director. Two or more offices may be held by the same person.

5.2 Term of Office (Removal) - In the absence of a written agreement to the contrary, the board may remove, whether for cause or without cause, any officer of the Corporation. Unless so removed, an officer shall hold office until his successor is appointed or until his resignation, whichever shall first occur.

5.3 Terms of Employment, Duties and Remuneration - The terms of employment and remuneration of all officers elected or appointed by the board shall be determined from time to time and may be varied from time to time by the board.

5.4 Description of Offices - Unless otherwise specified by the board (which may, subject to the Act, modify, restrict or supplement such duties and powers), the offices of the Corporation, if designated and if officers are appointed thereto, shall have the following duties and powers associated therewith:

- a) **Chairman of the Board** - The chairman of the board, if one is to be appointed, shall be a director. The board may assign to him any of the powers and duties which, pursuant to the by-laws, are capable of being assigned to the managing director or to the president;
- b) **Managing Director** - The managing director, if one is to be appointed, shall be a director and a resident Canadian. He shall be the chief executive officer and, subject to the authority of the board, shall have general supervision of the business and affairs of the Corporation;
- c) **President** - The president shall be the chief operating officer of the Corporation. During the absence or disability of the managing director, or if no managing director has been appointed, the president shall, subject to the authority of the board, have general supervision of the business and affairs of the Corporation;
- d) **Secretary** - The secretary, when in attendance, shall be the secretary of all meetings of the board, shareholders and committees of the board and, whether or not he attends, the secretary shall enter or cause to be entered in the Corporation's minute book, minutes of all proceedings at such meetings; he shall give, or cause to be given, as and when instructed, notices to shareholders, directors, auditors and members of committees; he shall be the custodian of the corporate seal as well as all books, papers, records, documents and other instruments belonging to the Corporation;
- e) **Treasurer** - The treasurer shall be responsible for the maintenance of proper accounting records in compliance with the Act as well as the deposit of money, the safekeeping of securities and the disbursement of funds of the Corporation; whenever required, he shall render to the board an account of his transactions as treasurer and of the financial position of the Corporation.

The duties of all other officers of the Corporation shall be such as the terms of their engagement call for or the board requires of them. Any of the powers and duties of an officer to whom an assistant

has been appointed may be exercised and performed by such assistant, unless the board otherwise directs.

5.5 Agents and Attorneys - The board shall have power from time to time to appoint agents or attorneys for the Corporation in or out of Ontario with such powers of management, administration or otherwise (including the power to sub-delegate) as the board considers fit.

5.6 Disclosure- Conflict of Interest - An officer shall have the same duty to disclose his interest in a material contract or transaction or proposed material contract or transaction with the Corporation, as is, pursuant to the provisions of the Act and the by-laws, imposed upon directors.

## 6. PROTECTION OF DIRECTORS, OFFICERS AND OTHERS

6.1 Standard of Care - Every director and officer of the Corporation in exercising his powers and discharging his duties shall act honestly and in good faith with a view to the best interests of the Corporation and shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. Every director and officer of the Corporation shall comply with the Act, the regulations, articles, by-laws and any unanimous shareholder agreement.

6.2 Limitation of Liability - Provided that the standard of care required of him has been satisfied, no director or officer shall be liable for the acts, receipts, neglects or defaults of any other director or officer or employee, or for joining in any receipt or other act for conformity, or for any loss, damage or expense happening to the Corporation through the insufficiency or deficiency of title to any property acquired for or on behalf of the Corporation, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Corporation shall be invested, or for any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any of the monies, securities or effects of the Corporation shall be deposited, or for any loss occasioned by any error of judgment or oversight on his part, or for any other loss, damage or misfortune which shall happen in the execution of the duties of his office or in relation thereto, unless the same are occasioned by his own wilful neglect or default.

6.3 Indemnity of Directors and Officers - Subject to the Act, the Corporation shall indemnify a director or officer of the Corporation, a former director or officer of the Corporation or a person who acts or acted at the Corporation's request as a director or officer of a body corporate of which the Corporation is or was a shareholder or creditor, and his heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of such corporation or body corporate if,

- a) he acted honestly and in good faith with a view to the best interests of the Corporation; and

- b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

The Corporation shall indemnify such person in all such other matters, actions, proceedings and circumstances as may be permitted by the Act or the law.

6.4 Insurance - Subject to the Act, the Corporation may purchase and maintain such insurance for the benefit of any person entitled to be indemnified by the Corporation pursuant to the immediately preceding section as the board may from time to time determine.

## 7. MEETINGS OF SHAREHOLDERS

7.1 Annual Meetings - The board shall call, at such date and time as it determines, the first annual meeting of shareholders not later than eighteen months after the Corporation comes into existence and thereafter not later than fifteen months after holding the last preceding annual meeting, so as to consider the financial statements and reports required by the Act to be presented thereat, to elect directors, appoint auditors and to transact such other business as may properly be brought before the meeting.

7.2 Special Meetings - The board, the chairman of the board, the managing director or the president may at any time call a special meeting of shareholders for the transaction of any business which may properly be brought before such meeting of shareholders.

7.3 Place of Meetings - Meetings of shareholders shall be held at such place in or outside Ontario as the board determines or, in the absence of such a determination, at the place where the registered office of the Corporation is located.

7.4 Special Business - All business transacted at a special meeting or an annual meeting of shareholders, except consideration of the minutes of an earlier meeting, the financial statements and auditor's report, election of directors and reappointment of the incumbent auditor constitutes special business.

7.5 Notice of Meetings - Notice of the time and place of a meeting of shareholders shall be sent not less than 10 days and not more than 50 days before the date of the meeting:

- a) to each shareholder entitled to vote at the meeting (according to the records of the Corporation at the close of business on the day preceding the giving of the notice);
- b) to each director; and
- c) to the auditor of the Corporation.

Notice of a meeting of shareholders at which special business is to be transacted shall state:

- a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and
- b) the text of any special resolution or by-law to be submitted to the meeting.

In the event of the adjournment of a meeting, notice, if any is required, shall be given in accordance with the provisions of the Act.

7.6 Waiving Notice - A shareholder and any other person entitled to attend a meeting of shareholders may in any manner and at any time waive notice of a meeting of shareholders, and attendance of any such person at a meeting of shareholders is a waiver of notice of the meeting, except where such person attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

7.7 Persons Entitled to be Present - The only persons entitled to be present at a meeting of shareholders shall be those entitled to vote thereat, the directors and the auditor of the Corporation and such other persons who are entitled or required under any provision of the Act, articles or by-laws of the Corporation to be present at the meeting. Any other person may be admitted only on the invitation of the chairman of the meeting or with the consent of the meeting.

7.8 Quorum - The holders of a majority of the shares entitled to vote at a meeting of shareholders present in person or by proxy constitute a quorum for the transaction of business at any meeting of shareholders. If a quorum is present at the opening of a meeting of shareholders, the shareholders present may proceed with the business of the meeting even if a quorum is not present throughout the meeting. If the Corporation has only one shareholder, or only one holder of any class or series of shares, the shareholder present in person or by proxy constitutes a meeting.

7.9 Right to Vote - Unless the articles otherwise provide, each share of the Corporation entitles the holder thereof to one vote at a meeting of shareholders.

7.10 Proxies - Every shareholder entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxyholder or one or more alternate proxyholders who need not be shareholders, as the shareholder's nominee to attend and act at the meeting in the manner, to the extent and with the authority conferred by the proxy. A proxy shall be in writing, shall be executed by the shareholder or by his attorney authorized in writing and shall, in all other respects, be in a form which complies with the Act.

7.11 Time for Deposit of Proxies - The Corporation shall recognize a proxy only if it has been deposited with the Corporation and it shall be so deposited before any vote is taken under its authority, or at such earlier time as the board, in compliance with the Act, prescribes and which has been specified in the notice calling the meeting.

7.12 Corporate Shareholders and Associations - As an alternative to depositing a proxy, a body corporate or an association may deposit a certified copy of a resolution of its directors or governing body authorizing an individual to represent it at meetings of shareholders of the Corporation.

7.13 Joint Shareholders - Where two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may in the absence of the others vote the shares, but if two or more of those persons are present, in person or by proxy, they shall vote as one on the shares jointly held by them.

7.14 Votes to Govern - Subject to the Act, the articles, the by-laws and any unanimous shareholder agreement, all questions proposed for the consideration of the shareholders shall be determined by a majority of the votes cast thereon and, in case of an equality of votes, the chairman of the meeting shall not have a second or casting vote.

7.15 Show of Hands - Except where a ballot is demanded as hereafter set out, voting on any question proposed for consideration at a meeting of shareholders shall be by show of hands, and a declaration by the chairman as to whether or not the question or motion has been carried and an entry to that effect in the minutes of the meeting shall, in the absence of evidence to the contrary, be evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the motion.

7.16 Ballots - For any question proposed for consideration at a meeting of shareholders, either before or after a vote by show of hands has been taken, the chairman, or any shareholder or proxyholder may demand a ballot, in which case the ballot shall be taken in such manner as the chairman directs and the decision of the shareholders on the question shall be determined by the result of such ballot.

7.17 Resolution in Lieu of Meeting - Except where, pursuant to the Act, a written statement is submitted to the Corporation by a director or representations in writing are submitted to the Corporation by an auditor:

- a) a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders; and
- b) a resolution in writing dealing with all matters required by the Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of the Act relating to that meeting of shareholders.



## 8. SHARES

8.1 Allotment - Subject to the Act, the articles and any unanimous shareholder agreement, the board may from time to time issue, allot or grant options to purchase the whole or any part of the authorized and unissued shares of the Corporation, at such times and to such persons and for such consideration as the board shall determine, provided that no share shall be issued until it is fully paid as provided by the Act.

8.2 Share Certificates - Share certificates shall be in such form as the board shall from time to time approve and shall be signed by the president and the secretary. Every shareholder of the Corporation is entitled upon request to a share certificate or to a non-transferable written acknowledgment of his right to obtain a share certificate in respect of the shares held by him.

8.3 Joint Shareholders - If two or more persons are registered as joint holders of any share, it shall be sufficient for the Corporation to issue one certificate in respect thereof and it shall also be sufficient for the Corporation to accept, from any one of such persons, receipts for the certificate or for any dividend, bonus, return of capital or other money payable or warrant issuable in respect of such share.

8.4 Deceased Shareholders - In the event of the death of a shareholder, the Corporation shall not be required to make an entry in its records in respect of such death and nor shall it be required to make any dividend or other payment in respect of such shares until such documents have been produced to the Corporation as are required by the Act and the law and as are reasonably required by the Corporation and its transfer agents.

8.5 Replacement of Share Certificates - Subject to the Act, the board may prescribe, either generally or for a particular instance, the conditions upon which a new share certificate may be issued to replace a share certificate which has been or is claimed to have been defaced, lost, stolen or destroyed.

8.6 Payment of Commission - The board may, from time to time, authorize the Corporation to pay a reasonable commission to any person in consideration of his purchasing or agreeing to purchase shares of the Corporation from the Corporation or from any other person, or for procuring or agreeing to procure purchasers for any such shares.

8.7 Lien for Indebtedness - Subject to the Act, the Corporation has a lien on shares registered in the name of a shareholder or his legal representative for a debt of that shareholder to the Corporation which lien may be enforced, subject to the articles and to any unanimous shareholder agreement, by the sale of such shares or by any other proceeding or remedy available by law to the Corporation and, until such indebtedness has been satisfied, the Corporation may refuse to register a transfer of any such shares.

## 9. DIVIDENDS

9.1 Declaration - Subject to the Act, the articles and any unanimous shareholder agreement, the board may declare and the Corporation may pay dividends to the shareholders according to their respective rights and interests in the Corporation. Any such dividend may be paid by issuing fully paid shares of the Corporation or options or rights to acquire fully paid shares of the Corporation or, subject to the Act, the Corporation may pay a dividend in money or property.

9.2 Payment - A dividend payable in money shall be paid by cheque to the order of each registered holder of shares of the class or series in respect of which it has been declared and, unless the shareholder otherwise directs, mailed by prepaid ordinary mail to such registered holder at his last address appearing on the records of the Corporation. In the case of joint shareholders, unless they otherwise direct, the cheque shall be made payable to the order of all of such joint holders and mailed by prepaid ordinary mail to them at the address appearing on the records of the Corporation for them or, if addresses appear for more than one such joint holder, it shall be mailed to the first address so appearing. The mailing of such cheque as aforesaid, unless it is not honoured on presentation, shall satisfy and discharge the liability for the dividend to the extent of the aggregate of the sum represented by such cheque plus the amount of any tax which the Corporation is required to and does withhold. The board may prescribe, either generally or for a particular instance, the terms as to indemnity, reimbursement of expenses and evidence of non-receipt, upon which a replacement cheque may be issued to a person to whom a dividend cheque was sent and who claims that such cheque was not received or has been defaced, lost, stolen or destroyed.

## 10. NOTICES

10.1 Method of Giving Notices - Any notice, communication or other document required to be given by the Corporation to a shareholder, director, officer, member of a committee of the board or auditor of the Corporation pursuant to the Act, the regulations, the articles or by-laws or otherwise shall be sufficiently given to such person if:

- a) delivered personally to him, in which case it shall be deemed to have been given when so delivered;
- b) delivered to his recorded address, in which case it shall be deemed to have been given when so delivered;
- c) mailed to him at his recorded address by prepaid ordinary mail, in which case it shall be deemed to have been given on the fifth day after it is deposited in a post office or public letter box; or
- d) sent to him at his recorded address by any means of prepaid transmitted or recorded communication, in which case it shall be deemed to have been given when dispatched or

delivered to the appropriate communication company or agency or its representative for dispatch.

10.2 Notice to Joint Shareholders - Notice required to be given to a shareholder where two or more persons are registered as joint holders of any share shall be sufficiently given to all of them if given to any one of them.

10.3 Notices Given to Predecessors - Every person who by transfer, death of a shareholder, operation of law or otherwise becomes entitled to shares, is bound by every notice in respect of such shares which was duly given to the registered holder of such shares from whom his title is derived prior to entry of his name and address in the records of the Corporation and prior to his providing to the Corporation the proof of authority or evidence of his entitlement as prescribed by the Act.

10.4 Computation of Time - In computing the date when notice must be given under any provision requiring a specified number of days' notice of any meeting or other event, reference shall be made to the definition given to the word "day" in the Act.


10.5 Omissions and Errors - The accidental omission to give any notice to any shareholder, director, officer, member of a committee of the board or auditor, or the non-receipt of any notice by any such person or any error in any notice not affecting its substance shall not invalidate any action taken at any meeting to which the notice pertained or otherwise founded on such notice.

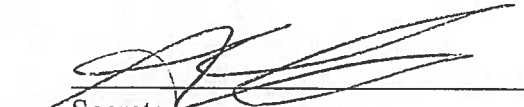
10.6 Waiver of Notice - Any shareholder, proxyholder, director, officer, member of a committee of the board or auditor may waive or abridge the time for any notice required to be given him, and such waiver or abridgement, whether given before or after the meeting or other event of which notice is required to be given shall cure any default in the giving or in the time of such notice, as the case may be. Any such waiver or abridgement shall be in writing except a waiver of notice of a meeting of shareholders or of the board or of a committee of the board, which may be given in any manner.

**11. EFFECTIVE DATE**

11.1 Effective Date - Subject to its being confirmed by the shareholders, this by-law shall come into force when enacted by the board, subject to the provisions of the Act.

**ENACTED** by the board and confirmed by the sole shareholder of the Corporation entitled to vote at a meeting of shareholders in accordance with the provisions of section 104(1) of the *Business Corporations Act* (Ontario) as of the 23rd day of April, 2013.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary

**BY-LAW NO. 2**

A by-law respecting the borrowing of money,  
the issuing of securities and the securing of liabilities by

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**  
(herein called the "Corporation")

**BE IT ENACTED** as a by-law of the Corporation as follows:

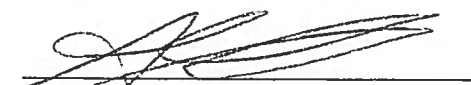
1. Borrowing Powers - Without limiting the borrowing powers of the Corporation as set forth in the Act, the board may, subject to the articles and any unanimous shareholder agreement, from time to time, on behalf of the Corporation, without the authorization of the shareholders:

- a) borrow money on the credit of the Corporation;
- b) issue, re-issue, sell or pledge debt obligations of the Corporation, whether secured or unsecured;
- c) subject to the Act, give a guarantee on behalf of the Corporation to secure performance of an obligation of any person; and
- d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the Corporation, owned or subsequently acquired, to secure any obligation of the Corporation.

2. Delegation of Powers - Subject to the Act, the articles, the by-laws and any unanimous shareholder agreement, the board may, from time to time, delegate any or all of the powers hereinbefore specified, to a director, a committee of directors or one or more officers of the Corporation.

**ENACTED** by the board and confirmed by the sole shareholder of the Corporation entitled to vote at a meeting of shareholders in accordance with the provisions of section 104(1) of the *Business Corporations Act* (Ontario) as of the 23rd day of April, 2013.

  
\_\_\_\_\_  
President

  
\_\_\_\_\_  
Secretary

**EXHIBIT "C"**  
**AUTHORIZING RESOLUTIONS**

**MIZRAHI DEVELOPMENTS (1451 WELLINGTON) INC.**  
(the "Corporation")

**RESOLUTION OF THE DIRECTOR**

**Resolution to Authorize Guarantee of Mizrahi Developments Inc.**

**RECITALS**

- A. The Corporation has the power and capacity to borrow money upon the credit of the Corporation, to issue securities of the Corporation and to mortgage and charge all or any of the real and personal property of the Corporation.
- B. The Corporation has the power and capacity to guarantee the obligations of others and has business relations with Mizrahi Developments Inc. (the "**Borrower**").
- C. The Corporation has the power and capacity to indemnify the indebtedness, obligations and liabilities of others and has business relations with Mizrahi Developments Inc. (the "**Borrower**").
- D. The director of the Corporation is of the opinion that it is in the interest of the Corporation to guarantee payment of the present and future indebtedness and liability of the Borrower.
- E. The director of the Corporation is of the opinion that it is in the interest of the Corporation to indemnify certain indebtedness and liabilities of the Borrower.
- F. The director of the Corporation wishes to authorize the execution and delivery of such documentation in favour of David Berry (the "**Lender**").

**RESOLVED THAT:**

- 1. The execution and delivery by the Corporation of the of the Term Sheet dated June 6, 2016 (the "**Credit Agreement**") issued by the Lender in favour of Mizrahi Developments Inc., be and the same is confirmed, ratified and approved.
- 2. The Corporation enter into, execute and deliver to the Lender each of the following documents (collectively, the "**Documents**"), substantially in the form and containing the terms and conditions of the draft documents presented to the directors of the Corporation, subject to such alterations, amendments or additions to which any officer or director of the Corporation may agree:
  - (a) Loan Agreement in the aggregate principal amount of \$10,000,000.00 entered into between Mizrahi Developments Inc., et. al and the Lender.

- (b) Guarantee with respect to the indebtedness and liability of Mizrahi Developments Inc. to Lender.
  - (c) General Security Agreement in favour of the Lender.
  - (d) Acknowledgment and Direction re Charge, to be held in escrow pursuant to the terms of the Loan Agreement.
  - (e) Assignment of Insurance.
  - (f) Assignment of Material Contracts.
  - (g) Environmental Indemnity.
  - (h) Postponement Agreement.
  - (i) Irrevocable Direction.
3. The execution by any officer or director of the Corporation of the Documents shall be conclusive proof of his/her agreement to any amendments or additions incorporated therein.
4. Any officer or director of the Corporation be and each of them is authorized to execute and deliver each of the Documents on behalf of the Corporation and each director and officer of the Corporation is authorized to execute all such other documents and writings and do such acts and things as may be necessary for fulfilling the obligations of the Corporation under the Credit Agreement and each of the Documents.
5. All acts and things heretofore done by any officer or director of the Corporation in respect of the foregoing matters be and the same are hereby ratified, confirmed and approved.

Pursuant to the *Business Corporations Act (Ontario)*, the foregoing resolution is hereby signed by the sole director of the Corporation, who is a resident Canadian, this 24<sup>th</sup> day of June, 2016.

  
Sam Mizrahi



# BALDWIN SENNECKE HALMAN LLP

BARRISTERS & SOLICITORS

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VICTORIA TOWER  
25 ADELAIDE STREET EAST  
TORONTO, ONTARIO M5C 3A1

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JEFFREY A. HALMAN

DIRECT: 416.601.1036  
FACSIMILE: 416.601.0655

jhalman@bashllp.com

June 29, 2016  
File No.: 574606

David Berry  
124 Park Road  
Toronto, ON M4W 2N7

- and to -

Stikeman Keeley Spiegel Pasternack LLP  
200 Front Street West, Suite 2300  
Toronto, ON M5V 3K2

**Attention: Michael Pasternack**

Dear Sirs:

**Re: Berry loan to Mizrahi Developments Inc. in respect of 1451 and 1445  
Wellington Street West, Ottawa**

We have acted as counsel to Mizrahi Developments Inc. (the "**Borrower**") and Mizrahi Development Group (1451 Wellington) Inc., and Sam Mizrahi (individually the "**Guarantor**" and collectively the "**Guarantors**"), (the Borrower and Guarantors collectively, the "**Credit Parties**"), in connection with a loan (the "**Loan**") made pursuant to a Term Sheet accepted June 6, 2016 (the "**Term Sheet**") issued by David Berry (the "**Lender**").

In acting as such counsel, we have examined the following documents:

**The Credit Parties (the Borrower and Guarantors)**

- (a) Term Sheet.
- (b) Promissory Notes.

- (c) Warrant.
- (d) Loan Agreement in the aggregate principal amount of \$10,000,000.00 granted by Borrower in favour of Lender in respect of certain assets located at 1451 Wellington Street West, Ottawa and 1445 Wellington Street West, Ottawa (collectively the "Property").
- (e) General Security Agreement by each of the Borrower and Mizrahi Development Group (1451 Wellington) Inc. in favour of Lender.
- (f) Postponement Agreement in favour of Lender.
- (g) Acknowledgment and Direction re Charge over 1451 Wellington Street West, Ottawa.
- (h) Environmental Indemnity.
- (i) Assignment of Material Contracts.
- (j) Assignment of Insurance.
- (k) Irrevocable Direction.

**Mizrahi Development Group (1451 Wellington) Inc., and Sam Mizrahi (the Guarantors)**

- (l) Guarantee of the indebtedness from Mizrahi Development Group (1451 Wellington) Inc. for all indebtedness under Loan Facility No. 1 and Loan Facility No. 2.
- (m) Guarantee of the indebtedness from Sam Mizrahi for all indebtedness under Loan Facility No. 2.
- (n) Postponement of Claim from Sam Mizrahi.

For the purposes of this opinion, the Term Sheet and the other Loan Documents are sometimes collectively referred to as the "**Documents**", and all capitalized terms not specifically defined herein have the same meanings as set out in the Loan Agreement.

We have examined originals or copies, certified or otherwise identified to our satisfaction, of the Documents, such public and corporate and/or partnership records, certificates, agreements, instruments and other documents and have considered such questions of law as we have deemed relevant and necessary as the basis for the opinions hereinafter expressed. In such examination and investigations, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as copies, certified or otherwise. We have also assumed that the Documents to which the Lender

is a signing party have been duly authorized, executed and delivered by the Lender and that each such Document constitutes a valid and legally binding obligation of the Lender.

Our opinion is limited to matters governed by the laws of the Province of Ontario and the federal laws of Canada applicable therein and does not extend to the laws of any other jurisdiction.

Based and relying upon the foregoing, we are of the opinion that:

1. The Borrower is a valid and subsisting corporation under the laws of the Province of Ontario.
2. Mizrahi Development Group (1451 Wellington) Inc. is a valid and subsisting corporation under the laws of the Province of Ontario.
3. Mizrahi Development Group (1451 Wellington) Inc. has the necessary power and authority and is duly qualified to own and operate the Property.
4. Each of the Borrower and Mizrahi Development Group (1451 Wellington) Inc. has all necessary power and authority to enter into those of the Documents executed by it and to observe and perform its obligations thereunder.
5. The execution, delivery and performance of each of the Documents required to be executed by each of the Borrower and Mizrahi Development Group (1451 Wellington) Inc. have been duly authorized by all necessary action and proceedings by it, and each has duly executed and delivered such Documents to the Lender.
6. The Documents executed by each of the Credit Parties constitute valid and legally binding obligations of each of the Borrower and Guarantors, as the case may be, enforceable against each of them in accordance with their terms.

Our opinion as to the enforceability of the Documents is subject to the following qualifications and reservations:

- (a) the enforceability of the Documents is subject to applicable bankruptcy, insolvency and other laws of general application limiting the enforcement of creditors' rights generally; and
- (b) no opinion is expressed as to any specific remedy that may be granted, imposed or rendered and, in particular, no opinion is expressed as to the availability of equitable remedies as such for the enforcement of any provision of any of the Documents.

This opinion shall enure to the benefit of and may be relied upon by (i) the Lender and all persons having an ownership interest in the Loan from time to time, and (ii) any Rating Agency in connection with any Securitization of the Loan.

Yours very truly,

*Baldwin Samuels Helman LLP*

**IRREVOCABLE DIRECTION**

**TO:** David Berry

**AND TO:** Stikeman Keeley Spiegel Pasternack LLP,  
its solicitors herein

**RE:** David Berry (the "**Lender**") loan (the "**Loan**") to Mizrahi Developments Inc. (the "**Borrower**") pursuant to a loan agreement between the Lender, the Borrower, Mizrahi Development Group (1451 Wellington) Inc. and Sam Mizrahi dated June \_\_, 2016 (as amended from time to time) in respect of a condominium project to be constructed on the property currently municipally known as 1445 Wellington and 1451 Wellington, Ottawa, Ontario (the "**Real Property**")

**IN CONSIDERATION** of the sum of \$2.00 paid to the Lender and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the undersigned does hereby irrevocably authorize and direct you to forward the net proceeds in connection with the Loan, after deduction of the Lender's solicitor's fees, to our solicitors, Baldwin Sennecke Halman, LLP and for so doing this shall be your good and valid authorization.

**DATED** as of the 24<sup>th</sup> day of June, 2016.

**MIZRAHI DEVELOPMENTS INC.**

Per: 

Name: Sam Mizrahi

Title: President

I have authority to bind the Corporation

UNDERTAKING

TO: MIZRAHI DEVELOPMENTS INC. ("MDI")  
FROM: DAVID BERRY  
RE: Loan Agreement

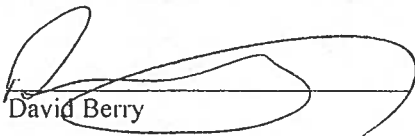
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Reference is made to a loan agreement dated of even date herewith between MDI, Mizrahi Development Group (1451 Wellington) Inc., David Berry and Sam Mizrahi (the "Agreement"). Capitalized terms used herein but not defined herein shall have the meanings ascribed thereto in the Agreement.

The undersigned undertakes to hold the following documents in escrow and only deal with same in accordance with the terms set out in the Agreement:

1. General Security Agreement provided by MDI in favour of David Berry;
2. General Security Agreement provided by Mizrahi Development Group (1451 Wellington) Inc. in favour of David Berry;
3. Irrevocable direction authorizing and directing the Construction Lender or Project solicitors, as the case may be, to remit any proceeds or funds from the Construction Lender to the Lender which Loan Facility No. 1 remains unpaid; and
4. Acknowledgment and Direction annexing a mortgage against the Property.

Dated this 26 day of June, 2016.

  
David Berry

**UNDERTAKING**

**TO:** MIZRAHI DEVELOPMENTS INC. ("MDI")  
**FROM:** STIKEMAN KEELEY SPIEGEL PASTERNAK LLP  
**RE:** Loan Agreement

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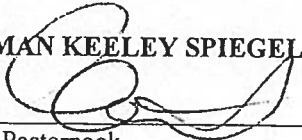
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The undersigned undertakes to hold the following document in escrow and only deal with same in accordance with the terms set out in the Agreement:

1. Acknowledgment and Direction annexing a mortgage against the Property; and
2. Irrevocable direction authorizing and directing the Construction Lender or Project solicitors, as the case may be, to remit any proceeds or funds from the Construction Lender to the Lender which Loan Facility No. 1 remains unpaid.

Dated this 29 day of June, 2016.

**STIKEMAN KEELEY SPIEGEL PASTERNAK LLP**

  
\_\_\_\_\_  
Michael Pasternack



## CLEAR CERTIFICATE / CERTIFICAT LIBRE

SHERIFF OF / SHÉRIF DE : CITY OF OTTAWA (OTTAWA)

CERTIFICATE # /  
N° DE CERTIFICAT : 28710217-9974089B

DATE OF CERTIFICATE /  
DATE DU CERTIFICAT : 2016-JUN-28

### SHERIFF'S STATEMENT

THIS CERTIFIES THAT THERE ARE NO ACTIVE WRITS OF EXECUTION, ORDERS OR CERTIFICATES OF LIEN FILED WITHIN THE ELECTRONIC DATABASE MAINTAINED BY THIS OFFICE IN ACCORDANCE WITH SECTION 10 OF THE *EXECUTION ACT* AT THE TIME OF SEARCHING AGAINST THE REAL AND PERSONAL PROPERTY OF:

### DÉCLARATION DU SHÉRIF

CE CERTIFICAT ATTESTE QU'IL N'Y A AUCUNE ORDONNANCE ACTIVE OU AUCUN BREF D'EXÉCUTION FORCÉE OU CERTIFICAT DE PRIVILÈGE ACTIF DANS LA BASE DE DONNÉES ÉLECTRONIQUE MAINTENUE PAR CE BUREAU AUX TERMES DE L'ARTICLE 10 DE LA *LOI SUR L'EXÉCUTION FORCÉE* AU MOMENT DE LA RECHERCHE VISANT LES BIENS MEUBLES ET IMMEUBLES DE :

### NAME SEARCHED / NOM RECHERCHÉ

#	PERSON OR COMPANY / PERSONNE OU SOCIÉTÉ	NAME OR SURNAME, GIVEN NAME(S) / NOM OU NOM DE FAMILLE, PRÉNOM(S)
1.	COMPANY / SOCIÉTÉ	MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

### CAUTION TO PARTY REQUESTING SEARCH:

- IT IS THE RESPONSIBILITY OF THE REQUESTING PARTY TO ENSURE THAT THE NAME SEARCHED IS CORRECT.
- BY VIRTUE OF THIS CERTIFICATE, THE SHERIFF IS ASSURING THAT THIS NAME WILL REMAIN CLEAR UNTIL THE END OF CLOSE OF THIS BUSINESS DATE, UNLESS THE SHERIFF IS DIRECTED OTHERWISE UNDER AN ORDER OF THE COURT.

### AVERTISSEMENT À LA PARTIE QUI DEMANDE LA RECHERCHE :

- IL INCOMBE À LA PARTIE QUI DEMANDE LA RECHERCHE DE S'ASSURER QUE LE NOM RECHERCHÉ EST EXACT.
- EN VERTU DU PRÉSENT CERTIFICAT, LE SHÉRIF ASSURE QUE CE NOM DEMEURE LIBRE JUSQU' À LA FIN DE CETTE JOURNÉE DE TRAVAIL, À MOINS DE RECEVOIR DES DIRECTIVES CONTRAIRES AUX TERMES D'UNE ORDONNANCE DU TRIBUNAL.

CHARGE FOR THIS CERTIFICATE /  
FRAIS POUR CE CERTIFICAT : CDN 11.50

SEARCHER REFERENCE /  
REFERENCE CONCERNANT  
L'AUTHEUR DE LA DEMANDE : 574606

# P. J. Dermody Insurance Brokers

Division of K. Morgan Henry-Churchill Insurance Brokers Limited  
7750 Birchmount Road, Unit#4, Markham, Ontario, L3R 0B4  
PHONE (905) 479-1100 FAX (905) 479-7911

Toll Free 1-877-DERMODY (337-6639)  
EMAIL paul@dermodyinsurance.ca

## CERTIFICATE OF INSURANCE

### This is to Certify to:

David Berry  
124 Park Road  
Toronto, Ontario  
M4W2N7

**Insurance Company:** MARKEL CANADA LIMITED

**Name of Insured:** MIZRAHI DEVELOPMENT GROUP(1451 Wellington) INC.

**Location and Operations to which this Certificate applies:** Vacant Building/Property  
LOCATION 1: 1451 Wellington Street West, Ottawa, ON K1Y 2X3

Type of policy	Policy#	Expiry Date	Limits of Liability
Commercial General Liability Public Liability incl. XX excl. Product & completed operations	197736	2016/12/06	\$5,000,000 aggregate. Bodily injury & property damage
Building Insurance – Named Perils Form - \$2,500 Deductible	197736	2016/12/06	\$300,000

The certificate holder will be included as an additional insured with respect to the Commercial General Liability for the insureds operations at the location mentioned above and will also be included as Loss Payee with respects to the Building insurance.

This certificate is to ensure that policies of insurance herein described have been issued to the insured named above and are in force on this date. This insurance afforded is subject to the terms, conditions, and exclusions of the applicable policy. This certificate is issued as a matter of information only and confers no right on the holder and imposes no liability on the Insurer. The insurer will endeavor to mail to the holder of this certificate 30 days written notice of any material change in or cancellation of these policies, but assumes no responsibility for failure to do so.

DATE: June 22, 2016

SIGNATURE: *Paul Dermody*

PER: P. J. DERMODY INSURANCE BROKERS  
Paul Dermody



This is Exhibit S to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits

**THIS AMENDING AGREEMENT** made this 12 day of October 2021 (the “**Effective Date**”);

**BETWEEN:**

**MIZRAHI DEVELOPMENTS INC.** (hereinafter, the “**Borrower**”)

-and-

**DAVID BERRY** (hereinafter, the “**Lender**”)

-and-

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.** (hereinafter, “**1451**”)

-and-

**SAM MIZRAHI** (hereinafter, “**Sam**”)

**WHEREAS** the Borrower, the Lender, 1451, and Sam entered in a loan agreement (the “**Loan Agreement**”) dated June 29, 2016, pursuant the Lender extended credit facilities in a total principal amount of \$10,000,000.00 to the Borrower (with 1451 and Sam serving as guarantors as outlined in the Loan Agreement) in connection to the development of a condominium complex located at 1451 Wellington Street, Ottawa, Ontario;

**AND WHEREAS** the Borrower, the Lender, 1451, and Sam wish to amend the Loan Agreement as outlined in this Amending Agreement.

**NOW THEREFORE THIS AGREEMENT WITNESSETH THAT** in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower, the Lender, 1451, and Sam agree as follows:

1. All terms used and not defined in this Amending Agreement shall bear the respective definitions assigned to them in the Loan Agreement.
2. The following amendments shall apply to the Loan Agreement:

(a) Section 2.3 shall now read as follows:

**2.3 Term.** The Loan Facility Number 1 shall mature on the date of execution of the APS’s (as defined below) (the “**Maturity Date**”).

(b) Section 2.6 shall now read as follows:

**2.6. Term.** The Loan Facility Number <sup>2</sup> shall mature on the Maturity Date.

(c) Section 3.3 shall now read as follows:

**3.3 Payment Options.** The full amount of the outstanding principal and accrued interest on Loan Facility No. 1 and Loan Facility No. 2 plus any other indebtedness owing in connection to Loan Facility No. 1 and Loan Facility No. 2 shall be repaid and satisfied in the manner and order set forth below (unless otherwise agreed upon by the Lender):

(i) A payment of \$4,000,000.00 towards outstanding principal and interest on Loan Facility No. 1 (receipt of payment confirmed on November 4, 2019).

(ii) The transfer to the Lender by Sam of all the issued and outstanding shares in



2659100 Ontario Inc. (a corporation controlled by Sam) (the “**Thrive Shares**”) which holds legal and beneficial ownership to 21,298,566 common shares in Terrafarma Inc. (“**Terrafarma**”). Documentation necessary to affect the transfer of the Thrive Shares shall be executed within thirty (30) days of the execution of this Amending Agreement (the “**Closing of the Thrive Share Transfer**”) and the purchase price of the Thrive Shares shall be offset against principal and/or interest amounts accrued under Loan Facility No. 1 and Loan Facility No. 2 outstanding as of the Maturity Date.

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The purchase price of the Thrive Shares shall be based off a total Terrafarma valuation of \$75,000,000.00 CDN and calculated in accordance with the Thrive Shares’ percentage of the total number of outstanding and issued shares in the capital of Terrafarma (as per the Terrafarma share registry as of the Effective Date) and on a fully diluted basis.

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As a result of the delay between the execution of this Amending Agreement and the Closing of the Thrive Share Transfer, it is understood upon that upon execution of this Amending Agreement Sam shall provide the Lender with a full and binding proxy (the “**Proxy**”) in connection to the Thrive Shares. Documentation confirming the Proxy shall be executed concurrently with the execution of this Amending Agreement.

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As of the Effective Date, a dispute exists between 2659100 Ontario Inc. and Terrafarma with respect to an additional 3,701,434 common shares in the capital of Terrafarma which were legally and beneficially owned by 2659100 Ontario Inc. but were cancelled by Terrafarma in advance of the Effective Date (the “**Disputed Shares**”). As of the Effective Date, 2659100 Ontario Inc. and/or Sam agree to forego any and all interests that 2659100 Ontario Inc. and/or Sam (or any entities in anyway connected to 2659100 Ontario Inc. and/or Sam) may have or could claim in the Disputed Shares. For greater certainty, should the Disputed Shares be returned to 2659100 Ontario Inc. and/or the Lender or a corporation controlled by the Lender it understood that no additional consideration should be owing to Sam.

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The parties further agree that except as necessary per relevant regulatory and/or corporate requirements (including any requirement to notify Terrafarma of a change of control of 2659100 Ontario Inc.) or otherwise agreed to by the Lender, the transfer of the Thrive Shares and all information pertaining to the transfer of the Thrive Shares as highlighted herein shall remain confidential.

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- (iii) A purchase price reduction by way of an offset of outstanding interest accrued to the Maturity Date (for either or both of Loan Facility No.1 and/or Loan Facility No. 2) and the Lender’s portion of Net Profits towards the Lender’s purchase of a two (2) residential penthouse units (unit 1102 and unit 1103) in the Project (the “**Units**”), based upon the sale price of \$900 per square foot for space on the twelfth (12<sup>th</sup>) floor and \$875 per square foot for space on the eleventh (11<sup>th</sup>) floor. With respect to the purchase of the Units, the Lender covenants to execute with the Borrower (or a related) agreements of purchase and sale (the “**APS’s**”) concurrent with the execution of this Amending Agreement. Furthermore, interest accrued in connection to Loan Facility No. 1 and Loan Facility No. 2 shall be applied towards any down payment required for the purchase the Units (to a maximum of 25 percent and in accordance with a schedule set out in the APS’s) and the remainder of the purchase price of the Units. Any amount of the purchase price of the Units owing following the application of accrued interest, Principal, and Net Profits (as set out herein), shall be paid by the Lender upon the closing of the purchase of the Units.
- 



Notwithstanding any of the foregoing, if registration of the Project and closing of the purchase of the Units has not occurred within eighteen (18) months of the date of execution of the APS's, all interest and/or principal amounts under Loan Facility No. 1 and Loan Facility No. 2 applied towards the purchase price of the Units shall recommence to accrue interest at rates as set out in the Loan Agreement on the day following eighteen (18) month anniversary of the date of execution of the APS's and until such point as registration of the Project and closing of the purchase of the Units occurs.

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- (iv) A credit in the amount of \$2,566,200.00 (the “**One Credit**”) applied towards the Lender’s acquisition of at least two (2) residential units (the “**One Units**”) in a condominium, hotel, and retail development located at 1 Bloor Street West, Toronto, Ontario M4W 1A3 (the “**One**”) and developed by \_\_\_\_\_, a corporation controlled by Sam (the “**One Developer**”). The One Units shall be agreed upon by the Lender, Sam, and the One Developer and are further described on Schedule A to this Amending Agreement. Standard purchase agreements for the One Units along with the agreement relating to the One Credit will be executed concurrently with the execution of this Amending Agreement. It is further understood that the One Credit is equal to the difference between the purchase price of unit 1101 (“**Unit 1101**”) and 1104 (“**Unit 1104**”) (together, “**1101 and 1104**”) in the Project (further described on Schedule B hereto) based upon the price of \$900 per square foot for space on the twelfth (12<sup>th</sup>) floor and \$875 per square foot for space on the eleventh (11<sup>th</sup>) floor, and a sale price of the highest per square foot per square foot price received by the Lender for 1101 and 1104 pursuant to agreements of purchase and sale executed and dated on February 26, 2019 (Unit 1101) and April 23, 2019 (Unit 1104) (together, the “**1101 and 1104 APS’s**”).
- 

Redacted copies of the 1101 and 1104 APS’s are attached as Schedule C to this Agreement. Despite the long-standing relationship between the Lender and Sam, the parties acknowledge that the errors and omissions do occasionally occur in fast-paced real estate transactions, and as such the parties agree that following penalties will apply with respect to inaccurate and/or incorrect information and/or documentation received by the Lender from the Borrower and/or Sam (or any other relevant and connected entity) in connection to Unit 1101 and Unit 1104 and the sales of Unit 1101 and Unit 1104 (including the 1101 and 1104 APS’s). In the event that:

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- (a) the actual sales price of Unit 1101 and/or Unit 1104 is less than twenty (20) percent greater than their individual or combined sale price(s) as outlined in the 1101 and 1104 APS’s, the One Credit will be increased by the exact dollar amount of the difference;
- 
- (b) the actual sales price of Unit 1101 and/or Unit 1104 is twenty (20) percent greater (or more) than their individual or combined sales price(s) as outlined in the 1101 and 1104 APS’s, the One Credit will be increased to \$5,132,400.00; or
- 
- (c) Unit 1101 and/or Unit 1104 were not sold as of the Effective Date, the One Credit will be increased to \$5,132,400.00.
- 

(d) Section 3.4 shall now read as follows:

---

**3.4 Net Profits.** It is understood by the parties hereto that Net Profits for the Project may not have been finally determined by that point in time when the Lender is required to make a final payment for the Unit. In the event that Net Profits for the Project have not been finally determined by the respective time period as aforesaid, the parties shall mutually agree on an estimate of Net Profits for the Project (the "**Interim Net Profit Calculation**"), and such estimate shall be used for determining the monetary amount to be applied towards the purchase price of the Units (the "**Interim Applied Amount**"). In the event that the parties cannot come to an agreement on the Interim Net Profit Calculation, the parties agree to appoint MNP LLP (or such other firm as the Lender and Borrower may determine should MNP LLP be unable or unwilling to act) to make such estimation, which shall be final and binding until the Adjustment Date (as defined below).

The Lender shall execute a promissory note (the "**Unit Purchase Note**") on the closing of the purchase of the Units promising to pay an amount equal to the Interim Applied Amount. The Unit Purchase Note shall contain a right of set-off. Once the Final Net Profit Calculation (as defined below) is determined, the Lender shall have the right to set-off his rights to the Net Profits (as determined pursuant to the Final Net Profit Calculation) against the amounts owing under the Unit Purchase Note. Any difference between the Interim Net Profit Calculation and the Final Net Profit Calculation shall be adjusted as set out below.

At such point in time when Net Profits can be finally determined (or such earlier date should the Lender notify the Borrower in writing that he wishes to finally calculate Net Profits at that point in time) (the "**Adjustment Date**"), the Borrower, with the approval of the Lender, shall engage an auditor to provide an opinion as to the final determination of Net Profits, which determination shall be final and binding (the "**Final Net Profit Calculation**"). Upon such determination, to the extent that the Interim Net Profit Calculation exceeds the Final Net Profit Calculation, the Lender shall pay to the Borrower (or 1451), within 10 days of the determination of the Final Net Profit Calculation, twenty-five percent (25%) of the difference between the Interim Net Profit Calculation and the Final Net Profit Calculation. To the extent that the Final Net Profit Calculation exceeds the Interim Net Profit Calculation, the Borrower shall pay to the Lender, within 10 days of the determination of the Final Net Profit Calculation, twenty-five percent (25%) of the difference between the Final Net Profit Calculation and the Interim Net Profit Calculation. This section shall survive termination or expiration of this Agreement without limit of time.

(e) Section 3.6 shall now read as follows:

**3.6 DELETED**

3. The Borrower, the Lender, 1451, and Sam hereby acknowledge and agree that the terms of the Loan Agreement are in all other respects ratified and confirmed and remain in full force and effect unamended.

[Signature Page to Follow]

**IN WITNESS WHEREOF** the Parties have executed this Amending Agreement as of the above.

**MIZRAHI DEVELOPMENTS INC.**

By: 

Name: Sam Mizrahi

Title: President



**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

By:

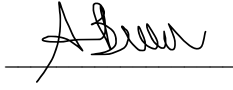


\_\_\_\_\_  
Name: Sam Mizrahi

Title: President



\_\_\_\_\_  
**SAM MIZRAHI**



\_\_\_\_\_  
**Witness**



\_\_\_\_\_  
**DAVID BERRY**



\_\_\_\_\_  
**Witness**

**SCHEDULE A**

**SCHEDULE B**

**SCHEDULE C**

This is Exhibit T to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. Ha", is written over a light blue rectangular background.

A Commissioner for taking affidavits

**SUPPLEMENTARY AGREEMENT**

This agreement ("**Agreement**") is made the 28 day of June, 2016 (the "**Effective Date**").

**BETWEEN: DAVID BERRY**, of the City of Toronto in the Province of Ontario

(hereinafter referred to as "**David**")

**AND SAM MIZRAHI**, of the City of Toronto in the Province of Ontario

(hereinafter referred to as "**Sam**")

**AND MIZRAHI (128 HAZELTON) INC.**, an Ontario corporation

(hereinafter referred to as "**Hazelton Inc.**")

**RECITALS**

**WHEREAS** David, Sam, Mizrahi Developments Inc. ("**MDI**") and Mizrahi Development Group (1451 Wellington) Inc. ("**Wellington Inc.**") have entered into a term sheet (the "**Term Sheet**") whereby David has agreed to loan MDI the aggregate amount of ten million dollars (\$10,000,000) (the "**Loan Transaction**");

**AND WHEREAS** on or about the date of execution of this Agreement, David, Sam, MDI and Wellington Inc. have, or shall, enter into a loan agreement, personal guarantee, general security agreements and other ancillary documents to consummate the Loan Transaction;

**AND WHEREAS** David has executed an Agreement of Purchase and Sale, as the same may be amended from time to time (the "**APS**") for the purchase of Suite PH 901, at 128 Hazelton Avenue, Toronto (the "**Lender's Unit**"), being a condominium project to be developed by Hazelton Inc., a company affiliated with Sam;

**AND WHEREAS** in the event that the closing of the Lender's Unit occurs before all amounts due and owing pursuant to Loan Facility #2 have been repaid to David in full, Sam has agreed to provide a bridge loan whereby Sam will pay to Hazelton Inc. any and all amounts due and owing by David to Hazelton Inc. for the Lender's Unit pursuant to the APS up to a maximum amount of that amount of principal that remains outstanding under Loan Facility #2 plus all accrued interest (the "**Mizrahi Bridge Payment**");

**AND WHEREAS** in order to guarantee repayment of the Loan Facility #2, Sam has agreed to execute a personal guarantee in favour of David (the "**Sam Personal Guarantee**");

**AND WHEREAS** in the event that Sam fails to provide the Mizrahi Bridge Payment and/or provide payment pursuant to the Sam Personal Guarantee, or if any amounts remain due and owing to David on account of Loan Facility #1 and/or Loan Facility #2 (including all interest accrued thereon), Sam, as a director and officer of Hazelton Inc., has agreed that David shall not be required to make any additional payments to Hazelton Inc. (including its successors and/or assignees) for the purchase of the Lender's Unit, whether on account of the final closing of the purchase of the Lender's Unit or otherwise (the "**Payment Postponement**");

**AND WHEREAS** in the event that any amounts remain due and owing to David on account of Loan Facility #1, and after Sam provides the Mizrahi Bridge Payment to Hazelton Inc. (or its successors or assigns (per Section 2 above), there remains any amounts owing to Hazelton Inc. on account of the final closing (or otherwise) of the Lender's Unit, David shall be entitled to use any and all cash and/or shares of Yappa Corp. held in escrow (as further described in this Agreement) to fund such remaining payment;

**AND WHEREAS** the Bridge Loan, the Sam Personal Guarantee and the Payment Postponement are intended to be confidential in nature;



NOW THEREFORE, in consideration of the background, the mutual covenants contained herein, and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the Parties), the Parties agree as follows:

#### ARTICLE 1 – DEFINED TERMS

Capitalized terms used herein but not defined herein shall have the meanings ascribed thereto in the Term Sheet.

#### ARTICLE 2 - BRIDGE LOAN

In the event that the final closing of the Lender's Unit occurs before Loan Facility #1 and Loan Facility #2 are repaid to David in full, Sam unconditionally covenants and agrees to pay to Hazelton Inc. (or any successors or assignees) any and all amounts due and owing by David to Hazelton Inc. for the Lender's Unit pursuant to the APS (such payment referred to herein as the "Mizrahi Bridge Payment") up to a maximum amount of that amount of principal that remains outstanding under Loan Facility #2 plus all accrued interest, and such Mizrahi Bridge Payment shall bear the following terms:

- (i) The Mizrahi Bridge Payment will bear interest at a maximum rate of 5% per annum (for a maximum of eighteen (18) months from the date of advance of the Mizrahi Bridge Payment (the "Interest End Date")), calculated and compounding annually, and payable on the Mizrahi Bridge Repayment Date (as defined below). It is understood that notwithstanding that the Mizrahi Bridge Repayment Date may occur after the Interest End Date, the Mizrahi Bridge Payment shall only bear interest for a maximum of eighteen (18) months from the date of advance of the Mizrahi Bridge Payment, and after such time shall be non-interest bearing. Notwithstanding the foregoing, it is understood that Sam will obtain a credit facility in order to provide the Mizrahi Bridge Payment, and, in connection therewith, Sam agrees to use his best efforts to obtain the credit facility to support the Mizrahi Bridge Payment at the best possible rate of interest and David shall pay such favourable rate of interest (up to a maximum rate of 5% per annum, as set out above);
- (ii) Repayment of the Mizrahi Bridge Payment by David to Sam shall occur immediately subsequent to full confirmed repayment by the Borrower to David of all amounts due and owing to David pursuant to Loan Facility #1 and Loan Facility #2 (such repayment date referred to as the "Mizrahi Bridge Repayment Date").

In connection with the foregoing, Hazelton Inc. agrees that, upon notice by David that Loan Facility #1 and/or Loan Facility #2 has not been repaid in full, notwithstanding anything to the contrary contained in the APS, (a) Hazelton Inc. (or any successor or assignee) shall seek any and all amounts due and owing to Hazelton Inc. (or any successor or assignee) for the final closing of the Lender's Unit from Sam, (b) David's rights under the APS shall not be affected in any way, and (c) the final closing of the Lender's Unit will be completed notwithstanding that funds for said closing may not have been provided by Sam.

#### ARTICLE 3 - YAPPN SHARES

In the event that:

- (i) any amounts remain due and owing to David on account of the Loan Facility #1 and/or Loan Facility #2, and
- (ii) after Sam provides the Mizrahi Bridge Payment to Hazelton Inc. (or its successors or assigns (per Section 2 above), there remains any amounts owing to Hazelton Inc. on account of the final closing (or otherwise) of the Lender's Unit (the "Remaining Fees"),

David shall be entitled to use any and all cash and/or Yappn Shares (being common shares of Yappn Corp.) held in escrow (as same is detailed in the amending agreement dated April 28, 2016 between David and Hazelton Inc. amending the terms of the APS (the "**Amending Agreement**")) up to a maximum amount of the Remaining Fees, to pay such Remaining Fees. In the event David obtains Yappn Shares from escrow in order to fund such Remaining Payment, the value attributed to such Yappn Shares shall be equal to the average VWAP per Yappn Share for the period covering the ten (10) trading days immediately preceding the date that David obtains such shares from escrow. "VWAP" means, for any date, the price determined by the first of the following clauses that applies:

- (a) the dollar volume-weighted average price of the Yappn Shares in the U.S. over-the-counter market on the electronic bulletin board for such shares during the Trading Period as reported by Bloomberg, L.P.;
- (b) the dollar volume-weighted average price for the Yappn Shares on any other trading market during the Trading Period as reported by Bloomberg, L.P.;
- (c) if no dollar volume-weighted average price is reported for the Yappn Shares by Bloomberg, L.P. for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for the Yappn Shares as reported by OTC Markets Group in the OTC Pink marketplace; and
- (d) if the VWAP cannot be calculated for the Yappn Shares on a particular date on any of the foregoing bases, the VWAP of the Yappn Shares shall be the fair market value of the Yappn Shares on such date as determined by an independent appraiser selected in

#### **ARTICLE 4 PERSONAL GUARANTEE**

In the event that Loan Facility #2 is not repaid to David in full (including any and all accrued interest thereon) by the expiration of the Loan Facility #2 Term, or if Sam fails to provide the Mizrahi Bridge Payment, David may use all legal remedies available to him in order to enforce the Sam Personal Guarantee.

#### **ARTICLE 5 PAYMENTS POSTPONED**

In the event that Sam fails to provide the Mizrahi Bridge Payment and/or provide payment pursuant to the Sam Personal Guarantee, or if any amounts remain due and owing to David on account of Loan Facility #1 and/or Loan Facility #2 (including all interest accrued thereon), Sam, as a director and officer of Hazelton Inc., confirms and agrees that David shall not be required to make any additional payments to Hazelton Inc. (including its successors and/or assignees) for the purchase of the Lender's Unit, whether on account of the final closing of the purchase of the Lender's Unit or otherwise. Sam agrees that (a) Hazelton Inc. (or any successor or assignee) shall seek any and all amounts due and owing to Hazelton Inc. (or any successor or assignee) for the final closing of the Lender's Unit from Sam, (b) David's rights under the APS shall not be affected in any way, and (c) the final closing of the Lender's Unit will be completed notwithstanding that funds for said closing may not have been provided by Sam.

#### **ARTICLE 6 - MISCELLANEOUS PROVISIONS**

##### **6.1 Amendment:**

This Agreement may be amended, modified or supplemented only by a written agreement signed by each party hereto.

##### **6.2 Waiver of Rights:**

Any waiver of, or consent to depart from the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

##### **6.3 Choice of Law:**

This Agreement shall be construed by, interpreted and enforced in accordance with the laws of the province of Ontario. The parties agree that the courts located in Toronto, Ontario shall be the exclusive forum for the resolution of any dispute arising from or relating to this Agreement. Each party hereby consents to the jurisdiction and venue of any such Ontario court.

**6.4 Assignment:**

Neither party may assign this Agreement without the prior written consent of the other party, except that David shall have the right to assign all or any part of this Agreement at any time after a period of one (1) year following the date of the initial advance of funds pursuant to the Loan Transaction.

**6.5 Severability:**

Nothing contained in this Agreement shall be construed as requiring any act contrary to the law. In the event there is a conflict between any provision of this Agreement and any applicable statute, law or regulation, the latter shall prevail and, within sixty (60) days of any such conflict coming to their attention, the parties shall confer to negotiate in good faith to modify this Agreement to the extent necessary to make the terms valid and enforceable.

**6.6 Notice:**

Any notice, demand or other communication (in this Article, a "notice") required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if, or

- (a) delivered in person during usual business hours of the recipient on a business day in Toronto, Canada ("**Business Day**") and left with a receptionist or other responsible employee of the recipient at the applicable address set forth below;
- (b) sent by prepaid first class mail; or
- (c) sent by any electronic means of sending messages, including email transmission, which produces a record ("**Transmission**") during normal business hours on a Business Day, charges prepaid and confirmed by prepaid first class mail;

in the case of a notice to Sam, addressed to him at:

189 Forest Hill Road  
Toronto, Ontario  
M5P 2N3  
Email: sam@mizrahidevelopments.ca

in the case of a notice to David, addressed to him at:

124 Park Rd.  
Toronto, Ontario  
M4W 2N7  
Email: davidmmberry@rogers.com

Each notice sent in accordance with this Article shall be deemed to have been received:

- (a) on the day it was delivered; or
- (b) on the third Business Day after it was mailed (excluding any Business Day which there existed any general interruption of postal services due to strike, lockout or other cause); or
- (c) on the same day it was sent by Transmission, or on the first Business Day thereafter if the day on which it was sent by transmission was not a Business Day.

Any Party may change its address for notice by giving notice to the other Party.

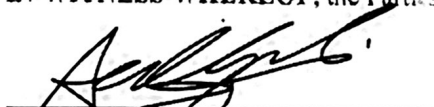
6.7 Term

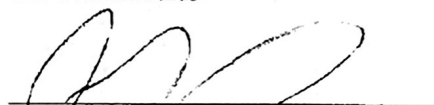
This Agreement shall automatically terminate upon repayment to David of all amounts due and owing pursuant to Loan Facility #1 and Loan Facility #2, but shall remain in full force and effect until such time.

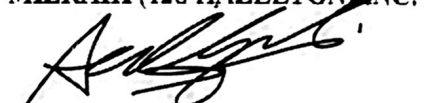
6.8 Notwithstanding

This Agreement shall be interpreted and enforced in accordance with its terms notwithstanding any "entire agreement" or similar clause which may be contained in any Loan Transaction document.

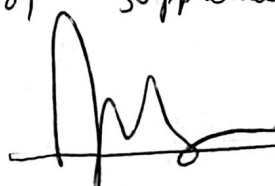
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.


  
\_\_\_\_\_  
SAM MIZRAHI

  
\_\_\_\_\_  
DAVID BERRY

MIZRAHI (128 HAZELTON) INC.  
  
\_\_\_\_\_  
Sam Mizrahi  
President

As representative of  
Mizrahi developments  
I acknowledge this  
is the only copy  
of Supplementary agreement

  
\_\_\_\_\_  
Josh Lax  
VP Development  
mizrahi developments

 June 28/16  
\_\_\_\_\_  
witness

Ashley  
Ashley Brate  
Concierge 133 Hazelton

**CONFIDENTIALITY AGREEMENT**

This agreement ("**Agreement**") is made the 28 day of June, 2016 (the "**Effective Date**").

**BETWEEN: DAVID BERRY**, of the City of Toronto in the Province of Ontario  
(hereinafter referred to as "**David**")

**AND SAM MIZRAHI**, of the City of Toronto in the Province of Ontario  
(hereinafter referred to as "**Sam**")

**RECITALS**

**WHEREAS** David, Sam, Mizrahi Developments Inc. ("**MDI**") and Mizrahi Development Group (1451 Wellington) Inc. ("**Wellington Inc.**") have entered into a term sheet (the "**Term Sheet**") whereby David has agreed to loan MDI the aggregate amount of ten million dollars (\$10,000,000) (the "**Loan Transaction**");

**AND WHEREAS** on or about the date of execution of this Agreement, David, Sam, MDI and Wellington Inc. have, or shall, enter into a loan agreement, personal guarantee, general security agreements and other ancillary documents to consummate the Loan Transaction;

**AND WHEREAS** David, Sam and Mizrahi (128 Hazelton) Inc. entered into a Supplementary Agreement relating to certain supplemental security and obligations with respect to the Loan Transaction, which Supplementary Agreement is intended to be strictly confidential

**NOW THEREFORE**, in consideration of the background, the mutual covenants contained herein, and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the Parties), the Parties agree as follows:

**SECTION 1 - CONFIDENTIALITY**

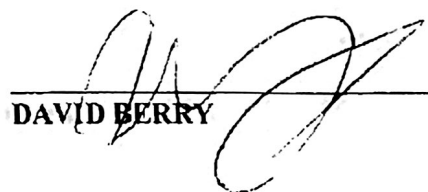
It is understood by the parties hereto that the Supplementary Agreement is intended to be confidential in nature. In the event that it has been finally determined by a court of competent jurisdiction from which no appeal lies that David has disclosed the existence and terms of the Supplementary Agreement by delivering a signed copy of the Supplementary Agreement to any third parties who were not otherwise aware of the Supplementary Agreement, David shall forfeit (i) repayment of all amounts due and owing under Loan Facility #1 and Loan Facility #2, and (ii) his right to exercise the warrant which shall be delivered to him on consummation of the Loan Transaction entitling David to obtain twenty five percent (25%) of the Net Profits in the Project.

Notwithstanding the foregoing, David shall be entitled to disclose the existence and/or terms of the Supplementary Agreement and deliver a copy of same to his accountants, lawyers and other professional advisors (on a need-to-know basis), and such disclosure shall not be considered a violation of this Section 1. In addition, disclosure of the existence and/or terms of the Supplementary Agreement by David (which includes by way of delivering a copy of same) with the consent of Sam, or disclosure of the existence and/or terms of the Supplementary Agreement by David (which includes by way of delivering a copy of same) subsequent to any disclosure of the Supplementary Agreement by Sam, or disclosure of the existence and/or terms of the Supplementary Agreement by David (which includes by way of delivering a copy of same) pursuant to an order of a court of competent jurisdiction, or disclosure of the existence and/or terms of the Supplementary

Agreement by David (which includes by way of delivering a copy of same) as required by law, or disclosure of the existence and/or terms of the Supplementary Agreement by David (which includes by way of delivering a copy of same) in connection with enforcement of this Supplementary Agreement or any other agreement or document delivered in connection with the Loan Transaction, shall not be considered a violation of this Section 1.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

  
\_\_\_\_\_  
SAM MIZRAHI

  
\_\_\_\_\_  
DAVID BERRY

This is Exhibit U to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read 'R. S. Ha', is centered within the upper portion of the box.

A Commissioner for taking affidavits

Loan Balance Outstanding including interest less Thrive Shares	9,052,949
Less:	
Two Ottawa Units	8,197,675
Two Bloor Units	3,421,753
Total Credits	<u>11,619,428</u>
Balance Outstanding	<u>- 2,566,479</u>

Loan A - \$4 million, June 6 2016 - Nov 4, 2019, 14% Annual				Rate	14%		
		Days	Principal	Interest	Principal + Interest		
29-Jun-16	6-Jun-17	342	\$ 4,000,000.00	\$ 524,712.33	\$ 4,524,712.33		
6-Jun-17	6-Jun-18	365	\$ 4,524,712.33	\$ 633,459.73	\$ 5,158,172.05		
6-Jun-18	6-Jun-19	365	\$ 5,158,172.05	\$ 722,144.09	\$ 5,880,316.14		
6-Jun-19	4-Nov-19	151	\$ 5,880,316.14	\$ 340,575.02	\$ 6,220,891.17	\$4 million repaid Nov 4 2019	
4-Nov-19	6-Jun-20	215	\$ 2,220,891.17	\$ 183,147.46	\$ 2,404,038.63		
6-Jun-20	6-Jun-21	365	\$ 2,404,038.63	\$ 336,565.41	\$ 2,740,604.04		
6-Jun-21	12-Oct-21	128	\$ 2,740,604.04	\$ 134,552.40	\$ 0.00	\$7,257,575.87 of Thrive Shares repayment on October 12, 2021 (\$2,875,156.43 used against Loan A and \$4,382,419.44 used against Loan B)	
12-Oct-21	12-Apr-23	547	\$ 0.00	\$ -	\$ 0.00		
12-Apr-23	30-Apr-24	384	\$ 0.00	\$ 0.00	\$ 0.00		
				\$ 2,875,156.43			
Days	1,931	2,862					
Loan B - \$6 million, June 6 2019 - Present, 14% Annual							
		Days	Principal	Interest	Principal + Interest		
29-Jun-16	6-Jun-17	342	\$ 6,000,000.00	\$ 787,068.49	\$ 6,787,068.49		
6-Jun-17	6-Jun-18	365	\$ 6,787,068.49	\$ 950,189.59	\$ 7,737,258.08		
6-Jun-18	6-Jun-19	365	\$ 7,737,258.08	\$ 1,083,216.13	\$ 8,820,474.21		
6-Jun-19	6-Jun-20	366	\$ 8,820,474.21	\$ 1,238,249.59	\$ 10,058,723.80		
6-Jun-20	6-Jun-21	365	\$ 10,058,723.80	\$ 1,408,221.33	\$ 11,466,945.13		
6-Jun-21	12-Oct-21	128	\$ 11,466,945.13	\$ 562,979.88	\$ 7,647,505.57	\$7,257,575.87 of Thrive Shares repayment on October 12, 2021 (\$2,875,156.43 used against Loan A and \$4,382,419.44 used against Loan B)	
12-Oct-21	6-Jun-22	237	\$ 7,647,505.57	\$ -	\$ 7,647,505.57	Interest Fee for 18 months	
6-Jun-22	12-Apr-23	310	\$ 7,647,505.57	\$ -	\$ 7,647,505.57	Interest Fee for 18 months	
12-Apr-23	6-Jun-23	55	\$ 7,647,505.57	\$ 161,330.94	\$ 7,808,836.51		
6-Jun-23	30-Apr-24	329	\$ 7,808,836.51	\$ 985,410.99	\$ 8,794,247.50		
30-Apr-24	6-Jun-24	37	\$ 8,794,247.50	\$ 124,806.03	\$ 8,919,053.53	9162628.5	-\$ 243,574.97
				\$ 7,301,472.97			
Days	1,931	2,862					
		Days	Principal	Interest	Principal + Interest		
29-Jun-16	29-Jun-17	365	\$ 6,000,000.00	\$ 840,000.00	\$ 6,840,000.00		
29-Jun-17	29-Jun-18	365	\$ 6,840,000.00	\$ 957,600.00	\$ 7,797,600.00		
29-Jun-18	29-Jun-19	365	\$ 7,797,600.00	\$ 1,091,664.00	\$ 8,889,264.00		
29-Jun-19	29-Jun-20	366	\$ 8,889,264.00	\$ 1,247,906.54	\$ 10,137,170.54		
29-Jun-20	29-Jun-21	365	\$ 10,137,170.54	\$ 1,419,203.88	\$ 11,556,374.42		
29-Jun-21	12-Oct-21	105	\$ 11,556,374.42	\$ 465,421.11	\$ 7,639,376.08		
12-Oct-21	29-Jun-22	260	\$ 7,639,376.08	\$ -	\$ 7,639,376.08		
29-Jun-22	12-Apr-23	287	\$ 7,639,376.08	\$ -	\$ 7,639,376.08		
12-Apr-23	12-Apr-24	366	\$ 7,639,376.08	\$ 1,069,512.65	\$ 8,708,888.73		
12-Apr-24	24-Jul-24	103	\$ 8,708,888.73	\$ 344,060.75	\$ 9,052,949.49		
				\$ 7,435,368.93			



This is Exhibit V to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits

September 13, 2024

**DELIVERED VIA EMAIL**

Jerome R. Morse  
Morse Shannon LLP  
133 Richmond Street West, Suite 501  
Email: [jmorse@morseshannon.com](mailto:jmorse@morseshannon.com)

Dear Counsel:

**Re: David Berry / 128 Hazelton Ave., Unit 901 / Mizrahi Developments Inc. Loan**

We write further to your letter of September 11, 2024. Capitalized terms in this letter carry the same meaning as set out in our letter of September 9, 2024.

We are surprised to hear that your client is not aware of the Supplementary Agreement dated June 28, 2016 between Mr. Berry and Mizrahi (128 Hazelton) Inc. and Sam Mizrahi. We enclose a copy of the Supplementary Agreement and its appended Confidentiality Agreement for your review, both of which are signed by Mr. Mizrahi. We are also concerned that the Receiver has not mentioned the Supplementary Agreement in its correspondence with our client thus far. It suggests that Mr. Mizrahi and Constantine have both failed to make the Receiver aware of an Agreement that is material to Mr. Berry's interest in Unit 901.

As previously advised, our client's position is that the Supplementary Agreement impacts his rights in respect of Unit 901 and he is required by law to provide a copy of the Supplementary Agreement to the Receiver. He is also entitled to do so in his effort to enforce his rights under the Supplementary Agreement, which is a permitted disclosure pursuant to the Confidentiality Agreement.

If your client objects to Mr. Berry's disclosure of the Supplementary Agreement to the Receiver please advise forthwith as we otherwise intend to provide the Receiver with a copy of the Supplementary Agreement, the Confidentiality Agreement, the June 29, 2016 Loan Agreement ("**Loan Agreement**"), the October 12, 2021 Amending Agreement ("**Amending Agreement**"), the April 16, 2020 Letter regarding Additional Parking for Unit 901 at 128 Hazelton, and the APS for the units 1102 and 1103 at 1451 Wellington.

We have reviewed your prior correspondence with Mr. Leslie. We disagree that the Wellington Loan Agreement and the ancillary agreements and documents should not be disclosed to the Receiver. Mr. Berry's entitlement to close on Unit 901 at Hazelton—and the finances of such

closing—is related, in part, to his rights under the Supplementary Agreement, which is a side agreement to the Loan Agreement and the Amending Agreement.

We also disagree with your suggestion that there are no amounts owing to Mr. Berry under the Loan. The Amending Agreement provides that interest will begin to run on the loan facilities if the Wellington APS do not close within 18 months. The units did not close in the prescribed time period and interest continued to accrue on the loans in April 2023. Interest continues to accrue to this date. The Loan Agreement also provides that all legal and other costs associated with the loans are to be paid by the Borrower. Our client is currently calculating the applicable costs and we will advise of this figure in due course.

In any event, by our client's calculation, as of September 12, 2024 the outstanding balance of the Loans including interest (and excluding other costs to be calculated) is ~\$9,356,289.14. Until the 1451 Wellington units to which our client is entitled close, the Loan remains outstanding and our client is entitled under the Supplementary Agreement to close on Unit 901 at Hazelton without making any further payment.

We intend to detail Mr. Berry's interest in Unit 901 to the Receiver, with specific reference to and disclosure of the Supplementary Agreement. If your client disagrees with Mr. Berry's obligation and entitlement to provide the Supplementary Agreement and Confidentiality Agreement to the Receiver at this time, please advise without delay, as we will then advise the Receiver that Mr. Mizrahi is preventing Mr. Berry from disclosing the Supplementary Agreement and seek permission from the court to make such disclosure. If our client is required to seek the assistance of the court on this issue he will seek his full costs against Mr. Mizrahi for having to do so.

We look forward to hearing from you.

Yours very truly,

A handwritten signature in black ink, appearing to read "Michael O'Brien".

Michael O'Brien

**cc:** Colin Keith, *Keith Law*  
Jason Wadden, Nick Morrow, *Tyr LLP*

This is Exhibit W to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. Ha", is centered within the upper portion of the box.

A Commissioner for taking affidavits

## Agreement of Purchase and Sale Commercial (based on OREA Form)

**BUYER : MIZRAHI ENTERPRISES INC.** in trust for a corporation to be incorporated and without personal liability,

agrees to purchase from

**SELLER : ALFREDO GIANNUZZI, MARIO GIANNUZZI and EUGENIO MILITO**

the following

**REAL PROPERTY:**

Address : 1445 Wellington Street West, Ottawa, ON (formerly known as 43-45 Richmond Rd), legally described as Lot 3 & Pt Lot 4, Plan 145, being the west ½ of, North side of Richmond Rd. (now Wellington Street); Ottawa and being PIN 04030-0155LT ("the **Property**").

**PURCHASE PRICE :** \*See Schedule "A"

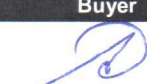

**DEPOSIT:** Upon Acceptance) FIVE THOUSAND Dollars (CDN \$5,000) by certified cheque or bank draft payable to SICOTTE GUILBAULT LLP In Trust, to be held in trust without interest pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. Buyer agrees to pay the balance subject to adjustments, by certified cheque or bank draft, on the Completion Date.

**SCHEDULE(S)\_A\_** attached hereto form(s) part of this Agreement.


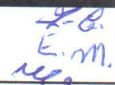
1. **CHATELS INCLUDED:** not applicable
2. **FIXTURES EXCLUDED:** not applicable
3. **RENTAL ITEMS:** The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable : not applicable
4. **IRREVOCABILITY:** This Offer shall be irrevocable by the Buyer: until 6:00 p.m. on the 19th day of April , 2013, after which time, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Buyers in full without interest.
5. **COMPLETION DATE:** This Agreement shall be completed by no later than\*\* See Schedule A. Upon completion, vacant possession of the Property shall be given to the Buyer unless otherwise provided for in this Agreement.
6. **NOTICES:** Any notice relating hereto or provided for herein shall be in writing. This offer, any counter offer, notice of acceptance thereof, or any notice shall be deemed given and received, when hand delivered to the party or where a facsimile number is provided herein, when transmitted electronically to that facsimile number.

FAX No. For delivery of notices to Seller: Attention: Denis Sicotte, (613) 837-8015

FAX No. For deliver of notices to Buyer: Al Cohen 613-238-8507



Initials of Buyer	Initials of Seller
	

7. **HST:** If this transaction is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the GST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If this transaction is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST.
8. **TITLE SEARCH:** Buyer shall be allowed until THIRTY (30) days prior to the Completion Date (the "Requisition Date"), to examine the title to the Property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there are no outstanding work orders or deficiency notices affecting the Property, that its present use may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders affecting the Property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.
9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the Property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.
10. **TITLE:** Provided that the title to the Property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (b) any minor easements for the supply of domestic utility or telephone services to the Property or adjacent properties; and if within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the Property.
11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of purchase and Sale of the Property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the *Electric Registration Act*, S.O.1990, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer deed (and any other documents intended to be registered in connection with the completion of this transaction and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release them except in accordance with the

Initials of Buyer	Initials of Seller
	

terms of a document registration agreement between the said lawyers, the form of which is as recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.



12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the Property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the Property within Seller's control to Buyers as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation Incorporate pursuant to the Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyers on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same on the title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, together with a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.
13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the Property and understands that upon acceptance of this Offer there shall be a binding agreement of purchase and sale between Buyer and Seller. The Buyer acknowledges having the opportunity to include a requirement for the Property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a Property inspection or Property inspection report regarding the Property.
14. **INSURANCE:** All buildings on the Property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage. Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.
15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the Property only if Seller complies with the subdivision control provisions of the *Planning Act* by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
16. **DOCUMENT PREPARATION:** The transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50 (22) of the *Planning Act* R.S.O.1990.
17. **RESIDENCY:** Buyer shall be credited towards the Purchase Price with the amount if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability

Initials of Buyer	Initials of Seller
	

in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers, on completion, the prescribed certificate or a statutory declaration that Seller is not then a non-resident of Canada.

18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
19. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing and completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
20. **TENDER :** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money may be tendered by bank draft or cheque certified by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse populaire.
21. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under provisions of the Family Law Act, R.S.O. 1990 unless Seller's spouse has executed the consent hereinafter provided.
22. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the Property, Seller has not caused any building on the Property to be insulated with insulation containing urea formaldehyde and that to the best of Seller's knowledge no building on the Property contains or has ever contained insulation that contains urea formaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is subject of this transaction.
23. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the broker is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
24. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction
25. **AGREEMENT IN WRITING:** If there is a conflict or discrepancy between any provisions added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.
26. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.
27. **CONFIRMATION OF REPRESENTATION:**

The Seller confirms that it will be represented by Denis Sicotte, c/o Sicotte Guilbault, LLP, #208-4275 Innes Rd., Ottawa, ON, K1C 1T1 Tel: (613) 837-7408 Fax: (613) 837-8015 Email: dsicotte@sicotte.ca

Initials of Buyer	Initials of Seller
	



The Buyer confirms that it will be represented by: Al Cohen, c/o Soloway Wright LLP, 427 Laurier Avenue West, Suite 900 Ottawa, Ontario, K1R 7Y2 Tel: 613-236-0111 Toll Free: 1-866-207-5880 Fax: 613-238-8507 cohen@solowaywright.com.

DATED AT Ottawa, Ontario THIS 17<sup>th</sup> DAY OF April, 2013.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Buyer: **MIZRAHI ENTERPRISES INC.**  
in trust for a corporation to be  
incorporated and without personal  
liability

\_\_\_\_\_  
witness:

Per: \_\_\_\_\_  
Sam Mizrahi, President  
I have the authority to bind the Corporation

We, the undersigned Seller, agree to the above Offer.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

DATED AT Ottawa, Ontario THIS 17<sup>th</sup> DAY OF April, 2013.

\_\_\_\_\_  
Witness:

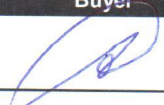

\_\_\_\_\_  
Seller: ALFREDO GIANNUZZI

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Seller: MARIO GIANNUZZI

\_\_\_\_\_  
Witness:

\_\_\_\_\_  
Seller: EUGENIO MILITO

Initials of Buyer	Initials of Seller
	

**SCHEDULE "A" to  
Agreement of Purchase and Sale  
Commercial (based on OREA Form)**

Executed between



**BUYER : MIZRAHI ENTERPRISES INC.** in trust for a corporation to be incorporated and without personal liability, and

**SELLER : ALFREDO GIANNUZZI, MARIO GIANNUZZI and EUGENIO MILITO**

For the following **REAL PROPERTY**: Address : 1445 Wellington Street West, Ottawa, ON (formerly known as 43-45 Richmond Rd), legally described as Lot 3 & Pt Lot 4, Plan 145, being the west ½ of, North side of Richmond Rd. (now Wellington Street); Ottawa and being PIN 04030-0155LT ("the **Property**").

**A - PURCHASE PRICE:**

1. The Seller is currently operating a restaurant on the Property under the trade name "Bella's Bistro Italiano".
2. Concurrent with the purchase of the Property, the Buyer will also be acquiring adjoining lands municipally known as 1451 Wellington Street West, Ottawa, Ontario (the "Adjoining Lands"). The Buyer intends to demolish the existing buildings on the Property and on the Adjoining Lands and construct thereon a new building comprising both residential units and commercial units (the "Development").
3. As part of the Purchase Price for the purchase of the Property, the Seller shall receive 4400 square feet of space in the Development. The Buyer shall provide the Seller with 2000 square feet of the said 4400 square feet, as commercial ready retail space on the ground floor of the Development, nearest to the corner of Island Park Drive and Wellington Street, fronting on Wellington Street (the "**Commercial Unit**"). At the Buyer's option such space may be part (A unit) of a condominium corporation to be formed.
4. With respect to the remaining 2400 square feet, the Buyer shall provide to the Seller 2400 square feet of residential units in the Development (the "**Residential Units**"). The Seller shall confirm to the Buyer within 7 days of the opening of the sales center the unit selection and their various sizes it requires for the Residential Units and the Buyer shall deliver same (i.e. 4 units x 600 square feet, or 2 units of 1200 square feet, etc.). The finishes for each of the Residential Units will conform to the Mizhari Enterprises Inc. and Buyer's standard schedule of finishes which will be appended to the Buyer's standard agreements of purchase and sale for the Development. Such units shall be located on the second floor above the commercial space set out in paragraph 3 above.

Initials of Buyer	Initials of Seller
	

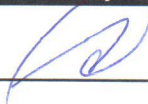
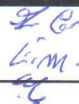
5. The fair market value of the Commercial Unit and Residential Units shall be determined prior to the Completion Date, by the Seller and the Buyer and shall be credited against the Purchase Price in favour of the Buyer, on the Completion Date. In the event the parties are unable to mutually agree on a fair market value for the Commercial Unit and Residential Units, such determination shall be made by an Accredited appraiser registered/licensed from/by the Appraisal Institute of Canada.
6. As additional consideration for the Purchase Price, the Seller shall also receive four (4) parking spots for use by the Residential Units underground, as well as a permitted and shared commercial parking use for the patrons of the restaurant business, and any related business of the Seller, to occupy the Commercial Unit. No warranty is given with respect to the size or location of the parking.
7. As additional consideration for the Purchase Price, the Buyer shall pay or provide a leasehold improvement allowance of up to TWO HUNDRED THOUSAND (\$200,000.00) Dollars to the Buyer for purposes of, and at time of, the construction of the restaurant leaseholds at the Commercial Unit.

**B- VACANT POSSESSION OF RESTAURANT**

8. No less than thirty days prior to the Completion Date, and upon receipt by the Seller of a written notice from the Buyer to that effect, the Seller shall provide vacant possession of the Property and thus stop the operations of its restaurant thereon. From the date the Seller ceases operating its restaurant, up to and including the date upon which the Seller's restaurant re-opens for business in the Commercial Unit, the Buyer shall pay the Seller the sum of TEN THOUSAND (\$10,000) Dollars per month for every month or part of a month that the Seller's restaurant is not open for business. Said sum shall be payable by the Buyer on the first (1<sup>st</sup>) day of each and every month during the said period. The first of such payments shall be provided to the Seller's lawyer, together with a copy of the notice to the Seller advising it to cease operations and the Seller's lawyer shall only remit the said first payment to the Seller, upon receipt of confirmation by both parties that the Seller has in fact ceased operations. It is anticipated said period may take approximately twenty-four (24) months. For greater certainty, all costs associated with the closing of the restaurant and the termination of the businesses, and or tenancies/licenses, shall be the sole responsibility of the seller and the seller covenants to indemnify and hold harmless the Buyer, its assignees, directors, officers and shareholders from any and all costs, claims, or demands arising therefrom. The Buyer's obligations to make such payments shall be secured on the Completion Date by way of a promissory note to be executed by the Buyer.

**C - COMPLETION DATE:**


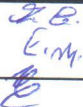

9. Transfer of the Property from the Seller to the Buyer will not be effected until thirty (30) days following written notice from the Buyer to the Seller confirming that the Buyer has secured the sale of at least seventy percent (70%) of units in the Development in order to assist with the financing costs of the Development's construction (the "**Completion Date**").

Initials of Buyer	Initials of Seller
	


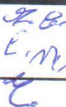
10. Transfer of the Property shall be registered in the entity name directed by the Buyer, in writing.
11. On the Completion Date, the Seller shall be entitled to register on title to the Property, notice of its interest in the Property and the Development, in the form of security reasonably required by the Seller's lawyer, securing the Seller's right to acquire the aforementioned Commercial Unit and the Residential Units, such notice of interest to be postponed only to (a) 1<sup>st</sup> rank charge, (b) a second mortgage for construction purposes postponed to all advances of hard and soft costs. At the Lender's option the 1<sup>st</sup> rank charge (used for acquisition) may be combined with the second mortgage described herunder. (c) 2<sup>nd</sup> rank mortgage defined, (d) any registered restrictions or covenants that run with the land (e) any registered municipal agreements and registered agreements with publicly regulated utilities; (f) any minor easements for the supply of domestic utility or telephone services to the Property or adjacent properties; and (g) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services and (h) development agreements with the City of Ottawa.
12. Upon request, the Seller shall also postpone its interest to that of the Buyer's lender of construction financing and to that of TARION bonding and excess insurance in the form of a mortgage.

**D - ADDITIONAL CLAUSES:**

13. Title to the Residential Units and to the Commercial Unit will be taken as directed by the Seller, in writing.
14. Prior to the Completion Date, the Buyer shall be entitled to register a caution or notice of agreement of purchase and sale against the Property, at its own costs, provided that if the transaction contemplated by this Agreement of Purchase & Sale does not close, for whatever reason, the Buyer shall cause the said caution to be deleted from title to the Property, at its own cost and if it fails to do within seven (7) days following receipt of a written demand to do so, the Buyer shall be deemed to have appointed the Seller as its attorney for the sole purpose of deleting the caution from title and this appointment herein shall be the Seller's sufficient authority for so doing.
15. Prior to the Completion Date, the Seller will cooperate with and provide the Buyer with various consents and authorizations required by the Buyer to perform its developmental investigations, upon seven (7) days' prior written notice and the Seller will sign all applications and forms, jointly with the Buyer, for such authorizations and consents, all at the Buyer's cost and expense.
16. The parties both agree that the transaction contemplated herein shall be structured in the manner that is most advantageous to the Seller. In that respect, the parties acknowledge that the Seller may, prior to the Completion Date, transfer its interest in the Property to a nominee corporation, if so advised by its accountant.

Initials of Buyer	Initials of Seller
	 J.B. E.M. 

17. The Seller is not providing any representation or warranty in connection with the status of the Property, and more specifically in connection with any environmental or contamination issues of the Property, for which the Buyer has completed its due diligence thereof, and the Buyer is purchasing the Property on an "as is" condition.
18. On execution hereunder the Seller appoints the Buyer as its authorized agent to execute application for title absolute, rezoning, site plan control and/or condominium status or any other related documents. At the request of the Buyer the Seller will execute any such authorizations reasonably required.

Initials of Buyer	Initials of Seller
	

This is Exhibit X to the Initial Order,  
sworn on October 10, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits

# Mizrahi Development Group (1451 Wellington) Inc.

## Supplier Balance Summary

As of September 30, 2024

	TOTAL
Arcadis Architects (Canada) Inc.	22,509.58
BOYD MOVING & STORAGE LTD.	2,694.36
CINTAS CANADA LIMITED	575.12
City of Ottawa	6,334.88
Coldwell Banker Rhodes & Co., Brokerage	25,698.99
DDL-Document Direction	160.27
ECi Software Solutions Canada, Inc.	526.40
Fotenn Consultants Inc.	4,798.28
Glaholt Bowles LLP	2,381.48
Harris, Sheaffer LLP	6,713.79
Hydro Ottawa	200.48
Jonny Cracower	225.61
KRCMAR Surveyors Ltd.	7,740.05
McCarter Grespan Lawyers	0.12
MCW Consultants Ltd.	4,915.50
Michael London Design	4,289.39
Mizrahi Inc	4,836,393.62
Morrison Hershfield Limited	3,292.46
Our Homes Media Group Inc.	3,390.00
PMA Brethour Real Estate Corporation	42,375.00
Prestige Cleaning Services	4,616.05
Read Jones Christoffersen Ltd.	15,690.00
Soberman Engineering Inc	621.50
UCIT Online Security Inc	3,941.44
Westmount Guarantee Services Inc.	51,600.00
<b>TOTAL</b>	<b>\$5,051,684.37</b>

This is Exhibit Y to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. Ha", is written over a light blue rectangular background.

A Commissioner for taking affidavits



**Properties**

PIN 04030 - 0261 LT

Description LOTS 1, 2 & 3 & PART LOT 4, PLAN 145, N/S RICHMOND ROAD (NOW WELLINGTON STREET), PARTS 1 & 2 PLAN 4R35696; SUBJECT TO AN EASEMENT AS IN OC2360765; SUBJECT TO AN EASEMENT AS IN OC2671330; CITY OF OTTAWA

Address 1451 WELLINGTON STREET WEST OTTAWA

**Consideration**

Consideration \$107,293.50

**Claimant(s)**

Name ALENFRAGE DESIGNER PAINT INC.  
Address for Service c/o ASSERTION LAW PROFESSIONAL CORPORATION  
2601 MATHESON BLVD E, UNIT 17  
MISSISSAUGA ON L4W 5A8

A person or persons with authority to bind the corporation has/have consented to the registration of this document. This document is not authorized under Power of Attorney by this party.

**Statements**

Name and Address of Owner MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC. 125 HAZELTON AVENUE, TORONTO ON M5R 2E4 Name and address of person to whom lien claimant supplied services or materials MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC. 125 HAZELTON AVENUE, TORONTO ON M5R 2E4 Time within which services or materials were supplied from 2023/08/23 to 2024/08/01 Short description of services or materials that have been supplied PAINTING SERVICES Contract price or subcontract price \$533,360 Amount claimed as owing in respect of services or materials that have been supplied \$107,293.50

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

**Signed By**

Hamraz Singh Toor 2601 Matheson Blvd E Unit 17 acting for Signed 2024 09 19  
Mississauga Applicant(s)  
L4W 5A8

Tel 877-892-7778

Fax 877-892-2209

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

FALCON LAW PROFESSIONAL CORPORATION 2601 Matheson Blvd E Unit 17 2024 09 19  
Mississauga  
L4W 5A8

Tel 877-892-7778

Fax 877-892-2209

**Fees/Taxes/Payment**

Statutory Registration Fee \$69.95

Total Paid \$69.95

**File Number**

Claimant Client File Number : 1070

This is Exhibit Z to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read 'R. S. Ha', is centered below the text.

A Commissioner for taking affidavits

# ASSERTION LAW

Business | Litigation | Construction

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info@assertionlaw.ca | 647-997-6325 | www.assertionlaw.ca  
2601 Matheson Boulevard East, Unit 17, Mississauga ON L4W 5A8

September 19, 2024

***SENT VIA EMAIL & REGULAR MAIL***

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

125 Hazelton Avenue  
Toronto ON M5R 2E4

To Whom It May Concern:

Re: **Construction Lien – 1451 Wellington Street West, Ottawa, ON**

---

I have been retained by Alenfrage Designer Paint Inc. o/a Alenfrage Painting Services with respect to an ongoing dispute at the 1451 Wellington Street West project in Ottawa, Ontario (the “Wellington Project”). Please see attached a copy of the construction lien registered against title of the Wellington Project.

If my client’s claim of \$107,293.50 is not paid promptly, legal proceedings will be initiated in the Ontario Superior Court of Justice to recover all owed amounts and obtain other necessary relief, which may include obtaining a court order to sell the Wellington Project to satisfy this claim.

Should you have any questions or require further clarification, please do not hesitate to contact me.

Yours very truly,



Aneal Seegobin  
Barrister & Solicitor

Encl.

**Properties**

PIN 04030 - 0261 LT

Description LOTS 1, 2 & 3 & PART LOT 4, PLAN 145, N/S RICHMOND ROAD (NOW WELLINGTON STREET), PARTS 1 & 2 PLAN 4R35696; SUBJECT TO AN EASEMENT AS IN OC2360765; SUBJECT TO AN EASEMENT AS IN OC2671330; CITY OF OTTAWA

Address 1451 WELLINGTON STREET WEST OTTAWA

**Consideration**

Consideration \$107,293.50

**Claimant(s)**

Name ALENFRAGE DESIGNER PAINT INC.  
Address for Service c/o ASSERTION LAW PROFESSIONAL CORPORATION  
2601 MATHESON BLVD E, UNIT 17  
MISSISSAUGA ON L4W 5A8

A person or persons with authority to bind the corporation has/have consented to the registration of this document. This document is not authorized under Power of Attorney by this party.

**Statements**

Name and Address of Owner MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC. 125 HAZELTON AVENUE, TORONTO ON M5R 2E4 Name and address of person to whom lien claimant supplied services or materials MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC. 125 HAZELTON AVENUE, TORONTO ON M5R 2E4 Time within which services or materials were supplied from 2023/08/23 to 2024/08/01 Short description of services or materials that have been supplied PAINTING SERVICES Contract price or subcontract price \$533,360 Amount claimed as owing in respect of services or materials that have been supplied \$107,293.50

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

**Signed By**

Hamraz Singh Toor 2601 Matheson Blvd E Unit 17 acting for Signed 2024 09 19  
Mississauga Applicant(s)  
L4W 5A8

Tel 877-892-7778

Fax 877-892-2209

I have the authority to sign and register the document on behalf of the Applicant(s).

**Submitted By**

FALCON LAW PROFESSIONAL CORPORATION 2601 Matheson Blvd E Unit 17 2024 09 19  
Mississauga  
L4W 5A8

Tel 877-892-7778

Fax 877-892-2209

**Fees/Taxes/Payment**

Statutory Registration Fee \$69.95

Total Paid \$69.95

**File Number**

Claimant Client File Number : 1070

This is Exhibit AA to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered below the text.

A Commissioner for taking affidavits

February 28, 2024

**VIA EMAIL AND COURIER**

Sam Mizrahi  
Mizrahi Development Group (1451 Wellington) Inc.  
2659100 Ontario Inc.  
Mizrahi Developments Inc.  
189 Forest Hill Road,  
Toronto, Ontario M5P 2N3

Dear Sam:

We refer to the loan agreement dated as of October 31, 2019, as amended by an amending agreement dated as of March 6, 2023 (collectively, the "**Loan Agreement**") between Sam Mizrahi, as borrower (the "**Borrower**"), and V2 Investment Holdings Inc., as lender (the "**Lender**"). Capitalized terms used herein and not defined have the meanings given to such terms in the Loan Agreement.

The Lender hereby gives notice to the Borrower that an Event of Default has occurred (the "**Maturity Default**") and is continuing under the Loan Agreement pursuant to Section 10.01(a) as a result of the Borrower failing to pay the principal and all other amounts due on the Maturity Date (December 31, 2023). In addition, the Lender gives notice to the Borrower that a Default has occurred and is continuing under the Loan Agreement as a result of the following: (i) the Wellington Guarantor granted an additional Encumbrance on the Project pursuant to a charge registered as Instrument No. OC2430519 on December 1, 2021 and related Encumbrances, in contravention of Section 7.03(6) of the Loan Agreement, and such Encumbrances continue to encumber the Project (the "**Additional Security**"), and (ii) the Wellington Guarantor incurred additional Debt pursuant to an amendment to the Construction Loan to increase the principal amount from \$68,000,000 to \$70,000,000, in contravention of Section 7.03(15) of the Loan Agreement (the "**Additional Debt**" and together with the Additional Security, the "**Additional Defaults**").

This letter is being delivered to you without prejudice to, and the Lender hereby expressly reserves, all available rights, remedies, powers and claims in their entirety under the Loan Agreement, any other Loan Document, or at law, in equity or otherwise as a result of the Maturity Default, the Additional Defaults or any other existing or pending Default or Event of Default, whether known or unknown, any of which may be exercised or otherwise pursued at any time, and from time to time, in the sole and absolute discretion of the Lender. Without limiting the generality of the foregoing, the Lender reserves the right to insist upon strict compliance by the Borrower and the Guarantors with each and every term, condition and covenant in the Loan Documents.

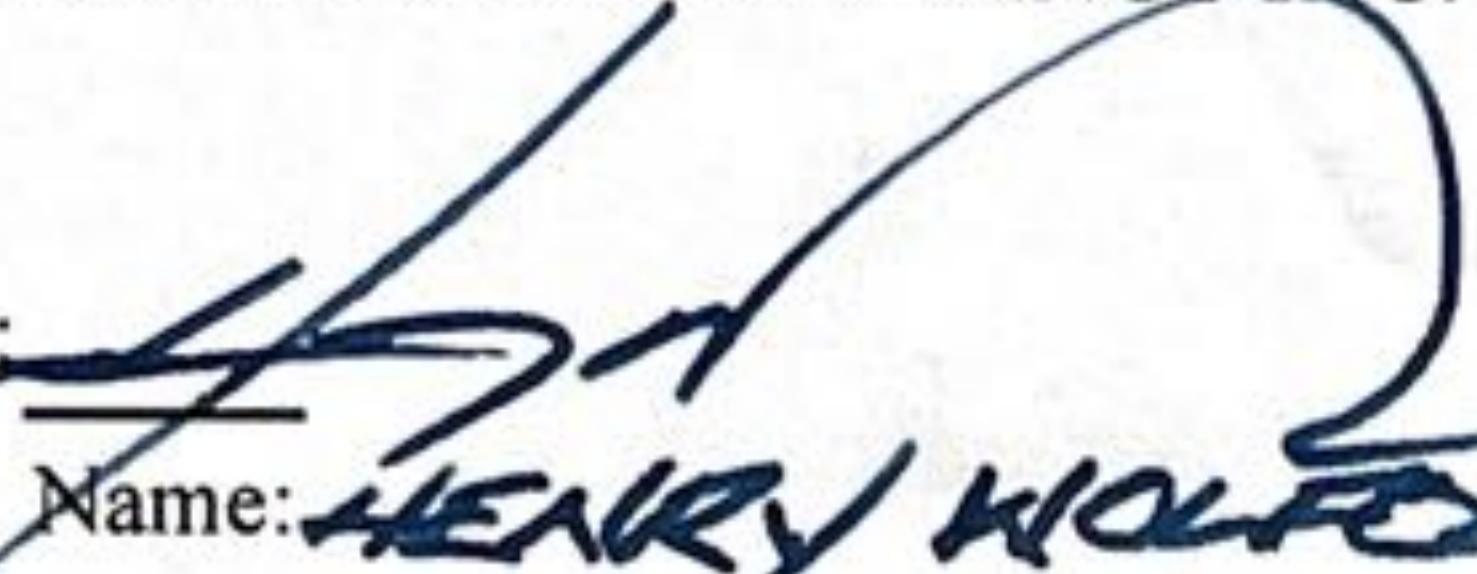
This letter shall not, and shall not be deemed to waive, limit or postpone any obligations of the Borrower or any Guarantor under the Loan Agreement, any other Loan Document, or otherwise, or any other Person obligated thereunder, and any discussions (whether written or oral) that have occurred or may occur are not, and any actions taken or not taken by the Lender shall not, and no failure or delay on the part of the Lender in exercising any right, remedy, option, power or privilege under any Loan Document or under Applicable Law shall be, and no course of dealing between the Lender, on the one hand, and the Borrower and any Guarantor, on the other hand, shall be, in any such case, deemed to be, a waiver, limitation, modification, release or postponement of any of the rights and remedies of the Lender under the Loan Agreement, any other Loan Document or at law, in equity or otherwise as a result of such Maturity Default or any other existing or pending Default or Event of Default, including the Additional Defaults, all of which rights and remedies hereby are expressly reserved. For greater certainty, the Lender's acceptance of any payments of accrued and unpaid interest shall not be deemed a cure of the Maturity Default or Additional Defaults, an agreement by the Lender to forbear from exercising its rights and remedies on account of the Maturity Default or Additional Defaults, or a waiver by the Lender of any past, present or future defaults under the Loan Documents. In addition, the absence of any other existing or pending Default or Event of Default that may exist on the date hereof shall not be, and shall not be deemed to be a waiver, limitation or postponement by the Lender of any rights and remedies that the Lender may have with respect

to such existing or pending Default or Event of Default under the Loan Agreement, any other Loan Document or at law, in equity or otherwise. Further, other defaults under the Loan Documents which are not specified in this letter may have occurred and be continuing.

The Loan Documents remain in full force and effect in accordance with their terms.

Yours truly,

**V2 INVESTMENT HOLDINGS INC.**

By:   
Name: **HENRY WOLFORD**  
Title: **CEO**

This is Exhibit BB to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. H. a", is centered below the text.

A Commissioner for taking affidavits



iMessage  
Wed, Apr 3 at 8:30 AM

Good morning

Good morning I got feedback from Trez which was positive My lawyer will connect with your lawyer spoke to her yesterday after Trez got back to me with a positive response subject to standstill subordination etc etc

Sat, Apr 6 at 10:13 AM

Just waking up. Can meet at 11

I can't at 11 am I am here now but will go if you can't come now as I have to go for my birthday

I'm still here at hazelton for Another 10 min

Let's just get documentation and registration done on Monday and meet for dinner on Tuesday

Avril my lawyer is working on that with your lawyer and will require what my senior lender requested with the standstill subordination etc etc to be allowed to register etc so I know they are working together to get it done. I am around but can't do dinner Tuesday night as I have a function that evening but can meet any other times that's convenient for you.

Sat, Apr 6 at 11:24 AM

Do you want to meet now for 30 min ?

Sat, Apr 6 at 4:10 PM

Did you see the statement of claim filed?

Not yet. Just out with family

Ok read it and let me know

Sun, Apr 7 at 9:42 AM

Sun, Apr 7 at 9:43 AM

When did you send? Happy birthday btw



**Affidavit of Sam Mizrahi 128 Hazelton.pdf**  
PDF Document · 449 KB



**Statement of Claim- Issued-05-  
APR-2024.pdf**  
PDF Document · 326 KB

Tue, Apr 9 at 10:58 AM

I'm tired of being strung along. We have nothing in writing from your lawyers but based on conversations, we are nowhere near an agreement. I am entitled to register a charge on Ottawa today without consent. As I already told you, we need to deal with Trez directly to see if we agree. If not we will register our charge in accordance with the loan agreement. Also, have had no response from your lawyer on other terms you agreed to.

Hi Henry, I am not stringing anything. Let me find out and Avril my lawyer to send you back the agreement as I understood it was done or to be done yesterday. Following up right now and get you the amending agreement

Calling her now and making sure you get the amendment

Tue, Apr 9 at 2:03 PM

Your lawyer will have it this afternoon just spoke to my lawyer

I will send it to you as well

Tue, Apr 9 at 7:10 PM

Waiting

It's coming

I'm going to grab a bite

Ok sounds good she's finishing it up to send to me first to proof read and then will send it over

Wed, Apr 10 at 2:47 PM

Just got the revised version from Avril finishing it up and getting it out to you

Wed, Apr 10 at 8:39 PM

?

Emailing in 30 min

For your review

Just need a clarification on Rauva can you call me when you have a moment so I can make sure that section is correct before it goes out and back to your lawyer thanks

Thu, Apr 11 at 11:43 AM

Hello?

Just spoke to her and she's sending it out now your lawyer should have it in next 15 min

I'm will forward you the email to your lawyer

Thu, Apr 11 at 2:15 PM

Email sent

Your lawyer has it

Please send to me directly

Sent



**Second Amending Agreement (1).docx**

Word Document · 32 KB

Rauva is incorrect

What's not correct about it?

Everything

I went over it last night with you

In March, we agreed to a pledge of your entire interest against the 12.9M with an ongoing interest of 10%. ie If you only get 10M for your share, I get 100% of it. You keep renegeing . Last night, I agreed to cap the bonus Rauva 10% interest at 12.9 but never agreed to give up the pledge.

I was also supposed to get paid out when TerraFarma closed but you conveniently forgot that.

You just keep drawing this out and stringing me along. This is exhausting. I'm inclined to hand this over to my lawyers and just declare default, register the charge and move for judgement.

I never agreed to pledge of shares this was your ask when we were discussing. I agreed to the 10% as per our call again last night to make sure we got the language right before sending it out and to include it as part of any liquidity event. Everything else is in the amendment just sent over which includes your registration and payout. Causing a default on Ottawa would not serve our collective interests in ensuring you get repaid, and my ability to repay my loan to you, in fact it would do the opposite. You are current on your interest and I am making all the payments and getting you repaid from a variety of sources. Thank you.

I'm handing it over to counsel

Sat, Apr 13 at 4:18 PM

Hi Henry, I want to get this loan amendment completed as per your request asap. Let me know what next steps are as I have forwarded the amendment and getting Trez to send me over the postponement and standstill for registration as per your request. Thanks

Sorry. you're out of runway. I sent you reservation of rights and notice on February 28 and we have made zero progress since. It is much less stressful for me to hand it over to my legal team to take steps in accordance with the loan agreement.

I still love you and support you but you can't provide the comfort I'm looking for so I have no choice.

So you are going to register and enforce? I need to know if this is what you are going to do, as I have to let my construction lender and Aviva Insurance know on Ottawa etc.

Sat, Apr 13 at 6:35 PM

Just let me know if you are enforcing and registering before Monday.

Meeting team Monday morning

Sun, Apr 14 at 11:46 AM

What's Israel's next move?

The right question is not what's Israel's next move, it's why and what this BS attack was designed to do....Regime change in Iran...like I told you when Trump gets in the Iranian regime will be over and the Ayatollahs will be gone. Abraham accords 2.0  
Reza Pahlavi will be back.

Did you really think Iran thought hundreds of drones were going to fly for 4+ hours in the air and not have each one of them blown out of the sky? Before reaching Israel Why did all the drones have their lights on at night? Why were all the drones launched out of Yemen, Iraq and Egypt ?

So does Israel take out Iranian nuke facilities tonight?

Best excuse in the world to have the right to do it



## Ordinary Iranians Don't Want a War With Israel

theatlantic.com

No Iranians want a war with anyone much less Israel 🇮🇱

People running the government in Iran are not Iranians

Sun, Apr 14 at 5:14 PM

There will be no Israeli strike against Iran

Was hoping that Israeli strike would ignite the street against Khomeini regime.

Sun, Apr 14 at 7:26 PM

There is a plan! It's been taking shape for sometime. Won't be fully baked until November 2024

Mon, Apr 15 at 9:23 AM

Meeting team at one pm. Assume we are proceeding in accordance with rights under loan agreement and notice provided to you on February 28th

What does that mean?

You asked if we are going to register and enforce

Yes that's what I am asking is that what you are doing now? Registering and enforcing?

Yes

So then this will put Ottawa into default with Trez and

cause me not to be able to finish the project and put the project into Receivership and cause me harm and my ability to repay loans. This makes no sense to do this when I am 6 months away from finishing Ottawa.

Yes it's too bad we couldn't reach agreement. I have been more than patient in holding lawyers back for months but it's clear that you aren't prepared to put up sufficient security in real property that I requested.

If you're only 6 months away, I'm sure Trez will keep you in place to completion.

Not if you are registering and enforcing. You know that and Avril communicated this to your lawyer too

Henry Wolfond unsent a message

I'm going to have to advise Trez and All stakeholders of this on Ottawa and I just want to make sure this is your decision as once I do advise them I can't undo it, and then I don't know what everyone will do next. But I can expect it will be a disaster.

Mon, Apr 15 at 12:14 PM

You're a friend and I know you understand it's not personal. After months of no progress, I just need to protect myself given your unwillingness to provide adequate security.

It's actually ironic that's I was able to survive all the attacks I have had to deal with successfully and I have a friend that's the one that's going to take me under, and especially when I continue to make good on the loan and a path to repayment.

I'm sure you'll manage. I asked for security on Ontario and Florida properties and you said NO. I'm out of options.

Mon, Apr 15 at 5:23 PM

Charge is registered.

Catastrophic!

Now I won't be able to get draws out to even pay the trades due to the registration through the senior lender.

Wed, Apr 17 at 4:11 PM

Sorry, I can't talk right now.

Look at my email

In meeting. Will be in car at 5:15

What's the security you are referring to in your email?



Call me back when you can trying to understand the security you are referring to?

I made it clear when we started these discussions. I would like security on your properties in Ontario (Forest Hill Road, Collingwood) and Palm Beach until payed in full. I will agree to standstill for say 3 years.

You will agree not to stand still?

I think you mean you agree to standstill for 3 years ?

Yes.

Houses are not mine. I told you this.

Sorry, I can't talk right now.

Call me back when you can thanks

Just went back and looked at your amending agreement. The pledge on the Rauva shares is that pledge security you were referring to?

I have been a loyal and patient friend and it seems to be a



one way street. You are on title to Ontario properties and can control Florida asset. If you're really a friend do the right thing. I am proceeding with legal advice unless you can give me comfort that I am completely secured. Ottawa doesn't do it.

Why would Ottawa not do it?

And if you are a loyal friend, why would a friend try do this to me?

I am honouring all my interest payments to you and gave you security registered.

Call me at 5:15 pm

If Ottawa will do it, I'd be paid off and would release all other security. Your refusal to provide the additional security only amplifies my concern that Ottawa will fall short.

Call me

I'm not changing my position.

If Ottawa falls short which it won't then we can agree to additional security with an agreement in place to provide the additional security.

It's 5:15 call me so we can get this resolved

If you're providing the security I need today, it can be resolved. You've made promises to pay for over two years and then don't. You're living a billionaire lifestyle on my money.

Friends honour their promises

I am happy to provide security as discussed and agreed to. Call me so we can discuss and get it done today

I'm driving with Focus turned on. I'll see your message when I get where I'm going.



Second Amending Agreement (3).docx

Word Document · 30 KB

Did this go to my lawyer?

Yes

K. Will discuss with Ryan tomorrow

Fri, Apr 19 at 8:28 AM

I reviewed it - sorry but totally unacceptable

What's the issue Henry?

Which part(s) is the issue?

Will call you back in 30

Ok call me back

I'm re-reading

Ok

Fri, Apr 19 at 11:59 AM

Ryan is traveling today but will get our revisions back to your lawyer tonight.

Still not sure about additional \$1.5. Is there an update on what's happening with receiver on The One and when you're going to get \$ for fees and possibly cancellation of purchase?

September scheduled hearing date for me fees \$\$

Can I assume they aren't canceling purchase agreements?

We don't really know at this time. They still could and are

analyzing

Pondering 🤔

I Personally think they will cancel the purchasers agreements. But don't know for certain but I believe they will based on the knowledge I have

Can realtor see Collingwood this weekend? Quick walk through - 15 minutes max.

Yes what's his name and let me know time to arrange

What day and time to arrange it

Cindy Ryerse

Between 1 and 3 today, tomorrow afternoon or Sunday morning

Let me confirm

Can she do tomorrow at 11 am?

Let me check

Yes. That will work. She will be there then.

Ok

Sun, Apr 21 at 9:14 AM

Square footage on collingwood?

Sun, Apr 21 at 11:27 AM

I'm not seeing quite the pad that I'm looking for in terms of security. (eg 185 appears to be fully leveraged). With some clarification in the amendment, I could proceed without the additional advance of \$1.5M. If there was some other property, I could probably get there. Are you sure, given standstill, you can't include Palm Beach?

I don't have control over Palm Beach, I advised this from the beginning and before. Same with anything that would

the beginning and before. Same with anything that would require Micki. I can give you everything I have absolute control over. What about the Rauva pledge and what you wanted with the 10% in the last draft amendment circulated, instead of the properties? I am doing everything I can to get this done with you and get Ottawa completed and you repaid. Also from the other Bloor funds to come in. Thank you for your continued support.

Can we do this deal without the 1.5?

Collingwood square footage?

Over 9,000 feet

Can we do this deal without the 1.5?

I'm thinking...can you defer the interest payments? I also need to put in additional equity into Ottawa until occupancy so I will need to get this financed somehow and working on it if you can't. All I want to do is finish the project to get debts repaid while I get my other funds from Bloor and Steeles

I'd rather not. Interest payments are my canary in the coal mine so to speak. To cover advance of 1.5M, is mortgage on 189 FH possible?

Not possible on 189FH. But I understand the canary analogy. Understood. I am thinking...

Mon, Apr 22 at 8:20 AM

Your lawyer should have our revised draft this morning

Good morning. Ok will connect with her. Also speaking to Trez today at noon.

Tue, Apr 23 at 9:11 AM

# Honda reaches EV deal with Ontario, Ottawa worth billions

Automaker to build new plants, retrofit assembly facility in plan to create in-province supply chain

LABRA STONE  
ADAM BARNHART

The federal government and Ontario are set to announce this week a multi-billion-dollar deal with Honda Motor Co. Ltd. that will see the company build a comprehensive electric-vehicle chain in the province.

The deal with Honda includes a plant to build electric vehicles, as well as facilities for both battery materials and engineering and manufacturing, according to three sources familiar with the project.

The Ontario Provincial Police will review how the Toronto force handled the case of Const. Zamora, who was acquitted of first-degree murder in the death of an officer after a jury trial in which the judge questioned the accuracy of police testimony.

# OPP to review Toronto police after red flags raised in case of officer death

SEAN FINE  
SILVER HOGUE

The Ontario Provincial Police will review how the Toronto force handled the case of Const. Zamora, who was acquitted of first-degree murder in the death of an officer after a jury trial in which the judge questioned the accuracy of police testimony.



Visitors fill in cherry blossom trees of Toronto's High Park on Sunday. The park's first trees were planted in 1883, when the Japanese ambassador to Canada presented 2,000 to the city on behalf of Tokyo officials. (JANIS FROST/THE GLOBE AND MAIL)

## IN THE PINK

Tens of thousands of people rush to enjoy a brief and colourful rise of spring: the cherry blossom bloom

# On Passover, Israelis' hearts lie with hostages while war keeps Palestinians on the move

NATHAN VANDERKLOPP  
THE GLOBE

A Israeli soldier stands in a field of cherry blossoms in the town of Beit She'an, a town in the West Bank, on Sunday. The soldier is part of the Israel Defense Forces' 8200th Paratrooper Battalion.

Israeli soldiers are preparing a week-long Passover seder in the West Bank, where they are holding Palestinian hostages. The soldiers are also preparing for the arrival of the 8200th Paratrooper Battalion.



Indigenous leaders call on watchdog to disband Thunder Bay police force

Protesters allege conspiracy of fraud in opening remarks at Trump trial

Leafs best Bruins 3-2 in tie playoff series at one game apiece

SECRET CANADA - Explore our national database of freedom of information requests SecretCanada.com

# New Toronto condo sales sink to lowest level since financial crisis (The Globe and Mail (Ontario Edition)), Apr 23, 2024

globe2go.pressreader.com

New Toronto condo sales sink to lowest level since financial crisis (The Globe and Mail (Ontario Edition)), Apr 23, 2024

Wed, Apr 24 at 2:22 PM

Let me know if your lawyer is responding. Signing affidavits in support of claim today.

I'm off to NYC then away most of May.

Sorry don't understand is this for me?

Yes. Nothing from your lawyer.

She was dealing with Scotiabank let me find out

OK.

Article coming out tomorrow

Wed, Apr 24 at 6:05 PM

Where?

Globe and Mail



It's on my statement of claim against Hiscox and Rogers on 180SAW and 128H

Thu, Apr 25 at 12:05 PM

Saw the article 🙄

I'm now more concerned. Is your lawyer getting us any comments? I can't advance additional funds under the circumstances

She's trying to get consents

Will call you

The Globe sucks

I'm with people - can't talk

Ok

Fri, Apr 26 at 9:01 AM

What's happening?

Fri, Apr 26 at 10:39 AM

Scotiabank won't let me register its in their mortgage documents. Avril just told me and was working to see if she could. They are one banks that prohibit. Working on another solution

You registered on 187 behind them. How did they permit that?

It did not have the prohibition. We are trying to find out what there issue is

Fri, Apr 26 at 1:21 PM

With people for next 1.5 hours. Call at 3

Ok thanks

Fri, Apr 26 at 3:12 PM

I can chat now for 10 minutes

Fri, Apr 26 at 4:31 PM

Sorry just got out of a meeting are you available in 30 min ?



**Lien Notice to Receiver - Mizrahi Inc..pdf**  
PDF Document · 135 KB

I filed my lien against bloor for the funds owed to me today

Available now

Fri, Apr 26 at 8:59 PM

Watch Toronto Lux on Amazon Prime episode 6

Sun, Apr 28 at 1:01 PM

The screenshot shows the Amazon Prime Video interface for the show 'Luxe Listings Toronto'. At the top, the time is 09:32, and the network is 5G. The main image features three real estate agents standing on a rooftop terrace with a city skyline in the background. Below the image, the title 'Luxe Listings Toronto' is displayed. A dropdown menu shows 'Saison 1'. A blue checkmark indicates 'Inclus avec Amazon Prime'. A large white button with a play icon says 'Reprendre S. 1 Ép. 7'. Below this, a progress bar shows '35 min restante(s)'. A dark button with a download icon says 'Télécharger la saison 1'. At the bottom, there are five icons for 'Regarder à nouveau', 'Liste de favoris', 'J'aime', 'Pas pour moi', and 'Partager'. A description follows: 'Dans l'industrie hyper compétitive de l'immobilier de luxe à Toronto, trois courtiers, Peter et Paige Torkan, un couple ambitieux, et Brett Starke, une étoile montante, nous donnent un aperçu de leurs carrières et de leurs vies personnelles.' Below the description, it says 'Documentaire • Téléréalité'. At the very bottom, there is a navigation bar with icons for 'Accueil', 'Boutique', 'TV en direct', 'Téléchargements', and 'Rechercher'.

I'm in episode 6 and 7

All your recommendations worked for the show



All your recommendations worked for the show

Mon, Apr 29 at 9:00 AM

Will check

Mon, Apr 29 at 2:22 PM

For the Canadian real estate we want to obtain a beneficial charge of the additional properties and right to register on title if the loan is in default (similar to what was done for the Ottawa project on the original loan)

I can't do it on those properties

Tue, Apr 30 at 11:59 AM

My lawyers don't see why not. You did that with Ottawa. You offer security then take it away. We feel you're just stalling and that we need to take action to establish our position

Because Avril my lawyer said I can't do it on the houses for a variety of reasons including Scotia does not allow for it in their documents. Ottawa did not have a prohibition from doing so in their mortgage but Scotia does and I don't control the houses like I advised several times. Ottawa I do control.

My lawyer sent your lawyer the revised amending agreement last night

Last night?

Yes

He has the latest amendment last night including Rauva

Again - my lawyer says you can do a beneficial charge - ie not registered

I can't my lawyer is telling me because I don't control the houses. I explained this and we discussed it before at your home. That's why we went via Rauva and the charge on Ottawa registered

Whatever. She already sent a proposal that included them.  
I'm meeting with lawyers this afternoon

I am doing everything I can Henry. What she sent you was what you asked to be sent to you and I told her to do it even though she said I can't and then she said she would go and check and came back and said I told you you can't and you did not listen and had me send it out and I did that because of the pressure you put me with getting it out to you and trying to make it happen when I forgot I could not after I had told you before I could not as I don't control them

Tue, Apr 30 at 7:25 PM

But you want me not to listen to my lawyers' advice

Tue, Apr 30 at 8:45 PM

I have done nothing to hurt you and have kept my payments to date and protected your interests with the Ottawa registration. Your lawyer is not you and you make your own decisions as you always have. You are your own person.

Wed, May 1 at 7:30 AM

You hurt me by not honouring your promises, by defaulting on payments in 2022, defaulting on payout and in stringing me along. You prioritize your lifestyle and luxury over our friendship. You're correct though - I will make my own decision. I'm sorry you are unable to provide me with the security I require.

Wed, May 1 at 9:06 AM

I'm sorry you feel I hurt you. That was never my intention. I did not string you along and I made good on our agreements throughout the years and cured with you any issues throughout the time line that presented itself. You were well aware of all my challenges during that time and what was to occur with the closings of 180 Steeles, Korea and Bloor. I have never given up or failed anyone regardless and throughout the hardships during COVID and the lawsuits maintaining my dignity and family to deliver on all my promises, even when my enemies were all unsuccessful in their attempts to destroy my family and my business.

You know this better than anyone. All I have tried to do during this time period is to keep everything together from collapse and to get to the finish line in Ottawa to deliver on all my commitments. Most would have failed years ago if they were in my shoes and had to deal with the enemies I had to deal with. I have not and have fought my way with your support to get through. It's up to you and you alone if you want now to pull that support away from me. I have always been a friend to you and consider you one of my closest friends and allies.

Wed, May 1 at 1:13 PM

You didn't even get me the Patek Nautilus you said was no problem. 😞

My lawyers tell me I'm being stupid and I should have acted immediately in February

You didn't even get me the Patek Nautilus you said was no problem. 😞

I did it's on order and I have the first one arriving at Humbertown

They give 1 to each boutique every other year

My lawyers tell me I'm being stupid and I should have acted immediately in February

No you're not. If there is ever a problem I would come to you like I always have done

They have put me with Ed Pasquale at CAE in Dallas starting on Monday. I asked to be going with you from now on.

You owe me \$13M and continue to fly private and live like a king on my largess. Some friend. You can't use my plane until I'm paid in full

until it is paid in full.

I do not fly private and have not. I have only flown with you private for the past years

I have to keep my license current or I will lose all of my license type rating on the 300. Which would be stupid beyond belief.

I have only flown private with you in the last years because I can't and that's why I ask you to fly so I can keep my hours. You know that

I let my type ratings lapse on everything other than the 300.

The only happiness I have left is that Henry and I have asked to fly with you or anyone so I can keep my hours

That's the only way I can afford to do it

You get 2 years on Phenom 300 currency before you have to do an initial

Correct and I did not go last year because of all my problems and don't want to lose my currency and have to do an initial. Again that would be stupid.

The draft we received from Avril is totally unacceptable.

So let me know what the issues are and let's fix it

My lawyer is supposed to be having a conversation with her.

High level:

Security in real estate you promised. You could look at what I proposed in February

Need direct interest in Rauva not beneficial

No 3 year extension

I never promised security in the real estate that I don't control. I always told you that. The houses and cottage etc is not under my control.

Rauva interest I don't understand the issue. Call me as it is a direct interest

Ottawa repayment I only did the 3 year because you suggested it in your draft and our discussions. And Just in case but funds would be out of Ottawa

What are you talking about? You promised it 3 weeks ago. You even put that real estate in your proposal to me which came from your lawyer. The 3 year period was only regarding standstill on the Toronto and Collingwood real estate mortgages you agreed to provide. That's my frustration. You keep making promises then renegeing.

No. You asked for it and pressed for it and I told you I can't from day one but went back to my lawyer to get her to do it and she came back and said I can't after I pushed her to do it and she sent it out as a draft to your lawyer under my instructions and she said she would go back to check and came back and said I told you Sam you can't provide it. You were pressing me to do it and I tried but I can't so I went back to Rauva which was in your previous draft from your lawyer which I now will agree to so I can get this successfully done with you

I have not reneged on anything I said I can do from day one

Riiiiiggghht. Whatever. Too much stress trying to make a deal with you. I'm hitting autopilot and letting legal team take over.

I really don't understand Henry. Your lawyer sent a previous draft to Avril. What's the issue with agreeing to that?

Why do you want to have me fail and go bankrupt? Something not one of my enemies could do. My closest friend is going to do to me.

Let's just agree to the draft your lawyer sent last

I really don't understand Henry. Your lawyer sent a previous draft to Avril. What's the issue with agreeing to that?

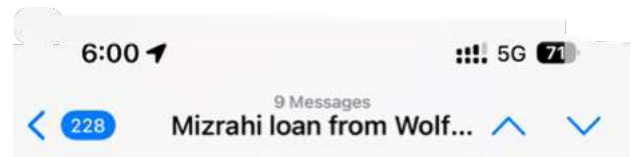
OK - Last draft my lawyer sent included real estate your lawyer included in her version to us

Sent you email

No it did not. It was the version with Rauva shares I can send it to you

I will send you over the draft your lawyer sent that we can do. Thanks

Thu, May 2 at 1:01PM



**From:** Avril Lavallee  
**Sent:** Monday, April 29, 2024 1:17 PM  
**To:** Nielsen, Ryan <RNielsen@osier.com>  
**Cc:** Avril Lavallee <avril@mgbwlaw.com>  
**Subject:** Mizrahi loan from Wolfond (file 34549)

Good Afternoon Ryan,

Our client's mortgages on 185 and 187 Forest Hill Road, Toronto and 104 Hemlock Blue Mountains prohibit further mortgages. Our client is prepared to offer an indirect pledge of its interest in Rauva. Our client's interest in Rauva is owned by MIZ Global Enterprises, and the sole shareholder of MIZ Global Enterprises is MIZ Global Enterprises Trust. Our client will cause MIZ Global Enterprises Trust to provide a pledge of its shares of MIZ Global Enterprises Trust.

Attached are blacklined and clean copies of the revised amendment reflecting the foregoing. I note that the blackline includes a couple of notes to draft to explain why some of the changes were made.

Also attached are statements received from Trez with respect to the Construction Loan.



I'll see what Ryan advises

Avril sending to him the revised amendment

I'm sure Scotia would sell me their 1st mortgages especially if they are at a low rate.

They can then redeploy at higher interest rates



This letter makes no reference to a request for consent.

I can't do it as I don't control it as I have explained before. I can't get the consent I tried

I tried and got a No. I did get Trez consent Because I control that

Let's proceed with registration as you agreed. All they can do is accelerate. I will agree to pay it off if that's the case and simply add that amount to our debt.

I can't do that

I don't control it

You agreed to it. Just like you agreed to a lot of things. Sorry I'm out of options.

That's not true Henry.

You were pushing me to do this and I said I would go back again and see if I would be allowed to. And I can't like I said the first time you asked me. Then you said include Rauva and I said fine. Plus you have your registration on Ottawa

Thu, May 2 at 6:39 PM

I'm tired of this bullshit. We had an agreement and then you reneged. We will deal through lawyers. We haven't seen anything today.

I never reneged.

Only on everything. You pretend to be friends but you just use people. If your lawyer has something to send, send it.

That's not true. And you know that

I will have Avril send it out

Mon, May 6 at 12:41 PM

Hi Henry, I received your statement of claim this morning from your lawyer. I see its filed and you wish to appoint a receiver over Ottawa, Mizrahi Developments etc so I will have to advise Trez in Ottawa which will cause the Ottawa project to go into receivership now. I just want to make sure this is what you want and understand will happen before I advise them. At that point I will no longer have any control over anything. I know you this. I also want to make sure you got the email and your lawyer did from Avril and I for the amending agreement over the weekend and as a result you do not wish to proceed with the renewal either. Again I am only asking as I will have to advise Trez the senior lender today of this and once I do its game over for me and no going back.

She did not make a single change (NOT ONE) from what she sent previously. I have given my lawyers complete control. I have been patient for almost two years. Obviously I should have commenced when you defaulted on interest almost 2 years ago. Obviously if you pay me out, this will be resolved.

That said you're still a good friend and I wish you the best



That said, you're still a good friend and I wish you the best.  
Let's grab dinner when I'm back in June.

Henry, I have to know if your lawyer is proceeding because I will have to advise Trez today and once I do I can't go back and they will put the project into receivership immediately too and everything will be out of my control. There will be also no point in further equity injections either into the project this month to keep everything going with Trez.

I don't know what change you wanted from Avril? I need to know today as I have to know what I am doing with Trez and the equity calls as there is no point if you are proceeding with your receivership application based on what I got served with today and Ottawa and everything will go into receivership too by the senior lender and I will be out.

Yes. We are proceeding

Ok so I will advise Trez. You have caused me absolute damage to be able to complete Ottawa to honour all my obligations.

Trez will automatically take me out now and appoint a receiver and I don't know what else.

You caused damage not me. I treated you as a friend. You did not reciprocate. Hopefully you'll pay me out this week to avoid any issues. See you in June.

I will be out of everything. I can't pay you out this week if I could I would have I need Ottawa to do that and you have destroyed that now too:

How dare you say I destroyed anything. I have no control. The lawyers are in charge.

You will bankrupt me with this move of your lawyers they are applying for a receiver on everything.

It's your move not your lawyers

Once I advise Trez today it's game over for me and everything with your receivership application. You do understand that...

Mon, May 6 at 3:25 PM

Henry please confirm to me that I am going to advise Trez in Ottawa of your statement of claim and receivership filed. So they can based on this information proceed on whatever they need to do which will be to put Ottawa into receivership. As I said there is no going back after that.

Mon, May 6 at 5:03 PM

Please confirm Henry or call me as I need to know what I am disclosing to Trez today and if we are going down the receivership road on this last project as well. I will be removed from this project too which will impact everything. But you already know that.

Mon, May 6 at 6:15 PM

It's ironic I defeated all my enemies who wanted to destroy my business and life and it took my closest friend that I disclosed everything to and came to for help to have me and my business destroyed. Something no other person could have done to me.

I have never not paid anyone back their money Henry even after all the lawsuits and you are causing me to fail you, my family, and everyone. Why? I needed your help now and in the last 3 months more than ever and my life depends on completing my last project successfully to repay and you have taken away my single ability to do so and to keep what is left of my reputation.

Mon, May 6 at 7:19 PM

How dare you say I destroyed anything. I have no control. The lawyers are in charge.

Respectfully Henry I have always known you to make the decisions and guide your lawyers.

I need you to help me.

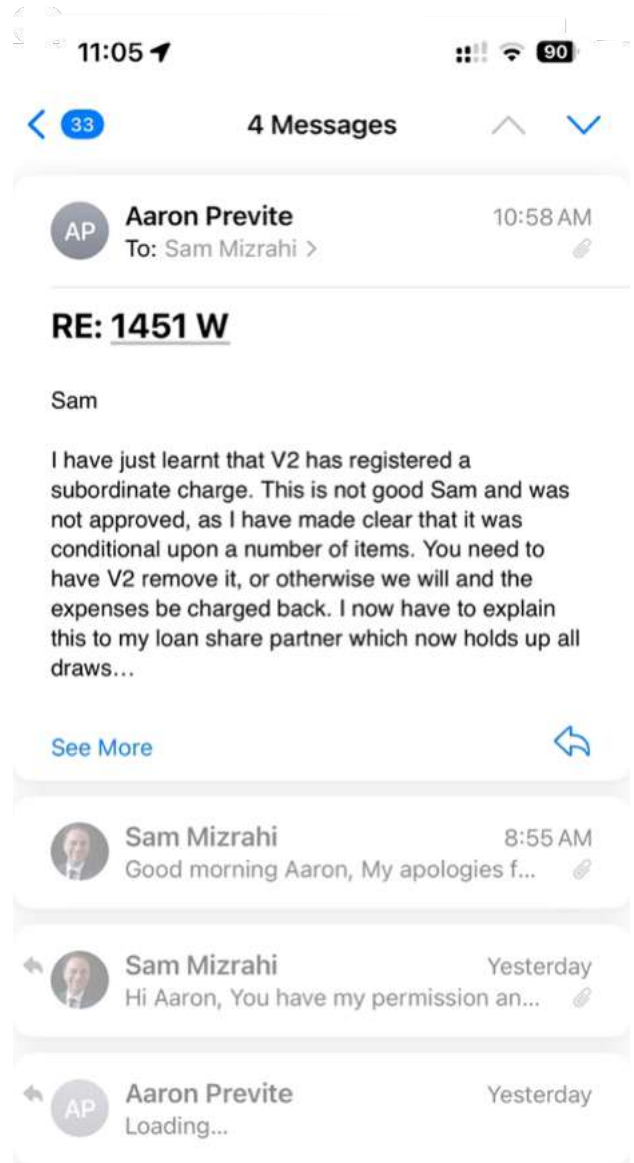
Respectfully Henry, Please retract your statement of claim. So I can finish Ottawa and get you repaid in 6 months or sooner and I will try to refinance something in the interim to get you repaid.

Tue, May 7 at 9:57 AM

Good morning Henry. I did not hear back from you. So I will advise Trez of your receivership statement of claim application today to Trez in Ottawa and everyone.

I'm driving with Focus turned on. I'll see your message when I get where I'm going.

Tue, May 7 at 12:06 PM



I'm driving with Focus turned on. I'll see your message when I get where I'm going.

Wed, May 8 at 7:04 PM

We are speaking with Trez directly. Can we get the 3 Ontario properties back into our deal?

No I don't control the 3 Ontario properties.

So nothing to discuss I guess

Enjoy Japan 🇯🇵 safe travels

Thank you. See you in June

Thu, May 9 at 4:12 PM

I have a brilliant idea

Call me when you have a minute. I have a potential solution

I really want to enjoy my holiday. V2 lawyers are talking with Trez lawyers.

I can chat very briefly in an hour or so.

Ok call me when you are free I have an idea want to pass it by you

Thu, May 9 at 8:18 PM

Sam,

Nice to speak today. As I said, my lawyers have been in touch with Trez and we are being very practical and accommodating with them to allow project funding to continue. You need to be practical about this as well. I am prepared to drop the request for receivership in my application against you, but you need to confirm that you will be consenting to judgment on the debt. There is no possible defence to this part of the application, so

opposing would only add unnecessary costs that will ultimately be added to the amount of the debt. This is separate from any ongoing discussions we may have about a further amending agreement, and can be separate from any discussion about whether we enforce the judgment right away. My lawyers also tell me that Avril hasn't even responded to them to confirm that she will accept service despite multiple emails about this. You need to arrange for a lawyer to accept service right away as a sign of good faith.

Thanks

Henry

Avril is away on a cruise this week. I will get another lawyer to respond for accepting service.

Let's discuss when you are able on next steps to come up with a solution on what you are saying above. I will tell you my main concerns so we can work out a practical solution.

Let me know when you are able to speak again briefly.  
Thanks

Just touring all day. I'm 13 hours ahead so, briefly, available tomorrow morning your time. 8:30AM your time

I can't do 8:30 am tomorrow unfortunately. Let's try for over the weekend if possible when you have time or Monday anytime. Thanks Henry

Thu, May 16 at 6:45 PM

Had a call with Trez. Not happy. They're getting 15% and 18% on their loans and talking about a further 15M in draws at 18% rate. I will be left with nothing. I'm trying to be practical but you need to confirm that you will be consenting to judgment on the debt. Again there is no possible defence to this part of the application, so opposing would only add unnecessary costs that will ultimately be added to the amount of the debt. This is not negotiable.

I need to know what to instruct my lawyers.

Thanks

Henry

I am working on refinancing Trez out and paying you out at the same time. In one new refinancing with what I told you when we spoke last. Have signed term sheet and working on DD to close by end of June.

I need to continue and ensure the building of Ottawa does not stop and I pay everyone as I refinance you and Trez out at 9% with my new loan

Are you able to speak now for a quick minute?

Nothing to discuss.

I am refinancing the debt and you to get paid out and have signed a new term sheet to do so is what I am saying for a closing in late June. They are doing DD now

OK. Send in writing and I will send to my lawyers to evaluate.

Ok

I'm at a zen monastery - need to focus on nothing.  
Ommmmm

Mon, Jun 3 at 10:53 AM

Deposited last interest cheque today. Can you provide replenishment for next year. Can you update me on the refi? Grab coffee later?

Good morning Henry, yes of course. Let me know when you are available to meet at your earliest opportunity. Would 5 pm or 5:30 pm work today for a coffee?

5 or 530 works

Ok perfect let's plan between 5 pm and 5:30 pm and I will text you as soon as I am out of my meetings at 5 pm. I will be in my offices on hazelton so we can go for a coffee

Mon, Jun 3 at 4:53 PM

5:15 at 5 Elements?

5:30 pm elements is good 👍

K

Thu, Jun 6 at 3:33 PM

Sorry, I can't talk right now.

Give me 30 minutes

15 minutes

Are you going to CJPAC tonight?

Call me when you are free

Just in meeting till 5. Will call after

Tue, Jun 11 at 9:03 PM

Hi **Henry**, how are you? I just emailed you the amending loan agreement, please let me know if you need any additional edits if so please make them and send it back so we can finalize as per our last discussion. Thanks

I don't see email

I did not receive

Wed, Jun 12 at 3:06 AM

I just resent it again

Wed, Jun 12 at 8:39 AM

Got it. Sent it to lawyer for comment

Thank you. Let me know if there is anything I missed or any edits required. Thanks

Wed, Jun 12 at 11:55 AM

Waiting to hear back from lawyers

Understood. We have until Friday June 15 as per Trez notice. Trez has confirmed moving for receivership on Monday June 18 if your standstill is not signed with them by this Friday as they said they cannot advance to pay the trades on this Friday without your standstill inter-creditor agreement and the building would come to a halt and/or liens filed. Either way that will then wipe out all my equity not to mention make it very difficult to sell the balance of the units if not impossible under receivership.

I sent it to you last Friday and just got it today.

I understand Avril was away on the weekend and did not respond or send it back to me until yesterday.

Wed, Jun 12 at 3:54 PM

Sorry. Looks like we're too far apart. Ryan will revise and return but I don't think we'll get there by Friday. Trez can advance behind me and will get paid out in any event when refi is completed.

Trez will not finance behind you. They have advised your lawyer and mine they will put in a receiver and wipe me out due to your registration and not signing the inter creditor agreement.

Sorry. Not my problem

Hopefully your refi comes through

Sorry. Looks like we're too far apart. Ryan will revise and return but I don't think we'll get there by Friday. Trez can advance behind me and will get paid out in any event when refi is completed.



Actually - no point in Ryan responding based on where we are.

Ok. And you are not signing the inter creditor agreement with Trez either correct?

Correct

Unfortunate.

Never thought this would happen with you.

You ask me to put myself in worse position and offer no consideration in return, so...

That's not true, I gave you the amending agreement and additional security and made all my payments and working to get refinancing completed to get everyone out. An inter creditor agreement is standard and you are not doing it and once the receiver is appointed next week I will no longer be able to re finance as I will loose my refinancing on Ottawa with the receivership.

I have nothing more to say. I have made several fair and reasonable proposals that you have refused to accept. Let the lawyers deal with it.

I have as well. Very disappointing. You did what nobody else ever did.

Wed, Jun 12 at 6:15 PM

You and I need to figure this out Henry and not the lawyers.

Wed, Jun 12 at 7:19 PM

I need money or hard collateral. Talking won't accomplish anything.

Thu, Jun 13 at 6:23 AM

I have nothing more to say. I have made several fair and reasonable proposals that you have refused to accept. Let the lawyers deal with it.

Good morning Henry, Send me your fair and reasonable proposal please asap so I can review.

We need to fix this together before everything gets broken. Send me your proposal asap. Thanks

Please see my email I sent you this morning, and call me when you have a moment

Thu, Jun 13 at 9:50 AM

Any further correspondence should be through legal counsel.

Ok

Thu, Jun 13 at 4:15 PM

Can you give me a very quick call 2 min thanks

Thu, Jun 13 at 5:53 PM

Sorry. I have a lot going on today. I don't want to have a call as nothing you say will change my position. You should try to reason with Trez. If you've come up with security or cash, I'm sure your lawyer can convey to my lawyer any proposal for me to consider.

Thu, Jun 13 at 8:13 PM

Please see your email. I just sent you. Thanks

Thu, Jun 13 at 9:15 PM

Will review tomorrow

Fri, Jun 14 at 3:56 PM

Is this getting done today?

Fri, Jun 14 at 9:10 PM

I have advised the lawyers and Trez. Waiting on them to see what Trez will do now as they were putting in a receiver next week. I am following up.

Thanks for the update

Have a good weekend. I am assuming we will hear back on Monday at this point.

You too. Happy Father's Day

Thank you. Happy Father's Day

Thu, Jun 27 at 9:27 AM

Are you dropping off interest cheques or do we just accrue at default rate?

Thu, Jun 27 at 5:08 PM

Working on everything

K

Tue, Jul 2 at 2:48 PM

Interest cheques today or should I just accrue at default rate?

Tue, Jul 2 at 6:46 PM

Working on getting everything done and closed.

Thu, Jul 4 at 10:43 AM

Signed limited subordination. Update on refi timing?

Getting that organized now. Will call you or update you shortly on timing as soon as the lawyers confirm timing to me.

Fri, Jul 5 at 11:46 AM



Meet Keir Starmer's Jewish wife, bringing Shabbat to No. 10 Downing Street

jpost.com

Mon, Jul 22 at 11:20 AM

Good morning Henry, let me know when you are free for a quick update call. Thanks

Now is good

Ok 2 min just walking into my office

Your phone is forwarded

Mon, Jul 29 at 4:49 PM

Any update?

Yes all loan documents just got finalized today with the lawyers so you should be received the skinny shortly today or tomorrow and our take out will occur right after of Trez the following week and then your take out right after the Trez take out.

Lawyers are on it getting everything done

Trying to get everything done and finished in August

Do you have a hard date?

Hard date with Trez for next week, Yes. And then following Trez is your take out with the lawyers and lender. It's a two step process.

So my hard date is August 15?

I don't know yet as the lawyers are doing there thing first Trez take out and then your take out so for sure it will be in August

You will be fully paid and taken out in August as the lawyers are moving fast to get it done with all the complexities

Tue, Jul 30 at 10:16 AM

received and executed

Thank you.

Lunch?

Or coffee

Sure when would you like to have a coffee?

3?

I'm in Ottawa today all day flying back and available at 5 pm to meet for a coffee

OK - Landwer in the village? I have to pick up my mom at 5:40

Ok see you there at 5 pm

Tue, Jul 30 at 4:55 PM

I'm here. Inside or outside?

Inside back corner

Ok

Ordered you a cappuccino

And an order of poutine

Ice 🧊 cappacuino thanks

Iced latte.

Ok 👍

No sugar

Tue, Jul 30 at 6:53 PM

Send me details on 181 retail. I'm definitely interested.

Ok

Fri, Aug 2 at 10:37 PM



Mossad hired IRGC security agents to plant explosives that killed Haniyeh — report

timesofisrael.com

Sat, Aug 3 at 7:19 AM

As ayatollah always says, "you just can't trust the help these days." The also took his Patek collection

Haniyeh does not have the class or taste for Patek. He's more of the Panerai character and taste. 🙄

and a Hublot

Tue, Aug 6 at 8:58 PM

Any update?

Wed, Aug 7 at 7:58 AM

Good morning, the lenders and their lawyers are proceeding for closing and finalizing documents will have a further timing update by tomorrow afternoon.

Fri, Aug 9 at 8:35 AM

Good morning, lawyers are finalizing with Trez for payout of Trez loan on Friday August 16. Then we move for reset and pay out of your loan following Trez as discussed. Your loan is expected to fund within approximately 30 days following Trez take out.



will be in August

You will be fully paid and taken out in August as the lawyers are moving fast to get it done with all the complexities

Thanks for the update.

Thu, Aug 15 at 10:28 AM

Any news on your bid?

Yes going very well

Cheering for you

Will be huge

Thank you and agreed. I feel like Rocky

In Rocky II

Thu, Aug 15 at 1:31 PM

And III, and IV

Mon, Aug 19 at 9:06 AM

Good morning and a Happy Birthday Henry! Wishing you many years of health happiness and prosperity in the coming years ahead. Enjoy your very special day! Happy birthday 🎉

Thank you Sam. (aka Rocky)

Wed, Aug 21 at 3:06 PM







**Check out this listing**

realtor.ca


Wed, Aug 21 at 5:41 PM

Is Trez done? Any update?

Almost. The lawyers took forever to get everything done. I am dealing with it daily with Trez and Cor financial to get it closed asap and many moving parts with Trez and Cor to get it completed and should know more by tomorrow or Friday latest. As same group of lawyers and Cor also involved on the Bloor Bid buyback so it's been a very busy month to get everything closed

**Jony Ive explains Steve Jobs' product philosophy, which saved Apple from bankruptcy in 1998**





instagram.com

Fri, Aug 23 at 1:54 PM

Hi Henry just sent you a update email on timing of Phase 1 the Trez payout for next week

Have a great weekend Shabbat shalom

Thu, Aug 29 at 7:57 AM

We're on the CRM call

2 min

Fri, Aug 30 at 11:10 AM

Did Trez get paid out? Update on timing?

Will know on Tuesday timing from Trez and the lender. Everyone has been working on the amending agreements all week and it's a short week with holidays, so it's spilling into next week.

Tue, Sep 3 at 2:25 PM

Update? Coffee?

Tue, Sep 3 at 3:58 PM

Hi Henry, would tomorrow work for you? Let me know best time ? Thanks

Around 2PM?

Sure that works let me know where you would like to meet for a coffee

for a coffee

The usual

Ok

Wed, Sep 4 at 1:56 PM

On my way running 10 min late sorry

OK. I'm here. What can I get you?

Ice cappuccino please and a gluten free dessert

Sun, Sep 8 at 7:31 PM

Hi Henry, let me know when you are available for a quick call. Thanks

Mon, Sep 9 at 4:06 AM

I'm in uk. Call me when yo get up

Mon, Sep 9 at 11:05 AM

Anytime in next hour

Calling you now thanks

Friday 3:29 PM

Hi **Henry** not sure if you are back to not from your vacation call me when you are free no rush and can me on the weekend or on Monday on an update on Ottawa

Friday 9:23 PM

Can your lawyer connect with Gord Capern at Paliere Roland. I told my lawyer that yours would be reaching out.

Saturday 5:13 AM

I'm in a car with other people all day.

Understood.

We need to get the trade paid as we are late this month paying them and have to get the draw out next week to pay them so the building continues to get built and we don't get any liens. As a result of the delay in closing with COR financial and Trez as I was overcoming their concerns 2 weeks ago and making very good progress.

Trez is convinced I will close this and as a result they have agreed to do one last skinny subordination to get the draw out to keep the building moving while we finalize and close the financing as discussed.

You will get another skinny the last one from Trez on Monday so they can fund and we can keep everything moving forward successfully to close on all financing fronts.

Thank you and safe travels.

Can't talk Back on Wednesday. Your lawyer should contact mine.

Yes they will reach out on Monday to send over the skinny to your lawyer and will also reach out to your lawyer as well.

We will be asking for commitments and assurances

Everyone is committed to getting the refinancing done, as it's in everyone's best interests. That's the whole point of why Trez is allowing for this last skinny and have confidence. That's the best sign of everyone's commitment to getting this successfully accomplished.

Lawyers will discuss and negotiate our conditions

Trez has a court date on this Thursday for receivership order if we don't get the trades paid this week with one last skinny by Wednesday. In wish case you will wipe me out and yourself out and the project completely and my refinancing will not obviously close. I will leave it up to you as I have done everything possible to get this successfully resolved and my refinancing gets everyone paid especially you and me. Trez is fatigued and will just take over and complete.

I won't be doing anything without hard concessions and my lawyer's approval.

Then you will be responsible for the receivership. I have done what was necessary to get you repaid.

Delivered

You are the only one responsible for your problems. This will only get resolved through my lawyers. I suggest you expedite communication between yours and mine.

This is Exhibit CC to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered below the text.

A Commissioner for taking affidavits

[REDACTED]

> On Mar 15, 2024, at 7:49 PM, Sam Mizrahi <sam@mizrahidevelopments.ca> wrote:

>  
>  
>  
>  
> Hi Henry,

> Thanks for your note. I would also like to memorialize our discussions from March 3, 2024.

- > 1. I told you that I would reach out to Trez about registering a mortgage in your favour behind Trez's existing security. I have since called Trez, and they said they would get back to me.
- > 2. I confirm that we had a general discussion about potential payment sources for this loan, but no agreement was reached with respect to any payments from matters involving The One.
- > 3. See note above for 2.
- > 4. I will continue to make monthly interest payments for the term of the loan.

> I think there is a misunderstanding with respect to my homes at 185, 187 and 189 Forest Hill Road, Toronto. Those properties are not listed for sale.

> As we discussed, I intend to repay your loan from the proceeds of the unit sales from my Ottawa project. I am targeting October, 2024 for condominium registration, and unit sales will occur thereafter. I would like to extend

your loan to January 1, 2025 to align with this time line. You will receive the net sale proceeds after payment is made to Trez in full so it is possible that you will have payment before the due date. In the meantime, if I recover all the amounts owed to me by The One, then I will make additional payments as we had discussed in reference to your point #2 and #3 from those sources.

>

>

> Thanks Henry looking forward to getting this successfully completed.

>

>

> Shabbat Shalom

>

>

> [[https://urldefense.com/v3/\\_http://mizrahidevelopments.ca/content/uploads/mizrahi-signature-2.gif\\_!!GeBfJs0!MdufPZ5-Jk1-IGGfAzcD48\\_un-eeMCH4mZaSQsG-83FoPEbAnGy\\_BhM327v1cm8ukNMKOx0-9kwxLEZaKKd6XgUj\\$](https://urldefense.com/v3/_http://mizrahidevelopments.ca/content/uploads/mizrahi-signature-2.gif_!!GeBfJs0!MdufPZ5-Jk1-IGGfAzcD48_un-eeMCH4mZaSQsG-83FoPEbAnGy_BhM327v1cm8ukNMKOx0-9kwxLEZaKKd6XgUj$)] Sam Mizrahi

> President

> 125 Hazelton Avenue

> Toronto, Ontario M5R 2E4

> T. 416.922.4200 ext.4210<tel:4169224200>

> C. 416.818.5288<tel:4168185288>

> F. 1.866.300.0219<tel:18663000219>

> E. Sam@MizrahiDevelopments.ca<<mailto:sam@mizrahidevelopments.ca>>

> [https://urldefense.com/v3/\\_http://www.MizrahiDevelopments.ca\\_!!GeBfJs0!MdufPZ5-Jk1-IGGfAzcD48\\_un-eeMCH4mZaSQsG-83FoPEbAnGy\\_BhM327v1cm8ukNMKOx0-9kwxLEZaKL89BZHi\\$](https://urldefense.com/v3/_http://www.MizrahiDevelopments.ca_!!GeBfJs0!MdufPZ5-Jk1-IGGfAzcD48_un-eeMCH4mZaSQsG-83FoPEbAnGy_BhM327v1cm8ukNMKOx0-9kwxLEZaKL89BZHi$)

<[https://urldefense.com/v3/\\_http://www.mizrahidevelopments.ca\\_!!GeBfJs0!MdufPZ5-Jk1-IGGfAzcD48\\_un-eeMCH4mZaSQsG-83FoPEbAnGy\\_BhM327v1cm8ukNMKOx0-9kwxLEZaKD\\_PiJOP\\$](https://urldefense.com/v3/_http://www.mizrahidevelopments.ca_!!GeBfJs0!MdufPZ5-Jk1-IGGfAzcD48_un-eeMCH4mZaSQsG-83FoPEbAnGy_BhM327v1cm8ukNMKOx0-9kwxLEZaKD_PiJOP$)>

>

>

>

>

>

[REDACTED]



This is Exhibit DD to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. Ha", is centered within the upper portion of the box.

A Commissioner for taking affidavits

[Redacted]

[Redacted]

**From:** Avril Lavallee <[avril@mgbwlaw.com](mailto:avril@mgbwlaw.com)>  
**Sent:** Friday, April 05, 2024 4:32 PM  
**To:** Nielsen, Ryan <[RNielsen@osler.com](mailto:RNielsen@osler.com)>  
**Cc:** Avril Lavallee <[avril@mgbwlaw.com](mailto:avril@mgbwlaw.com)>  
**Subject:** RE: V2 Investment Holdings loan to Sam Mizrahi (file 34549)

Good Afternoon Ryan,  
Trez has advised Sam that it will consent to the registration of your client's mortgage provided that your client enters into a deep subordination and absolute standstill agreement, and your client must consent and subordinate to any financing to take out and replace the existing debts owed to Trez upon request.

<image001.png>

**Avril Lavallee BA, LLB**

**Director**

E / [avalallee@mgbwlaw.com](mailto:avalallee@mgbwlaw.com)  
T / 519.571.8800 ext. 135 F / 519.742.1841

**McCarter Grespan Beynon Weir Professional Corporation**

539 Riverbend Drive, Kitchener, ON N2K 3S3 / [mgbwlaw.com](http://mgbwlaw.com)

This email (including all attachments) is for the sole use of the intended recipient and may contain confidential information which is protected by legal privilege. If you are not the intended recipient, please notify us immediately by reply email or by telephone, delete this email and destroy any copies. Thank you.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

This is Exhibit EE to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered below the text.

A Commissioner for taking affidavits

## FORM 86

**NOTICE OF INTENTION TO ENFORCE SECURITY**

(s. 244, Rule 124)

To: Mizrahi Development Group (1451 Wellington) Inc., an insolvent person

Take notice that:

1. V2 Investment Holdings Inc., a secured creditor, intends to enforce its security on the insolvent persons' property described below:
  - a) The real property of Mizrahi Development Group (1451 Wellington) Inc. municipally known as 1451 Wellington Street West, Ottawa ON and having the following legal description: PIN 04030-0261 (LT) LOTS 1, 2 & 3 & PART LOT 4, PLAN 145, N/S RICHMOND ROAD (NOW WELLINGTON STREET), PARTS 1 & 2 PLAN 4R35696; SUBJECT TO AN EASEMENT AS IN OC2360765; SUBJECT TO AN EASEMENT AS IN OC2671330; CITY OF OTTAWA (formerly PINs 04030-0155 (LT) and PINs 04030-0154 (LT)) (the "Property"), including all buildings, erections, structures, improvements and fixtures now or hereafter constructed or placed in, under or upon the Property; (iii) all easements, rights-of-way, licences and privileges appurtenant or appertaining to the Property; and (iv) all interests in any of the foregoing and all benefits and rights to be derived by Mizrahi Development Group (1451 Wellington) Inc. in respect thereof (collectively, the "Charged Premises"); and
  - b) all of its right, title, estate and interest, present and future, in and to any and all personal property in which a security interest can be taken, reserved, created or granted whether under the *Personal Property Security Act* (Ontario) (the "**Act**"), any similar personal property security legislation in any jurisdiction in which any of the Charged Premises is located or otherwise under any statute or law or in equity and which is now or at any time hereafter owned by Mizrahi Development Group (1451 Wellington) Inc. or in which Mizrahi Development Group (1451 Wellington) Inc. now has or at any time hereafter acquires any interest of any nature whatsoever.
2. The security that is to be enforced is the following:

A demand debenture dated October 31, 2019, a charge registered or to be registered on the Property, and the other security referenced in Article 8.01 of the Loan Agreement between Sam Mizrahi and V2 Investment Holdings Inc. made as of October 31, 2019, as amended.
3. The total amount of indebtedness secured by the security is \$12,822,835.76 as of December 31, 2023 plus ongoing interest and legal fees.

4. The secured creditor will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the insolvent person consents to an earlier enforcement.

Dated at Toronto, this 15<sup>th</sup> day of April, 2024

V2 Investment Holdings Inc.  
Name of Secured Creditor

Henry Wolfond, President  
Name and Title of Signing Officer

This is Exhibit FF to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered below the text.

A Commissioner for taking affidavits

**Properties**

*PIN* 04030 - 0261 LT *Interest/Estate* Fee Simple  
*Description* LOTS 1, 2 & 3 & PART LOT 4, PLAN 145, N/S RICHMOND ROAD (NOW WELLINGTON STREET), PARTS 1 & 2 PLAN 4R35696; SUBJECT TO AN EASEMENT AS IN OC2360765; SUBJECT TO AN EASEMENT AS IN OC2671330; CITY OF OTTAWA  
*Address* OTTAWA

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

*Name* MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.  
*Address for Service* 125 Hazelton Avenue  
 Toronto, Ontario  
 M5R 2E4

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)***Capacity**Share*

*Name* V2 INVESTMENT HOLDINGS INC.  
*Address for Service* c/o Bayshore Capital Inc.  
 Commerce Court West  
 199 Bay Street, Suite 2900  
 P.O.Box 459  
 Toronto, ON M5L 1G4

**Statements**

Schedule: See Schedules

The text added or imported if any, is legible and relates to the parties in this document.

**Provisions**

*Principal* \$12,900,000.00 *Currency* CDN  
*Calculation Period* Semi-annually, not in advance  
*Balance Due Date* See schedule attached  
*Interest Rate* 25% per annum  
*Payments*  
*Interest Adjustment Date*  
*Payment Date* See schedule attached  
*First Payment Date*  
*Last Payment Date*  
*Standard Charge Terms*  
*Insurance Amount* Full insurable value  
*Guarantor*

**Signed By**

Annie My Tran 1 First Canadian Place, 61st Floor, acting for Signed 2024 04 15  
 Box 50 Chargor(s)  
 Toronto  
 M5X 1B8

Tel 416-362-2111

Fax 416-862-6666

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

OSLER HOSKIN & HARCOURT LLP 1 First Canadian Place, 61st Floor, Box 50 2024 04 15  
 Toronto  
 M5X 1B8

Tel 416-362-2111

The applicant(s) hereby applies to the Land Registrar.

**Submitted By**

Fax 416-862-6666

**Fees/Taxes/Payment**

Statutory Registration Fee	\$69.95
Total Paid	\$69.95

**File Number**

Chargee Client File Number : 1205097



**DEMAND DEBENTURE**

(1451 Wellington Street West, Ottawa, Ontario)

PRINCIPAL SUM: \$12,900,000.00

DATE: October 31, 2019

**ARTICLE 1****PROMISE TO PAY**

1.1 Promise to Pay: **MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.** (the “**Chargor**”), for value received, hereby acknowledges itself indebted and covenants and promises: (i) to pay to V2 Investment Holdings Inc. (the “**Chargee**”), as Chargee, its successors and assigns, at such place in Canada the Chargee may designate in writing to the Chargor, ON DEMAND the maximum principal amount of Twelve Million Nine Hundred Thousand Dollars (\$12,900,000.00) in the lawful money of Canada and interest thereon, from and including the date hereof (or from and including the last interest payment date to which interest shall have been paid), at a rate of 25% per annum calculated semi-annually, not in advance, as well after as before maturity and both before and after demand, default and judgment, with interest on overdue interest at the same rate, and on all other amounts secured hereby; and (ii) to perform the Secured Obligations (as hereinafter defined).

1.2 Interpretation: In this Debenture, unless there is something in the subject matter or text that is inconsistent therewith, all capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement. In addition, the following terms shall have the following meanings:

“**Account**” has the meaning set out in Section 3.9 hereof.

“**Act**” has the meaning set out in Section 2.1(b) hereof.

“**Charged Premises**” has the meaning set out in Section 2.1 hereof.

“**Chargee**” has the meaning set out in Section 1.1 hereof.

“**Chargor**” has the meaning set out in Section 1.1 hereof.

“**Contract**” has the meaning set out in Section 3.9 hereof.

“**Credit Agreement**” means the loan agreement made as of October 31, 2019, between, *inter alia*, the Borrower (as defined therein), the Chargor and the Chargee, as the same may be refinanced, amended, restated, supplemented or otherwise modified from time to time.

“**Excluded Collateral**” has the meaning set out in Section 2.2 hereof.

“**Real Property**” has the meaning set out in Section 2.1(a) hereof.

“**Revenues**” has the meaning set out in Section 2.1(b)(vi) hereof.

“**Secured Obligations**” means, without limitation or duplication, the Obligations and the covenant of the Chargor herein contained, and the principal, interest and other amounts payable hereunder or secured hereby.

“**Secured Property**” means the lands and premises described in Schedule A attached hereto, together with all rights and privileges appertaining thereto and all buildings, improvements and structures now or hereafter constructed or placed therein, thereunder or thereon.

“**Security Interests**” has the meaning set out in Section 2.1 hereof.

“**Tenant**” means any lessee, sublessee, licensee or grantee of a right of use or occupation under a Lease and its successors and permitted assigns.

## ARTICLE 2

### SECURITY

2.1 Security: As security for the due and timely payment of the principal amount, interest and all other amounts from time to time payable hereunder and of any and all of the Secured Obligations and performance of the Secured Obligations, but subject to the Permitted Encumbrances, the Chargor:

- (a) mortgages and charges as and by way of a fixed specific mortgage and charge to and in favour of the Chargee, all of its right, title, estate and interest, present and future, in and to: (i) the Secured Property; (ii) all buildings, erections, structures, improvements and fixtures now or hereafter constructed or placed in, under or upon the Secured Property; (iii) all easements, rights-of-way, licences and privileges appurtenant or appertaining to the Secured Property; and (iv) all interests in any of the foregoing and all benefits and rights to be derived by the Chargor in respect thereof (collectively, the “**Real Property**”);
- (b) grants, conveys, mortgages, charges, pledges, assigns and creates a security interest in, as and by way of a fixed and specific mortgage, charge, pledge, assignment and security interest to and in favour of the Chargee of all of its right, title, estate and interest, present and future, in and to any and all personal property in which a security interest can be taken, reserved, created or granted whether under the *Personal Property Security Act* (Ontario) (the “**Act**”), any similar personal property security legislation in any jurisdiction in which any of the Charged Premises is located or otherwise under any statute or law or in equity and which is now or at any time hereafter owned by the Chargor or in which the Chargor now has or at any time hereafter acquires any interest of any nature whatsoever, without in any way limiting the generality of the foregoing, the interest of the Chargor in:
  - (i) all materials, supplies, machinery, equipment, fixtures, inventory, vehicles, furniture, tools, accessories and appliances now or hereafter owned or acquired by or on behalf of the Chargor and every interest therein which the Chargor now has or hereafter acquires, wheresoever situate;
  - (ii) all present and future accounts (including, without limitation, cash collateral accounts), accounts receivable, money (including, without limitation, all money in any bank accounts), intangibles, claims, contract rights, demands, chattel papers, instruments, documents, warehouse receipts, bills of lading, notes and choses in action, together with any and all security therefor, including, without limiting the generality of the foregoing, all present and future mortgages receivable, debentures, bonds, promissory notes, bills of exchange, judgments and book debts, now due or hereafter to become due to or owned by the Chargor, together with all securities, documents, computer disks, tapes, software or records now or hereafter owned by the Chargor and representing or evidencing the said debts, accounts, accounts receivable, claims, contract rights, demands and choses in action and all other rights and benefits in respect thereof, including, without limitation, all Material Project Agreements and Material Licences;
  - (iii) all rights, agreements, licenses, permits, consents, policies, approvals, development agreements, building contracts, performance bonds, purchase orders, plans, patents, trademarks, trade names, copyrights and other industrial and intellectual property, goodwill, know-how, management agreements, rights to carry on business and specifications presently owned and hereafter acquired by the Chargor;
  - (iv) all present and future computer hardware, software, programs and electronically stored data, and all rights, agreements, licences, permits and consents in respect of or in any way relating to such computer hardware, software and programs including, without limitation, all paper cards, magnetic tapes, discs, diskettes, drums or magnetic bubbles and whether

permanently installed in hardware or crystallized in firmware, and all codes, passwords and security devices in respect thereof;

- (v) all shares, stocks, warrants, bonds, debentures, debenture stock, partnership interests, joint venture interests or other securities investments now or hereafter owned by the Chargor;
- (vi) all rents, revenues, income, insurance proceeds, expropriation proceeds, other proceeds and other monies to which the Chargor may from time to time be entitled from all sources including, without limitation, all income and proceeds (whether in cash or on credit) received or receivable by or on behalf of the Chargor in respect of the use, occupancy or enjoyment of the Real Property or any part thereof or for the sale of goods or the provision of services on, at or from the Real Property or from judgments, settlements or other resolutions of disputes relating to the ownership, use, construction, development, operation, maintenance or management of the Real Property (collectively, “**Revenues**”); and
- (vii) the benefit of any guarantees or indemnities relating to all or part of the property referred to in paragraph 2.1(b)(vi); and
- (viii) all investment property (as defined in the Act);

and with respect to paragraphs 2.1(b)(i) to (viii) inclusive, in, to and under all amendments, extensions, renewals, replacements and substitutions of any of the foregoing, all increases, additions and accessions thereto and all rights, remedies, powers, easements, privileges and claims of the Chargor thereunder (whether arising pursuant thereto or available to the Chargor at law or in equity) including without limitation, the right of the Chargor to enforce the foregoing and the obligations of the other parties thereto and to give or withhold any and all consents, requests, directions, approvals, extensions and/or waivers thereunder, save and except for the deposit monies held in the designated trust account monitored by the DBC in respect of which it has a first priority security interest and the unilateral right to give or withhold any and all consents or directions to release same (in whole or in part) from said designated trust account;

- (c) assigns, transfers and sets over unto and in favour of the Chargee, as and by way of a fixed and specific assignment, all of its right, title, estate and interest, present and future, in and to:
  - (i) all Material Project Agreements, Material Licences, Permitted Encumbrances and any agreements relating in any way to the Real Property (including, without limitation, those relating to construction or development on, or operation of, the Real Property) or the business, undertaking and operations of the Chargor; and
  - (ii) all amendments, extensions, renewals, replacements and substitutions of any of the property referred to in paragraph 2.1(c)(i) and all benefits, rights, remedies, privileges, claims, powers and advantages of the Chargor to be derived therefrom or thereunder (whether arising pursuant thereto or available to the Chargor at law or in equity) and all covenants, obligations and agreements of the other parties thereto including, without limitation, the right of the Chargor to enforce any of the foregoing and the obligations of the other parties thereto and to give or withhold any and all consents, requests, directions, approvals, extensions and/or waivers thereunder;
- (d) assigns, transfers and sets over unto and in favour of the Chargee, as and by way of a general assignment, all of its right, title, estate and interest present and future, in and to:
  - (i) the Leases and all benefits, powers and advantages of the Chargor to be derived therefrom and all covenants, obligations and agreements of the Tenants thereunder or in any agreement collateral thereto including, without limitation, the benefit of any right, option or obligation of any Tenant or other person to acquire any of the Real Property or an interest therein, to

renew or extend any Lease, to lease other space and any other collateral advantage or benefit to be derived from the Leases or any of them;

- (ii) all rents and other moneys now due and payable or hereafter to become due and payable under the Leases and each guarantee of or indemnity in respect of the obligations of the Tenants thereunder with full power to demand, sue for recovery, receive and give receipts for all such rents and other moneys and otherwise to enforce the rights of the Chargor thereto in the name of the Chargor;
- (iii) all present and future intangibles arising from or out of the Real Property or any part or parts thereof and the property and assets referred to in subsections 2.1(b) and (c) above including, without limiting the generality of the foregoing, all of its rights, title and interest in all present and future book debts, accounts and other accounts receivable, contract rights and choses in action;
- (iv) any and all existing or future agreements, contracts, licences, permits, plans and specifications, bonds, letters of credit, letters of guarantee or other documents or instruments relating to the Real Property or any part or parts thereof and all extensions, amendments, renewals or substitutions thereof or therefor which may hereafter be effected or entered into and all benefit, power and advantage of the Chargor to be derived therefrom, including, without limitation, all Material Project Agreements and Material Licences;
- (v) any and all existing or future agreements of purchase and sale, options to purchase and mortgage, loan or other financing commitments relating to the Real Property each of the Condominium Sales Agreements, including, without limitation, a security interest in all of the right title and interest of the Chargor in and to the Purchaser Deposits, subject to the prior security interest of DBC and the Construction Lender, or any part or parts thereof and all proceeds and other moneys now due and payable or hereafter to become due and payable thereunder and all benefit, power and advantage of the Chargor to be derived therefrom; Chargee acknowledges that such assignment is subject to the relevant provisions of the *Condominium Act*, 1998 (Ontario), as amended, and the interest of Tarion, the DBC and/or the Construction Lender; Chargee acknowledges that “proceeds and other moneys” does not include those moneys which must be held in trust for the proposed condominium corporation(s) with relation to the reserve fund component required by the *Condominium Act*, 1998 (Ontario), as amended; and
- (vi) the proceeds of any and all existing or future insurance policies pertaining to the Real Property or the property and assets referred to in subsections 2.1(b) and (c) and paragraphs 2.1(d)(i) to (v) inclusive, including, without limitation, the insurance referred to in the Credit Agreement and all proceeds of expropriation or similar taking of the Real Property or any part or parts thereof and all benefit, power and advantage of the Chargor to be derived therefrom provided that all such proceeds shall be held and applied in accordance with the Credit Agreement;
- (vii) the Construction Contracts;
- (viii) the Consultant Contracts;
- (ix) all money, rents, revenue, claims, rights, demands, judgements, securities, privileges, powers and the like whatsoever which the Chargor may now or at any time hereafter have or be entitled to under or by virtue of or in respect of, or incidental to, the Construction Contracts and Consultant Contracts;
- (x) any and all benefits and advantages due or at any time after the date hereof to become due under the Construction Contracts and Consultant Contracts, and any extensions or renewals thereof;

- (xi) the benefit of all covenants, guarantees, representations, warranties and indemnities and rental income-loss, public liability and other insurance policies which have been or in the future are granted to, received or negotiated by the Chargor, or any agent of the Chargor, in respect of the Construction Contracts and Consultant Contracts;
- (xii) all letters, papers, insurance policies, performance bonds, labour and material payment bonds, other bonds and other documents in any way evidencing or relating to or which may at any time be received by the Chargor as security for or on account of any of the Construction Contracts and Consultant Contracts; all proceeds arising in respect of the Construction Contracts and Consultant Contracts, that are goods, intangibles, securities, documents of title, chattel paper, instruments or money (words used in this subparagraph that are defined in the Personal Property Security Act (Ontario) (the "PPSA") shall have the meaning ascribed thereto in the PPSA unless otherwise defined herein);
- (xiii) all letters of credit or performance bonds in connection with the Project pursuant to which the Chargor is a beneficiary, including (without limitation) the Performance and Payment Bonds, as the same may be renewed, amended or replaced from time to time;
- (xiv) all benefit, power and advantage of the Chargor to be derived from the Performance and Payment Bonds, and all covenants, obligations, agreements and undertakings of the Chargor, and otherwise the right to enforce the rights of the Chargor thereunder in the name of the Chargor;
- (xv) all revenues, proceeds and other moneys now due and payable or hereafter to become due and payable to the Chargor in respect of the Performance and Payment Bonds or to be derived therefrom, if any, with full power and authority to demand, sue for, recover, receive and give receipts for all such revenues and other moneys;
- (xvi) all books, accounts, invoices, letters, papers and documents in any way evidencing or relating to the Performance and Payment Bonds;

all amendments, extensions, renewals, replacements and substitutions of any of the property referred to in paragraph 2.1(d)(i) – (xvi) and all benefits, rights, remedies, privileges, claims, powers and advantages of the Chargor to be derived therefrom or thereunder (whether arising pursuant thereto or available to the Chargor at law or in equity) and all covenants, obligations and agreements of the other parties thereto including, without limitation, the right of the Chargor to enforce any of the foregoing and the obligations of the other parties thereto and to give or withhold any and all consents, requests, directions, approvals, extensions and/or waivers thereunder;

- (e) grants, conveys, mortgages, charges, pledges, assigns and creates a security interest in, as and by way of a fixed and specific mortgage, charge, pledge, assignment and security interest to and in favour of the Chargee, all of its right, title, estate and interest, present and future, in and to all personal property in any form (including money) derived, directly or indirectly, from any dealing with the property referred to in subsections 2.1(a) to (d) inclusive, or proceeds therefrom or that indemnifies or compensates for all or part of such property or proceeds therefrom that is destroyed and damaged; and
- (f) grants, conveys, mortgages, charges, pledges and assigns as and by way of a floating charge to and in favour of the Chargee all of the undertaking, property, assets, rights, entitlements, benefits and privileges, both real and personal, moveable and immovable, of every nature and kind, now or at any time and from time to time hereafter existing and owned by the Chargor (except such property and assets as are validly and effectively subject to any fixed and specific mortgage and charge or assignment, transfer or security interest created hereby);

provided that the said grants, conveyances, mortgages, charges, pledges, transfers, assignments and security interests created pursuant to this Section 2.1 (the “**Security Interests**”) shall not: (i) extend or apply to any personal property which is “consumer goods”, as such term is defined in the Act; or (ii) extend to the last day of the term of any Lease or any agreement therefor now held or hereafter acquired by the Chargor, but should such Security Interests become enforceable the Chargor shall thereafter stand possessed of such last day and shall hold it in trust for the Chargee for the purpose of this Debenture and assign and dispose thereof as the Chargee shall, for such purpose, direct. Upon any sale of such leasehold interest or any part thereof, the Chargee, for the purpose of vesting the aforesaid one day residue of such term or renewal thereof in any purchaser or purchasers thereof, shall be entitled by deed or writing to appoint such purchaser or purchasers or any other person or persons as new trustee or trustees of the aforesaid residue of any such term or renewal thereof in the place of the Chargor and to vest the same accordingly in the new trustee or trustees so appointed free and discharged from any obligation respecting the same.

All the undertaking, property and assets mortgaged and charged pursuant to Subsection 2.1(a) and all of the undertaking, property and assets granted, conveyed, assigned, transferred, mortgaged, pledged and charged pursuant to Subsections 2.1(b), (e) and (f) hereof being hereinafter collectively referred to as the “**mortgaged property**”; all the undertaking, property and assets assigned, transferred and set over pursuant to Subsections 2.1(c) and (d) being hereinafter collectively referred to as the “**assigned property**”; and the mortgaged property and assigned property being hereinafter collectively referred to as the “**Charged Premises**”. Wherever used herein in relation to the rights and remedies of the Chargee the terms “Real Property”, “mortgaged property”, “assigned property” and “Charged Premises” shall, where the context permits, mean the whole or any part or parts thereof.

TO HAVE AND TO HOLD the Charged Premises and all rights hereby conferred unto the Chargee, its successors and assigns, for the uses and purposes and with the powers and authorities and subject to the terms and conditions set forth herein and in the Credit Agreement.

2.2 Excluded Collateral: Notwithstanding anything contained in this Debenture, the Security Interests contained herein in respect of the Charged Premises, other than the Charged Premises referred to in Section 2.1(a), shall not extend or attach to the right, title, interest or benefit of the Chargor in any of the Charged Premises which by the terms thereof or by law cannot be assigned or charged or which requires the consent of any third party or Governmental Authority to such assignment or charge or which, if assigned or charged, would give rise to a default, penalty or right of termination (collectively the “**Excluded Collateral**”). The Chargor agrees that, at the reasonable request of the Chargee from time to time, it will obtain such consents in respect of the Excluded Collateral and to obtain consents to the transfer or assignment of the Excluded Collateral to any third party who may acquire an interest in the Charged Premises as a result of the exercise by the Chargee of its remedies hereunder. Upon such consent being obtained, the Security Interests contained herein shall apply to such Excluded Collateral without regard to this Section 2.2 and without the necessity of any further assurance to effect the Security Interests contained herein in respect thereto. Until such consent is obtained, the Chargor shall, to the extent that it may do so by law or under the terms of the Excluded Collateral and without giving rise to any default, penalty or right of termination, hold all right, title, benefit and interest to be derived therefrom in trust for the Chargee as additional security, as if the Security Interests contained herein applied, and shall deliver up such right, title, benefit and interest to the Chargee forthwith upon the occurrence and during the continuance of an Event of Default.

2.3 Delivery of Instruments, Securities, Etc.: The Chargor shall, upon reasonable request from the Chargee, following the occurrence of an Event of Default which is continuing, forthwith deliver to the Chargee to be held by the Chargee hereunder all instruments, securities, letters of credit, advices of credit and negotiable documents of title in its possession or control which pertain to or form part of the Charged Premises, and shall, where appropriate, duly endorse the same for transfer in blank or as the Chargee may direct and shall make all reasonable efforts to deliver forthwith to the Chargee any and all consents or other instruments or documents necessary to comply with any restrictions on the transfer thereof in order to transfer the same to the Chargee.

2.4 Representations and Warranties of the Chargor: The Chargor represents and warrants to the Chargee as follows:

- (a) French Name: The Chargor does not have or use a French form of name or a combined English and French form of name;

- (b) Address: The address of the Chargor's chief executive office is 125 Hazelton Avenue, Toronto, ON M5R 2E4;
- (c) Location of Charged Premises: With the exception of inventory in transit, all material tangible assets comprising the Charged Premises are situated at the Real Property, the Chargor's chief executive office or a location disclosed in the Credit Agreement;

With respect to the Condominium Sales Agreements:

- (d) as at the date hereof, there is no default or any material outstanding dispute between it and any purchaser under any of the terms of any existing Condominium Sales Agreement or other documentation executed relating thereto, except as already disclosed to the Chargee;
- (e) it shall at all times observe and perform all of its covenants and obligations under the Condominium Sales Agreements in all material respects;
- (f) it has full capacity, power and authority to enable it to enter into the Condominium Sales Agreements and this Agreement and to carry on its business as now conducted and to carry out its obligations under the Condominium Sales Agreements and this Agreement;
- (g) as at the date hereof, each of the existing Condominium Sales Agreements has been duly executed and delivered by it and is in full force and effect and constitutes a valid and legally binding obligation of it;
- (h) except in the ordinary course of business acting prudently and in such case only if an Event of Default is not subsisting under the Credit Agreement, it shall not terminate, forfeit, cancel, alter, amend or modify any of the Condominium Sales Agreements or any of the terms or conditions thereof nor waive any default by any of the other parties thereto without the consent of the Chargee which consent shall not be unreasonably withheld or delayed unless the Chargor is required to do so by law or contract;
- (i) it shall notify the Chargee within a reasonable period of time upon becoming aware of any claim or litigation in respect of any of the Condominium Sales Agreements which may (if any such claim was pursued, or if any such litigation was judicially determined against the Chargor) have a material adverse impact on (i) the ability of the Chargor to complete the Project; or (ii) the ability of the Chargor to fully repay the outstanding indebtedness owed to the Chargee and the other chargees; and
- (j) in entering into Condominium Sales Agreements and holding Purchaser Deposits, it shall at all times comply with the *Condominium Act, 1998* (Ontario) and shall ensure that a proper disclosure statement is delivered to each purchaser, together with copies of all amendments thereto, as required by the *Condominium Act, 1998* (Ontario).

The foregoing representations and warranties shall survive for so long as any of the Secured Obligations remain unpaid and, notwithstanding any investigation made by or on behalf of the Chargee, shall continue in full force and effect for the benefit of the Chargee during such period.

2.5 Covenants of the Chargor: So long as any of the Secured Obligations shall remain unpaid and the Chargee has obligations to provide credit facilities pursuant to the Credit Agreement, the Chargor covenants and agrees with the Chargee as follows:

- (a) No Accessions: The Chargor shall prevent any Charged Premises from being or becoming an accession to any property not subject to Security Interests created by this Debenture;
- (b) Change of Name/Chief Executive Office: The Chargor shall not change its name or the location of its chief executive office without giving prior written notice to the

Chargee of the new name or chief executive office location and the date upon which such change of name or chief executive office location is to take effect;

- (c) Location of Charged Premises: Except as may be permitted by the Credit Agreement, the Chargor shall not keep, store, locate or install any Charged Premises at, or move, transport or transfer any Charged Premises to, any location other than those locations set out in Section 2.4(c) without the prior written consent of the Chargee; and
- (d) Registrations: The Chargor will, from time to time at the request of the Chargee, promptly effect all registrations, filings, recordings and all renewals thereof and all re-registrations, re-filings and re-recordings of or in respect of this Debenture and the Security Interests created hereby in such offices of public record and at such times as may be necessary or of advantage in perfecting, maintaining and protecting the validity, effectiveness and priority hereof and of the Security Interests created hereby; provided that the Chargee may effect all such registrations, filings, recordings, renewals, re-registrations, re-filings and re-recordings from time to time in its sole discretion at the expense of the Chargor.
- (e) Comply with Obligations: The Chargor will comply with all obligations, covenants, liabilities and conditions under the assigned property, and any of the assigned property.

2.6 Enlargement: Each Security Interest created by this Article 2 is intended to be a mortgage, pledge and charge of, and a security interest in, the entire estate, right, title and interest of the Chargor of its interests, whether such interests are leasehold or freehold interests, in and to each and every part of the Real Property and, if the estate, right, title and interests of the Chargor, whether leasehold or freehold, in and to the Real Property or any part thereof enlarges, the charges created by this Article 2 will be enlarged and extended to be a mortgage, pledge and charge of, and security interest in, such enlarged estate, right, title and interest promptly upon the acquisition thereof by the Chargor, and without any further act on the part of the Chargor, and will become and be subject to the charges created by this Article 2 as fully and completely as though now owned by the Chargor.

### ARTICLE 3

#### RIGHTS AND REMEDIES

3.1 Remedies Upon Default: Upon the occurrence of any Event of Default which is continuing, the Chargee may do any one or more of the following:

- (a) by written notice to the Chargor, declare the Secured Obligations to be immediately due and payable without the necessity of presentment for payment, or notice of non-payment and of protest (all of which are hereby expressly waived by the Chargor);
- (b) proceed to exercise any and all rights under this Debenture, the other Loan Documents and any other document or instrument executed pursuant to this Debenture or any other rights otherwise available to it whether under this Debenture, the other Loan Documents or otherwise, including enforcement of this Debenture;
- (c) take any action or proceeding authorized or permitted by this Debenture, the other Loan Documents or by law or equity, and file or cause to be filed on its behalf such proofs of claim and other documents as may be necessary or desirable to have its claims lodged in any bankruptcy, winding-up or other judicial proceeding relative to the Chargor;
- (d) take proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;



- (e) immediately enter upon and take possession of, disable or remove all of the Charged Premises or any part or parts thereof with power, among other things, to exclude the Chargor, to preserve and maintain the Charged Premises and make additions and replacements thereto, to receive rents, income and profits of all kinds in connection with the Charged Premises and pay therefrom all reasonable expenses of maintaining, completing, repairing, preserving and protecting and operating the Charged Premises and all charges, payment of which may be necessary to preserve or protect the Charged Premises, and enjoy and exercise all powers necessary to the performance of all functions made necessary or advisable by possession, including, without limitation, power to advance its own moneys at the rate of interest paid on the outstanding amount of the Loan under the Credit Agreement and enter into contracts and undertake obligations for the foregoing purposes upon the security hereof;
- (f) exercise all powers and rights of the Chargee under any of the Charged Premises;
- (g) enjoy all benefits of the Chargee under any of the Charged Premises;
- (h) whether or not the Chargee has taken possession of the Charged Premises or any of it, sell, lease or otherwise dispose thereof, either as a whole or in separate parcels, at public auction, by public tender or by private sale, with only such notice as may be required by law, either for cash or upon credit, at such time and upon such terms and conditions as the Chargee may determine (including a term that a reasonable commission shall be payable to the Chargee or any related corporation in respect thereof) and enter into, rescind or vary any contract for the sale, lease or other disposition of any of the Charged Premises and sell, lease or dispose thereof again without being answerable for any loss occasioned thereby and the Chargee may execute and deliver to any purchaser of the Charged Premises or any part thereof good and sufficient deeds and documents for the same;
- (i) require the Chargor, at the Chargor's expense, to assemble the Charged Premises at a place or places designated by notice in writing given by the Chargee to the Chargor, and the Chargor agrees to so assemble the Charged Premises;
- (j) require the Chargor, by notice in writing given by the Chargee to the Chargor, to disclose to the Chargee the location or locations of the Charged Premises and the Chargor agrees to make such disclosure when so required by the Chargee;
- (k) without legal process, enter any premises where the Charged Premises may be situated and take possession of the Charged Premises by any method permitted by law;
- (l) carry on all or any part of the business or businesses of the Chargor relating to the Real Property and, to the exclusion of all others including the Chargor, enter upon, occupy and, subject to any requirements of law and subject to any leases or agreements then in place, use all or any of the Real Property, premises, buildings, plant, undertaking, assets and other property comprising the Charged Premises for such time and in such manner as the Chargee sees fit, free of charge and, except to the extent required by law, the Chargee shall not be liable to the Chargor for any act, omission or negligence in so doing or for any rent, charges, depreciation or damages or other amounts incurred in connection therewith or resulting therefrom;
- (m) borrow money for the purpose of carrying on the business of the Chargor relating to the Charged Premises or for the maintenance, preservation or protection of the Charged Premises and mortgage, charge, pledge or grant a security interest in the Charged Premises, whether or not in priority to the security interests created by this Debenture to secure repayment of any money so borrowed;
- (n) where the Chargee has taken possession of the Charged Premises, retain the Charged Premises irrevocably, to the extent not prohibited by law, by giving

notice thereof to the Chargor and to any other persons required by law in the manner provided by law;

- (o) send or employ inspectors or agents to inspect, audit and report upon the value, state and condition of the Charged Premises;
- (p) subject to applicable law, seize, collect, retain and administer the Charged Premises or any part or parts thereof in the Chargee's discretion;
- (q) pay any encumbrance, lien, claim or charge that validly exists or has been threatened against any of the Charged Premises and any amounts determined to be validly existing shall, when so paid, together with any costs, charges and expenses incurred by the Chargee (including, without limitation, legal fees and disbursements on a solicitor-client basis), be added to the Secured Obligations hereby and shall bear interest at the rate provided for in the Credit Agreement;
- (r) take proceedings in any court of competent jurisdiction to enforce payment by the Chargor of the Secured Obligations or any deficiency remaining upon application of proceeds of realization which are actually received by the Chargee;
- (s) exercise or pursue any other remedy or proceeding authorized or permitted hereby or by the Act or any similar personal property security legislation or by any other legislation in any jurisdiction in which any of the Charged Premises is located or otherwise permitted by law or equity;
- (t) with or without entry into possession of the Charged Premises, or any part thereof, appoint a receiver (which term shall include a receiver and manager) of the Charged Premises or any part thereof and of the rents and profits thereof pursuant to and in accordance with the provisions of the Loan Documents and this Debenture and with or without security for the performance of the receiver's obligations and from time to time remove any receiver and appoint another in its stead. Upon the appointment of any such receiver or receivers from time to time, subject to Applicable Laws, the following provisions shall apply:
  - (i) every such receiver shall be the irrevocable agent of the Chargor for all purposes with respect to the Charged Premises including, without limitation, for the collection of all Revenues owing or earned in respect of the Real Property or any part thereof;
  - (ii) every such receiver may, in the discretion of the Chargee, be vested with all or any of the powers and discretion of the Chargee under this Debenture and the Loan Documents, including, without limitation, the power to carry on all or any part of the business of the Chargor relating to the Real Property and to sell, lease or otherwise dispose of the Charged Premises, either as a whole or in separate parcels, at public auction, by public tender or by private sale, with only such notice as may be required by Applicable Laws, either for cash or on credit, at such time and upon such terms and conditions as the receiver may determine (including a term that a reasonable commission shall be payable to the receiver, or any related corporation in respect thereof) and enter into, rescind or vary any contract for the sale, lease or other disposition of any of the Charged Premises and sell, lease or dispose thereof again without being answerable for any loss occasioned thereby and the receiver may execute and deliver to any purchaser of the Charged Premises or any part thereof good and sufficient deeds and documents for the same and such receiver shall also have the power to take proceedings in any court of competent jurisdiction for sale or foreclosure of all or any part of the Charged Premises;
  - (iii) the Chargee may from time to time fix the remuneration of every such receiver and every such receiver shall be entitled to deduct the same out of the income from the Charged Premises or the proceeds of disposition of the Charged Premises;

- (iv) the appointment of every such receiver by the Chargee shall not, to the extent permitted by law, incur or create any liability on the part of the Chargee to the receiver in any respect and such appointment or anything which may be done by any such receiver or the removal of any such receiver or the termination of any such receivership shall not have the effect of constituting the Chargee a mortgagee in possession in respect of the Real Property or any part thereof;
- (v) every such receiver shall, from time to time, have the power to lease or otherwise deal with any portion of the Real Property which may become vacant or available for lease on such terms and conditions as such receiver may deem advisable and shall have full power to complete any unfinished construction upon the Real Property (such power of the receiver to include, without limitation, the power to borrow funds in the name of and on the credit of the Chargor for such purposes, which borrowings may be secured by the Charged Premises, or any part thereof, and which security shall have such priority as the receiver deems appropriate);
- (vi) every such receiver shall have full power to fully manage, develop, operate, lease, deal with agreements (including, without limitation, the Material Project Agreements, Project Management Agreement, Construction Contracts, Consultant Contracts, Condominium Sales Agreements, the Material Licences, and the Permitted Encumbrances) and Leases, construct, complete, repair, renovate or alter the Real Property or any part thereof on behalf of the Chargor and to take all such actions as are required in the exercise of such powers including, without limitation, entering into, amending and terminating such contracts and other agreements relating to the Charged Premises as are necessary or advisable, in the opinion of the receiver, and the entering into, renewal, amendment, supplement or termination of any agreements and Leases as the receiver may deem appropriate in its sole and absolute discretion; the aforementioned power shall include the power to borrow money in the name of and on the credit of the Chargor for all such purposes (which borrowings may be secured by the Charged Premises, or any part thereof, and which security shall have such priority as the receiver deems appropriate);
- (vii) no such receiver shall be liable to the Chargor to account for monies other than monies actually received by or in respect of Charged Premises or any part thereof and out of such monies so received, every such receiver shall, subject to the further direction of the Chargee, in the following order pay:
  - (A) his remuneration aforesaid;
  - (B) all payments made or incurred by him in connection with the management, operation, construction, completion, repair or alteration of the Charged Premises or any part thereof in accordance with the provisions thereof;
  - (C) all payments of interest, principal and other money which may, from time to time, be or become charged upon the Charged Premises in priority to this Debenture or the Loan Documents and all taxes, insurance premiums and every other proper expenditure made or incurred by him in respect of the Charged Premises or any part thereof and in payment of all interest, fees and other similar amounts due or falling due hereunder and the balance to be applied upon the Secured Obligations; and
  - (D) at the discretion of the receiver, interest, principal and other monies which may from time to time constitute an encumbrance on the Charged Premises subsequent or subordinate to this Debenture or the Loan Documents;

and every receiver may in its discretion retain reasonable reserves to pay accruing amounts and anticipated payments in connection with any of the foregoing; and any surplus remaining in the hands of every such receiver after payments made as aforesaid shall be accountable to the Chargor and upon termination of the receivership such receiver shall pay such surplus to the Chargor or pay it into court, as the receiver may elect;

- (viii) the Chargee may at any time and from time to time terminate any such receivership by notice in writing to the Chargor and to any such receiver; and
- (ix) the receiver may carry out all actions and do all things that the Chargee may do under this Debenture and the Loan Documents as if it were the Chargee (it being agreed that such powers are not in any way limited by the foregoing provisions of this Subsection 3.1(r)).

3.2 Sale of Charged Premises: The Chargor agrees that any sale referred to in Section 3.1 may be either a sale of all or any portion of the Charged Premises and may be by way of public auction, public tender, private contract or otherwise without notice, advertisement or any other formality, except as required by law, all of which the Chargor waives to the extent permitted by law. To the extent not prohibited by law, any such sale may be made with or without any special condition as to the upset price, reserve bid, title or evidence of title or other matter and from time to time as the Chargee in its sole discretion think fit with power to vary or rescind any such sale or buy in at any public sale and resell. The Chargee may sell the Charged Premises for a consideration payable by instalments either with or without taking security for the payment of such instalments and may make and deliver to any purchaser thereof good and sufficient deeds, assurances and conveyances of the Charged Premises and give receipts for the purchase money, and any such sale shall be a perpetual bar, both at law and in equity, against the and all those claiming an interest in the Charged Premises by, from, through or under the Chargor.

3.3 References to the Chargee Include Receiver: For the purposes of Sections 3.2, 3.4, 3.7, 3.8, 3.10, 3.11 and 3.14 a reference to the Chargee shall, where the context permits, include any receiver or receiver and manager or other agent on behalf of the Chargee.

3.4 Chargor's Rights: Subject to the terms of the Credit Agreement, until the security hereby constituted shall become and remains enforceable, the Chargor shall be entitled to deal with the Charged Premises and enforce, use and enjoy all of the benefits, advantages and powers thereunder as if this Debenture had not been made. Upon the security hereby constituted becoming and remaining enforceable, the Chargee may, but shall not be obligated to, exercise all rights, powers, authority and discretions of the Chargor in respect of the Charged Premises in its place and stead.

3.5 Judgment: Neither the taking of any judgment nor the exercise of any power of seizure or sale shall operate to extinguish the liabilities of the Chargor to make payment of the principal hereby secured or interest thereon or other moneys owing hereunder nor shall such operate as a merger of any covenant or affect the right of the Chargee to interest at the rate hereinbefore specified and any judgment shall bear interest at such rate.

3.6 Interest: If any amount payable to the Chargee under this Debenture is not paid when due, the Chargor will pay to the Chargee, immediately on demand, interest on such amount from the date due until paid, at an annual rate equal to the interest rate stipulated therefor in the Credit Agreement. All amounts payable by the Chargor to the Chargee under this Debenture, and all interest on all such amounts will form part of the Secured Obligations and will be secured by the security interests created by this Debenture.

3.7 Charge as Security:

- (a) It is expressly acknowledged and agreed that nothing herein contained shall obligate the Chargee to assume or perform any obligation of the Chargor to any third party in respect of or arising out of any of the Charged Premises. The Chargee may, however, only after an Event of Default and only after the occurrence of an Event of Default which is continuing, at its option, assume or perform any such obligations as the Chargee considers necessary or desirable to obtain the benefit of

the Charged Premises free of any set-off, deduction or abatement and any money expended by the Chargee in this regard shall form part of and shall be deemed to form part of the Secured Obligations and bear interest at the rate stipulated in Section 3.6.

- (b) The exercise by the Chargee of its rights under this Debenture or the assumption after any Event of Default of certain obligations of the Chargor as referred to in Subsection 3.7(a) above shall not constitute or have the effect of making the Chargee a mortgagee in possession and the Chargee shall be liable to account only for such rents or monies as shall actually come into its hands, less all reasonable costs and expenses and other proper deductions as allowed by law. Care, control and management of the Charged Premises shall remain and shall be deemed to be with the Chargor in the absence of clear and unequivocal action by the Chargee depriving the Chargor of such care, control and management and the assumption thereof by the Chargee.

3.8 Limitations on Chargee's Liability: The Chargee will not be liable to the Chargor or any other Person for any failure or delay in exercising any of the rights of the Chargee under this Debenture (including any failure to take possession of, collect, sell, lease or otherwise dispose of any Charged Premises, or to preserve rights against prior parties). Neither the Chargee, nor any receiver or agent of the Chargee is required to take, or will have any liability for any failure to take or delay in taking, any steps necessary or advisable to preserve rights against other Persons under any Charged Premises in its possession. Neither the Chargee nor any receiver or agent will be liable for any, and the Chargor will bear the full risk of all, loss or damage to any and all of the Charged Premises (including any Charged Premises in the possession of the Chargee or any receiver or agent) caused for any reason other than the gross negligence or wilful misconduct of the Chargee or such receiver or agent.

3.9 Chargor Remains Liable under Accounts and Contracts: Notwithstanding any provision of this Debenture, the Chargor will remain liable under each of the agreements, contracts, Leases, Material Project Agreements, Material Licences, Construction Contracts, Consultant Contracts and other documents comprising the Charged Premises (each a "**Contract**") to pay and satisfy all indebtedness, liabilities and other monetary obligations and to observe and perform all the covenants, obligations and conditions which are to be paid, satisfied, observed and performed by the Chargor thereunder, all in accordance with the terms of each such Contract. The Chargee and its successors and assigns will have no obligation or liability under any account or monetary obligation (an "**Account**") (or any Contract giving rise thereto) or Contract by reason of or arising out of this Debenture or the receipt by the Chargee of any payment relating to such Account or Contract pursuant hereto, and in particular (but without limitation), the Chargee will not be obligated in any manner to perform any of the covenants, obligations or conditions of the Chargor under or pursuant to any Account (or any Contract giving rise thereto) or under or pursuant to any Contract, to make any payment, to make any inquiry as to the nature or the sufficiency of any payment received by it or as to the sufficiency of any performance by any party under any Account (or any Contract giving rise thereto) or under any Contract, to present or file any claim, to take any action to enforce any performance or to collect the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

3.10 Dealings by Chargee: The Chargee will not be obliged to exhaust its recourse against the Chargor or any other Person or against any other security it may hold in respect of the Secured Obligations before realizing upon or otherwise dealing with the Charged Premises in such manner as the Chargee may consider desirable. The Chargee may grant extensions of time and other indulgences, take and give up security, accept compositions, grant releases and discharges and otherwise deal with the Chargor and any other Person, and with any or all of the Charged Premises, and with other security and sureties, as the Chargee may see fit, all without prejudice to the Secured Obligations or to the rights and remedies of the Chargee under this Debenture or the other Loan Documents. The powers conferred on the Chargee under this Debenture are solely to protect the interests of the Chargee in the Charged Premises and will not impose any duty upon the Chargee to exercise any such powers.

3.11 Possession of Charged Premises: Where any Charged Premises is in the possession of the Chargee or any receiver or agent:

- (a) the Chargee shall only have the duty of care with respect to such Charged Premises as would a reasonable and prudent owner, including the duty to use reasonable care in the custody and preservation thereof, provided that the Chargee need not take any steps of any nature to defend or preserve the rights of the Chargor therein against the claims or demands of others or to preserve rights therein against prior parties;
- (b) the Chargee may, at any time following the occurrence of an Event of Default which is continuing, grant or otherwise create a security interest in such Charged Premises upon any terms provided that such terms do not impair the Chargor's right to redeem such Charged Premises; and
- (c) the Chargee may, at any time following the occurrence of an Event of Default which is continuing, use such Charged Premises in any manner and to such extent as it deems necessary or desirable.

3.12 After Acquired Property: The Chargor covenants and agrees that, if and to the extent that any of its respective rights, titles, estates and interests in any of the Charged Premises is not acquired until after delivery of this Debenture, this Debenture shall nonetheless apply thereto and the security interest of the Chargee hereby created shall attach to such Charged Premises at the same time as the Chargor acquires rights therein, without the necessity of any further mortgage, charge, pledge, assignment or assurance and thereafter such Charged Premises shall be subject to the security interests created hereby in accordance with the provisions of Section 2.1 hereof.

3.13 Attachment: The Chargor hereby acknowledges and agrees that value has been given for the granting of the security interests created hereby and that there is no agreement between the Chargor and the Chargee, express or implied, to postpone the attachment of the security interests created hereby except in respect of after-acquired property forming part of the Charged Premises with respect to which the security interests created hereby shall attach at the same time as the Chargor acquires rights therein or thereto.

3.14 Indemnity: The Chargor agrees to indemnify the Chargee from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may be imposed on, incurred by, or asserted against the Chargee and arising by reason of (i) any action (including any action referred to in this Debenture) or inaction or omission to do any act legally required by the Chargor; and (ii) any non-compliance with or breach of the Chargor's obligations, liabilities, covenants or conditions under any of the assigned property. This indemnification will survive the satisfaction, release or extinguishment of the Secured Obligations and the security interests created by this Debenture.

3.15 PPSA Clauses: The Chargor acknowledges that (i) value has been given, (ii) the Chargor has rights in each of the assigned property to which they are a party, (iii) the Chargor has not agreed to postpone the time of attachment hereof, (iv) the Chargor has each received a copy of this Debenture, and (v) the Chargor waives any right to receive from the Chargee a copy of any financing statement, financing change statement or verification statement filed in respect of this Debenture.

## ARTICLE 4

### GENERAL PROVISIONS

4.1 Remedies Cumulative and Waivers: For greater certainty, it is expressly understood and agreed that the rights and remedies of the Chargee hereunder or under any other document or instrument executed pursuant to this Debenture are cumulative and are in addition to and not in substitution for any rights or remedies provided by law or by equity; and any single or partial exercise by the Chargee of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in this Debenture or other document or instrument executed pursuant to this Debenture or the Loan Documents shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the

Chargee may be lawfully entitled for such default or breach. Any waiver by the Chargee of the strict observance, performance or compliance with any term, covenant, condition or agreement herein contained and any indulgence granted either expressly or by course of conduct by the Chargee shall be effective only in the specific instance and for the purpose for which it was given and shall be deemed not to be a waiver of any rights and remedies of the Chargee under this Debenture or other document or instrument executed pursuant to this Debenture as a result of any other default or breach hereunder or thereunder.

4.2 Termination: The Chargee covenants and agrees with the Chargor that, if the Chargor pays the Secured Obligations and the Chargor performs, satisfies and extinguishes all Secured Obligations and if the Chargee no longer has any further obligation to provide or continue to provide the Loan to, *inter alia*, the Chargor and the Chargor pursuant to the Credit Agreement, this Debenture shall be and become fully ended and terminated and all right, title, interest and benefit of the Chargor in, to, under or in respect of the Charged Premises, assigned by it to, or held by it in trust for, the Chargee hereunder shall automatically revert and be re-assigned to the Chargor or its successors or assigns, and, subject to Section 3.14 hereof, all covenants and agreements of the Chargor hereunder shall be at an end and the Chargee, upon the request and at the expense of the Chargor, shall execute such instruments, discharges or re-assignments and give such notification or assurances as the Chargor may properly require to fully release, discharge and cancel this Debenture in the circumstances.

4.3 Notice: Any demand, notice, consent or other communication to be made or given hereunder shall be in writing and shall be deemed to have been sufficiently given for all purposes when given in accordance with the provisions of the Credit Agreement.

4.4 Further Assurances: Each party shall, at its own expense, promptly execute and deliver to the other upon request all such other and further documents, agreements, opinions, certificates and other instruments in compliance with or accomplishment of their covenants and agreements hereunder or under any document to be delivered pursuant hereto or otherwise necessary to make any recording, file any notice or obtain any consent, all as may be reasonably necessary and appropriate in connection herewith.

4.5 Continuing Security: This Debenture and the rights and remedies it creates are a continuing agreement and security and shall bind the parties until discharge of this Debenture as provided in Section 4.2 hereof. No payment by the Chargor of the whole or any part of any Secured Obligations by this Debenture shall reduce the amount secured hereby unless specifically appropriated to and noted on this Debenture by the Chargee.

4.6 No Marshalling: This Debenture shall be in addition to and not in substitution for any other security which the Chargee may now or hereafter hold in respect of the Secured Obligations or any other Loan Documents and the Chargee shall be under no obligation to marshal in favour of the Chargor, any other Obligor or other lender or holder of security, any monies or other assets which the Chargee may be entitled to receive or upon which the Chargee may have a claim.

4.7 Agreement Paramount: This Debenture is issued subject to the terms of the Credit Agreement. In the event of any inconsistency or conflict between the terms of this Debenture and the Credit Agreement, the terms of the Credit Agreement shall govern. Notwithstanding the foregoing, in the event that this Debenture contains remedies which are in addition to the remedies set forth in the Credit Agreement, the existence of such additional remedies in this Debenture shall not constitute a conflict or inconsistency with the provisions of the Credit Agreement.

4.8 Amendment of Agreement: No supplement, modification, amendment, waiver or termination of this Debenture shall be binding unless executed in writing by all parties hereto. No waiver of any provision of this Debenture shall be deemed or shall constitute a waiver of any other provision of this Debenture (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise so expressed or provided.

4.9 Invalidity of Provisions: If any of the provisions in this Debenture should be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

4.10 Time: Time shall be of the essence in this Debenture.

4.11 Successors and Assigns: This Debenture and all its provisions shall enure to the benefit of and shall be binding upon the Chargee and the Chargor and their respective permitted successors and permitted assigns, as provided for in the Credit Agreement.

4.12 Assignment by Chargee: The rights of the Chargee under this Debenture may be assigned by the Chargee to a person to whom the Chargee is also assigning its rights under the Credit Agreement to the same extent, and on and subject to the same terms and conditions, as the Chargee may assign its rights under the Credit Agreement. The Chargor may not assign its obligations under this Debenture except in accordance with the provisions of the Credit Agreement.

4.13 Attorney: The Chargor hereby irrevocably nominates, constitutes and appoints the Chargee and each of its officers holding office from time to time as the true and lawful attorney of the Chargor with power of substitution in the name of the Chargor to, after the occurrence and during the continuance of an Event of Default and so long as it is continuing, do any and all such acts and things or execute and deliver all such agreements, documents and instruments as the Chargee reasonably considers necessary or desirable to carry out the provisions and purposes of this Debenture or any of the Charged Premises or to exercise any of its rights and remedies hereunder or under any of the Charged Premises and the Chargor hereby ratifies and agrees to ratify all reasonable acts of any such attorney taken or done in accordance with this Section 4.13. Without in any way limiting the generality of the foregoing, the Chargee shall have the right to execute for and in the name of the Chargor all financing statements, financing change statements, conveyances, transfers, assignments, consents and other instruments as may be required for such purposes. This power of attorney is coupled with an interest and shall not be revoked or terminated by any act or thing other than the discharge of this Debenture in accordance with Section 4.2. The cost of all action taken by the Chargee pursuant to the foregoing power of attorney shall form part of the Obligations and bear interest at the rate applicable from time to time to the outstanding balance of the Obligations.

The Chargor hereby directs each surety under the Performance and Payment Bonds, upon the occurrence and during the continuance of an Event of Default, subject to the terms of the Credit Agreement, to perform all bonded obligations under the Performance and Payment Bonds and to pay all sums of money assigned to the Chargee hereunder to the Chargee at the address of the Chargee set out in the Credit Agreement or at such other place as the Chargee may further direct the Chargor from time to time.

During the continuance of an Event of Default, the Chargor hereby irrevocably directs each purchaser under a Condominium Sales Agreement to thereupon:

- (a) cease to deal with the Chargor; and
- (b) subject to the rights of the DBC and the Construction Lender, deal with the Chargee, its nominee or any receiver/manager appointed by the Chargee, or a court having jurisdiction, as if it was the vendor under such Condominium Sales Agreement.

4.14 Acknowledgement by Chargor: The Chargor acknowledges receipt of a copy of this Debenture and hereby expressly waives the right to receive a copy of any financing statement or a copy of the statement confirming the registration of any financing statement that may be registered in connection with any security interest created under this Debenture.

4.15 Waiver of Default: The Chargee may by written notice to the Chargor waive any default of the Chargor hereunder on such terms and conditions as the Chargee may determine, but no such waiver shall be taken to affect any subsequent default or the rights resulting therefrom.

4.16 Applicable Laws: This Debenture shall be governed in all respects by the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated in all respects as an Ontario contract save in respect of the security created pursuant hereto upon real property and personal property situate in any province of Canada other than Ontario, and upon income therefrom, which shall be governed by the laws of the province of in which such property is situate.

4.17 Attornment: The Chargor submits to the non-exclusive jurisdiction of any court in the Province of Ontario in any action or proceeding arising out of or relating to this Debenture, and the Chargor irrevocably agrees that all claims in respect of any such action or proceeding may be



heard and determined in any such court or in any other court of competent jurisdiction selected by the Chargee.

4.17 Land Registration Reform Act: The implied covenants deemed to be included in a charge under Subsection 7(1) of the *Land Registration Reform Act* (Ontario) are hereby expressly excluded and replaced by the terms of this Debenture, to the extent that same are inconsistent with the terms hereof.

4.18 Condominium Provisions:

- a) This section applies to those parts of the Real Property that are or become a condominium unit created under the *Condominium Act, 1998* (Ontario).
- b) The Chargor gives to the Chargee the right, after and during the continuance of an Event of Default, to vote for the Chargor under the by-laws of the condominium corporation, but the Chargee is not required to do so or to attend or vote at any meeting or to protect the Chargor's interest.
- c) At the request of the Chargee, the Chargor will give the Chargee copies of all notices, financial statements and other documents given by the condominium corporation to the Chargor.
- d) The Chargor appoints the Chargee to be the Chargor's agent to inspect or obtain copies of any records or other documents of the condominium corporation that the Chargor is entitled to inspect or obtain.
- e) Nothing done by the Chargee under this Section 4.18 will make the Chargee a "mortgagee in possession".
- f) For greater clarity, when there is no Event of Default, the Chargor shall be entitled to exercise the right to vote or consent attributable to each Unit in all matters relating to the affairs of the condominium corporation, provided that the Chargor exercises such voting rights in good faith, for the purposes of organizing the affairs of the condominium corporation in a commercially reasonable manner, and to cause the condominium corporation to formally enact, ratify and/or approve all of the by-laws, rules and agreements referred to in the Chargor's disclosure statement issued with respect to the condominium (or in any corrigenda issued with respect thereto).

4.19 Chargor's Development: The Chargor, its agents, employees or contractors, may conduct building operations upon the Secured Property including, without limiting the generality of the foregoing, demolition or removal of any existing building, surveying, grading, excavation, installation of services and all acts incidental to the development of the Secured Property at any time and from time to time and without payment and without such acts being deemed acts of waste, provided such acts are reasonably necessary to facilitate the development of the Secured Property in accordance with the terms and conditions of the Credit Agreement.

4.20 Counterparts and Electronic Execution: This Debenture may be executed in several counterparts and delivered by electronic means, 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 Debenture

IN WITNESS WHEREOF the Chargor has duly executed this Debenture as of the date first written above.

**[SIGNATURE LINES FOLLOW ON THE NEXT PAGE]**

**MIZRAHI DEVELOPMENTS GROUP (1451 WELLINGTON) INC.**

By:   
Name: Sam Mizrahi  
Title: President

By: \_\_\_\_\_  
Name:  
Title:

I have authority to bind the Corporation.

**Schedule A**

**Legal Description of the Secured Property**

**PIN 04030-0155 (LT)**

LT 3 & PT LT 4, PL 145 , BEING THE W 1/2, N/S RICHMOND RD (NOW WELLINGTON ST); OTTAWA

**PIN 04030-0154 (LT)**

LTS 1 & 2, PL 145 , N/S RICHMOND RD (NOW WELLINGTON ST); OTTAWA

This is Exhibit GG to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. Ha", is written over a light blue rectangular background.

A Commissioner for taking affidavits

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**V2 INVESTMENT HOLDINGS INC.**

Applicant

- and -

**SAM MIZRAHI, MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.,  
MIZRAHI DEVELOPMENTS INC., and 2659100 ONTARIO INC.**

Respondents

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.  
R.S.O. 1990, c. C.43**

**APPLICATION RECORD OF THE APPLICANT**

May 7, 2024

**Paliare Roland Rosenberg Rothstein LLP**  
155 Wellington Street West, 35th Floor  
Toronto, Ontario M5V 3H1

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Lawyers for the Respondents

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# TAB 1



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**V2 INVESTMENT HOLDINGS INC.**

Applicant

- and -

**SAM MIZRAHI, MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.,  
MIZRAHI DEVELOPMENTS INC., and 2659100 ONTARIO INC.**

Respondents

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c.  
C.43**

**NOTICE OF APPLICATION**

TO THE RESPONDENTS

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing (*choose one of the following*)

- In person
- By telephone conference
- By video conference

at the following location: 161 Elgin St., 2nd Fl. Ottawa, Ontario K2P 2K1 on a date to be fixed by the Registrar.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where

the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: Issued by: \_\_\_\_\_

Local registrar

Address of court office: 161 Elgin St., 2nd Fl.

Ottawa, Ontario K2P 2K1

TO: Sam Mizrahi  
189 Forest Hill Road  
Toronto ON  
M5P 2N3

AND TO: Mizrahi Development Group (1451 Wellington) Inc.  
189 Forest Hill Road  
Toronto ON  
M5P 2N3

AND TO: Mizrahi Developments Inc.  
189 Forest Hill Road  
Toronto ON  
M5P 2N3

AND TO: 2659100 Ontario Inc.  
189 Forest Hill Road  
Toronto ON  
M5P 2N3

AND TO:       Computershare Trust Company of Canada  
                  100 University Ave, 8th Floor  
                  Toronto ON, M5J 2Y1

AND TO:       Westmount Guarantee Services Inc.  
                  600 Cochrane Dr #205  
                  Markham, ON L3R 5K3

AND TO:       City of Ottawa  
                  110 Laurier Avenue West  
                  Ottawa, ON K1P 1J1

## APPLICATION

1. The applicant makes an application for orders:
  - (a) if necessary, abridging the time for and validating the manner of service of the Notice of Application and Application Record in respect of this application and dispensing with further service thereof;
  - (b) granting judgment, jointly and severally, as against the respondents on the Loan and the Guarantees, respectively (both as defined below), inclusive of pre- and post-judgment interest at the contractual rates;
  - (c) appointing a receiver to be identified of the Property (as defined below);
  - (d) awarding costs of this application on a full indemnity basis; and
  - (e) awarding such further and other relief which this Honourable Court deems appropriate and just.

### THE GROUNDS FOR THE APPLICATION ARE:

#### A. *The parties*

2. The applicant V2 Investment Holdings Inc. (the “**Lender**”) is an Ontario corporation in the business of, among other things, providing commercial loans.

3. The respondent Sam Mizrahi (the “**Borrower**”) is an individual resident in Ontario. He is an officer, director, and shareholder (directly or indirectly) of each of the corporate respondents.

4. The Borrower is the principal of a real estate development business which he operates through a number of companies, principally including the respondent Mizrahi Developments Inc. (“**Mizrahi Developments**”), an Ontario corporation. The Borrower is the sole shareholder of Mizrahi Developments.

5. The respondent Mizrahi Development Group (1451 Wellington) Inc. (“**WellingtonCo**”) is a single-purpose Ontario corporation through which the Borrower owns and operates the Property and the Project (both as defined below). Mizrahi Developments is WellingtonCo’s sole shareholder.

6. The respondent 2659100 Ontario Inc. (“**FarmCo**” and, together with Mizrahi Developments and WellingtonCo, the “**Guarantors**”) is a single-purpose Ontario corporation through which the Borrower held a minority equity interest in a cannabis company.

**B. The Property**

7. WellingtonCo owns the property/properties municipally known as 1451 Wellington Street West, Ottawa ON and having the following legal description (the “**Property**”): PIN 04030-0261 (LT) LOTS 1, 2 & 3 & PART LOT 4, PLAN 145, N/S RICHMOND ROAD (NOW WELLINGTON STREET), PARTS 1 & 2 PLAN 4R35696; SUBJECT TO AN EASEMENT AS IN OC2360765; SUBJECT TO AN EASEMENT AS IN OC2671330; CITY OF OTTAWA (formerly PINs 04030-0155 (LT) and PINs 04030-0154 (LT)).

8. The Property is the site of a mixed-use midrise development known as “1451 Wellington – The Residences at Island Park Drive” (the “**Project**”). The Project is

currently undergoing construction and includes a residential tower with ground-level retail space.

**C. The Loan**

9. On or around October 31, 2019, the Borrower and the Lender entered into a loan agreement (the “**Loan Agreement**”) which contemplated a loan by the Lender to the Borrower in the amount of \$12,900,000, all of which has been advanced (the “**Loan**”).

10. The purpose of the loan was to fund costs associated with the Borrower’s construction of a residential home in Florida for personal use.

11. The rate of interest applicable to the Loan was 10%, compounded annually and payable monthly in arrears.

12. The Loan, including any outstanding interest, was initially repayable in full on October 31, 2022, being the third anniversary of the Loan (the “**Maturity Date**”).

13. Pursuant to an amending agreement dated March 31, 2023 (the “**Amending Agreement**”), the Borrower and the Lender agreed to extend the Maturity Date to December 31, 2023.

14. The Borrower’s obligations under the Loan are guaranteed by each of the Guarantors.

**D. Security for the Loan**

15. In addition to other security granted to the Lender under the Loan Agreement, WellingtonCo granted a charge over the Property in favour of the Lender (the

“**Mortgage**”), an assignment of leases relating to the Property and a security interest in the personal property owned by WellingtonCo.

16. The Mortgage expressly contemplates that in the event of a default, the Lender may, among other things, appoint a receiver over the Property.

17. The Loan Agreement contemplated that the Mortgage and other Security (as defined in the Loan Agreement) would not be registered on title to the Property except in the event of a default by the Borrower under the Loan Agreement or the Security.

***E. Defaults and loan amendment***

18. There have been multiple events of default in respect of the Loan.

19. The Borrower initially failed to make his monthly interest payments during 2022 and advised that he would be unable to repay the Loan in full when it came due.

20. As a result of these defaults, the Borrower and the Lender entered into the Amending Agreement by which they agreed, among other things, to extend the Maturity Date to December 31, 2023.

21. Notwithstanding the extension, the Borrower still failed to repay all amounts due under the Loan when it came due on the Maturity Date, in breach of the Loan Agreement as amended.

22. The following other defaults under the Loan occurred:

- (a) WellingtonCo granted an additional encumbrance on the Property to a third party without the Lender’s consent, contrary to section 7.03(6) of the Loan



Agreement which prohibited the registration of any encumbrances other than expressly permitted under the Loan Agreement; and

- (b) WellingtonCo incurred additional debt, contrary to section 7.03(15) of the Loan Agreement.

23. Under the Loan Agreement, the Borrower was required to make best efforts to secure the consent of the senior mortgagees on the Property to the registration of the Mortgage on title, although such consent is expressly not a condition to the registration of the Mortgage. The Borrower failed deliver such consents to the Lender despite repeated demands.

24. The Lender delivered a notice of default on February 28, 2024 and later delivered a Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act*.

25. After a number of communications from the Borrower and his counsel in which the Borrower provided only vague updates regarding Trez, the Lender proceeded to register the Mortgage on title to the Property on April 15, 2024, which was receipted as instrument number OC2682295.

26. As a result of the foregoing, the entire amount owing under the Loan is now due and owing to the Lender, in the total amount of \$12,822,835.76 as of December 31, 2023, plus ongoing interest and legal fees.

**F. Need for a receiver**

27. The Lender is expressly entitled under the terms of the Mortgage to appoint a receiver over the Property in the event the Loan is in default.

28. The Lender has lost confidence in the Borrower's ability or willingness to repay the Loan. Further, the respondents' ability to complete the Project (and thereby generate proceeds to repay the Loan) is highly uncertain in light of the recent appointment of a receiver over a significant and high-profile development in Toronto owned directly or indirectly by the Borrower and/or Mizrahi Developments.

29. The appointment of a receiver is necessary, just and convenient.

30. Section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

31. Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

32. Rules 16.08 and 3.02 of the *Rules of Civil Procedure*; and

33. Such further and other grounds as counsel may advise.

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

- (a) The affidavit of Henry Wolfond, to be affirmed, and the exhibits thereto;
- (b) The consent of the proposed receiver; and
- (c) Such further and other evidence as counsel may advise and this Honourable Court may permit.

May 3, 2024

**PALIARE ROLAND  
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Barristers  
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Lawyers for the Applicant

**V2 INVESTMENT HOLDINGS INC.**  
Applicant

-and-

**MIZRAHI et al.**  
Respondents

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT OTTAWA

**NOTICE OF APPLICATION**

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Lawyers for the Applicant

# TAB 2

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**V2 INVESTMENT HOLDINGS INC.**

Applicant

- and -

**SAM MIZRAHI, MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.,  
MIZRAHI DEVELOPMENTS INC., and 2659100 ONTARIO INC.**

Respondents

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*,  
R.S.C. 1985, c. B-3, and section 101 of the *Courts of Justice Act*,  
R.S.O. 1990, c. C.43**

**AFFIDAVIT OF HENRY WOLFOND**

I, Henry Wolfond, of the City of Toronto in the Province of Ontario, SOLEMNLY AFFIRM AS FOLLOWS:

1. I am the President of V2 Investment Holdings Inc. (the “**Lender**”). As such, I have personal knowledge of the matters set out in this affidavit. Where I do not have personal knowledge, I state the source of my information and I believe it to be true.
2. I affirm this affidavit in support of the Lender’s application for, among other things:
  - (a) Judgment as against the respondents on the Loan and the Guarantees, respectively (both as defined below); and
  - (b) the appointment of a receiver in respect of the Property (as defined below).

**A. Background**

3. The Lender is an Ontario corporation in the business, of among things, of providing commercial loans.

4. The respondent Sam Mizrahi (the **"Borrower"**) is an individual resident in Ontario.

5. The Borrower is the principal of a real estate development business which he operates through a number of companies, principally including the respondent Mizrahi Developments Inc. (**"Mizrahi Developments"**), an Ontario corporation. Based on representations made by the Borrower in various loan documents described below, I understand that the Borrower is the sole shareholder of Mizrahi Developments.

6. The respondent Mizrahi Development Group (1451 Wellington) Inc. (**"WellingtonCo"**) is, to my knowledge, a single-purpose Ontario corporation through which the Borrower owns and operates the Property and the Project (both as defined below). I understand that Mizrahi Developments is WellingtonCo's sole shareholder.

7. The respondent 2659100 Ontario Inc. (**"FarmCo"** and, together with Mizrahi Developments and WellingtonCo, the **"Guarantors"**) is a single-purpose Ontario corporation through which I understand the Borrower holds or held a minority equity interest in a cannabis company.

**B. The Property**

8. WellingtonCo owns the property/properties municipally known as 1451 Wellington Street West, Ottawa, Ontario and having the following legal description (the **"Property"**):  
PIN 04030-0261 (LT) LOTS 1, 2 & 3 & PART LOT 4, PLAN 145, N/S RICHMOND ROAD (NOW WELLINGTON STREET), PARTS 1 & 2 PLAN 4R35696; SUBJECT TO AN

EASEMENT AS IN OC2360765; SUBJECT TO AN EASEMENT AS IN OC2671330; CITY OF OTTAWA (formerly PINs 04030-0155 (LT) and PINs 04030-0154 (LT)).

9. I have attached copies of the parcel register (dated May 2, 2024) for the Property to this affidavit was **Exhibit A**.

10. The Property is the site of a mixed-use midrise condominium development known as “1451 Wellington – The Residences at Island Park Drive” (the “**Project**”). The Project is currently undergoing construction and includes a residential tower with ground-level retail space.

11. Encumbrances registered on title to the Property include:

- (a) A mortgage in favour of Computershare Trust Company of Canada (“**Computershare**”) which I understand is held by Computershare on behalf of Trez Capital Limited Partnership (“**Trez**”), as lender, in the amount of \$68,000,000, registered on October 29, 2019 (the “**First Trez Mortgage**”). I have attached a copy of the First Trez Mortgage to my affidavit as **Exhibit B**;
- (b) A mortgage in favour of Westmount Guarantee Services Inc. (“**Westmount**”) and, together with Computershare, the “**Senior Mortgagees**”) in the amount of \$24,000,000, registered on October 29, 2019 (the “**Westmount Mortgage**”). I have attached a copy of the instrument registering the Westmount Mortgage to my affidavit as **Exhibit C**; and



- (c) A further mortgage in favour of Computershare in the amount of \$6,000,000, registered on December 1, 2021 (the “**Second Trez Mortgage**”). I have attached a copy of the Second Trez Mortgage to my affidavit as **Exhibit D**.

**C. The Loan**

12. On or around October 31, 2019, the Borrower and the Lender entered into a loan agreement (the “**Loan Agreement**”) which contemplated a loan by the Lender to the Borrower in the amount of \$12,900,000, all of which has been advanced (the “**Loan**”).

13. I attach a copy of the Loan Agreement to my affidavit as **Exhibit E**.

14. As set out in section 2.02 of the Loan Agreement, the purpose of the Loan was to fund costs associated with the Borrower’s construction of a residential home in Florida for personal use.

15. The rate of interest applicable to the Loan was 10%, compounded annually and payable monthly in arrears.

16. The Loan, including any outstanding interest, was initially repayable in full on October 31, 2022, being the third anniversary of the Loan (the “**Maturity Date**”).

17. The Guarantors are also parties to the Loan Agreement and, at article 9.01, have agreed to be jointly and severally liable to the Lender for the Borrower’s obligations thereunder.

**D. Security for the Loan**

18. The Loan was secured by a demand debenture granted by WellingtonCo in favour of the Lender (the “**Debenture**”). I attach a copy of the Debenture as **Exhibit F**.

19. Among other things, the Debenture granted a charge over the Property in favour of the Lender (the “**V2 Mortgage**”), an assignment of leases relating to the Property and a security interest in the personal property owned by WellingtonCo.

20. The Debenture, at article 3.1(t), expressly contemplates that in the event of a default, the Lender may, among other things, appoint a receiver over the Property.

21. Article 8.01(1) of the Loan Agreement provided that, among other things, the V2 Mortgage and other Security (as defined in the Loan Agreement) would not be registered on title to the Property until there was a default.

22. I understood that the reason for this restriction was to protect WellingtonCo’s ability to complete the Project. Specifically, under article 9.2 of the First Trez Mortgage, WellingtonCo agreed that it would not permit the registration of any other encumbrances against title to the Property without the consent of Trez.

23. As such, the registration of a further charge on title to the Property might put WellingtonCo in default of its obligations under the First Trez Mortgage – depending on whether Trez consented in advance to the registration – thereby endangering the ability of WellingtonCo to complete the Project.

24. However, article 8.01(1) of the Loan Agreement also provided that:

- (a) the Lender may register any or all of the Security on title to the Property in the event of a default by the Borrower under the Loan Agreement;
- (b) in the event of a continuing default under the Loan Agreement, the Borrower and WellingtonCo shall use best efforts to obtain the consent of the Senior

Mortgagees to the registration of the Security on title to the Property (although such consent shall not be a condition to the registration of the Security).

25. The Lender's lawyer conducted a search of the Personal Property Security Registration system in Ontario against WellingtonCo and a copy of the search, dated April 22, 2024, is attached as **Exhibit G**.

26. The search against the Borrower indicates that the following Personal Property Security registrations exist:

Secured Party	Collateral Description	Registration Date	Registration Number
WESTMOUNT GUARANTEE SERVICES INC. AS ADMINISTRATIVE AGENT FOR THE SURETIES	SECURITY INTEREST IN THOSE ITEMS SET OUT IN A DEPOSIT TRUST AGREEMENT DATED DECEMBER 7, 2018 WITH RESPECT TO THE PROJECT KNOWN AS 1451 WELLINGTON, LOCATED AT 1445 AND 1451 WELLINGTON STREET WEST, OTTAWA, ONTARIO.	December 13, 2018	20181213 1039 1590 5583
COMPUTER SHARE TRUST COMPANY FO CANADA	A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY WHICH IS RELATED	October 25, 2019	20191025 1414 9234 8632

	<p>TO, LOCATED ON OR USED IN CONNECTION WITH THE OPERATION, MANAGEMENT, ENJOYMENT, DEVELOPMENT OR USE OF THE LANDS AND BUILDINGS MUNICIPALLY KNOWN AS 1445 AND 1451 WELLINGTON STREET WEST, OTTAWA, ONTARIO, AND LEGALLY DESCRIBED UNDER THE FOLLOWING PARCEL IDENTIFICATION NUMBERS PIN 04030-0154 (LT) AND PIN 04030-0155 (LT). LOAN NO. 1995/19</p>		
<p>COMPUTERSHARE TRUST COMPANY OF CANADA</p>	<p>A SECURITY INTEREST IS TAKEN IN ALL OF THE DEBTOR'S PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY WHICH IS RELATED TO, LOCATED ON OR USED IN CONNECTION WITH THE OPERATION, MANAGEMENT, ENJOYMENT DEVELOPMENT OR USE OF THE LANDS AND BUILDINGS MUNICIPALLY KNOWN AS 1445 AND 1451 WELLINGTON STREET WEST,</p>	<p>December 1, 2021</p>	<p>20211201 1053 9234 0157</p>

	OTTAWA, ONTARIO, AND LEGALLY DESCRIBED UNDER THE FOLLOWING PARCEL IDENTIFICATION NUMBERS, PIN 04030-0154 (LT) AND PIN 04030-0155 (LT). LOAN NO. 2272/21.		
CWB MAXIUM FINANCIAL INC.	None.	August 29, 2022	20220829 1403 1462 8145

27. The Lender's lawyer also conducted an execution search against WellingtonCo in all 49 Ontario enforcement offices. The search indicated that there are no executions registered against WellingtonCo as of April 22, 2024. A copy of this search is attached as **Exhibit H**.

***E. The Borrower defaults***

28. There have been multiple events of default in respect of the Loan, most significantly in respect of the key payment terms thereunder.

**1. First default: payment**

29. In June 2022, the Borrower failed to make his monthly interest payments under the Loan and advised me that he would be unable to repay the Loan in full when it came due. The Borrower did not repay the loan in full on the Maturity Date of October 31, 2022, as contemplated by the Loan Agreement.

30. On March 31, 2023, the Borrower and the Lender entered into an amending agreement which, among other things, extended the Maturity Date to December 31, 2023

(the “**Amending Agreement**”) and set out a new schedule for interest payments which contemplated that (i) interest would continue to accrue monthly but that (ii) no interest would actually be paid until March 1, 2023.

31. I have attached a copy of the Amending Agreement to my affidavit as **Exhibit I**.

32. Initially, the Borrower complied with its monthly interest obligations leading up to the extended Maturity Date.

33. However, and notwithstanding the extension, the Borrower still failed to repay all amounts due under the Loan when it came due on the Maturity Date, in breach of the Loan Agreement as amended by the Amending Agreement.

34. Since December 31, 2023, the only payments made toward the Loan were monthly interest payments (at an annual rate of 10%).

## **2. Further defaults: additional registrations and indebtedness**

35. On December 1, 2021, WellingtonCo granted the Second Trez Mortgage to Trez, without the Lender’s consent.

36. Pursuant to the Second Trez Mortgage, WellingtonCo incurred additional debt to Trez, above WellingtonCo’s then existing \$68 million indebtedness to Trez to fund construction of the Project (the “**Construction Loan**”).

37. Both of these acts were defaults under the Loan Agreement.

38. Section 7.03(6) prohibited the Borrower and WellingtonCo from encumbering the Property, save for certain specifically enumerated exceptions (which included security for

the Construction Loan up to the lesser of \$68 million or 73.6% of the hard and soft costs of the Project set out in its budget, but not higher).

39. Section 7.03(15) of the Loan Agreement prohibited WellingtonCo from incurring any debt other than those debts specifically permitted by the Loan Agreement. Under the Loan Agreement, WellingtonCo's permitted debt to Trez under the Construction Loan was not to exceed \$68 million.

40. The Borrower advised me that the Second Trez Mortgage was granted by WellingtonCo for the purpose of securing WellingtonCo's existing \$68 million indebtedness under the Construction Loan and thus did not violate the Loan Agreement. I have not been provided with any evidence of this assertion by the Borrower and, in any event, the aggregate principal amount of the First Trez Mortgage and Second Trez Mortgage are in excess of that permitted in the Loan Agreement.

***F. Status of the Loan***

41. Given that the Maturity Date has passed, the entirety of the Loan is due and owing. As of December 31, 2023, this amount is \$12,822,835.76 inclusive of principal and interest plus ongoing interest and legal fees. This indebtedness was specifically acknowledged by the Borrower in the Amending Agreement.

***G. Correspondence with the Borrower***

42. On February 28, 2024, the Lender delivered a notice of default on the Borrower by which the Lender demanded repayment of the Loan. I have attached a copy of this notice of default to my affidavit as **Exhibit J**.

43. On March 3, 2024, I met with the Borrower to discuss the terms of a possible further extension agreement. In this meeting, the Borrower advised me that he would work with Trez to obtain their consent to register the V2 Mortgage on title to the Property.

44. On March 15, 2023, the Borrower advised me that he contacted Trez to request its consent to the registration of the V2 Mortgage on title to the Property, consistent with his obligations under the Loan Agreement to make best efforts to secure Trez's consent.

45. The Lender was very patient with the Borrower. I gave him a month to attempt to obtain Trez's consent to the registration of the V2 Mortgage, even though the Lender was fully entitled to register the V2 Mortgage as soon as the defaults occurred and without Trez's consent.

46. After a number of communications from the Borrower and his counsel in which the Borrower provided only vague updates regarding Trez, the Lender proceeded to register the V2 Mortgage on title to the Property on April 15, 2024, which was receipted as instrument number OC2682295. A copy of the registration is attached as **Exhibit K**.

47. Also on April 15, 2024, the Lender served a Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act*. I have attached a copy of this Notice of Intention to Enforce Security to my affidavit as **Exhibit L**.

**H. Need for a receiver**

48. The Lender is expressly entitled under the terms of the V2 Mortgage to appoint a receiver over the Property in the event the Loan is in default. Further, I believe that the appointment of a receiver is needed to assist the Lender in realizing on its security.



49. The Property is the key collateral underlying the Loan, and I was only willing to enter into the Loan Agreement knowing that, if necessary, the Property could be sold for the benefit of WellingtonCo's creditors.

50. The Borrower and the Guarantors have demonstrated that they are unable or unwilling to repay the Loan despite having been given several months since the initial notice of default on February 28, 2024.

51. Most recently, the Borrower proposed an extension agreement for the Loan with a Maturity Date of May 1, 2025 (with two one-year extensions of this Maturity Date). This is not acceptable to the Lender and confirms that the security underlying the Loan should be enforced as there is no other realistic route to repayment.

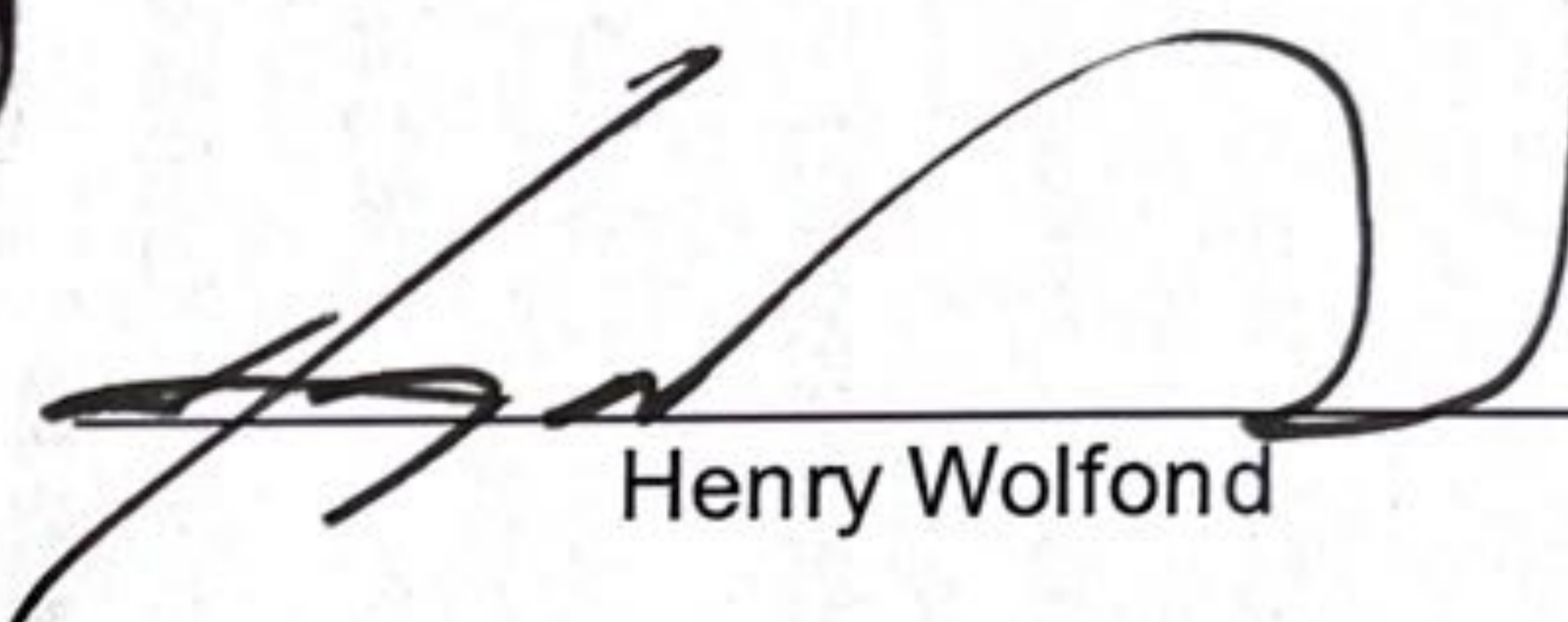
52. Further, and as set out above, the Senior Mortgagees have registered three mortgages on title to the Property. As well, I understand that a number of parties have entered agreements of purchase and sale with respect to the Project's condominium units. The appointment of a receiver in respect of the Property will therefore permit the orderly realization on the Property for the benefit of all of WellingtonCo's creditors.

**AFFIRMED** remotely by Ryan Shah at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 3rd day of May, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



\_\_\_\_\_  
Commissioner for Taking Affidavits  
Ryan Shah (LSO#: 88250C)

}



\_\_\_\_\_  
Henry Wolfond

This is Exhibit HH to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits

**From:** [Avril Lavallee](#)  
**To:** [Nielsen, Ryan](#)  
**Cc:** [Avril Lavallee](#)  
**Subject:** Mizrahi loan from Wolfond (file 34549)  
**Attachments:** [image001.png](#)  
[Second Amending Agreement \(3\).docx](#)

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Good Afternoon Ryan,

Attached please find a revised draft of the Second Amending Agreement which incorporates the terms that our respective clients agreed to last evening. Thank you.



**Avril Lavallee BA, LLB**

**Director**

E / [alavallee@mgbwlaw.com](mailto:alavallee@mgbwlaw.com)

T / 519.571.8800 ext. 135 F / 519.742.1841

**McCarter Grespan Beynon Weir Professional Corporation**

539 Riverbend Drive, Kitchener, ON N2K 3S3 / [mgbwlaw.com](http://mgbwlaw.com)

This email (including all attachments) is for the sole use of the intended recipient and may contain confidential information which is protected by legal privilege. If you are not the intended recipient, please notify us immediately by reply email or by telephone, delete this email and destroy any copies. Thank you.

This is Exhibit II to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered within the upper portion of the box.

A Commissioner for taking affidavits

**THIS SECOND AMENDING AGREEMENT (the “Agreement”) made effective as of the 15<sup>th</sup> day of December 2023**

BETWEEN:

**SAM MIZRAHI**  
(the “Borrower”)

AND

**V2 INVESTMENT HOLDINGS INC.**  
(the “Lender”)

**WHEREAS:**

- A. Pursuant to a loan agreement (the “**Original Loan Agreement**”) made October 31, 2019, the Lender provided a loan to the Borrower upon and subject to the terms set out in the Loan Agreement;
- B. The Borrower and the Lender entered into an amending agreement dated as of March 6, 2023 (the “**Amending Agreement**”) and the Original Loan Agreement as amended by the Amending Agreement and as may be further amended, restated, supplemented, replaced or otherwise modified, the “**Loan Agreement**”); and
- C. The Borrower and the Lender agree to further amend the Loan Agreement in accordance with the terms and conditions hereinafter set forth.

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Lender and the Borrower hereby agree as follows:

1. The Loan Agreement is amended as follows:
  - a. to delete from Section 1.01 the definition of “Construction Lender” in its entirety and replace it with the following:

“**Construction Lender**” means the lender providing the Construction Loan.”
  - b. to delete from Section 1.01 the definition of “Construction Loan” in its entirety and replace it with the following:

“**Construction Loan**” means the loans made to the Borrower by Trez Capital Corp. secured by, inter alia, the charges registered on the Project Lands as instruments no. OC2158856 and OC2430519, and any replacements thereof.”
  - c. to delete from Section 1.01 the definition of “Maturity Date” in its entirety and replace it with the following:

“**Maturity Date**” means May 1, 2027.”
  - d. to delete Sections 2.01 and 2.02 in their entirety and replace them with the following:

**2.01     Loan**

Subject to the terms and conditions of this Agreement, the Lender establishes in favour of the Borrower a term loan (the “Loan”) in the amount of \$14,400,000, which term loan is non-revolving and shall be advanced in two advances, the first in the amount of \$12,900,000 advanced on October 31, 2019 and the second in the amount of \$1,500,000 to be advanced on May 1, 2024.

**2.02     Purpose of Loan**

The Loan will only be used to fund hard and soft costs relating to the Project.
  - e. the following new Sections 5.01(4), 5.01(5) and 5.01(6) shall be added following Section 5.01(3):

“(4) The Borrower shall repay the Loan outstanding from the following amounts: (a) no less than \$1,000,000 forthwith upon receipt by the Borrower, any Guarantor or Mizrahi Inc.) (collectively, the “**Mizrahi Parties**”)

from any proceeds arising from, or relating in any way to, the termination of any of the Mizrahi Parties as manager of the project commonly known as The One located at the southwest corner of Yonge Street and Bloor Street in Toronto, Ontario (“**The One Project**”); and (b) no less than \$2,000,000 upon receipt by any of the Mizrahi Parties of any return or refund of any deposits paid by any of the Mizrahi Parties or damages received in respect of any unit(s) in The One Project. Following a final judgement in favour of the Mizrahi Parties with respect to amounts payable pursuant to (a) above and the expiration of all appeal periods in connection therewith, upon request of the Lender, the Borrower agrees to deliver, or cause to be delivered, within three (3) Business Days of receipt of such request, a direction with respect to the amounts payable pursuant to (a) above, from any other of the Mizrahi Parties to Alvarez & Marsal Canada Inc., as receiver and manager of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP in connection with The One Project, or such other party related to The One Project. Following receipt of a notice cancelling the Mizrahi Parties’ agreements of purchase and sale for units in The One Project, upon request of the Lender, the Borrower agrees to deliver, or cause to be delivered, within three (3) Business Days of receipt of such request, a direction with respect to the amounts payable pursuant to (b) above, from any other of the Mizrahi Parties to Alvarez & Marsal Canada Inc., as receiver and manager of all of the assets, undertakings and properties of Mizrahi Commercial (The One) LP in connection with The One Project. In the event that the Borrower replaces any Construction Loan with a new Construction Loan in a principal amount greater than the principal amount owed to the prior lender, then any surplus funds shall be paid by the Borrower to the Lender as a payment of the Loan.

(5) Net proceeds of the sale of units in the Project shall first be paid to the Construction Lender and the DBC, and thereafter all net sale proceeds from the sale of Units in the Project shall be paid to the Lender on account of the Loan. For the purposes of this section, “net sale proceeds” shall mean the proceeds from the sale of any unit to a purchaser less purchasers’ deposits received by the Wellington Guarantor and used in the Project, legal fees, closing costs (including sales commissions) and harmonized sales tax.

(6) Effective April 1, 2024, the Loan shall be fully open for prepayment at any time without notice, bonus or penalty. Without limiting the generality of the foregoing, no Prepayment Premium shall be charged for any payments made after April 1, 2024.”

f. The following new Sections 8.01(i), 8.01(j), 8.01(k) and 8.01(l) shall be added following Section 8.01(h):

(i) a limited recourse guarantee from the Limited Recourse Guarantor which guarantee shall be limited in recourse to her interests in 185 Forest Hill Road, Toronto and 104 Hemlock Court, Blue Mountains;

(j) a collateral mortgage in the amount of \$14,400,000 on the real property legally described as Part Lot 22, Concession 3 FTB, Township of York as in CA694165; City of Toronto (PIN 21180-0242 (LT)) and municipally known as 185 Forest Hill Road, Toronto;

(k) A collateral mortgage in the amount of \$14,400,000 on the real property legally described as Part Lot 22, Concession 3 FTB, Township of York as in CT483220; City of Toronto (PIN 21180-0241 (LT)) and municipally known as 187 Forest Hill Road, Toronto;

(l) A collateral mortgage in the amount of \$14,400,000 on Lot 23, Plan 1127, T/W R450659; S/T R459306; The Blue Mountains (PIN 37144-0409 LT) and municipally known as 104 Hemlock Court;

(n) an amendment to Charge No. OC2682295 registered against the Project to increase the principal amount to \$14,400,000 and to amend the interest rate to 10% per annum calculated semi-annually, not in advance.

g. The following new Sections 7.04 and 7.05:

7.04 The Lender covenants to execute and deliver any intercreditor agreements (including but not limited to subordination and standstill agreements) with the Construction Lender and/or DBC as required by the Construction Lender and/or DBC forthwith upon request.

7.05 From and after the date hereof, to and until May 1, 2027, the Lender shall not take any Enforcement Action (as defined below) under or in respect of the Security contemplated in Sections 8.01(j), 8.01(k), 8.01(l) or 8.01(m). In this Section, "Enforcement Action" means the commencement of power of sale, foreclosure or other judicial or private sale proceedings, appointing or obtaining the appointment of a receiver, a manager

or a receiver and manager or other person having similar powers in respect of any person or property, attornment of rents, taking possession or control of any property or undertaking or commencing any notice of intention to enforce security or any action or proceeding seeking payment or recovery of all or any part of any indebtedness 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 proceedings.

2. The Lender and the Borrower hereby confirm that the outstanding principal amount of the Loan as of December 31, 2023 is \$12,822,835.76.
3. The Borrower and Lender hereby confirm that the Loan is in good standing and that there is no Default or Event of Default as of the date hereof.
4. This Agreement shall be read together with the Loan Agreement and the parties confirm that, except as modified herein, all covenants and conditions in the Loan Agreement remain unchanged, unmodified and in full force and effect.
5. This Agreement and the amendments set out in Section 1 above shall be deemed to be effective on the date first written above, subject to the completion of the following conditions precedent:
  - a. this Agreement shall have been executed and delivered by all parties thereto;
  - b. the Lender shall have received receipt of evidence of registration on title to the Project of a charge in the principal amount of \$12,900,000.00 constituting a charge on the Project Lands and assets related to the Project (subject only to the charge granted in favour of the Construction Lender under the Construction Loan and DBC under the DBC Mortgage) granted by the Wellington Guarantor in favour of the Lender and in a form acceptable to the Lender; and
  - c. the Borrower shall pay to the Lender on demand all reasonable fees and expenses, including, without limitation, legal fees incurred by the Lender in connection with the preparation, negotiation, completion, execution, delivery and review of this Agreement and all other documents, registrations and instruments arising therefrom and/or executed in connection therewith.
6. The Borrower shall pay to the Lender all reasonable legal fees and expenses of the Lender's counsel incurred in connection with the preparation of this Agreement and the implementation hereof.
7. Any capitalized word or term not otherwise defined herein shall have the meaning given thereto in the Loan Agreement.
8. The parties agree to do or cause to be done, from time to time, all such things, and shall execute and deliver all such documents, agreements and instruments reasonably requested by any other party, as may be necessary or desirable to carry out the provisions and intention of this Agreement.
9. This Agreement may be executed and delivered in counterparts and by facsimile transmission or other electronic means (including but not limited to email and/or document signature software such as DocuSign) and the parties hereto may rely upon all such signatures as though they were original signatures. Upon request of any party the parties will exchange a copy of this Agreement with original signatures.
10. This Agreement shall ensure to the benefit of and be binding upon the parties and their legal representatives, heirs, executors, administrators, successors and permitted assigns, as the case may be.



IN WITNESS WHEREOF the parties hereto have executed this Agreement.

**BORROWER:**

\_\_\_\_\_  
**Sam Mizrahi**

**LENDER:**

**V2 INVESTMENT HOLDINGS INC.**

By: \_\_\_\_\_  
Name:  
Title:

This is Exhibit JJ to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. H. a", is centered below the text.

A Commissioner for taking affidavits

## ACKNOWLEDGEMENT OF SUBORDINATION AND POSTPONEMENT

**TO: COMPUTERSHARE TRUST COMPANY OF CANADA**, acting as agent for Trez Capital Limited Partnership (the "**Senior Lender**")

### **WHEREAS:**

- A. Mizrahi Development Group (1451 Wellington) Inc. (the "**Mortgagor**"), is the registered owner of the lands legally described as Lots 1, 2 & 3 & Part Lot 4, Plan 145, N/S Richmond Road (now Wellington Street), Parts 1 & 2 Plan 4R35696; Subject to an Easement as in OC2360765; Subject to an Easement as in OC2671330; City of Ottawa, being the whole of PIN 04030-0261 (being a consolidate from PINs 04030-0259 and 04030-0260) (the "**Lands**").
- B. V2 Investment Holdings Inc. (the "**Subordinate Lender**") has entered into a loan agreement dated October 31, 2019 (as amended, restated or supplemented from time to time collectively, the "**Subordinate Loan Agreement**") with Sam Mizrahi, as borrower. The obligations of Sam Mizrahi having been guaranteed by the Mortgagor, as guarantor, for a loan in the principal sum of \$12,900,000 (such loan and all other indebtedness and obligations evidenced or secured by, among other things, the Subordinate Charge (as hereinafter defined), collectively, the "**Subordinate Loan**").
- C. As security for the Subordinate Loan, the Subordinate Lender holds, among other things, a charge/mortgage in the principal amount of \$12,900,000 granted by the Mortgagor to and in favour of the Subordinate Lender notice of which was registered in the Land Registry Office for the Land Titles Division of Ottawa-Carlton (No. 4) (the "**LRO**") on April 15, 2024 as Instrument No. OC2682295 (the "**Subordinate Charge**" and together with any other security granted by any covenantor as security for the Subordinate Loan, as amended, restated or supplemented from time to, the "**Subordinate Loan Documents**"):
- D. Trez Capital Limited Partnership ("**Trez**") has entered into a commitment letter dated October 2, 2019 (as amended, restated or supplemented from time to time collectively, the "**Senior Loan Agreement**") with, among others, the Mortgagor, as borrower, for a loan in the principal sum of up to \$70,000,000 (such loan and all other indebtedness and obligations evidenced or secured by the Senior Charge (as hereinafter defined), collectively, the "**Senior Loan**").
- E. As security for the Senior Loan, Trez or the Senior Lender holds, among other things, a charge/mortgage in the principal amount of \$70,000,000 granted by the Mortgagor to and in favour of the Senior Lender notice of which was registered in the LRO on October 29, 2019 as Instrument No. OC2158856, as amended by a mortgage amending agreement notice of which was registered in the LRO on April 23, 2021 as Instrument No. OC2339182 (the "**Senior Charge**" and together with any other security granted by any covenantor as security for the Senior Loan, as amended, restated or supplemented from time to, the "**Senior Loan Documents**").
- F. The outstanding loan balance of the Senior Loan as of June 1, 2024 will be \$63,216,671.69 (the "**Current Senior Loan Balance**"). On or about May 24, 2024 Trez will complete an

urgent advance to the Mortgage in the amount of \$2,806,559 (the "**Urgent Advance**" and together with (i) the Current Senior Loan Balance, (ii) all interest accruing on the Urgent Advance and the Current Senior Loan Balance, each at the interest rate of 11.40%, and (iii) reasonable protective disbursements under the Senior Loan Documents, collectively the "**Senior Loan Indebtedness**") to fund ongoing construction costs for the development of a 12 storey concrete frame condominium building on the Lands featuring 93 residential units with 5,268 square feet of retail space at grade, 100 storage lockers and 130 underground parking spaces.

- G. It is a condition, among others, of Trez making the Urgent Advance to the Mortgagor that the Subordinate Lender executes and delivers this Acknowledgement of Subordination and Postponement.

**NOW THEREFORE**, the Subordinate Lender hereby acknowledges, consent and agrees, in consideration of ten dollars (\$10) and other good and valuable consideration, the receipt and adequacy of which is acknowledged by the Subordinate Lender, as follows:

1. Notwithstanding the terms of the agreements, instruments or other documents giving rise to the Senior Loan, the Subordinate Loan, the Senior Loan Documents or the Subordinate Loan Documents, the times of defaults under or the dates of any advances of or commitments with respect to the Senior Loan or the Subordinate Loan, nor the dates of creation or perfection of the Senior Loan Documents or the Subordinate Loan Documents, all and any of the Trez's, the Senior Lender's or the Subordinate Lender's rights in respect of the Senior Loan, the Subordinate Loan, the Senior Loan Documents and the Subordinate Loan Documents shall be subject to the terms of this Acknowledgement of Subordination and Postponement.
2. The Senior Lender has priority over the Subordinate Lender's interests in the Lands, the rents derived therefrom and the personal property relating thereto by virtue of the Subordinate Loan Documents, including all proceeds of insurance and proceeds of expropriation relative to the Lands (collectively, the "**Charged Property**"), and the Subordinate Lender does hereby postpone and subordinate all its rights under the Subordinate Loan Documents in respect of the Charged Property and all its rights, title and interest in and to the Charged Property, with the intent that the interests of the Subordinate Lender therein will be subject to the rights of the Senior Lender under the Senior Loan Documents as though the Senior Loan Documents had been executed and delivered, registered or otherwise processed and the Senior Loan to the maximum amount of the Senior Loan Indebtedness advanced thereunder in point of time prior to the execution, delivery, registration or processing of the Subordinate Loan Documents and the date of advance of the Subordinate Loan thereunder.
3. For greater certainty, the grant of priority provided for herein will apply in all events and circumstances:
  - (a) to the full amount of the Senior Loan Indebtedness, until the Senior Loan has been repaid in full and the Senior Loan Documents have been completely released and discharged; and

- (b) regardless of:
- (i) the dates of execution, delivery and registration of the Subordinate Loan Documents and the Senior Loan Documents;
  - (ii) the dates of all past, present and future advances or re-advances of the Senior Loan to, for, on behalf of or for the benefit of the Mortgagor;
  - (iii) the dates of issue of any letters of guarantee or letters of credit issued by the Senior Lender, any Senior Lender or on its behalf to the Mortgagor or on its request and the dates of any payments made by the Senior Lender or any Senior Lender under such letters of guarantee or letters of credit;
  - (iv) the dates of any past, present or future defaults by the Mortgagor under any of the terms and conditions of the Senior Loan or the Senior Loan Documents;
  - (v) 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;
  - (vi) any contrary intention expressed in the Senior Loan Documents, the Subordinate Loan Documents or any other documents; and
  - (vii) any priority granted by any principle of law or equity or any statute, including the *Personal Property Security Act* (Ontario) and the *Land Titles Act* (Ontario).
4. This Acknowledgement of Subordination and Postponement shall be binding upon the Subordinate Lender and its successors and assigns and enure to the benefit of the Senior Lender and its successors and assigns.
5. The Subordinate Lender will execute such further and other assurances, instruments, assignments, declarations and other documents as may be reasonable required to give full effect to this Acknowledgement of Subordination and Postponement.

05/23/2024

Dated effective this \_\_\_ day of May, 2024

**V2 INVESTMENT HOLDINGS INC.**

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

Henry Wolfond  
President

This is Exhibit KK to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. Ha", is written over a light blue rectangular background.

A Commissioner for taking affidavits

June 6, 2024

**VIA E-MAIL (DANIEL.ROSENBLUTH@PALIAREROLAND.COM)**

**Steven J. Weisz**

Direct Phone 647-417-5334

Direct Fax 647-805-0519

sweisz@cozen.com

**Daniel Rosenbluth**

Paliare Roland Rosenberg Rothstein LLP  
155 Wellington Street West - 35th Floor  
Toronto, ON M5V 3H1

**Re: V2 Investment Holdings Inc. ats Mizrahi Development Group (1451 Wellington) Inc.**

Dear Mr. Rosenbluth:

I am writing further to our telephone conversation of June 3, 2024, to set out Sam Mizrahi's position.

We understand that:

- Trez Capital Limited Partnership ("Trez") has asked V2 Investment Holdings Inc. ("V2") to enter into a routine standstill agreement in relation to 1451 Wellington Street, Ottawa (the "Project").
- Currently, Trez has advanced approximately \$65 million toward the Project.
- Altus has advised that approximately \$15 million is required to complete the project.
- The standstill agreement would enable Trez to advance the funds that are needed to complete the Project.
- Upon completion, the total construction debt to be paid out on the Project is expected to be less than \$80 million.
- Sale of the units in the Project is expected to yield approximately \$117 million.
- As a result, \$37 million will likely be available to satisfy V2's loan to Mr. Mizrahi. This is nearly three times the amount currently outstanding (\$12.8 million).
- Mr. Mizrahi has been paying interest on V2's loan, and V2 has accepted those payments.
- V2 has refused to enter into the standstill agreement.
- Because of V2's refusal to enter into the standstill agreement, Trez will bring an application to appoint a receiver over the Project, after which it will advance the funds, and complete the Project.

LEGAL\70995834\3

It is in V2's interest to enter into the standstill agreement, because it will enable the Project to be completed and the remaining unsold units to be sold. This in turn will unlock revenue to pay out V2's loan to Mr. Mizrahi.

By contrast, V2's refusal to enter into the standstill agreement gives V2 no advantage at all, potentially disadvantages V2, and causes loss to Mr. Mizrahi. By obtaining the appointment of a receiver, Trez will obtain the same priority over V2's charge for additional funding that the standstill agreement would provide. Thus V2's intransigence will not preserve any priority over Trez additional funds that Trez advances. The appointment of a receiver will drive up costs and make it more difficult to sell the remaining units. This could delay and potentially imperil repayment of V2's loan.

I would invite V2 to reconsider its position. Agreeing to the standstill agreement proposed by Trez is the most efficacious way to ensure that V2's loan to Mr. Mizrahi is repaid in a timely way.

If V2 maintains its refusal, it will cause substantial loss to Mr. Mizrahi, since the cost of the receivership will come out of the funds remaining after Trez is repaid. In that event, it will be Mr. Mizrahi's position that V2 has caused this loss by acting in bad faith and contrary to sensible commercial practice. Accordingly, Mr. Mizrahi may claim against V2 for all losses arising from the receivership.

Yours truly,

Cozen O'Connor LLP



Steven J. Weisz  
SJW:sc



This is Exhibit LL to the Initial Order,  
sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. H. a", is centered below the text.

A Commissioner for taking affidavits



Bennett Jones

Bennett Jones LLP  
3400 One First Canadian Place, PO Box 130  
Toronto, Ontario, Canada M5X 1A4  
Tel: 416.863.1200 Fax: 416.863.1716

Sean H. Zweig  
Partner  
Direct Line: 416.777.6254  
e-mail: zweigs@bennettjones.com

June 6, 2024

**DELIVERED VIA COURIER AND EMAIL**

**Mizrahi Development Group (1451 Wellington) Inc.**  
125 Hazelton Ave  
Toronto, ON M5R 2E4  
Attention: Sam Mizrahi

**Harris, Sheaffer LLP**  
4881 Yonge Street, 8th Floor  
Toronto, ON M2N 5X3  
Attention: Phil Draper

**Westmount Guarantee Services Inc.**  
Suite 205, 600 Cochrane Drive  
Markham, ON L3R 5K3  
Attention: Marlon Brown

**Paliare Roland Rosenberg Rothstein LLP**  
155 Wellington Street West,  
Toronto, ON M5V 3H1  
Attention: Dan Rosenbluth

Dear Sirs/Mesdames:

**Re: Indebtedness of Mizrahi Development Group (1451 Wellington) Inc. (the “Borrower”) to Trez Limited Capital Partnership (the “Lender”) in Respect of 1451 & 1445 Wellington Street, West, Ottawa, Ontario**

We are counsel to the Lender and Computershare Trust Company of Canada (“**Computershare**”). As you know, the Borrower is indebted to the Lender pursuant to a Commitment Letter dated October 2, 2019 as has been or may be amended, supplemented and/or renewed from time to time, including by the Renewal Letter dated October 24, 2022, the Second Renewal Letter dated April 10, 2023, the Third Renewal Letter dated July 1, 2023, the Amendment Letter dated September 12, 2023 and the Fourth Renewal Letter (the “**Fourth Renewal Letter**”) dated December 22, 2023 (collectively, the “**Commitment Letter**”), pursuant to which the Lender extended to the Borrower the following loans: (i) a Construction Loan Facility; and (ii) a Letter of Credit Facility. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Commitment Letter.

As general and continuing security for the payment and performance of the Borrower’s indebtedness and obligations under the Commitment Letter, the Lender and Computershare were granted various security (collectively, the “**Security**”) including, without limitation: (i) a mortgage/charge in the amount of \$70,000,000 (the “**Mortgage**”) over the property more particularly described in Schedule “A” appended hereto (the “**Property**”) in favour of

Computershare as the title trustee/custodian for the Lender; and (ii) a General Security Agreement dated October 29, 2019.

The Borrower's obligations under the Commitment Letter are also guaranteed by: (i) Mizrahi Developments Inc. (the "**Limited Recourse Guarantor**") pursuant to a Limited Recourse Guarantee dated October 29, 2019; (ii) Sam Mizrahi (the "**Mizrahi Guarantor**", and together with the Limited Recourse Guarantor, the "**Guarantors**") pursuant to a Guarantee and Postponement of Claims dated October 29, 2019 (the "**Guarantee and Postponement**"); and (iii) the Mizrahi Guarantor pursuant to a Completion and Cost Overrun Guarantee dated October 29, 2019 (the "**Cost Overrun Guarantee**", and together with the Limited Recourse Guarantee and the Guarantee and Postponement, the "**Guarantees**").

The Guarantors' obligations under the Guarantees are secured by various security granted in favour of the Lender and Computershare (the "**Collateral Security**") including, without limitation: (i) the Share Pledge Agreement dated October 29, 2019; and (ii) the Irrevocable Stock Transfer and Power of Attorney dated October 29, 2019.

We are advised by the Lender and Computershare that events of default under the terms of the Commitment Letter and Mortgage have occurred and are continuing, including, among other things: (i) a failure to pay the Monthly Equity Injection in accordance with section 9 of the Fourth Renewal Letter; (ii) a failure to provide the Binding Commitment Letter in accordance with section 13(f) of the Fourth Renewal Letter; (iii) a failure to comply with the Revised Development Schedule and Budget in accordance with section 15 of the Fourth Renewal Letter; and (vi) the registration of unauthorized liens on the property in breach of section 18.1(i)(ii) of the Mortgage and section 35 of the Commitment Letter (collectively with any other events of default having occurred and continuing under the Commitment Letter and/or Mortgage as of the date of this letter, the "**Events of Default**"). As a result of the Events of Default, the Lender and Computershare hereby: (i) declare the entire amount of the Borrower's indebtedness to the Lender (the "**Indebtedness**") due and payable; and (ii) demand repayment of the Indebtedness in full by no later than 10 days from the date of this letter, which as of June 4, 2024 is in the amount of \$66,928,638.53 comprised of the following:

Principal Balance	\$ 66,773,025.24
Accrued Interest	\$ 73,222.53
Fees	\$ 82,390.76
Total	<b>\$ 66,928,638.53<sup>1</sup></b>

Interest accrues on the Indebtedness in accordance with the terms of the Commitment Letter and the Mortgage and will accrue until the Indebtedness is paid in full. Additionally, the Lender and Computershare have incurred and are continuing to incur costs in relation to this matter and reserve the right to claim such amounts from the Borrower and/or the Guarantors. Payment of the Indebtedness can be made by electronic funds transfer to the Lender.

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<sup>1</sup> Please note that this amount only relates to the Lender's and Computershare's first mortgage security, which is the subject of this letter. The Borrower is further indebted to the Lender in respect of a second mortgage as well.



June 6, 2024

Page 3

Please be advised that unless the Indebtedness, together with all applicable interest, fees, costs, legal expenses and disbursements, is paid in full within the 10-day period referred to above, the Lender and Computershare will be entitled, and intend to, take whatever steps they consider necessary or appropriate to protect their rights and interests including, without limitation, commencing legal proceedings against the Borrower and/or the Guarantors, enforcing the Security and the Collateral Security, and seeking the appointment of a receiver or receiver-manager. To that end, please find enclosed a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada). Should you consent to an earlier enforcement, please return an executed copy of the relevant enclosed Consent and Waiver to our office.

Nothing in this letter shall constitute or be deemed to be a waiver by the Lender or Computershare of any breach, default, or event of default that has occurred to the date hereof and the Lender and Computershare specifically reserve all of their rights and remedies at law or in equity or arising under or in connection with the Commitment Letter, the Security, the Guarantees, the Collateral Security and all documents and instruments provided in respect thereof. Further, the Lender and Computershare expressly reserve their rights to take such additional steps as are necessary at any time without further notice to you if the Lender or Computershare becomes aware of any matter that may impair the Security or the Collateral Security.

Yours truly,

**BENNETT JONES LLP**



Sean H. Zweig

Enclosures – Notice of Intention to Enforce Security, and Consent and Waiver

c: Aiden Nelms and Milan Singh-Cheema – Bennett Jones LLP



**Schedule "A"**

**The Property**

**PIN 04030-0261 (LT)**

LOTS 1, 2 & 3 & PART LOT 4, PLAN 145, N/S RICHMOND ROAD (NOW WELLINGTON STREET), PARTS 1 & 2 PLAN 4R35696; SUBJECT TO AN EASEMENT AS IN OC2360765; SUBJECT TO AN EASEMENT AS IN OC2671330; CITY OF OTTAWA

**FORM 86**  
**NOTICE OF INTENTION TO ENFORCE A SECURITY**  
**(SUBSECTION 244(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*)**

**TO:** Mizrahi Development Group (1451 Wellington) Inc. (the “**Debtor**”), an insolvent person.

**TAKE NOTICE THAT:**

1. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the:  
(i) Commitment Letter dated October 2, 2019, as has been or may be amended, supplemented and/or renewed from time to time, including by the Renewal Letter dated October 24, 2022, the Second Renewal Letter dated April 10, 2023, the Third Renewal Letter dated July 1, 2023, the Amendment Letter dated September 12, 2023 and the Fourth Renewal Letter dated December 22, 2023 (collectively, the “**Commitment Letter**”), between, among others, the Debtor and Trez Limited Capital Partnership ( “**Trez**”); and (ii) the mortgage/charge on title to the Property (as defined below) in favour of Computershare Trust Company of Canada, as custodian for and on behalf of Trez (“**Computershare**”, and together with Trez, the “**Secured Party**”) as the title trustee/custodian for the Lender, bearing Instrument No. OC2158856 as amended by the Mortgage Amending Agreement dated April 22, 2019 with notice of such Mortgage Amending Agreement registered on title to the Property bearing Instrument No. OC2339182 (collectively, the “**Mortgage**”).
  
2. The Secured Party, a secured creditor, intends to enforce on its security on all of the following property and assets of the Debtor, including, without limitation:
  - (a) the lands and premises more particularly described within Schedule “A” attached hereto (the “**Property**”);
  - (b) all property and collateral against which the security interest bearing reference file number 756919467 that has been registered pursuant to the *Personal Property Security Act* (Ontario);
  - (c) the Collateral (as defined in the General Security Agreement dated October 29, 2019 (the “**GSA**”);
  - (d) all other assets, property and collateral that were assigned, transferred, pledged, granted, mortgaged, charged and/or similarly secured pursuant to the Security (as defined below) or the Commitment Letter.
  
3. The security that is to be enforced is in the form of all security delivered in connection with the Commitment Letter, including, among other things:
  - (a) the Mortgage executed by the Debtor in favour of Computershare;
  - (b) the GSA executed by the Debtor in favour of the Secured Party;
  - (c) the Environmental Indemnity dated October 29, 2019 executed by the Debtor in favour of the Secured Party;
  - (d) the General Assignment of Material Projects dated October 29, 2019 executed by the Debtor in favour of the Secured Party;

- (e) the General Assignment of Agreements of Purchase and Sale and Deposits dated October 29, 2019 executed by the Debtor in favour of the Secured Party;
  - (f) the Specific Assignment of CCDC2 – Stipulated Price Contract dated October 29, 2019 executed by the Debtor in favour of the Secured Party;
  - (g) the Assignment of Insurance dated October 29, 2019 executed by the Debtor in favour of the Secured Party; and
  - (h) all ancillary, supplemental and additional documents or instruments to each of the foregoing (collectively, the “**Security**”).
4. The total amount of indebtedness secured by the security as of June 4, 2024 is \$66,928,638.53 (excluding accruing fees, expenses and costs).
5. The Secured Party will not have the right to enforce the security until after the expiry of the 10-day period after this notice is sent unless the insolvent company consents to an earlier enforcement. A Consent and Waiver to earlier enforcement, which may be completed and executed by the Debtor, is enclosed herewith.

**DATED** at Toronto, this 6<sup>th</sup> day of June, 2024.

**TREZ LIMITED CAPITAL PARTNERSHIP  
AND COMPUTERSHARE TRUST  
COMPANY OF CANADA** by their solicitors,  
Bennett Jones LLP



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Sean Zweig

This Notice is a required document under the *Bankruptcy & Insolvency Act* (Canada) (the “**Act**”). The use of the word “insolvent” is prescribed by the Act but nothing herein shall be deemed to imply that any person to whom this Notice is delivered is, in fact, insolvent.

**CONSENT AND WAIVER**

**TO:** Trez Limited Capital Partnership and Computershare Trust Company of Canada

The undersigned, Mizrahi Development Group (1451 Wellington) Inc. (the “**Debtor**”), hereby acknowledges receipt from Trez Limited Capital Partnership (“**Trez**”) and Computershare Trust Company of Canada as custodian for and on behalf of Trez (together, the “**Secured Party**”) of a Notice of Intention to Enforce Security (the “**Notice**”) given under subsection 244(1) of the *Bankruptcy and Insolvency Act* (Canada) (the “**Act**”) dated June 6, 2024, pursuant to which the Secured Party gave notice that it intended to enforce its security in all of the property and assets of the Debtor set out in the Notice (collectively, the “**Collateral**”), after the expiry of the ten (10) day period following the sending of the Notice unless the Debtor consented to an earlier enforcement. In accordance with subsection 244(2) of the Act, the Debtor hereby waives its rights to the ten (10) day notice period and consents to the immediate enforcement by the Secured Party of its security in all of the Collateral.

**DATED** at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.**

By: \_\_\_\_\_

Name:

Title:

I have authority to bind the corporation.



**Schedule "A"**

**The Property**

**PIN 04030-0261 (LT)**

LOTS 1, 2 & 3 & PART LOT 4, PLAN 145, N/S RICHMOND ROAD (NOW WELLINGTON STREET), PARTS 1 & 2 PLAN 4R35696; SUBJECT TO AN EASEMENT AS IN OC2360765; SUBJECT TO AN EASEMENT AS IN OC2671330; CITY OF OTTAWA

This is Exhibit MM to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. Ha", is written over a light blue rectangular background.

A Commissioner for taking affidavits

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**From:** [ryan.shah@paliarerland.com](mailto:ryan.shah@paliarerland.com) <[ryan.shah@paliarerland.com](mailto:ryan.shah@paliarerland.com)>

**Sent:** Wednesday, August 14, 2024 8:05 PM

**To:** Weisz, Steven J <[SWeisz@cozen.com](mailto:SWeisz@cozen.com)>; Osborne, Michael G. <[MOsborne@cozen.com](mailto:MOsborne@cozen.com)>

**Cc:** [Gordon.Capern@paliarerland.com](mailto:Gordon.Capern@paliarerland.com); [Daniel.Rosenbluth@paliarerland.com](mailto:Daniel.Rosenbluth@paliarerland.com); [avril@mgbwlaw.com](mailto:avril@mgbwlaw.com); Carson, Shannon <[SCarson@cozen.com](mailto:SCarson@cozen.com)>

**Subject:** RE: CV-24-00095643-0000Confirmed: Your Virtual Appearance on Tuesday, November 26, 2024 at 10am. /  
Confirmé : Votre comparution virtuelle le Tuesday, November 26, 2024, à 10 heures. [IMAN-PRIMANAGE.FID411241]

**\*\*EXTERNAL SENDER\*\***

Counsel:

I write to arrange a timetable for the remaining steps in this proceeding ahead of the return of our client's application on November 26.

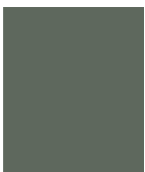
As previously stated, our client is no longer seeking the appointment of a receiver over 1451 Wellington Street West, Ottawa, Ontario. Accordingly, the only issue to be determined is that of judgment against the respondents.

Assuming that your clients intend to oppose this relief, we propose the following timetable:

August 30, 2024: delivery of responding record;  
September 13, 2024: delivery of reply (if any);  
October 11, 2024: cross-examinations to be completed (if any);  
November 11, 2024: delivery of applicant's factum; and  
November 18, 2024: delivery of respondent's factum.

We look forward to hearing your clients' position on the above.

Regards,



**Ryan Shah**  
Associate

**Phone:** 647-865-4702

**Email:** [ryan.shah@paliarerland.com](mailto:ryan.shah@paliarerland.com)

155 Wellington St. West, 35<sup>th</sup> Floor  
Toronto, ON M5V 3H1

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

This is Exhibit NN to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "K. S. Ha", is written over a light blue rectangular background.

A Commissioner for taking affidavits

## DIP LOAN AGREEMENT

**Dated as of October 15, 2024**

**WHEREAS** the Borrower has requested that the DIP Lender (each as defined below) provide financing to fund certain obligations of the Borrower in the context of its anticipated proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the “**CCAA**”, and such proceeding, the “**CCAA Proceedings**”) before the Ontario Superior Court of Justice (the “**Court**”), in accordance with the terms and conditions set out in this agreement (this “**DIP Agreement**”);

**NOW THEREFORE** the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

- 1. BORROWER:** Mizrahi Development Group (1451 Wellington) Inc. (the “**Borrower**”)
- 2. DIP LENDER:** TCC Mortgage Holdings Inc. (in such capacity, the “**DIP Lender**”).
- 3. PURPOSE:** As set out in Section 15(t) of this DIP Agreement.
- 4. DIP FACILITY AND MAXIMUM AMOUNT**

A super-priority, debtor-in-possession, non-revolving credit facility (the “**DIP Facility**”) up to the maximum principal amount of \$25,000,000 (the “**Maximum Amount**”). For greater certainty, any interest, expenses or fees that are capitalized and added to the principal amount owing hereunder as contemplated by the terms hereof shall not constitute part of the Maximum Amount, and the Borrower is and shall be permitted to borrow up to the Maximum Amount without taking into account any such capitalized amounts, subject to the terms and conditions hereof.

Advances under the DIP Facility shall be made in accordance with Section 7 of this DIP Agreement.
- 5. REPAYMENT:** The aggregate principal amount owing under the DIP Facility, all accrued and unpaid interest, all fees and expenses incurred by the DIP Lender (including, without limitation, the Expenses (as defined below)), and all other obligations of the Borrower to the DIP Lender under or in connection with the CCAA Proceedings, this DIP Agreement, the DIP Facility or any other definitive security or other documents, agreements, registrations, financing statements and instruments in respect of the DIP Facility (collectively, the “**DIP Obligations**”) shall

be repaid in full on the earliest to occur of: (i) the occurrence of any Event of Default hereunder that has not been cured or waived in writing by the DIP Lender, in its sole and absolute discretion; (ii) the closing of one or more sale transactions for all or substantially all of the assets or shares in the capital of the Borrower approved by an order of the Court; (iii) the implementation of a plan of compromise or arrangement in accordance with the CCAA and the Court Orders (as defined below); (iv) conversion of the CCAA Proceedings into a proceeding under the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”); and (v) April 15, 2026 (the earliest of such dates being the “**Maturity Date**”). Provided that there is no Event of Default hereunder which is continuing, the Maturity Date may be extended at the request of the Borrower, following consultation with the Monitor, and with the prior written consent of the DIP Lender, in its sole and absolute discretion, for such period and on such terms and conditions as the Borrower and the DIP Lender may agree.

The commitment in respect of the DIP Facility shall expire automatically on the Maturity Date (unless extended according to the terms hereunder) and all DIP Obligations shall be repaid in full on the Maturity Date (or extended Maturity Date if applicable), without the DIP Lender being required to make demand upon the Borrower or to give notice that the DIP Facility has expired and/or that the DIP Obligations are due and payable.

All payments received by the DIP Lender shall be applied first to any fees and expenses due hereunder (including, without limitation, the Expenses), then to accrued and unpaid interest and then, after all such fees, expenses and interest are brought current, to principal.

It is acknowledged that some or all of the DIP Obligations may be satisfied by the DIP Lender “credit bidding” such DIP Obligations for some or all of the assets of the Borrower, in the DIP Lender’s sole discretion, subject to approval of the Court.

## **6. CASH FLOW PROJECTIONS:**

The Borrower, in consultation with MNP Ltd., in its capacity as proposed court-appointed monitor (as appointed in such capacity, the “**Monitor**”) in the CCAA Proceedings, has provided to the DIP Lender the cash flow projections attached at Schedule “A” hereto, which are in form and substance satisfactory to the DIP Lender as of the date of this DIP

Agreement, and which are to be filed with the Court, reflecting the projected cash requirements of the Borrower for the 13-week period from October 14, 2024, through the period ending January 12, 2024, calculated on a weekly basis (the “**Cash Flow Projection**”). The Borrower acknowledges that the Cash Flow Projection attached as **Schedule “A”** hereto is subject to amendment following the receipt by the DIP Lender and the Borrower of an independent budget from the DIP Lender’s cost consultant, the Altus Group (in such capacity, the “**DIP Lender’s Cost Consultant**”). Upon written request from the DIP Lender following receipt of such independent budget, the Borrower, in consultation with the Monitor, shall within 5 days produce a Proposed Amended Cash Flow Projection (as defined below) in form and substance satisfactory to the DIP Lender which reflects the budget produced by the DIP Lender’s Cost Consultant.

The Borrower shall keep the DIP Lender and the Monitor apprised of its cash flow requirements by providing: (i) an updated cash flow projection for the same period as the Cash Flow Projection by no later than 5:00 p.m. (Toronto time) on the Tuesday of each week ending after the week in which the First DIP Advance (as defined below) occurs, such updated cash flow projection to be in a form consistent with the Cash Flow Projection (a “**Proposed Amended Cash Flow Projection**”), provided that the Borrower, at its option, may provide a Proposed Amended Cash Flow Projection on a more frequent basis, but in any event, not more than twice in any calendar week; and (ii) on a weekly basis, (x) actual cash flow results from the immediately preceding one week period and (y) a comparison of the actual cash flow results from the immediately preceding one week period as against the DIP Agreement Cash Flow Projection (as defined below) for such week, such information described in this clause (ii) to be delivered to the DIP Lender and Monitor weekly by no later than 5:00 p.m. (Toronto time) on the Tuesday of each week.

No Proposed Amended Cash Flow Projection shall be considered the DIP Agreement Cash Flow Projection unless the DIP Lender, in its sole discretion, has provided notice in writing to the Borrower, with a copy to the Monitor, confirming its consent to such Proposed Amended Cash Flow Projection. Upon the DIP Lender delivering such notice to the Borrower, with a copy to the Monitor, such Proposed Amended

Cash Flow Projection shall be considered the DIP Agreement Cash Flow Projection.

At any given time, the cash flow projection in force and effect (whether the Cash Flow Projection or any subsequent Proposed Amended Cash Flow Projection which the DIP Lender has consented to in accordance herewith) shall be the “**DIP Agreement Cash Flow Projection**”.

For greater certainty, neither the DIP Lender nor the Monitor, as the case may be, shall be required to initiate any DIP Advances pursuant to a Proposed Amended Cash Flow Projection, nor is the Borrower entitled to utilize any DIP Advance to make payments set out in a Proposed Amended Cash Flow Projection, unless and until it has become effective as the DIP Agreement Cash Flow Projection in accordance with this Section 6.

## **7. ADVANCES UNDER DIP FACILITY:**

### **I. DIP Advances from the DIP Lender**

Pursuant to the terms and conditions of this DIP Agreement, the DIP Lender shall advance the following disbursements as draws against the Maximum Amount of the DIP Facility:

- (a) A first advance in the amount of up to \$2,345,000 (“**First DIP Advance**”) shall be made by the DIP Lender to the DIP Lender’s counsel in accordance with Section 9 of this DIP Agreement, such First DIP Advance to be advanced following the satisfaction of each of the conditions to the First DIP Advance set out in Section 8 of this DIP Agreement; and
- (b) One or more subsequent advances (each, a “**Subsequent DIP Draw**” and together with the First DIP Advance, the “**DIP Advances**” and each a “**DIP Advance**”) up to the aggregate principal amount \$22,655,000 shall be made by the DIP Lender to the Monitor, in trust for the Borrower, to be disbursed in accordance with Section 9 of this DIP Agreement, each such Subsequent DIP Draw to be advanced following the satisfaction of each of the conditions to such Subsequent DIP Draw set out in Section 8 of this DIP Agreement.



## II. Subsequent DIP Draws from the Monitor

Following the advance of the First DIP Advance, the Borrower shall apply to the DIP Lender and the Monitor to draw on proceeds available under the DIP Facility in accordance with the following process:

- (a) The Borrower shall issue a request for a Subsequent DIP Draw by delivering a draw down certificate, substantially in the form attached hereto as **Schedule “B”** to the DIP Lender and the DIP Lender’s Cost Consultant, with a copy to the Monitor, which request shall specify the amount of such Subsequent DIP Draw requested and shall identify the intended uses for such Subsequent DIP Draw in accordance with the DIP Agreement Cash Flow Projection; and
- (b) Subsequent DIP Draws shall be in the minimum principal amount of \$100,000 and in increments of \$100,000 and are to be funded within three (3) business days following delivery of the request for a Subsequent DIP Draw, unless within two (2) business days of delivery of such request for a Subsequent DIP Draw the DIP Lender delivers to the Borrower a notice of non-consent to such Subsequent DIP Draw as a result of one or more of the applicable conditions precedent not being met or the occurrence of an Event of Default that is continuing. The DIP Lender, in consultation with the Monitor, may also consent to the making of a Subsequent DIP Draw prior to the second (2<sup>nd</sup>) business day following delivery of the request for a Subsequent DIP Draw.

The proceeds of each DIP Advance shall be applied by the Borrower solely in accordance with the DIP Agreement Cash Flow Projection, subject to the Permitted Variance (as defined below), or as may otherwise be agreed to in writing by the DIP Lender, in its sole discretion, from time to time.

Notwithstanding anything to the contrary herein, unless the DIP Lender consents in advance in writing, the Borrower shall be prohibited from using the proceeds of any DIP Advance to pay: (i) any expenses not included in the DIP Agreement Cash Flow Projection, subject to the Permitted Variance (and for certainty including the exceptions contained therein); (iii) any

employee, partner, agent and advisor of the Borrower, Mizrahi Inc. (the “**General Contractor**”) or any employee, partner, agent and advisor of an entity related to the Borrower for any work performed not related to the Property or Project; (iii) professional fees of the Borrower or any other party to contest, challenge or in any way oppose (or support any other person in contesting, challenging or opposing) the DIP Lender on any Court Order; (iv) subject to the preceding subsection (iii), the professional fees of any party, except for such professional fees incurred for and on behalf of the Borrower, the Monitor and the DIP Lender; and (v) any amounts outstanding as at the date of commencement of the CCAA Proceedings, including without limitation, any amounts owing to trade creditors and other lenders.

For the purposes of this DIP Agreement, “**Permitted Variance**” shall mean an adverse variance of not more than 1% of the construction costs and 5% of the remaining aggregate disbursements each as set forth in the DIP Agreement Cash Flow Projection on a cumulative basis starting on the start date of the initial Cash Flow Projection referred to in the first paragraph of this Section 7 above; provided, however, that the Permitted Variance calculation shall not take into account the Expenses.

## **8. CONDITIONS PRECEDENT TO DIP FACILITY ADVANCES**

### **1. CONDITIONS TO FIRST DIP ADVANCE**

The following conditions precedent shall be satisfied, or waived in writing by the DIP Lender, in its sole and absolute discretion, prior to the First DIP Advance hereunder:

- (a) The Borrower’s application materials in connection with the initial order in substantially the form attached as **Schedule “C”** hereto (the “**Initial Order**”), shall be satisfactory to the DIP Lender in its sole discretion and the Court shall have issued the Initial Order on or before October 15, 2024 (the “**Filing Date**”), the effect of which, among other things, is to authorize and approve the DIP Facility on the terms and conditions hereof including without limitation the DIP Charge (as defined below) securing the principal amount of \$25,000,000, plus interest fees and expenses payable pursuant to this DIP Agreement, and the other DIP Obligations not constituting the principal amount thereof with the priority contemplated herein, and such

Initial Order shall have been obtained on notice to such parties required by the DIP Lender;

- (b) Delivery to the DIP Lender and the DIP Lender's Cost Consultant, with a copy to the Monitor of a drawdown certificate, in substantially the form set out in **Schedule "B"** hereto, executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the First DIP Advance requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred or is continuing;
- (c) The Initial Order shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective, or amended in a manner prejudicial to the DIP Lender;
- (d) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the First DIP Advance;
- (e) No material adverse change in the financial condition or operation of the Borrower or otherwise affecting the Borrower shall have occurred after the date hereof;
- (f) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and as of the date of the First DIP Advance (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (g) There are no pending motions for leave to appeal, appeals, or injunctions relating to the Initial Order, the DIP Facility, the DIP Charge or this DIP Agreement, or pending litigation seeking to restrain, vary or prohibit the operation of all or any part of the Initial Order or this DIP Agreement;
- (h) The DIP Lender has received, as and when required hereunder, all information to which it is entitled

hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 6 of this DIP Agreement);

- (i) There shall be no liens ranking in priority to the DIP Charge except for the Admin Charge (as defined below);
- (j) The Borrower shall have paid all government statutory liens, trusts and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions, except, in each case, for any such amounts that are not yet due and payable or which are in dispute; and
- (k) The Borrower shall be in compliance with all Court Orders.

## **2. CONDITIONS TO EACH SUBSEQUENT DIP DRAW**

The following conditions precedent shall be satisfied, or waived in writing by the DIP Lender, in its sole and absolute discretion, prior to each Subsequent DIP Draw hereunder:

- (a) The Amended and Restated Initial Order (the “**ARIO**”), which shall be satisfactory to the DIP Lender in its sole discretion, and other Court Orders in the CCAA Proceedings shall be in full force and effect and shall not have been vacated, stayed or otherwise caused to become ineffective or amended in a manner prejudicial to the DIP Lender;
- (b) Delivery to the DIP Lender and the DIP Lender’s Cost Consultant, with a copy to the Monitor, of a drawdown certificate, in substantially the form set out in **Schedule “B”** hereto (each a “**Subsequent Draw Request Certificate**”), executed by an officer on behalf of the Borrower, certifying, *inter alia*, that the proceeds of the Subsequent DIP Draw requested thereby will be applied solely in accordance with the DIP Agreement Cash Flow Projection and Section 3 of this DIP

Agreement, that the Borrower is in compliance with the Court Orders, and that no Default or Event of Default has occurred or is continuing;

- (c) The relevant Subsequent DIP Draw has been approved by the DIP Lender's Cost Consultant;
- (d) The DIP Lender's receipt of a report by the Project Monitor (as defined below), dated no earlier than two (2) weeks prior to the date of the relevant Subsequent Draw Request Certificate, confirming: (i) that the DIP Agreement Cash Flow Projection accurately reflects the costs to complete the Project; (ii) the work completed to date; (iii) any applicable holdbacks; (iv) the value of any change order; (v) the amount of Subsequent DIP Draw; and (v) the cost to complete the Project;
- (e) Certification by the Project Monitor and the DIP Lender's Cost Consultant that there are no cost over runs, and that the requirement of the plans have been respected;
- (f) Receipt of an architect's certificate and/or engineer's certificate for the Project;
- (g) Certification by the Borrower's counsel that there have been no additional liens registered against the Project;
- (h) Satisfactory workers compensation board clearances;
- (i) A satisfactory inspection of the Project by the DIP Lender, the Project Monitor and/or the DIP Lender's Cost Consultant;
- (j) There is no Default or Event of Default that has occurred and is continuing, nor will any such event occur as a result of the Subsequent DIP Draw;
- (k) No material adverse change in the financial condition or operation of the Borrower or otherwise affecting the Borrower shall have occurred after the date hereof;
- (l) Each Subsequent DIP Draw (together with all previous DIP Advances) must be no greater in the aggregate than

the Maximum Amount and shall be subject to the terms and conditions hereof;

- (m) Each of the representations and warranties made in this DIP Agreement shall be true and correct in all material respects as of the date made or deemed made and of the date of each Subsequent DIP Draw (unless any representation and warranty is qualified by materiality, in which case it shall be true and correct in all respects as of the date made or deemed made);
- (n) The DIP Lender has received, as and when required hereunder, all information to which it is entitled hereunder (including, without limitation, the information and cash flow projections required pursuant to Section 6 of this DIP Agreement);
- (o) There are no pending motions for leave to appeal, appeals, or injunctions relating to the DIP Facility, any Court Orders, the DIP Charge or this DIP Agreement, or pending litigation seeking to restrain, vary or prohibit the operation of all or any part of any Court Orders or this DIP Agreement;
- (p) There shall be no liens ranking in priority to the DIP Charge except for the Admin Charge;
- (q) The Borrower shall have paid all government statutory liens, trust and other claims arising after the commencement of the CCAA Proceedings (but for greater certainty, not including any such claims in existence at the time of the commencement of the CCAA Proceedings) including, without limitation, source deductions, except, in each case, for any such amounts that are not yet due and payable or which are in dispute;
- (r) All Expenses for which invoices have been provided to the Borrower shall have been paid, or arrangements satisfactory to the DIP Lender shall have been made to pay such amounts; and
- (s) The Borrower shall be in compliance with all Court Orders.

Notwithstanding the foregoing or any other provision of this DIP Agreement, to the extent that an emergency cash need arises in the Borrower's business that is not contemplated in the DIP Agreement Cash Flow Projection, the Borrower may request a Subsequent DIP Draw from the DIP Lender by providing written particulars relating to such emergency cash need to the DIP Lender and the Monitor, which Subsequent DIP Draw shall only be permitted with the prior written consent of the DIP Lender delivered to the Borrower and the Monitor, in the DIP Lender's sole and absolute discretion, and provided further that in no case shall the Maximum Amount be exceeded.

## 9. DISBURSEMENTS

The proceeds of the First DIP Advance shall be funded by the DIP Lender into the DIP Lender's counsel's trust account and then, subject to adjustment, to the Borrower's account noted in **Schedule "D"** hereto (the "**Borrower's Account**").

The proceeds of each Subsequent DIP Draw shall be funded by the DIP Lender into a segregated trust account to be established and maintained by the Monitor (the "**Monitor's Trust Account**") solely for the purpose of administering DIP Advances in accordance with the terms of this DIP Agreement and the Court Orders issued in the CCAA Proceedings from time to time. The proceeds of each Subsequent DIP Draw shall be held in trust by the Monitor in the Monitor's Trust Account, to be disbursed solely in accordance with the terms of this DIP Agreement and the Court Orders of the Courts issued in the CCAA Proceedings from time to time.

The Monitor shall provide the DIP Lender with account details for the Monitor's Trust Account in writing no less than three (3) business days prior to each Subsequent DIP Draw.

The proceeds of each Subsequent DIP Draw shall be deposited by the Monitor by way of direct deposit to the Borrower's Account.

## 10. VOLUNTARY PREPAYMENTS:

The Borrower may prepay the DIP Obligations at any time prior to the Maturity Date by effecting payment to the DIP Lender, to an account to be specified in writing in advance, in minimum amounts of \$500,000 and in increments of \$100,000 in excess thereof, without premium or penalty, and any

amounts so prepaid may not be re-borrowed by the Borrower hereunder.

**11. INTEREST RATE:**

The outstanding principal amount of all DIP Advances shall bear interest from the date of advance at a rate per annum equal to 10% (the “**Interest Rate**”), and upon the occurrence and during the continuance of an Event of Default, the Interest Rate shall be increased by an additional 15% per annum, payable monthly in arrears on the last business day of each calendar month.

The Borrower shall pay interest on all DIP Advances by adding such accrued interest to the principal amount of the DIP Obligations on the last business day of each calendar month. Amounts representing the interest payable hereunder that are added to the principal amount of the DIP Obligations shall thereafter constitute principal and bear interest in accordance with this Section 11.

Interest on all DIP Advances shall accrue daily from and after the date of such DIP Advance to the Borrower or the Monitor, as the case may be, to, but excluding, the date of repayment, as well as before and after maturity, demand and default and before and after judgment, and shall be calculated and compounded on a daily basis on the principal amount of such advances and any overdue interest remaining unpaid from time to time and on the basis of the actual number of days elapsed in a year of 365 days.

For the purposes of the *Interest Act* (Canada), the annual rates of interest referred to in this DIP Agreement calculated in accordance with the foregoing provisions of this DIP Agreement, are equivalent to the rates so calculated multiplied by the actual number of days in a calendar year and divided by 365 or 366, as the case may be.

If any provision of this DIP Agreement or any ancillary document in connection with this DIP Agreement would obligate the Borrower to make any payment of interest or other amount payable to the DIP Lender in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the DIP Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provision, such amount or rate shall be deemed to have been adjusted with retroactive effect to the



maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the DIP Lender of interest at a criminal rate and any such amounts actually paid by the Borrower in excess of the adjusted amount shall be forthwith refunded to the Borrower.

**12. DIP SECURITY:**

All of the DIP Obligations shall be secured by a Court-ordered charge (the “**DIP Charge**”) over all present and after-acquired property, assets and undertakings of the Borrower (including for greater certainty and without limitation, the Project (as defined below), insurance proceeds, intellectual property, goods, documents of title, investment property, securities now owned or hereafter owned or acquired by or on behalf of the Borrower and those assets set forth on the financial statements of the Borrower), including all proceeds therefrom and all causes of action of the Borrower (collectively, the “**Collateral**”).

The DIP Charge shall be a super-priority charge which shall rank ahead of all existing, liens, claims, trusts and charges, but shall be subject to and shall rank behind an administration charge (the “**Admin Charge**”) in the maximum amount of \$300,000 to secure payment of the fees, expenses and disbursements of: (i) the Borrower’s counsel; and (ii) the Monitor and its counsel.

**13. MANDATORY REPAYMENTS:**

The proceeds of any debt or equity issuance by the Borrower that occurs from and after the date hereof, and the proceeds of Collateral (for greater certainty, net of reasonable costs and closing adjustments, as applicable), including, without limitation, arising from: (a) any sale of Collateral out of the ordinary course of business (including for greater certainty, any sale of all or substantially all of the Collateral); (b) insurance proceeds in respect of any damage, loss or destruction of the Collateral; or (c) any closings of units (each a “**Project Unit**”) in the Project (collectively, the “**Net Proceeds**”) shall be forthwith paid: (i) first, to satisfy the Admin Charge; (ii) second, to satisfy the DIP Obligations; (iii) third, to satisfy any other priority charges in accordance with their priorities; (iv) fourth, to satisfy other indebtedness and liabilities of the Borrower as may be ordered by the Court in accordance with their priorities; and (v) fifth, to the Borrower or such other persons as are entitled thereto in accordance with applicable law.

The Maximum Amount shall be permanently reduced in an amount equal to the Net Proceeds paid to the DIP Lender and applied to the aggregate principal amount of the DIP Advances in accordance with Section 5 of this DIP Agreement. For greater certainty, any mandatory repayments shall not be subject to any premium or penalty.

**14. REPRESENTATIONS AND WARRANTIES:**

The Borrower represents and warrants to the DIP Lender, upon which the DIP Lender relies in entering into this DIP Agreement, that subject to the entry of the Initial Order:

- (a) The Borrower is a corporation duly incorporated and validly existing under the laws of its governing jurisdiction and is duly qualified, licensed or registered to carry on business under the laws applicable to it in all jurisdictions in which the nature of its assets or business makes such qualification necessary;
- (b) Subject to the granting of the Initial Order or the ARIO, as the case may be, the Borrower has all requisite corporate or other power and authority to: (i) carry on its business; (ii) own property, borrow monies and enter into agreements therefor; and (iii) execute and enter into this DIP Agreement and observe and perform the terms and provisions hereof;
- (c) Subject to the granting of the Initial Order or the ARIO, as the case may be, the execution and delivery of this DIP Agreement by the Borrower and the performance by the Borrower of its obligations hereunder has been duly authorized by all necessary corporate or other action and any actions required under applicable laws. Except as has been obtained and is in full force and effect, no registration, declaration, consent, waiver or authorization of, or filing with or notice to, any governmental body is required to be obtained in connection with the performance by the Borrower of its obligations under this DIP Agreement;
- (d) Subject to the granting of the Initial Order or the ARIO, as the case may be, this DIP Agreement has been duly executed and delivered by the Borrower and constitutes a legal, valid and binding obligation of the Borrower, enforceable against it in accordance with its terms, subject only to any limitation under applicable laws

relating to: (i) bankruptcy, insolvency, reorganization, moratorium or creditors' rights generally; (ii) the fact that specific performance and injunctive relief may only be given at the discretion of the courts; and (iii) the equitable or statutory powers of the courts to stay proceedings before them and to stay the execution of judgments;

- (e) The execution and delivery of this DIP Agreement by the Borrower and the performance by the Borrower of its obligations hereunder and compliance with the terms, conditions and provisions hereof, will not conflict with or result in a breach in any material respect of any of the terms, conditions or provisions of:
  - (i) its constating documents (including any shareholders' agreements) or by-laws; (ii) any applicable laws; (iii) except as stayed pursuant to the CCAA Proceedings by the terms of the Initial Order or the ARIO, as the case may be, any contractual restriction binding on or affecting it or its material properties; or (iv) any material judgment, injunction, determination or award which is binding on it;
- (f) The Borrower is in compliance with all applicable laws of each jurisdiction in which its business has been or is being carried on, non-compliance with which would reasonably be expected to have a Material Adverse Effect. For the purpose of this DIP Agreement, "**Material Adverse Effect**" means a material adverse effect on: (i) the financial condition, business or assets of the Borrower; or (ii) the ability of the Borrower to comply with their obligations hereunder or under any Court Order;
- (g) Unless previously disclosed in writing to the DIP Lender, to the Borrower's Knowledge (as defined below), there are no actions, suits or proceedings pending, taken or, threatened, before or by any governmental body or by any elected or appointed public official or private person in Canada or elsewhere, whether or not having the force of law, which would reasonably be expected to have a Material Adverse Effect and have not been stayed pursuant to the CCAA Proceedings. For the purpose of this DIP Agreement "**Borrower's Knowledge**" means the

actual knowledge of Sam Mizrahi and any other senior officers and directors of the Borrower and the knowledge that such individuals would have had if they had conducted a reasonably diligent inquiry into the relevant subject matter;

- (h) The DIP Agreement Cash Flow Projection includes a provision for payment of all projected obligations of any kind whatsoever reasonably anticipated by the Borrower on the date hereof that, if not paid, could result in statutory liens ranking in priority to the DIP Charge, except for purchase money security interests;
- (i) As at the date of the Initial Order, the Borrower has good and marketable title to all of the Collateral;
- (j) The Borrower has filed all tax returns that are required to be filed and has paid all taxes, interest and penalties, if any, which have become due pursuant to such returns or pursuant to any assessment received by it, except any such assessment that is being contested in good faith by proper legal proceedings. Without limiting the foregoing, all employee source deductions (including in respect of income taxes, employment insurance and Canada Pension Plan) payroll taxes and workers' compensation dues are currently paid and up to date, subject to normal course accruals;
- (k) Except as previously disclosed in writing by the Borrower to the DIP Lender and set out on **Schedule "E"**, there are no actions, suits or proceedings (including any tax-related matter) by or before any arbitrator or governmental authority or by any other person pending against or threatened against or affecting the Borrower that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect that have not been stayed pursuant to the CCAA Proceedings;
- (l) The Borrower maintains insurance policies and coverage that: (i) is sufficient for compliance with any applicable law and all material agreements to which it is a party; and (ii) provide adequate insurance coverage in at least such amounts and against at least such risks as are usually insured against in the same general area

by persons engaged in the same or similar business to the assets and operations of such Borrower;

- (m) All factual information provided by or on behalf of the Borrower to the DIP Lender for the purposes of or in connection with this DIP Agreement or any transaction contemplated herein, is true and accurate in all material respects on the date as of which such information is dated or certified and remains true in all material respects as of the date provided and is not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not materially misleading at such time in light of the circumstances under which such information was provided. With respect to any projections, future business plans or forward looking financial statements, the Borrower is not guaranteeing in giving this representation and warranty that the actual future results will be as forecast or projected (but, for greater certainty, the DIP Lender has all of its rights hereunder in the event that such actual future results are not as forecast or projected, including, without limitation, as provided for in Section 18(g) of this DIP Agreement); and
- (n) As of the date hereof, the Borrower does not administer any pension plans and does not have any outstanding payment obligations in respect of special payments or amortization payments, including without limitation, in respect of any pension plan, payments related to post-retirement benefits, solvency deficiencies or wind-up shortfalls in relation to any pension plan.

**15. AFFIRMATIVE COVENANTS:**

The Borrower covenants and agrees to do the following until such time as the DIP Obligations are indefeasibly repaid in full:

- (a) Allow the DIP Lender and its professional advisors, including for greater certainty the Project Monitor (as defined below) and the DIP Lender's Cost Consultant, full access to the Collateral and its business, properties, and books and records and cause management thereof to fully co-operate with the DIP Lender and its professional advisors;
- (b) Promptly keep the DIP Lender apprised on a timely basis of all material developments with respect to the

Collateral and the business and affairs of the Borrower and the CCAA Proceedings;

- (c) Meet with the Project Monitor at least once per week to report to the Project Monitor on construction progress of the Project and any other material items the Project Monitor deems necessary in its sole and absolute discretion;
- (d) Provide the DIP Lender with unfettered access to the Project Monitor;
- (e) Provide the DIP Lender with full access to any of the Borrower's or Mizrahi Inc.'s directors, officers, employees, partners, agents, attorneys (subject to matter of privilege), advisors, contractors and affiliates, including for greater certainty PMA Brethour;
- (f) Provide the DIP Lender, the Project Monitor or the DIP Lender's Cost Consultant, as the case may be, with responses to any questions or requests within one (1) business day of any such question or request;
- (g) Strictly adhere to the timelines, minimum purchase price thresholds and any other requirements as set forth in **Schedule "F"** following the amendment, disclaimer, termination or resiliation of a pre-sale agreement of purchase and sale (each a "**Pre-Sale APS**") related to the Borrower's development project located at 1451 Wellington Street West, Ottawa, Ontario (the "**Project**");
- (h) Provide the DIP Lender, forthwith upon receipt and in any event within one (1) business day, any offer or agreement of purchase and sale for any space related to the Project;
- (i) Provide the DIP Lender, within 10 business days of obtaining the Initial Order, with a proposed plan acceptable to the DIP Lender in its sole and absolute discretion, relating to the amendment, disclaimer, termination or resiliation of the Pre-Sale APS, which plan shall include, among other things: (i) which Pre-Sale APS are proposed to be amended, disclaimed, terminated or resiliated; (ii) new anticipated pricing;

- (iii) quantum of deposit already provided; and (iv) whether such deposit will be assigned or released, and shall strictly comply with the timelines and minimum purchase price thresholds as set forth in **Schedule “F”**;
- (j) Provide the Project Monitor with unfettered access to the Project and the ability to engage with, *inter alia*, trades, sub-trades, the city, consultants, advisors and contractors;
- (k) Travel to the DIP Lender’s head office at 745 Thurlow Street, Suite 1700, Vancouver, BC V6E 0C5 once each quarter of the calendar year to report on, among other things, progress of the Project;
- (l) Obtain written approval from the DIP Lender prior to it or the General Contractor, as the case may be, enter into any construction, subtrade, materials procurement, staffing or consulting agreement which would be expected to affect the Project or the DIP Agreement Cash Flow Projection;
- (m) Provide the DIP Lender with any Project management staffing plan;
- (n) Perform all existing and new obligations regarding any regulator disclosure requirements as it relates to the Project or any agreement of purchase and sale;
- (o) Perform all Tarion Warranty Corporation new home warranty obligations;
- (p) File any and all documentation, including any documentation relating to permitting, with the City of Ottawa on a timely basis;
- (q) Obtain written approval from the DIP Lender prior to it, the General Contractor, Sam Mizrahi or any other senior officers and directors of the Borrower or the General Contractor implement or execute any media communication related to the Project;
- (r) Perform its obligations hereunder and under any other contract or agreement with the DIP Lender or any of its

affiliates as and when required and in the manner required;

- (s) Deliver to the DIP Lender the reporting and other information from time to time requested by the DIP Lender and as set out herein (including, without limitation, the Cash Flow Projections and Proposed Amended Cash Flow Projections and any information pertaining to the Borrower and the reporting obligations required herein) at the times requested, or set out herein, as applicable, and in form and substance satisfactory to the DIP Lender in its sole discretion;
- (t) Use the proceeds of the DIP Facility (at all times solely in accordance with the terms hereof and the DIP Agreement Cash Flow Projections subject to the Permitted Variance) only for the limited purpose of facilitating the CCAA Proceedings and for the purpose of funding: (i) transaction costs and expenses incurred by the DIP Lender in connection with the DIP Facility; (ii) professional fees and expenses incurred by the Borrower, the Monitor and the DIP Lender in respect of the CCAA Proceedings; and (iii) construction costs of the Borrower;
- (u) Comply with the provisions of the court orders made in connection with the CCAA Proceedings (collectively, the “**Court Orders**” and each a “**Court Order**”), provided that if any such Court Order contravenes this DIP Agreement or any documentation contemplated hereunder in a manner detrimental to the DIP Lender, the same shall be an Event of Default hereunder;
- (v) Preserve, renew and keep in full force the Borrower’s corporate or other existence and all material licenses, permits or approvals required in respect of their respective business, properties, assets or any activities or operations carried out therein;
- (w) Maintain the insurance in existence of the date hereof with respect to the Collateral and the business and, in any event, maintain at all times adequate insurance coverage of such type, in such amounts and against such risks as is prudent for a business of its nature with



reputable insurers in coverage and scope acceptable to the DIP Lender;

- (x) Cause the DIP Lender to be listed as the loss payee and additional insurer on the insurance policies of the Borrower on or before the Filing Date;
- (y) Conduct all activities in accordance with the DIP Agreement Cash Flow Projection, subject to the Permitted Variance;
- (z) Promptly notify the DIP Lender and the Monitor of the occurrence of any Event of Default, or of any event or circumstance (a “**Default**”) that may, with the passage of time or the giving of notice, constitute an Event of Default;
- (aa) Promptly notify the DIP Lender and the Monitor of the commencement of, or receipt of notice of intention to commence, any action, suit, investigation, litigation or proceeding before any court, governmental department, board, bureau, agency or similar body affecting the Borrower;
- (bb) Subject to the CCAA and the Court Orders, comply in all material respects with all applicable laws, rules and regulations applicable to its business, including, without limitation, health and safety, and environmental laws;
- (cc) With the consent of the DIP Lender, except where a stay of proceedings or Court Order otherwise applies, pay when due all government statutory liens, trust and other Crown claims including employee source deductions, outstanding source deductions owing by the Borrower prior to the commencement of the CCAA Proceedings, GST, HST, PST, employer health tax, and workplace safety and insurance premiums, but only with respect to: (i) payments that rank in priority to the DIP Charge; (ii) payments that are otherwise authorized pursuant to Court Order; or (iii) payments of commercial liability and directors’ and officers’ insurance premiums to maintain such insurance policies;

- (dd) Treat as unaffected the DIP Obligations in any plan of compromise or arrangement, proposal or any other restructuring whatsoever;
- (ee) At all times be and remain subject to the CCAA Proceedings until the DIP Obligations are irrevocably and unconditionally repaid in full or otherwise satisfied through credit bidding, with no further right to DIP Advances; and
- (ff) Ensure that all motion records, pleadings, application records, orders and other documents (collectively, the “**Court Documents**”) filed, proposed, sought, served, and obtained by the Borrower or in respect of which the Borrower consents or does not object, in or in connection with the CCAA Proceeding shall be in form and substance satisfactory to the DIP Lender in its sole and absolute discretion, and provide to the DIP Lender copies of such Court Documents as soon as practicable prior to any filing or service in the CCAA Proceedings, but in no event later than the day that is five (5) business days prior to the date on which the same is to be served or if such advance notice is not possible then as soon as reasonably practicable prior to the date on which the same is to be served.

**16. NEGATIVE COVENANTS:**

The Borrower covenants and agrees not to do the following while any DIP Obligations remain outstanding, other than with the prior written consent of the DIP Lender in its sole discretion:

- (a) Transfer, lease or otherwise dispose of all or any part of its property, assets or undertaking except: (i) where permitted pursuant to the Initial Order or ARIO; (ii) the closing of any Project Units; and (iii) where such transaction results in the repayment of DIP Obligations in accordance with Section 13 of this DIP Agreement;
- (b) Not to commence, or cause to be commenced, the marketing of any Project Unit without approval from the DIP Lender;
- (c) Not to sell or lease Units or any commercial space in the Project;

- (d) Not to commence, or cause to be commenced, any new action, suit or proceeding;
- (e) Make any payment of principal or interest in respect of any indebtedness outstanding prior to the Initial Order (“**Existing Indebtedness**”);
- (f) Create or permit to exist indebtedness for borrowed money other than: (i) Existing Indebtedness; (ii) debt contemplated by this DIP Facility; and (iii) post-filing trade credit obtained in the ordinary course of business, in accordance with the DIP Agreement Cash Flow Projection;
- (g) Make any payment to anyone whatsoever not contemplated in the DIP Agreement Cash Flow Projection;
- (h) Permit any new liens, including for greater certainty any liens under the *Construction Act* (Ontario), to exist on any Collateral other than the Admin Charge and the DIP Charge;
- (i) Either: (i) change its name, amalgamate, consolidate with or merge into, or enter into any similar transaction with any other entity; or (ii) make any changes to its organizational documents that could be adverse to the DIP Lender;
- (j) Other than as permitted by the terms of this DIP Agreement, make any acquisitions, investments or loans to any person or guarantee the obligations of any person, other than those in existence on the date hereof and disclosed to the DIP Lender in writing;
- (k) Enter into any transaction with any affiliate other than: (i) any transaction on terms and conditions at least as favourable to the Borrower as could reasonably be obtained in an arm’s-length transaction; or (ii) those in existence on the date hereof and disclosed to the DIP Lender in writing;
- (l) Pay any dividends, distributions or advances to shareholders of the Borrower, or any management

bonus or similar payments except to the extent provided for in the DIP Agreement Cash Flow Projection;

- (m) Engage in new businesses;
- (n) Change its fiscal year or accounting practices;
- (o) Issue any equity;
- (p) Amend, terminate, disclaim or resiliate any Pre-Sale APS without the DIP Lender's prior written approval;
- (q) Take any action (or in any way support the taking of any action by another person) that has, or may have, a material adverse impact on the rights and interests of the DIP Lender, including, without limitation, any action in furtherance of challenging the validity, enforceability or amount of the DIP Obligations; and
- (r) Commence, continue or seek any stakeholder or court approval for any sale, restructuring transaction or plan.

**17. INDEMNITY AND  
RELEASE:**

The Borrower agrees to indemnify and hold harmless the DIP Lender and its directors, officers, employees, partners, agents, attorneys, advisors and affiliates, including for greater certainty the Project Monitor (all such persons and entities being referred to hereafter as "**Indemnified Persons**", and each, an "**Indemnified Person**"), from and against any and all actions, suits, proceedings (including any investigations or inquiries), claims, losses, damages, liabilities or expenses of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against or involve any Indemnified Person as a result of or arising out of or in any way related to or resulting from the CCAA Proceedings, this DIP Agreement or any advance made hereunder, and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding (including, without limitation, any inquiry or investigation) or claim (whether or not any Indemnified Person is a party to any action or proceeding out of which any such expenses arise); provided, however, the Borrower shall not be obligated to indemnify pursuant to this paragraph any Indemnified Person against any loss, claim,

damage, expense or liability to the extent it resulted from the gross negligence or willful misconduct of such Indemnified Person as finally determined by a court of competent jurisdiction.

The indemnities granted under this DIP Agreement shall survive any termination of the DIP Facility.

The Borrower shall not contest, challenge or in any way oppose (or support any other person in contesting, challenging or opposing) the validity and enforceability of the DIP Obligations or any loan, security or other documents relating thereto. The Borrower further covenants to, and does hereby, release the DIP Lender solely in its capacity as lender hereunder and its respective predecessors, successors, agents, advisors, representatives and assigns of and from all claims and liabilities relating to any act or omission related to this DIP Agreement that occurred prior to the date of this DIP Agreement.

**18. EVENTS OF DEFAULT:**

The occurrence of any one or more of the following events, without the prior written consent of the DIP Lender, shall constitute an event of default (“**Event of Default**”) under this DIP Agreement:

- (a) The issuance of any order terminating the CCAA Proceedings or lifting the stay in the CCAA Proceedings to permit the enforcement of any security against the Borrower or the Collateral, or the appointment of a receiver and manager, receiver, interim receiver or similar official or the making of a bankruptcy order against the Borrower, the Collateral, the General Contractor or Sam Mizrahi;
- (b) The filing of a Notice of Intention to Make a Proposal under the BIA by any of the Borrower, the General Contractor or Sam Mizrahi;
- (c) The issuance of any order granting the General Contractor CCAA protection;
- (d) The issuance of an order granting a lien of equal or superior status to that of the DIP Charge, other than as provided in Section 12 of this DIP Agreement;

- (e) The issuance of any Court Order: (i) staying, reversing, vacating or otherwise modifying the DIP Charge; or (ii) that adversely impacts or could reasonably be expected to adversely impact the rights and interests of the DIP Lender in connection with the Collateral or under this DIP Agreement or any Court Order, as determined by the DIP Lender in its sole discretion; provided; however, that any such order that provides for payment in full forthwith of all of the DIP Obligations shall not constitute an Event of Default;
- (f) Failure of the Borrower to pay any principal, interest, fees or any other amounts, in each case when due and owing hereunder (subject to a three (3) business day cure period in the case of interest, fees and any other amounts (other than principal amounts) due hereunder);
- (g) Any update to the DIP Agreement Cash Flow Projection required to be made in accordance with Section 6 of this DIP Agreement indicating that the Borrower would require additional funding above the Maximum Amount to meet their obligations at any time during the period of the DIP Agreement Cash Flow Projection;
- (h) Any representation or warranty by the Borrower herein or in any certificate delivered by the Borrower to the DIP Lender shall be incorrect or misleading in any material respect as of the date made or deemed made;
- (i) A Court Order is made, a liability arises or an event occurs, including any change in the business, assets, or conditions, financial or otherwise, of the Borrower, that has or will have a Material Adverse Effect; provided that the forgoing shall exclude changes to the Borrower's business or its performance solely as a result of the commencement, announcement or continuance of the CCAA Proceedings;
- (j) Any breach of any Court Order upon receipt by the Borrower of notice from the DIP Lender of such breach by the Borrower;
- (k) Failure of the Borrower to perform or comply with any other term or covenant under this DIP Agreement and

such Default shall continue unremedied for a period of three (3) business days after the earlier of: (i) delivery of notice given by the DIP Lender to the Borrower, with a copy to the Monitor; or (ii) the Borrower's Knowledge of such failure to perform or comply;

- (l) Failure of the Borrower to cooperate with the Project Monitor or provide it access as is contemplated by the terms of this DIP Agreement;
- (m) The amendment, termination, disclaimer or resiliation of any Pre-Sale APS without the prior written consent of the DIP Lender;
- (n) The commencement by any Borrower of an action or any other proceeding against the DIP Lender;
- (o) The expiry without further extension of the stay of proceedings provided for in the Initial Order or the ARIQ, as applicable;
- (p) Any change of control of the Borrower; or
- (q) The seeking or support by the Borrower, or the issuance, of any court order (in the CCAA Proceedings or otherwise) that is materially inconsistent with the terms of this DIP Agreement.

**19. PROJECT MONITOR**

The DIP Lender has engaged Toddglen Group of Companies to act as an independent project monitor (in such capacity, the "**Project Monitor**") to monitor the Project on behalf of the DIP Lender throughout the duration of the CCAA Proceedings. The Project Monitor's mandate is set forth in **Schedule "G"**. The DIP Lender shall have the right in its sole and absolute discretion to expand or vary the scope of the Project Monitor or to replace the Project Monitor at any time.

**20. REMEDIES:**

Upon the occurrence and during the continuance of an Event of Default, whether or not there is availability under the DIP Facility: (a) without any notice to the Borrower, the Borrower shall have no right to receive any additional DIP Advances or other accommodation of credit from the DIP Lender except in the sole and absolute discretion of the DIP Lender; and (b) the DIP Lender may immediately terminate the DIP Facility and demand immediate payment of all of the DIP Obligations by

providing such a notice and demand to the Borrower, with a copy to the Monitor. With the leave of the Court sought on not less than three (3) business days' notice to the Borrower and the Monitor after the occurrence and during the continuance of an Event of Default, the DIP Lender shall have the right to: (a) enforce the DIP Charge and to exercise all other rights and remedies in respect of the DIP Obligations and the DIP Charge, including the right to realize on all Collateral and to apply to the Court for the appointment of a court-appointed receiver, subject to the application of proceeds of realization to the Admin Charge, if applicable; (b) exercise the rights of a secured party under the *Personal Property Security Act* (Ontario) or any other applicable law relating to the enforcement of liens by secured parties against any type of property, including the Collateral; (c) apply to the Court for an order on terms satisfactory to the Monitor and the DIP Lender, providing the Monitor with the power, in the name of and on behalf of the Borrower, to take all necessary steps in the CCAA Proceedings; and (d) exercise all such other rights and remedies under the Court Orders and applicable law. No failure or delay by the DIP Lender in exercising any of its rights hereunder or at law shall be deemed a waiver of any kind, and the DIP Lender shall be entitled to exercise such rights in accordance with this DIP Agreement at any time. The rights and remedies of the DIP Lender under this DIP Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise, including under the CCAA.

- 21. COMMITMENT FEE:** The Borrower shall pay to the DIP Lender a commitment fee (the "**Commitment Fee**"), as compensation for making the DIP Facility available, in an amount equal to 1.5% of the Maximum Amount (being \$375,000). The Commitment Fee shall be earned and payable upon execution and delivery of this DIP Agreement to the DIP Lender and approval of this DIP Agreement and the Initial Order. The Commitment Fee, once earned and payable, shall be non-refundable under all circumstances and shall be paid by adding the amount of such fee to the principal amount of the DIP Obligations on the Maturity Date. Amounts representing the Commitment Fee that are added to the principal amount of the DIP Obligations shall thereafter constitute principal and bear interest in accordance with Section 11 of this DIP Agreement.



**22. LEGAL AND PROFESSIONAL FEES:**

The Borrower shall pay by wire transfer, within seven (7) days of receipt of a summary invoice, all reasonable and documented out-of-pocket expenses, including all legal expenses on a solicitor-client basis and all other professional fees, including those of the Project Monitor and the DIP Lender's Cost Consultant, incurred by the DIP Lender in connection with the CCAA Proceedings, this DIP Agreement and the DIP Facility, including those with respect to any enforcement of the terms hereof or of the DIP Charge or otherwise incurred in connection with the DIP Facility (collectively, the "**Expenses**"). Subject to Court approval of this DIP Agreement, all Expenses shall be non-refundable under all circumstances.

Notwithstanding the preceding paragraph, at the sole and absolute discretion of the DIP Lender, expenses may be paid by adding the amount of the Expenses to the principal amount of the DIP Obligations on the Maturity Date. Amounts representing the Expenses that are added to the principal amount of the DIP Obligations shall thereafter constitute principal and bear interest in accordance with Section 11 of this DIP Agreement.

**23. DIP LENDER APPROVALS:**

Any consent, approval, instruction or other expression of the DIP Lender to be delivered in writing may be delivered by any written instrument, including by way of email, by the DIP Lender pursuant to the terms hereof.

**24. EVIDENCE OF INDEBTEDNESS**

The DIP Lender's accounts and records constitute, in the absence of manifest error, conclusive evidence of the indebtedness of the Borrower to the DIP Lender under the DIP Facility.

**25. TAXES:**

All payments by the Borrower under this DIP Agreement to the DIP Lender, including any payments required to be made from and after the exercise of any remedies available to the DIP Lender upon an Event of Default, shall be made free and clear of, and without reduction for or on account of, any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholdings of any kind or nature whatsoever or any interest or penalties payable with respect thereto now or in the future imposed, levied, collected, withheld or assessed by any country or any political subdivision of any country (collectively, "**Taxes**").

**26. FURTHER ASSURANCES:**

The Borrower shall, at its expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents and things as the DIP Lender may reasonably request for the purpose of giving effect to this DIP Agreement. Without limiting the foregoing, the Borrower agrees that if so requested by the DIP Lender, it shall promptly execute and deliver to the DIP Lender any general security agreement or other security documents securing its obligations to the DIP Lender hereunder in forms reasonable and customary for debtor in possession financings, provided however that the execution of any such security document shall not be a condition precedent to funding the Maximum Amount or DIP Advances hereunder.

**27. ENTIRE AGREEMENT:**

This DIP Agreement, including the schedules hereto, constitutes the entire agreement between the parties relating to the subject matter hereof.

**28. AMENDMENTS, WAIVERS, ETC.:**

No waiver or delay on the part of the DIP Lender in exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing and delivered in accordance with the terms of this DIP Agreement. Any amendment to the terms of this DIP Agreement shall be made in writing and signed by the parties hereto.

**29. ASSIGNMENT:**

The DIP Lender may: (i) assign this DIP Agreement and its rights and obligations hereunder, in whole or in part, to any party acceptable to the DIP Lender in its sole and absolute discretion; or (ii) syndicate its rights and obligations under this DIP Agreement, in whole or in part, to any party acceptable to the DIP Lender in its sole and absolute discretion; provided, however, in each case the Monitor shall have provided its prior written consent based solely on the Monitor being satisfied that the proposed assignee has the financial capacity.

Neither this DIP Agreement nor any right and obligation hereunder may be assigned by the Borrower.

**30. SEVERABILITY:**

Any provision in this DIP Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions

hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**31. COUNTERPARTS AND SIGNATURES:**

This DIP Agreement may be executed in any number of counterparts and by electronic transmission, each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. Any party may execute this DIP Agreement by signing any counterpart of it.

**32. DISCLOSURE**

Except as required by applicable laws (including any Court Orders), the Borrower shall not issue any press release or make any public announcement concerning this DIP Agreement, the CCAA Proceedings or the operations of its business (collectively, the “**Communications**” and each a “**Communication**”), without the prior written consent of the DIP Lender. The Borrower shall provide the DIP Lender with a minimum of three (3) business days to review and comment on all Communications in respect of this DIP Agreement, the CCAA Proceedings or the operations of its business to its employees, contractors, business partners and contractual counter-parties or to the public prior to such Communications being issued or published.

**33. NOTICES:**

Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the attention of the person as set forth below:

**(a) In the case of the Borrower:**

Mizrahi Development Group (1451 Wellington) Inc.  
133 Hazelton Avenue  
Toronto, ON M5R 0A6

Attention: Sam Mizrahi  
Email: [sam@mizrahidevelopments.com](mailto:sam@mizrahidevelopments.com)

**With a copy to the Borrower’s Counsel:**

Cozen O’Connor  
40 Temperance St., Suite 2700  
Toronto, Ontario M5H 0B4

Attention: Steven Weisz  
Email: [sweisz@cozen.com](mailto:sweisz@cozen.com)

And with a copy to the Monitor:

MNP Ltd.  
111 Richmond Street West  
Toronto, Ontario M5H 2G4

Attention: Sheldon Title  
Email: [sheldon.title@mnp.ca](mailto:sheldon.title@mnp.ca)

And with a copy to the Monitor's Counsel:

Chaitons LLP  
5000 Yonge Street  
North York, ON M2N 7E9

Attention: Harvey Chaiton  
Email: [harvey@chaitons.com](mailto:harvey@chaitons.com)

**(b) In the case of the DIP Lender:**

TCC Mortgage Holdings Inc.  
745 Thurlow Street, Suite 1700  
Vancouver, BC V6E 0C5

Attention: Christian Skogen and Eric Horie  
Email: [ChristianS@trezcapital.com](mailto:ChristianS@trezcapital.com) / [EricH@trezcapital.com](mailto:EricH@trezcapital.com)

With a copy to the DIP Lender's Counsel:

Bennett Jones LLP  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

Attention: Sean Zweig and Aiden Nelms  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com) /  
[nelmsa@bennettjones.com](mailto:nelmsa@bennettjones.com)

Any such notice shall be deemed to be given and received, when received, unless received after 5:00 p.m. (Toronto time) or on a day other than a business day, in which case the notice shall be deemed to be received the next business day.

**34. GOVERNING LAW  
AND SUBMISSION TO  
JURISDICTION:**

This DIP Agreement shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein. The parties irrevocably attorn to the jurisdiction of the Court, which will have exclusive jurisdiction over any matter arising out of this DIP Agreement.

**35. CURRENCY AND  
JUDGMENT CURRENCY:**

Unless otherwise specified herein, all dollar amounts are in the lawful currency of Canada. The Borrower shall pay to the DIP Lender all payments on account of principal and interest hereunder in lawful money of Canada.

If in the recovery by the DIP Lender of any amount owing by the Borrower hereunder in any currency, judgment can only be obtained in another currency and because of changes in the exchange rate of such currencies between the date of judgment and payment in full of the amount of such judgment, the amount received by the DIP Lender is less than the recovery provided for under the judgment, the Borrower shall immediately pay any such shortfall to the DIP Lender and such shortfall can be claimed by the DIP Lender against the Borrower as an alternative or additional cause of action.

*[ - Signature page follows - ]*

**IN WITNESS HEREOF**, the parties hereby execute this DIP Agreement as at the date first above mentioned.

**TCC MORTGAGE HOLDINGS INC.**

Per:  Signed by:  
C90D967972D54C4...  
Name: Christian Skogen  
Title: Chief Risk Officer

Per:  DocuSigned by:  
BEA333F425834D2...  
Name: Eric Horie\*  
Title: Senior Managing Director,  
Canadian Origination Principal  
Broker (Lic. # 20001785)  
*\* in his capacity as a licensed principal broker*

I/We have the authority to bind the corporation

**MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.**

Per: \_\_\_\_\_  
Name: Amanda Brown  
Title: Director

I have the authority to bind the corporation

**IN WITNESS HEREOF**, the parties hereby execute this DIP Agreement as at the date first above mentioned.

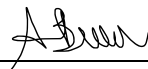
**TCC MORTGAGE HOLDINGS INC.**

Per: \_\_\_\_\_  
Name: Christian Skogen  
Title: Chief Risk Officer

Per: \_\_\_\_\_  
Name: Eric Horie\*  
Title: Senior Managing Director,  
Canadian Origination Principal  
Broker (Lic. # 20001785)  
*\* in his capacity as a licensed principal broker*

I/We have the authority to bind the corporation

**MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.**

Per:  \_\_\_\_\_  
Name: Amanda Brown  
Title: Director

I have the authority to bind the corporation

**SCHEDULE "A"**  
**CASH FLOW PROJECTION**

See attached.



Mizrahi Development Group (1451 Wellington) Inc.  
Statement of Projected Cash Flow  
For the thirteen week period ending January 12, 2025

Currency: CAD																
Week Beginning	Notes	14-Oct-24	21-Oct-24	28-Oct-24	04-Nov-24	11-Nov-24	18-Nov-24	25-Nov-24	02-Dec-24	09-Dec-24	16-Dec-24	23-Dec-24	30-Dec-24	06-Jan-25	Total	
Opening cash balance		10,422	26,202	25,962	90,684	70,393	59,926	59,686	334,948	49,110	48,018	47,778	47,778	268,170	10,422	
<b>Receipts</b>																
DIP funding (net)	1	2,345,000	-	-	-	400,000	-	3,800,000	-	-	-	-	3,300,000	-	9,845,000	
HST Refund		-	-	190,000	-	-	-	190,000	-	-	-	-	237,125	-	617,125	
<b>Total Receipts</b>		<b>2,345,000</b>	<b>-</b>	<b>190,000</b>	<b>-</b>	<b>400,000</b>	<b>-</b>	<b>3,990,000</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>3,537,125</b>	<b>-</b>	<b>10,462,125</b>	
<b>Disbursements</b>																
Deposit Refunds		-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Occupancy Cost		-	-	8,980	-	-	-	-	8,980	-	-	-	8,980	-	26,940	
Utilities (Primus, Enbridge)		742	-	-	750	842	-	-	850	1,092	-	-	-	1,050	5,325	
Construction Costs	2	1,670,919	-	-	-	-	-	3,396,317	-	-	-	-	3,206,317	-	8,273,553	
Soft Costs	2	25,659	-	-	-	-	-	40,000	-	-	-	-	40,000	-	105,659	
Professional Fees- CCAA	3	-	-	-	-	226,000	-	-	141,250	-	-	-	-	141,250	508,500	
Pre-CCAA Legal fees	4	24,520	-	116,278	-	-	-	203,401	-	-	-	-	-	-	344,199	
Insurance		46,169	-	-	-	-	-	-	-	-	-	-	-	-	46,169	
Interest on DIP Funding	5	-	-	-	19,542	-	-	-	38,708	-	-	-	61,417	-	119,667	
Forbearance fee/Commitment fee/DIP Lender's fees and expenses		561,211	-	-	-	183,625	-	75,000	96,050	-	-	-	-	73,450	989,336	
Bank Service charges		-	240	20	-	-	240	20	-	-	240	-	20	-	780	
<b>Total Disbursements</b>		<b>2,329,219</b>	<b>240</b>	<b>125,278</b>	<b>20,292</b>	<b>410,467</b>	<b>240</b>	<b>3,714,738</b>	<b>285,838</b>	<b>1,092</b>	<b>240</b>	<b>-</b>	<b>3,316,734</b>	<b>215,750</b>	<b>10,420,127</b>	
<b>Closing cash balance</b>		<b>26,202</b>	<b>25,962</b>	<b>90,684</b>	<b>70,393</b>	<b>59,926</b>	<b>59,686</b>	<b>334,948</b>	<b>49,110</b>	<b>48,018</b>	<b>47,778</b>	<b>47,778</b>	<b>268,170</b>	<b>52,420</b>	<b>52,420</b>	

The Statement of Projected Cash Flow for the period from October 14, 2024 to January 12, 2025 has been prepared pursuant to the requirements of section 10 (2) (a) of the Companies' Creditors Arrangement Act and should be read in conjunction with the attached Notes and Assumptions and the Monitor's Report.

MNP LTD.,  
Monitor acting in re the CCAA of  
Mizrahi Development Group (1451 Wellington) Inc.  
and not in its personal or corporate capacity

Mizrahi Developments Group (1451 Wellington) Inc.

Per: \_\_\_\_\_  
Sheldon Title, CPA, CA, CIRP, LIT

Per: \_\_\_\_\_  
Sam Mizrahi

Date: October 15, 2024

## SCHEDULE "B"

### FORM OF DRAWDOWN CERTIFICATE

TO: TCC Mortgage Holdings Inc. (the "**DIP Lender**") and MNP Ltd. (the "**Monitor**")

FROM: Mizrahi Development Group (1451 Wellington) Inc. (the "**Borrower**")

DATE: [●]

1. This certificate is delivered to you in connection with a request for a Subsequent DIP Draw pursuant to the DIP Agreement made as of October [●], 2024, between the Borrower and the DIP Lender, as amended, supplemented, restated or replaced from time to time (the "**DIP Agreement**"). All capitalized terms used, but not otherwise defined, in this certificate shall have the respective meanings set forth in the DIP Agreement, unless the context requires otherwise.

2. The Borrower hereby requests a DIP Advance as follows:

(a) Date of DIP Advance: \_\_\_\_\_

(b) Aggregate amount of requested DIP Advance: \$[●]

to be transferred into the Borrower's Account by the DIP Lender or the Monitor, as applicable, by direct deposit in accordance with the DIP Agreement.

3. All of the representations and warranties of the Borrower as set forth in the DIP Agreement are true and correct as at the date hereof, as though made on and as of the date hereof (except for any representations and warranties made as of a specific date, which shall be true and correct as of the specific date made).

4. All of the covenants of the Borrower contained in the DIP Agreement and all other terms and conditions contained in the DIP Agreement to be complied with by the Borrower, and not waived in writing by or on behalf of the DIP Lender, have been complied with.

5. The Borrower is in compliance with all Court Orders.

6. The proceeds of the DIP Advance hereby requested will be applied solely in accordance with the DIP Agreement Cash Flow Projection, or as has been otherwise agreed to by the DIP Lender in advance in writing, and shall be utilized exclusively to fund the expense items listed on Appendix "A" hereto.

7. No Default or Event of Default has occurred and is continuing nor will any such event occur as a result of the DIP Advance hereby requested.

**MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.**

By: \_\_\_\_\_

Name:

Title:

cc: [●]

**Appendix "A"**  
**Approved Expense Items**

<b>Expense Item</b>	<b>Amount</b>
[•]	\$[•]
<b>TOTAL:</b>	\$[•]

**SCHEDULE "C"**  
**DRAFT INITIAL ORDER**

See attached.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) TUESDAY, THE 15<sup>th</sup> DAY  
 )  
JUSTICE KERSHMAN ) OF OCTOBER, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.

Applicant

**INITIAL ORDER**

**THIS APPLICATION**, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by judicial videoconference via Zoom at 161 Elgin Street, Ottawa, Ontario.

**ON READING** the affidavit of Sam Mizrahi sworn October 15, 2024 and the Exhibits thereto (the "**Mizrahi Affidavit**"), and the Pre-Filing Report of MNP Inc. ("**MNP**") as the proposed monitor, filed, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for MNP, counsel for TCC Mortgage Holdings Inc. (in such capacity, the "**DIP Lender**") and such other counsel present, and on reading the consent of MNP to act as the monitor (in such capacity, the "**Monitor**").

## **SERVICE AND DEFINITIONS**

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

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the Mizrahi Affidavit.

## **APPLICATION**

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, licences, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant, subject to the terms of the Definitive Documents (as hereinafter defined), shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant, subject to the terms of the Definitive Documents, is authorized and empowered to continue to retain and employ the employees, independent contractors, sub-contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicant, with the prior consent of the Monitor and subject to the terms of the Definitive Documents, shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in

the ordinary course of business and consistent with existing compensation policies and arrangements;

- (b) amounts owing for goods and services actually supplied to the Applicant or the Project prior to the date of this Order, with the Monitor and DIP Lender considering, among other factors, whether: (i) the supplier or service provider is essential to the Project or the Business and ongoing operations of the Applicant and the payment is required to ensure ongoing supply, (ii) making such payment will preserve, protect or enhance the value of the Project, the Property or the Business, (iii) making such payment is required to address regulatory concerns, and (iv) the supplier or service provider is required to continue to provide goods or services to the Applicant after the date of this Order, including pursuant to the terms of this Order; and
- (c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant, with the prior consent of the Monitor and the DIP Lender, shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. **THIS COURT ORDERS** that the Applicant, subject to the terms of the Definitive Documents, shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be



- deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

9. **THIS COURT ORDERS** that the Applicant, with the prior consent of the Monitor, shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to:

- (a) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property for any purpose pursuant to this Order;

- (b) permanently or temporarily cease, downsize or shut down any of the Applicant's business or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate; and
- (c) pursue all avenues of financing or refinancing, restructuring, selling, assigning or in any other manner disposing of and/or reorganizing the Applicant's Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material financing or refinancing, restructuring, sale, assignment, disposition or reorganization,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

10. **THIS COURT ORDERS** that, notwithstanding paragraph 9(c), the Applicant, with the prior consent of the Monitor and the DIP Lender, shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to sell or lease Units or any commercial space in the Project, as applicable, in the ordinary course without the need for prior approval of this Court.

**NO PROCEEDINGS AGAINST THE APPLICANT, GENERAL CONTRACTOR, THE MONITOR OR THE PROPERTY**

11. **THIS COURT ORDERS** that until and including October 25, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding, demand or enforcement process in any court or tribunal (each, a "**Proceeding**" and collectively, the "**Proceedings**") shall be commenced or continued against or in respect of the Applicant, Mizrahi Inc. (the "**General Contractor**") (other than the ongoing proceedings before Justice Osborne in Court File No. CV-23-00707839-00CL) or the Monitor, except with the written consent of the Applicant, the Monitor and the DIP Lender, or with leave of this Court, and any and all Proceedings currently under way against or in respect of such parties, or affecting the Applicant's Business or the Property, are hereby stayed and suspended pending further Order of this Court.

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

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant, the General Contractor or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant, the Monitor and the DIP Lender, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by the Applicant or General Contractor except with the written consent of the Applicant, the Monitor and the DIP Lender, or leave of this Court.

## **CONTINUATION OF SERVICES**

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant, General Contractor, or contractual, statutory or regulatory mandates for the supply of goods and/or services to the Applicant, the General Contractor or the Project, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll and benefit services, warranty services, subcontracts, trade suppliers, equipment vendors and rental companies, insurance, vehicle and transportation services, temporary labour and staffing services, freight services, equipment vendors and rental companies, utility, customs, clearing, warehouse and logistics services or other services to the Business, the Applicant, the General Contractor and/or the Project, are hereby restrained until

further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods, services, trademarks or other intellectual property as may be required by the Applicant, the General Contractor and/or the Project and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names and building and other permits, provided in each case that the normal prices or charges for all such goods or services or trademarks or other intellectual property received or used after the date of this Order are paid by the Applicant, the General Contractor and/or the Project in accordance with normal payment practices of the Applicant, the General Contractor and/or the Project or such other practices as may be agreed upon by the supplier or service provider and the Applicant and/or General Contractor, the Monitor and the DIP Lender, or as may be ordered by this Court.

15. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, no insurer providing insurance to the Debtor or its directors or officers shall terminate or fail to renew such insurance on the existing terms thereof provided that such insurer is paid any premiums, as would be paid in the normal course, in connection with the continuation or renewal of such insurance at current prices, subject to reasonable annual increases in the ordinary course with respect to such premiums.

#### **NON-DEROGATION OF RIGHTS**

16. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

17. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any

obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

## **APPOINTMENT OF MONITOR**

18. **THIS COURT ORDERS** that MNP is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

19. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) liaise with and assist the Applicant with respect to all matters relating to the Business, Property, the Project and related restructuring, and such other matters as may be relevant to the proceedings herein;
- (d) in the Monitor's discretion, receive and collect, on behalf of the Applicant, all monies and accounts now owed or hereafter owing to the Applicant and to exercise all remedies of the Applicant, on behalf of the Applicant and in consultation with the Applicant and with the consent of the DIP Lender, in collecting such monies, including without limitation, to enforce any security held by the Applicant;

- (e) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel at the times set out in the DIP Term Sheet, financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (f) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, at the times set out in the DIP Term Sheet, or as otherwise agreed to by the DIP Lender;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

20. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

21. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

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

22. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

23. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its respective employees and representatives acting in such capacities shall incur any liability or obligation as a result of the appointment of the Monitor or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

24. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and

counsel for the Applicant on a monthly basis, or pursuant to such other arrangements as may be agreed to between the Applicant and such parties.

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

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000.00, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, in connection with the Project and these proceedings, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 33 and 35 hereof.

#### **DIP FINANCING**

27. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from the DIP Lender in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that the indebtedness under such credit facility shall not exceed \$2,345,000.00 plus applicable interest, fees, expenses and costs (the total amount outstanding from time to time, the "**DIP Obligations**") unless permitted by further Order of this Court.

28. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the DIP Lender dated as of October 15, 2024 (the "**DIP Term Sheet**"), filed.

29. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents, including for greater certainty the DIP Term Sheet (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and



the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

30. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 33 and 35 hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Term Sheet, Definitive Documents or the DIP Lender’s Charge, the DIP Lender, may cease making advances to the Applicant, and with leave of the Court sought on not less than three (3) business days’ notice to the Applicant and the Monitor, may exercise any and all of its others rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender’s Charge, including without limitation, to set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

32. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or

any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the “BIA”), with respect to any advances made under the Definitive Documents.

### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

33. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender’s Charge (collectively, the “Charges”), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$100,000.00; and

Second – DIP Lender’s Charge (to the maximum amount of the DIP Obligations at the relevant time).

34. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

35. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “Encumbrances”) in favour of any Person; provided that the Charges shall rank behind Encumbrances in favour of any Persons that have not been served with notice of the application for this Order. The Applicant and the beneficiaries of the Charges shall be entitled to seek priority of the Charges ahead of such Encumbrances on a subsequent motion including, without limitation, on the Comeback Date (as defined below), on notice to those Persons likely to be affected thereby.

36. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

37. **THIS COURT ORDERS** that the Charges, the DIP Term Sheet, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing constating or governance documents, loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

38. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant’s interest in such real property leases.

## **SERVICE AND NOTICE**

39. **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish only once in the National Post a notice containing the information prescribed under the CCAA; and (ii) within five (5) days after the date of this Order: (A) make this Order publicly available in the manner prescribed under the CCAA; (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000; and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not be required to make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by this Court.

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

41. **THIS COURT ORDERS** that the Monitor shall maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor nor its counsel shall have any liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

42. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant, the Monitor, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any

notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service, distribution or notice by courier, personal delivery or facsimile or other electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. Any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of Subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

### **COMEBACK HEARING**

43. **THIS COURT ORDERS** that the comeback motion in this proceeding shall be heard on October 25, 2024 (the "**Comeback Date**").

### **FORBEARANCE AGREEMENT**

44. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered, *nunc pro tunc*, to enter into the Forbearance Agreement. Such Forbearance Agreement is hereby approved and the Applicant is authorized and directed to comply with all terms and conditions of the Forbearance Agreement.

### **GENERAL**

45. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than five (5) calendar days' notice to the Service List and any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 33 and 35 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

46. **THIS COURT ORDERS** that, notwithstanding paragraph 45 of this Order, each of the Applicant, the Monitor or the DIP Lender may from time to time apply to this Court to amend,

vary or supplement this Order or for advice and directions in the discharge of its powers and duties hereunder or in the interpretation of this Order.

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

48. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

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

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

51. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without the need for entry or filing.

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.

Court File No. BK24-00000230-0033

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
OTTAWA

**INITIAL ORDER**

**COZEN O'CONNOR LLP**

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Lawyers for the Applicant,  
Mizrahi Development Group (1451 Wellington) Inc.  
and the General Contractor, Mizrahi Inc.

**SCHEDULE "D"**

**BORROWER'S ACCOUNT INFORMATION**

As provided to the DIP Lender.



**SCHEDULE “E”**

**LITIGATION**

All outstanding litigation proceedings set out in the Affidavit of Sam Mizrahi sworn October 15, 2024, a copy of which has been provided to the DIP Lender, including the proceedings set out below:

<b>Plaintiff(s)/Applicant(s)</b>	<b>Defendant(s)/Respondent(s)</b>	<b>Date Initiated</b>	<b>Jurisdiction</b>	<b>Amount of Claim</b>
V2 Investment Holdings Inc.	Sam Mizrahi, Mizrahi Development Group (1451 Wellington) Inc., Mizrahi Developments Inc. and 2659100 Ontario Inc.	May 3, 2024	Ottawa	N/A

## SCHEDULE “F”

### PRE-SALE APS AMENDMENT OR DISCLAIMER/TERMINATION<sup>1</sup>

If the Borrower, in accordance with the terms of the DIP Agreement, opts to amend a Pre-Sale APS related to the Project, the Borrower shall amend the Pre-Sale APS (as amended, each an “**Amended APS**”) within 30 business days of beginning negotiations with the relevant purchaser.

If the Borrower, in accordance with the terms of the DIP Agreement, opts to terminate, disclaim or resiliate a Pre-Sale APS related to the Project, the Borrower shall:

- i. commence remarketing the relevant Project Unit within 5 business days of any such termination, disclaimer or resiliation (the “**Termination Date**”); and
- ii. enter into a new binding unconditional agreement of purchase and sale (each a “**New APS**”), which New APS shall be satisfactory to the DIP Lender in its sole and absolute discretion, for the relevant Project Unit within 90 days of the Termination Date.

Without limiting the generality of the foregoing, any New APS and Amended APS shall be in form and substance acceptable to the DIP Lender and contemplate a purchase price acceptable to the DIP Lender, each in its sole and absolute discretion.

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<sup>1</sup> The timelines contemplated in this **Schedule “F”** may be extended by the DIP Lender in its sole and absolute discretion.

## **SCHEDULE “G”**

### **THE PROJECT MONITOR’S SCOPE OF WORK**

The Project Monitor will, among other things:

1. Assess the Project status in conjunction with the schedule.
2. Assess the schedule feasibility.
3. Assess the Project team in conjunction with the Project needs.
4. Assess the trades’ performance in conjunction with the agreements in place.
5. Assess the resources allocated for ensuring minimum industry standards for quality assurance.
6. Assess the procurement status.
7. Identify risks and opportunities related to the above 6 assessments.
8. Propose a strategy to secure successful Project delivery.
9. Monitor the progress monthly and implementation of the proposed/approved strategy.
10. Daily interaction with the site superintendent.
11. Regular discussions with Sam Mizrahi and Jonny Cracower regarding Project tasks.
12. Biweekly site visits by Cristian Oniga, as needed.
13. Site visits by another Project Monitor representative on off weeks to Cristian’s visits.
14. Direct interaction with trade contractors, as required.
15. Problem solving and Project issue mitigation.
16. Attend the Project site monthly to fulfill all services within the scope of its mandate and attend other meetings related to its services via video conference, as required.

This is Exhibit OO to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. Ha", is written over a light blue rectangular background.

A Commissioner for taking affidavits

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.

Applicant

**CONSENT**

MNP LTD hereby consents to act as Court-appointed Monitor in these proceedings should such an Initial Order be granted by the Court.

Dated at Toronto this 11<sup>th</sup> day of October, 2024

**MNP LTD**



Per: \_\_\_\_\_  
Name: Sheldon Title, CPA, CA, CIRP, LIT  
Senior Vice-President  
(I have the authority to bind the corporation)

This is Exhibit PP to the Initial  
Order, sworn on October 15, 2024

A handwritten signature in blue ink, appearing to read "R. S. Ha", is centered within the upper portion of the box.

A Commissioner for taking affidavits

## FORBEARANCE AGREEMENT

**THIS FORBEARANCE AGREEMENT** (as may be amended, restated, supplemented, replaced or otherwise modified from time to time in accordance with the terms hereof, this “**Agreement**”) is made as of October 15, 2024.

### BETWEEN:

**MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.** (the “**Borrower**”)

and

**TCC MORTGAGE HOLDINGS INC.** (“**TCC**” and together with the Borrower, the “**Parties**” and each a “**Party**”)

### RECITALS:

- A. Trez Capital Limited Partnership, by its general partner, Trez Capital (2011) Corporation (the “**Original Lender**”) and the Borrower, among others, are party to a Commitment Letter dated as of October 2, 2019 (as amended from time to time, the “**First CL**”) pursuant to which the Original Lender extended certain loan facilities to the Borrower (the “**First Loan**”).
- B. The Original Lender and the Borrower, among others, are also party to a Commitment Letter dated as of October 18, 2021 (as amended from time to time, the “**Second CL**” and together with the First CL, the “**Commitment Letters**”) pursuant to which the Original Lender extended a further loan facility to the Borrower (the “**Second Loan**” and together with the First Loan, the “**Loans**” and each a “**Loan**”).
- C. Pursuant to the terms of the Commitment Letters, the Borrower has executed and delivered to the Original Lender and Computershare Trust Company of Canada (“**Computershare**”) certain security documents (collectively, the “**Security**”) for the purpose of securing the payment and performance of the obligations of the Borrower to the Original Lender that may be outstanding from time to time, including but not limited to the Indebtedness (as defined below).
- D. As at June 6, 2024, certain events of default under the First CL and the related Security had occurred and were continuing (the “**First CL Events of Default**”). As a result of the First CL Events of Default, on June 6, 2024, the Original Lender sent demand letters to, among others, the Borrower: (i) declaring the entire amount of the indebtedness owing under the First CL due and payable; and (ii) demanding repayment of the entire amount of the indebtedness owing under the First CL in full (the “**First CL Demand Letters**”). Enclosed with the First CL Demand Letters were Notices of Intention to Enforce Security (the “**NITES**”) pursuant to section 244 of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”).
- E. As at October 1, 2024, the total indebtedness owing under the First CL and the Second CL was approximately \$81,054,964.31 (the “**Indebtedness**”) with with interest, fees and costs continuing to accrue.

- F. Following the delivery of the First CL Demand Letters, the Original Lender intended to proceed with an application (the “**Receivership Application**”) seeking an order pursuant to subsection 243(1) of the BIA and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43 seeking, among other things, the appointment of a receiver in respect of the Borrower.
- G. On October 15, 2024, the Original Lender, Computershare and TCC entered into Assignment and Assumption Agreements in connection with the Commitment Letters and the Security pursuant to which TCC is now the lender under the Loans.
- H. The Original Lender, TCC and the Borrower have worked cooperatively to find a resolution to the Receivership Application (the “**Resolution**”) which has culminated in a consensual application by the Borrower (the “**CCAA Application**”) in the Ontario Superior Court of Justice (the “**Court**”) for an order pursuant to the *Companies Creditors’ Arrangement Act*, R.S.C. 1985, c. C-36, among other things, approving a debtor-in-possession financing term sheet by and between TCC and the Borrower (the “**DIP Term Sheet**”).
- I. In connection with the Resolution, the Parties have agreed to enter into this Agreement.

## **ARTICLE 1 INTERPRETATION**

### **1.01 Definitions**

Capitalized terms used in this Agreement and not otherwise defined have the meanings given to them in the CCAA Application or the Commitment Letters, as the case may be.

### **1.02 Currency**

Unless specified otherwise, all dollar amounts expressed in this Agreement refer to Canadian currency.

### **1.03 Headings**

The headings used in this Agreement and its division into articles, sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.

### **1.04 Internal references**

References in this Agreement to articles, sections, schedules, exhibits, appendices, and other subdivisions are to those parts of this Agreement.

### **1.05 Number and gender**

Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.

### **1.06 Calculation of time**

In this Agreement, a period of days begins on the first day after the event that began the period and ends at 5:00 p.m. Eastern Time on the last day of the period. If any period of time is to expire,



or any action or event is to occur, on a day that is not a business day, the period expires, or the action or event is considered to occur, at 5:00 p.m. Eastern Time on the next business day.

### **1.07 Construction of terms**

The Parties have each participated in settling the terms of this Agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting party will not apply in interpreting this Agreement.

## **ARTICLE 2 FORBEARANCE**

### **2.01 CCAA Application**

Subject to the terms and conditions of this Agreement, the Borrower hereby agrees to bring the CCAA Application and obtain an order in the form attached as 0 hereto (the “**Initial Order**”) on or before October 15, 2024 (the period between such date and the date of this Agreement being the “**Standstill Period**”).

### **2.02 Applicable Interest Rate under the Commitment Letters**

Concurrent with the execution of this Agreement, the applicable interest rate under each of the Commitment Letters shall be charged, and shall be retroactively charged, as follows:

- (a) on the outstanding balance under the First Loan at the greater of 9.65% per annum and Royal Bank of Canada Prime + 4.20 %, compounded and payable monthly; and
- (b) on the outstanding balance under the Second Loan at the greater of 16.95% per annum and Royal Bank of Canada Prime + 11.50 %, compounded and payable monthly.

Such interest rates shall be set with respect to amounts advanced on the day of each advance and thereafter monthly on the first day of each month. Interest shall be calculated daily on the daily balance outstanding from time to time, before as well as after maturity, default or judgment, from the date of each advance. Such interest rates shall be determined upon the basis of a three hundred and sixty-five (365) day year for common years and a three hundred and sixty-six (366) day year for leap years. Interest shall be calculated in accordance with TCC’s usual practice (as to times and methods of calculation) and shall be adjusted automatically without notice to the Borrower. All interest rates specified are nominal annual rates. The effective annual rate in any case will vary with payment frequency. All interest payable hereunder bears interest as well after as before maturity, default and judgment with interest on overdue interest at the applicable rate payable hereunder. All interest payable hereunder bears interest from the date of advance of any portion of the relevant Loan to TCC’s solicitor, whether or not such advance of the relevant Loan is released to the Borrower or the Borrower’s solicitor.

### **2.03 DIP Term Sheet**

The Parties expressly acknowledge and agree to incorporate by reference (with the same force and effect as though fully set forth herein) Sections 14, 15, 16, 18, and 20 of the DIP Term Sheet in this Agreement, the Commitment Letter and the Security, as the case may be, *mutatis mutandis*, until the Indebtedness is in indefeasibly repaid in full. For greater certainty, even when the

indebtedness owing under the DIP Term Sheet is repaid in full, this section and the incorporation by reference will continue to apply as if the indebtedness owing under the DIP Term Sheet was still outstanding.

#### **2.04 Renewal Term**

Each of the First CL and the Second CL are hereby renewed for 24 months commencing from October 1, 2024 to October 1, 2026.

#### **2.05 Forbearance/Exit Fee**

Immediately upon execution of this Agreement, the Borrower shall pay to TCC non-refundable forbearance/exit fees in the amounts of: (i) \$50,000 in connection with the First CL; and (ii) \$25,000 in connection with the Second CL, each to compensate TCC for the additional time incurred and to be incurred, and the costs borne and to be borne, in connection with the forbearance contemplated herein, and in monitoring the ongoing affairs of the Borrower (together, the “**Forbearance Fee**”). The Forbearance Fee shall be fully earned as at the date hereof, and shall be added to the principal amount of the First Loan or the Second Loan, as the case may be, on the date hereof.

#### **2.06 Right to Assign**

TCC reserves all of its rights under the Commitment Letters and Security to assign, sell, syndicate or transfer any portion of the Loans, the Indebtedness and Security, without the consent of the Borrower.

### **ARTICLE 3 BORROWER’S REPRESENTATIONS AND WARRANTIES**

The Borrower represents and warrants to TCC as follows, acknowledging that TCC is relying on these representations and warranties:

#### **3.01 Existence**

It is a corporation incorporated and existing under the laws of the jurisdiction of its incorporation.

#### **3.02 Power and capacity**

It has the corporate power and capacity to carry on business, to own properties and assets, and to execute, deliver, and perform its obligations under this Agreement.

#### **3.03 Authorization**

It has taken all necessary corporate action to authorize its execution and delivery of, and the performance of its obligations under, this Agreement.

#### **3.04 Execution and delivery**

It has duly executed and delivered this Agreement.

### **3.05 Enforceability**

This Agreement constitutes a legal, valid, and binding obligation, enforceable against it in accordance with its terms in accordance with applicable law.

### **3.06 No breach**

The execution, delivery, and performance of its obligations under this Agreement do not and will not breach or result in a default under:

- (a) if applicable, its memorandum of association, articles of association, by-laws, or any shareholders agreement to which it is a party;
- (b) any law to which it is subject;
- (c) any judgment, order, or decree of any court, agency, tribunal, arbitrator, or other authority to which it is subject; or
- (d) any agreement to which it is a party or by which it is bound.

### **3.07 No regulatory approvals required**

It is not required to obtain any action, approval, authorization, consent, or order of, or make any filing, registration, qualification, or recording with, any governmental authority or any other person in connection with the execution or delivery of, or the performance of its obligations under, this Agreement.

## **ARTICLE 4 BORROWER ACKNOWLEDGEMENTS**

The Borrower acknowledges, confirms and agrees to TCC as follows:

### **4.01 Recitals True and Correct**

The Recitals to this Agreement are true and correct.

### **4.02 Borrower in Default**

The Borrower is in default under the relevant Commitment Letters and the Security. TCC is entitled to exercise all of its rights and remedies under each of the Commitment Letters and the Security.

### **4.03 First CL Demand Letters and NITES**

- (a) The Borrower acknowledges and accepts receipt from the Original Lender of the First CL Demand Letters and NITES. The Borrower acknowledges and agrees that the First CL Demand Letters and NITES have been validly delivered by the Original Lender and shall remain in full force and effect throughout the Standstill Period and that the Original Lender and TCC are not, and will not be deemed to have waived, varied, altered or withdrawn same by virtue of entering into this Agreement or otherwise. The Borrower further acknowledges, consents, and confirms that TCC may continue to rely

on the First CL Demand Letters and NITES and TCC shall be entitled to act on same, subject to the terms of this Agreement, without the need to issue any further, refreshed or new demand or notice of intention to enforce security.

- (b) Without limiting the generality of the foregoing, TCC reserves all of its rights subject only to the express terms hereof, and the entering into of this Agreement by TCC does not constitute a withdrawal or revocation of the First CL Demand Letters or NITES or a waiver of any existing or future defaults, or events of default under this Agreement or a waiver of the obligation to pay the entirety of the Indebtedness by or before the end of the Standstill Period.

## **ARTICLE 5 RIGHTS AND REMEDIES**

### **5.01 Remedies Cumulative**

The rights, remedies, and powers provided in this Agreement, the Commitment Letters or the Security to a party are cumulative and in addition to, and are not exclusive of or in substitution for, any rights, remedies, and powers otherwise available to that party.

### **5.02 Severability**

The invalidity or unenforceability of any particular term of this Agreement will not affect or limit the validity or enforceability of the remaining terms.

### **5.03 Waiver**

No waiver of satisfaction of a condition or non-performance of an obligation under this Agreement, the Commitment Letters or the Security is effective unless it is in writing and signed by the party granting the waiver. No waiver will extend to a subsequent occurrence, whether or not that occurrence is the same or similar to the original occurrence that was waived. No waiver will affect the exercise of any other rights or remedies under this Agreement, the Commitment Letters or the Security. Any failure or delay in exercising any right or remedy will not constitute, or be deemed to constitute, a waiver of that right or remedy. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

## **ARTICLE 6 GENERAL PROVISIONS**

### **6.01 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties relating to its subject matter. This Agreement supersedes any previous agreements and discussions between the Parties. There are no representations, covenants, or other terms other than those set forth in this Agreement.

### **6.02 Further Assurances**

Each Party, upon receipt of written notice by another party, shall sign and effect (or cause to be signed and effected) all further documents, instruments, deeds and registrations, do (or cause to be

done) all further acts, and provide all reasonable assurances as may reasonably be necessary or desirable to give effect to the terms of this Agreement.

For greater certainty, nothing in this Agreement shall preclude TCC from effecting any further registrations of security interests or issuing to the Borrower further notices or demands for repayment as are necessary to preserve its rights.

### **6.03 Time is of the Essence**

Time is of the essence with respect to the terms and conditions of this Agreement.

### **6.04 Amendment**

This Agreement may only be amended by a written document signed by each of the Parties.

### **6.05 Conflict of Terms**

If there is any inconsistency between the terms of this Agreement and the terms of either of the Commitment Letters or the Security, the terms of this Agreement will prevail, provided that, to the extent that either this Agreement, the Commitment Letters or the Security are silent on a particular matter, the Commitment Letters, the Security or this Agreement, as the case may be, will govern relating to that matter. The Parties shall take any necessary steps to conform the inconsistent terms to the terms of this Agreement.

### **6.06 Binding Effect**

This Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns.

### **6.07 Assignment**

This Agreement may not be assigned by the Borrower.

### **6.08 Notice**

To be effective, a notice must be in writing and delivered in accordance with the Commitment Letters or the Security, as the case may be.

### **6.09 Governing Law**

The laws of Province of Ontario and the laws of Canada applicable therein, excluding any rule or principle of conflicts of law that may provide otherwise, govern this Agreement.

### **6.10 Submission to Jurisdiction**

The Parties irrevocably attorn to the jurisdiction of the Court, which will have exclusive jurisdiction over any matter arising out of this Agreement.

### **6.11 Counterparts**

This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. Counterparts may be transmitted by

fax or in electronically scanned form. Parties transmitting by fax or electronically shall also deliver the original counterpart to each other party, but failure to do so does not invalidate this Agreement.

**6.12 Effective Date**

This Agreement is effective as of the date shown at the top of the first page, even if any signatures are made after that date.

**6.13 Independent Legal Advice, etc.**

The Borrower acknowledges and declares that: (a) it has had an adequate opportunity to read and consider this Agreement and to obtain such advice in regard to it as it consider advisable, including, without limitation, independent legal advice; (b) it fully understands the nature and effect of this Agreement; and (c) this Agreement has been duly executed voluntarily.

**6.14 Receipt of Copy**

The Borrower acknowledges having received a signed copy of this Agreement.

*[- signature page follows -]*



**IN WITNESS HEREOF**, the Parties hereto have executed this Agreement as of date first written above.


**TCC MORTGAGE HOLDINGS INC.**

Per: \_\_\_\_\_  
Name: Christian Skogen  
Title: Chief Risk Officer

Per: \_\_\_\_\_  
Name: Eric Horie\*  
Title: Senior Managing Director,  
Canadian Origination Principal  
Broker (Lic. # 20001785)  
*\* in his capacity as a licensed principal broker*

I/We have the authority to bind the corporation

**MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.**

Per:  \_\_\_\_\_  
Name: Amanda Brown  
Title: Director

I have the authority to bind the corporation



**SCHEDULE A  
FORM OF INITIAL ORDER**

See attached.

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) TUESDAY, THE 15<sup>th</sup> DAY  
 )  
JUSTICE KERSHMAN ) OF OCTOBER, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.

Applicant

**INITIAL ORDER**

**THIS APPLICATION**, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day by judicial videoconference via Zoom at 161 Elgin Street, Ottawa, Ontario.

**ON READING** the affidavit of Sam Mizrahi sworn October 15, 2024 and the Exhibits thereto (the "**Mizrahi Affidavit**"), and the Pre-Filing Report of MNP Inc. ("**MNP**") as the proposed monitor, filed, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for MNP, counsel for TCC Mortgage Holdings Inc. (in such capacity, the "**DIP Lender**") and such other counsel present, and on reading the consent of MNP to act as the monitor (in such capacity, the "**Monitor**").

## **SERVICE AND DEFINITIONS**

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

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the Mizrahi Affidavit.

## **APPLICATION**

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, licences, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant, subject to the terms of the Definitive Documents (as hereinafter defined), shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant, subject to the terms of the Definitive Documents, is authorized and empowered to continue to retain and employ the employees, independent contractors, sub-contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicant, with the prior consent of the Monitor and subject to the terms of the Definitive Documents, shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in

the ordinary course of business and consistent with existing compensation policies and arrangements;

- (b) amounts owing for goods and services actually supplied to the Applicant or the Project prior to the date of this Order, with the Monitor and DIP Lender considering, among other factors, whether: (i) the supplier or service provider is essential to the Project or the Business and ongoing operations of the Applicant and the payment is required to ensure ongoing supply, (ii) making such payment will preserve, protect or enhance the value of the Project, the Property or the Business, (iii) making such payment is required to address regulatory concerns, and (iv) the supplier or service provider is required to continue to provide goods or services to the Applicant after the date of this Order, including pursuant to the terms of this Order; and
- (c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant, with the prior consent of the Monitor and the DIP Lender, shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. **THIS COURT ORDERS** that the Applicant, subject to the terms of the Definitive Documents, shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be

- deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

9. **THIS COURT ORDERS** that the Applicant, with the prior consent of the Monitor, shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to:

- (a) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property for any purpose pursuant to this Order;

- (b) permanently or temporarily cease, downsize or shut down any of the Applicant's business or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate; and
- (c) pursue all avenues of financing or refinancing, restructuring, selling, assigning or in any other manner disposing of and/or reorganizing the Applicant's Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material financing or refinancing, restructuring, sale, assignment, disposition or reorganization,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

10. **THIS COURT ORDERS** that, notwithstanding paragraph 9(c), the Applicant, with the prior consent of the Monitor and the DIP Lender, shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to sell or lease Units or any commercial space in the Project, as applicable, in the ordinary course without the need for prior approval of this Court.

**NO PROCEEDINGS AGAINST THE APPLICANT, GENERAL CONTRACTOR, THE MONITOR OR THE PROPERTY**

11. **THIS COURT ORDERS** that until and including October 25, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding, demand or enforcement process in any court or tribunal (each, a "**Proceeding**" and collectively, the "**Proceedings**") shall be commenced or continued against or in respect of the Applicant, Mizrahi Inc. (the "**General Contractor**") (other than the ongoing proceedings before Justice Osborne in Court File No. CV-23-00707839-00CL) or the Monitor, except with the written consent of the Applicant, the Monitor and the DIP Lender, or with leave of this Court, and any and all Proceedings currently under way against or in respect of such parties, or affecting the Applicant's Business or the Property, are hereby stayed and suspended pending further Order of this Court.

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

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant, the General Contractor or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant, the Monitor and the DIP Lender, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by the Applicant or General Contractor except with the written consent of the Applicant, the Monitor and the DIP Lender, or leave of this Court.

## **CONTINUATION OF SERVICES**

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant, General Contractor, or contractual, statutory or regulatory mandates for the supply of goods and/or services to the Applicant, the General Contractor or the Project, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll and benefit services, warranty services, subcontracts, trade suppliers, equipment vendors and rental companies, insurance, vehicle and transportation services, temporary labour and staffing services, freight services, equipment vendors and rental companies, utility, customs, clearing, warehouse and logistics services or other services to the Business, the Applicant, the General Contractor and/or the Project, are hereby restrained until

further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods, services, trademarks or other intellectual property as may be required by the Applicant, the General Contractor and/or the Project and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names and building and other permits, provided in each case that the normal prices or charges for all such goods or services or trademarks or other intellectual property received or used after the date of this Order are paid by the Applicant, the General Contractor and/or the Project in accordance with normal payment practices of the Applicant, the General Contractor and/or the Project or such other practices as may be agreed upon by the supplier or service provider and the Applicant and/or General Contractor, the Monitor and the DIP Lender, or as may be ordered by this Court.

15. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, no insurer providing insurance to the Debtor or its directors or officers shall terminate or fail to renew such insurance on the existing terms thereof provided that such insurer is paid any premiums, as would be paid in the normal course, in connection with the continuation or renewal of such insurance at current prices, subject to reasonable annual increases in the ordinary course with respect to such premiums.

#### **NON-DEROGATION OF RIGHTS**

16. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

17. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any



obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

## **APPOINTMENT OF MONITOR**

18. **THIS COURT ORDERS** that MNP is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

19. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) liaise with and assist the Applicant with respect to all matters relating to the Business, Property, the Project and related restructuring, and such other matters as may be relevant to the proceedings herein;
- (d) in the Monitor's discretion, receive and collect, on behalf of the Applicant, all monies and accounts now owed or hereafter owing to the Applicant and to exercise all remedies of the Applicant, on behalf of the Applicant and in consultation with the Applicant and with the consent of the DIP Lender, in collecting such monies, including without limitation, to enforce any security held by the Applicant;

- (e) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel at the times set out in the DIP Term Sheet, financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (f) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, at the times set out in the DIP Term Sheet, or as otherwise agreed to by the DIP Lender;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

20. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

21. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

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

22. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

23. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its respective employees and representatives acting in such capacities shall incur any liability or obligation as a result of the appointment of the Monitor or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

24. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and

counsel for the Applicant on a monthly basis, or pursuant to such other arrangements as may be agreed to between the Applicant and such parties.

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

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000.00, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, in connection with the Project and these proceedings, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 33 and 35 hereof.

#### **DIP FINANCING**

27. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from the DIP Lender in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that the indebtedness under such credit facility shall not exceed \$2,345,000.00 plus applicable interest, fees, expenses and costs (the total amount outstanding from time to time, the "**DIP Obligations**") unless permitted by further Order of this Court.

28. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the DIP Lender dated as of October 15, 2024 (the "**DIP Term Sheet**"), filed.

29. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents, including for greater certainty the DIP Term Sheet (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP Term Sheet and

the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

30. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 33 and 35 hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Term Sheet, Definitive Documents or the DIP Lender’s Charge, the DIP Lender, may cease making advances to the Applicant, and with leave of the Court sought on not less than three (3) business days’ notice to the Applicant and the Monitor, may exercise any and all of its others rights and remedies against the Applicant or the Property under or pursuant to the DIP Term Sheet, Definitive Documents and the DIP Lender’s Charge, including without limitation, to set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Term Sheet, the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

32. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or

any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the “BIA”), with respect to any advances made under the Definitive Documents.

### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

33. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender’s Charge (collectively, the “Charges”), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$100,000.00; and

Second – DIP Lender’s Charge (to the maximum amount of the DIP Obligations at the relevant time).

34. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

35. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “Encumbrances”) in favour of any Person; provided that the Charges shall rank behind Encumbrances in favour of any Persons that have not been served with notice of the application for this Order. The Applicant and the beneficiaries of the Charges shall be entitled to seek priority of the Charges ahead of such Encumbrances on a subsequent motion including, without limitation, on the Comeback Date (as defined below), on notice to those Persons likely to be affected thereby.

36. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

37. **THIS COURT ORDERS** that the Charges, the DIP Term Sheet, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing constating or governance documents, loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

38. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant’s interest in such real property leases.

## **SERVICE AND NOTICE**

39. **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish only once in the National Post a notice containing the information prescribed under the CCAA; and (ii) within five (5) days after the date of this Order: (A) make this Order publicly available in the manner prescribed under the CCAA; (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000; and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not be required to make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by this Court.

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

41. **THIS COURT ORDERS** that the Monitor shall maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor nor its counsel shall have any liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

42. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant, the Monitor, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any



notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service, distribution or notice by courier, personal delivery or facsimile or other electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. Any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of Subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

### **COMEBACK HEARING**

43. **THIS COURT ORDERS** that the comeback motion in this proceeding shall be heard on October 25, 2024 (the "**Comeback Date**").

### **FORBEARANCE AGREEMENT**

44. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered, *nunc pro tunc*, to enter into the Forbearance Agreement. Such Forbearance Agreement is hereby approved and the Applicant is authorized and directed to comply with all terms and conditions of the Forbearance Agreement.

### **GENERAL**

45. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than five (5) calendar days' notice to the Service List and any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 33 and 35 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

46. **THIS COURT ORDERS** that, notwithstanding paragraph 45 of this Order, each of the Applicant, the Monitor or the DIP Lender may from time to time apply to this Court to amend,

vary or supplement this Order or for advice and directions in the discharge of its powers and duties hereunder or in the interpretation of this Order.

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

48. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

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

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

51. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without the need for entry or filing.

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.

Court File No. BK24-00000230-0033

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
OTTAWA

**INITIAL ORDER**

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Lawyers for the Applicant,  
Mizrahi Development Group (1451 Wellington) Inc.  
and the General Contractor, Mizrahi Inc.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.

Court File No. BK24-0000230-0033

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
OTTAWA

**AFFIDAVIT OF SAM MIZRAHI**

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Lawyers for the Applicant,  
Mizrahi Development Group (1451 Wellington) Inc.  
and the General Contractor, Mizrahi Inc.

# TAB 3

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) TUESDAY, THE 15<sup>th</sup> DAY  
JUSTICE KERSHMAN ) OF OCTOBER, 2024

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.

Applicant

**INITIAL ORDER**

**THIS APPLICATION**, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day by judicial videoconference via Zoom at 161 Elgin Street, Ottawa, Ontario.

**ON READING** the affidavit of Sam Mizrahi sworn October 15, 2024 and the Exhibits thereto (the "**Mizrahi Affidavit**"), and the Pre-Filing Report of MNP Inc. ("**MNP**") as the proposed monitor, filed, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for the Applicant, counsel for MNP, counsel for TCC Mortgage Holdings Inc. (in such capacity, the "**DIP Lender**") and such other counsel present, and on reading the consent of MNP to act as the monitor (in such capacity, the "**Monitor**").

## **SERVICE AND DEFINITIONS**

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

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the Mizrahi Affidavit.

## **APPLICATION**

3. **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, licences, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Applicant, subject to the terms of the Definitive Documents (as hereinafter defined), shall continue to carry on business in a manner consistent with the preservation of its business (the “**Business**”) and Property. The Applicant, subject to the terms of the Definitive Documents, is authorized and empowered to continue to retain and employ the employees, independent contractors, sub-contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Applicant, with the prior consent of the Monitor and subject to the terms of the Definitive Documents, shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in

the ordinary course of business and consistent with existing compensation policies and arrangements;

- (b) amounts owing for goods and services actually supplied to the Applicant or the Project prior to the date of this Order, with the Monitor and DIP Lender considering, among other factors, whether: (i) the supplier or service provider is essential to the Project or the Business and ongoing operations of the Applicant and the payment is required to ensure ongoing supply, (ii) making such payment will preserve, protect or enhance the value of the Project, the Property or the Business, (iii) making such payment is required to address regulatory concerns, and (iv) the supplier or service provider is required to continue to provide goods or services to the Applicant after the date of this Order, including pursuant to the terms of this Order; and
- (c) the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant, with the prior consent of the Monitor and the DIP Lender, shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. **THIS COURT ORDERS** that the Applicant, subject to the terms of the Definitive Documents, shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be



deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

8. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## **RESTRUCTURING**

9. **THIS COURT ORDERS** that the Applicant, with the prior consent of the Monitor, shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to:

- (a) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property for any purpose pursuant to this Order;

- (b) permanently or temporarily cease, downsize or shut down any of the Applicant's business or operations, and to dispose of redundant or non-material assets not exceeding \$50,000 in any one transaction or \$250,000 in the aggregate; and
- (c) pursue all avenues of financing or refinancing, restructuring, selling, assigning or in any other manner disposing of and/or reorganizing the Applicant's Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material financing or refinancing, restructuring, sale, assignment, disposition or reorganization,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business.

10. **THIS COURT ORDERS** that, notwithstanding paragraph 9(c), the Applicant, with the prior consent of the Monitor and the DIP Lender, shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to sell or lease Units or any commercial space in the Project, as applicable, in the ordinary course without the need for prior approval of this Court.

**NO PROCEEDINGS AGAINST THE APPLICANT, GENERAL CONTRACTOR, THE MONITOR OR THE PROPERTY**

11. **THIS COURT ORDERS** that until and including October 25, 2024, or such later date as this Court may order (the "**Stay Period**"), no proceeding, demand or enforcement process in any court or tribunal (each, a "**Proceeding**" and collectively, the "**Proceedings**") shall be commenced or continued against or in respect of the Applicant, Mizrahi Inc. (the "**General Contractor**") (other than the ongoing proceedings before Justice Osborne in Court File No. CV-23-00707839-00CL) or the Monitor, except with the written consent of the Applicant, the Monitor and the DIP Lender, or with leave of this Court, and any and all Proceedings currently under way against or in respect of such parties, or affecting the Applicant's Business or the Property, are hereby stayed and suspended pending further Order of this Court.

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

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicant, the General Contractor or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant, the Monitor and the DIP Lender, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

13. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by the Applicant or General Contractor except with the written consent of the Applicant, the Monitor and the DIP Lender, or leave of this Court.

## **CONTINUATION OF SERVICES**

14. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant, General Contractor, or contractual, statutory or regulatory mandates for the supply of goods and/or services to the Applicant, the General Contractor or the Project, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll and benefit services, warranty services, subcontracts, trade suppliers, equipment vendors and rental companies, insurance, vehicle and transportation services, temporary labour and staffing services, freight services, equipment vendors and rental companies, utility, customs, clearing, warehouse and logistics services or other services to the Business, the Applicant, the General Contractor and/or the Project, are hereby restrained until

further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods, services, trademarks or other intellectual property as may be required by the Applicant, the General Contractor and/or the Project and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names and building and other permits, provided in each case that the normal prices or charges for all such goods or services or trademarks or other intellectual property received or used after the date of this Order are paid by the Applicant, the General Contractor and/or the Project in accordance with normal payment practices of the Applicant, the General Contractor and/or the Project or such other practices as may be agreed upon by the supplier or service provider and the Applicant and/or General Contractor, the Monitor and the DIP Lender, or as may be ordered by this Court.

15. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, no insurer providing insurance to the Debtor or its directors or officers shall terminate or fail to renew such insurance on the existing terms thereof provided that such insurer is paid any premiums, as would be paid in the normal course, in connection with the continuation or renewal of such insurance at current prices, subject to reasonable annual increases in the ordinary course with respect to such premiums.

#### **NON-DEROGATION OF RIGHTS**

16. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

#### **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

17. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any

obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.

## **APPOINTMENT OF MONITOR**

18. **THIS COURT ORDERS** that MNP is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

19. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) liaise with and assist the Applicant with respect to all matters relating to the Business, Property, the Project and related restructuring, and such other matters as may be relevant to the proceedings herein;
- (d) in the Monitor's discretion, receive and collect, on behalf of the Applicant, all monies and accounts now owed or hereafter owing to the Applicant and to exercise all remedies of the Applicant, on behalf of the Applicant and in consultation with the Applicant and with the consent of the DIP Lender, in collecting such monies, including without limitation, to enforce any security held by the Applicant;

- (e) assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel at the times set out in the DIP Agreement, financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (f) advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, at the times set out in the DIP Agreement, or as otherwise agreed to by the DIP Lender;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Applicant, to the extent that is necessary to adequately assess the Applicant's business and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

20. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

21. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release

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

22. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

23. **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its respective employees and representatives acting in such capacities shall incur any liability or obligation as a result of the appointment of the Monitor or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

24. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and

counsel for the Applicant on a monthly basis, or pursuant to such other arrangements as may be agreed to between the Applicant and such parties.

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

26. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$100,000.00, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, in connection with the Project and these proceedings, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 33 and 35 hereof.

## **DIP FINANCING**

27. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from the DIP Lender in order to finance the Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that the indebtedness under such credit facility shall not exceed \$2,345,000.00 plus applicable interest, fees, expenses and costs (the total amount outstanding from time to time, the "**DIP Obligations**") unless permitted by further Order of this Court.

28. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the term sheet between the Applicant and the DIP Lender dated as of October 15, 2024 (the "**DIP Agreement**"), filed.

29. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents, including for greater certainty the DIP Agreement (collectively, the "**Definitive Documents**"), as are contemplated by the DIP Agreement or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the DIP



Agreement and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

30. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the “**DIP Lender’s Charge**”) on the Property, which DIP Lender’s Charge shall not secure an obligation that exists before this Order is made. The DIP Lender’s Charge shall have the priority set out in paragraphs 33 and 35 hereof.

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

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Agreement, Definitive Documents or the DIP Lender’s Charge, the DIP Lender, may cease making advances to the Applicant, and with leave of the Court sought on not less than three (3) business days’ notice to the Applicant and the Monitor, may exercise any and all of its others rights and remedies against the Applicant or the Property under or pursuant to the DIP Agreement, Definitive Documents and the DIP Lender’s Charge, including without limitation, to set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the DIP Agreement, the Definitive Documents or the DIP Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.

32. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or

any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the “BIA”), with respect to any advances made under the Definitive Documents.

### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

33. **THIS COURT ORDERS** that the priorities of the Administration Charge and the DIP Lender’s Charge (collectively, the “Charges”), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$100,000.00; and

Second – DIP Lender’s Charge (to the maximum amount of the DIP Obligations at the relevant time).

34. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

35. **THIS COURT ORDERS** that the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “Encumbrances”) in favour of any Person; provided that the Charges shall rank behind Encumbrances in favour of any Persons that have not been served with notice of the application for this Order. The Applicant and the beneficiaries of the Charges shall be entitled to seek priority of the Charges ahead of such Encumbrances on a subsequent motion including, without limitation, on the Comeback Date (as defined below), on notice to those Persons likely to be affected thereby.

36. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the Charges, or further Order of this Court.

37. **THIS COURT ORDERS** that the Charges, the DIP Agreement, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing constating or governance documents, loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the DIP Agreement or the Definitive Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the DIP Agreement, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the DIP Agreement or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

38. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicant’s interest in such real property leases.

## SERVICE AND NOTICE

39. **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish only once in the National Post a notice containing the information prescribed under the CCAA; and (ii) within five (5) days after the date of this Order: (A) make this Order publicly available in the manner prescribed under the CCAA; (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than \$1,000; and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not be required to make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by this Court.

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

41. **THIS COURT ORDERS** that the Monitor shall maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor nor its counsel shall have any liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

42. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Applicant, the Monitor, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any

notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile or other electronic transmission to the Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service, distribution or notice by courier, personal delivery or facsimile or other electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. Any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of Subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

### **COMEBACK HEARING**

43. **THIS COURT ORDERS** that the comeback motion in this proceeding shall be heard on October 25, 2024 (the "**Comeback Date**").

### **FORBEARANCE AGREEMENT**

44. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered, *nunc pro tunc*, to enter into the Forbearance Agreement. Such Forbearance Agreement is hereby approved and the Applicant is authorized and directed to comply with all terms and conditions of the Forbearance Agreement.

### **GENERAL**

45. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than five (5) calendar days' notice to the Service List and any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 33 and 35 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

46. **THIS COURT ORDERS** that, notwithstanding paragraph 45 of this Order, each of the Applicant, the Monitor or the DIP Lender may from time to time apply to this Court to amend,

vary or supplement this Order or for advice and directions in the discharge of its powers and duties hereunder or in the interpretation of this Order.

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

48. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

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

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

51. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without the need for entry or filing.

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.

Court File No. BK24-00000230-0033

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
  
PROCEEDING COMMENCED AT  
OTTAWA

**INITIAL ORDER**

**COZEN O'CONNOR LLP**

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Lawyers for the Applicant,  
Mizrahi Development Group (1451 Wellington) Inc.  
and the General Contractor, Mizrahi Inc.

# TAB 4



**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**~~COMMERCIAL LIST~~**

THE HONOURABLE — ) ~~WEEKDAY~~ TUESDAY, THE #  
 )  
JUSTICE — KERSHMAN ) 15<sup>th</sup> DAY ~~OF MONTH, 20YR~~  
 )  
OF OCTOBER, 2024

IN THE MATTER OF THE *COMPANIES'* CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF ~~[APPLICANT'S NAME]~~ (the  
"Applicant" MIZRAHI DEVELOPMENT GROUP (1451  
WELLINGTON) INC.

Applicant

**INITIAL ORDER**

**THIS APPLICATION**, made by the Applicant, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day ~~at 330 University Avenue, Toronto~~ by judicial videoconference via Zoom at 161 Elgin Street, Ottawa, Ontario.

**ON READING** the affidavit of ~~[NAME]~~ Sam Mizrahi sworn ~~[DATE]~~ October 15, 2024 and the Exhibits thereto (the "Mizrahi Affidavit"), and the Pre-Filing Report of MNP Inc. ("MNP") as the proposed monitor, filed, and on being advised that the secured creditors who are likely to be affected by the charges created herein were given notice, and on hearing the submissions of counsel for ~~[NAMES], no one appearing for [NAME]~~ <sup>†</sup>~~although duly served as~~

<sup>†</sup>Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1), 11.3(1), 11.4(1), 11.51(1), 11.52(1), 32(1), 32(3), 33(2) and 36(2).

~~appears from the affidavit of service of [NAME] sworn [DATE]~~ the Applicant, counsel for MNP, counsel for TCC Mortgage Holdings Inc. (in such capacity, the “DIP Lender”) and such other counsel present, and on reading the consent of ~~[MONITOR’S NAME]~~ MNP to act as the monitor (in such capacity, the “Monitor;”).

## **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Application ~~and,~~ the Application Record and the Factum is hereby abridged and validated<sup>2</sup> so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that unless otherwise indicated or defined herein, capitalized terms have the meanings given to them in the Mizrahi Affidavit.

## **APPLICATION**

3. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that the Applicant is a company to which the CCAA applies.

## **~~PLAN OF ARRANGEMENT~~**

~~3. THIS COURT ORDERS that the Applicant shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").~~

## **POSSESSION OF PROPERTY AND OPERATIONS**

4. **THIS COURT ORDERS** that the Applicant shall remain in possession and control of its current and future assets, licences, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “Property”). Subject to further Order of this Court, the Applicant, subject to the terms of the Definitive Documents (as

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<sup>2</sup>~~If service is effected in a manner other than as authorized by the Ontario Rules of Civil Procedure, an order validating irregular service is required pursuant to Rule 16.08 of the Rules of Civil Procedure and may be granted in appropriate circumstances.~~

hereinafter defined), shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. The Applicant, subject to the terms of the Definitive Documents, is authorized and empowered to continue to retain and employ the employees, independent contractors, sub-contractors, advisors, consultants, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

~~5. [THIS COURT ORDERS that the Applicant shall be entitled to continue to utilize the central cash management system<sup>3</sup> currently in place as described in the Affidavit of [NAME] sworn [DATE] or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicant of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicant, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.]~~

5. ~~6.~~ **THIS COURT ORDERS** that the Applicant, with the prior consent of the Monitor and subject to the terms of the Definitive Documents, shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

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~~<sup>3</sup>This provision should only be utilized where necessary, in view of the fact that central cash management systems often operate in a manner that consolidates the cash of applicant companies. Specific attention should be paid to cross border and inter company transfers of cash.~~

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; ~~and~~
- (b) amounts owing for goods and services actually supplied to the Applicant or the Project prior to the date of this Order, with the Monitor and DIP Lender considering, among other factors, whether: (i) the supplier or service provider is essential to the Project or the Business and ongoing operations of the Applicant and the payment is required to ensure ongoing supply, (ii) making such payment will preserve, protect or enhance the value of the Project, the Property or the Business, (iii) making such payment is required to address regulatory concerns, and (iv) the supplier or service provider is required to continue to provide goods or services to the Applicant after the date of this Order, including pursuant to the terms of this Order; and
- (c) ~~(b)~~ the fees and disbursements of any Assistants retained or employed by the Applicant in respect of these proceedings, at their standard rates and charges.

6. ~~7.~~ **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicant, with the prior consent of the Monitor and the DIP Lender, shall be entitled but not required to pay all reasonable expenses incurred by the Applicant in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicant following the date of this Order.

7. ~~8.~~ **THIS COURT ORDERS** that the Applicant, subject to the terms of the Definitive Documents, shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) ~~Quebec Pension Plan,~~ ~~and (iv)~~ income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicant in connection with the sale of goods and services by the Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicant.

~~9. THIS COURT ORDERS that until a real property lease is disclaimed [or resiliated]<sup>4</sup> in accordance with the CCAA, the Applicant shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, twice monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On~~

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<sup>4</sup>The term "resiliate" should remain if there are leased premises in the Province of Quebec, but can otherwise be removed.

~~the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.~~

8. ~~10.~~ **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

9. ~~11.~~ **THIS COURT ORDERS** that the Applicant, with the prior consent of the Monitor, shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents ~~(as hereinafter defined)~~, have the right to:

- (a) execute, assign, issue and endorse documents of whatever nature in respect of any of the Property for any purpose pursuant to this Order;
- (b) ~~(a)~~ permanently or temporarily cease, downsize or shut down any of ~~its~~the Applicant's business or operations, ~~and~~ to dispose of redundant or non-material assets not exceeding \$•50,000 in any one transaction or \$•250,000 in the aggregate<sup>5</sup>; and  
~~(b) [terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate]; and~~
- (c) pursue all avenues of financing or refinancing of its, restructuring, selling, assigning or in any other manner disposing of and/or reorganizing the Applicant's Business or Property, in whole or part, subject to prior approval of this Court being obtained

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<sup>5</sup>~~Section 36 of the amended CCAA does not seem to contemplate a pre-approved power to sell (see subsection 36(3)) and moreover requires notice (subsection 36(2)) and evidence (subsection 36(7)) that may not have occurred or be available at the initial CCAA hearing.~~

before any material financing or refinancing, restructuring, sale, assignment, disposition or reorganization,

all of the foregoing to permit the Applicant to proceed with an orderly restructuring of the Business ~~(the "Restructuring")~~.

10. ~~12.~~ **THIS COURT ORDERS** that, notwithstanding paragraph 9(c), the Applicant ~~shall provide each of the relevant landlords with notice of the Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicant, or by further Order of this Court upon application by the Applicant on at least two (2) days notice to such landlord and any such secured creditors. If the Applicant disclaims [or resiliates] the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer [or resiliation] of the lease shall be without prejudice to the Applicant's claim to the fixtures in dispute,~~ with the prior consent of the Monitor and the DIP Lender, shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents, have the right to sell or lease Units or any commercial space in the Project, as applicable, in the ordinary course without the need for prior approval of this Court.

~~13. THIS COURT ORDERS that if a notice of disclaimer [or resiliation] is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer [or resiliation], the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicant and the Monitor 24 hours' prior-written notice, and (b) at the effective time of the disclaimer [or resiliation], the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicant in respect of such~~

~~lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.~~

## **NO PROCEEDINGS AGAINST THE APPLICANT, GENERAL CONTRACTOR, THE MONITOR OR THE PROPERTY**

11. ~~14.~~ **THIS COURT ORDERS** that until and including ~~[DATE — MAX. 30 DAYS]~~ October 25, 2024, or such later date as this Court may order (the “Stay Period”), no proceeding, demand or enforcement process in any court or tribunal (each, a “Proceeding” and collectively, the “Proceedings”) shall be commenced or continued against or in respect of the Applicant, Mizrahi Inc. (the “General Contractor”) (~~other than the ongoing proceedings before Justice Osborne in Court File No. CV-23-00707839-00CL~~) or the Monitor, ~~or affecting the Business or the Property~~, except with the written consent of the Applicant ~~and~~ the Monitor ~~and~~ the DIP Lender, or with leave of this Court, and any and all Proceedings currently under way against or in respect of ~~the Applicant~~ such parties, or affecting the Applicant’s Business or the Property, are hereby stayed and suspended pending further Order of this Court.

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

12. ~~15.~~ **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “Persons” and each being a “Person”) against or in respect of the Applicant, the General Contractor or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicant ~~and~~ the Monitor ~~and~~ the DIP Lender, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicant to carry on any business which the Applicant is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

## **NO INTERFERENCE WITH RIGHTS**

13. ~~16.~~ **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to



perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by the Applicant; or General Contractor except with the written consent of the Applicant ~~and~~, the Monitor and the DIP Lender, or leave of this Court.

## CONTINUATION OF SERVICES

14. ~~17.~~ **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicant ~~or~~, General Contractor, or contractual, statutory or regulatory mandates for the supply of goods and/or services to the Applicant, the General Contractor or the Project, including without limitation all trademark license and other intellectual property, computer software, communication and other data services, construction management services, project management services, permit and planning management services, accounting services, centralized banking services, payroll and benefit services, warranty services, subcontracts, trade suppliers, equipment vendors and rental companies, insurance, vehicle and transportation services, temporary labour and staffing services, freight services, equipment vendors and rental companies, utility, customs, clearing, warehouse and logistics services or other services to the Business ~~or~~, the Applicant, the General Contractor and/or the Project, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods ~~or~~, services, trademarks or other intellectual property as may be required by the Applicant, the General Contractor and/or the Project and that the Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names and building and other permits, provided in each case that the normal prices or charges for all such goods or services or trademarks or other intellectual property received or used after the date of this Order are paid by the Applicant, the General Contractor and/or the Project in accordance with normal payment practices of the Applicant, the General Contractor and/or the Project or such other practices as may be agreed upon by the supplier or service provider and ~~each of~~ the Applicant and or General Contractor, the Monitor and the DIP Lender, or as may be ordered by this Court.

15. **THIS COURT ORDERS** that, without limiting the generality of the foregoing, no insurer providing insurance to the Debtor or its directors or officers shall terminate or fail to renew such insurance on the existing terms thereof provided that such insurer is paid any premiums, as would be paid in the normal course, in connection with the continuation or renewal

of such insurance at current prices, subject to reasonable annual increases in the ordinary course with respect to such premiums.

## **NON-DEROGATION OF RIGHTS**

16. ~~18.~~ **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicant. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.<sup>6</sup>

## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

17. ~~19.~~ **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicant with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicant whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, ~~until a compromise or arrangement in respect of the Applicant, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicant or this Court.~~

## ~~**DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE**~~

~~20. THIS COURT ORDERS that the Applicant shall indemnify its directors and officers against obligations and liabilities that they may incur as directors or officers of the Applicant after the commencement of the within proceedings,<sup>7</sup> except to the extent that, with respect to any officer or~~

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<sup>6</sup>This non-derogation provision has acquired more significance due to the recent amendments to the CCAA, since a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, 11.1(2) and 11.5(1).

<sup>7</sup>The broad indemnity language from Section 11.51 of the CCAA has been imported into this paragraph. The granting of the indemnity (whether or not secured by a Directors' Charge), and the scope of the indemnity, are discretionary matters that should be addressed with the Court.

~~director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.~~

~~21. THIS COURT ORDERS that the directors and officers of the Applicant shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge")<sup>8</sup> on the Property, which charge shall not exceed an aggregate amount of \$●, as security for the indemnity provided in paragraph [20] of this Order. The Directors' Charge shall have the priority set out in paragraphs [38] and [40] herein.~~

~~22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Applicant's directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph [20] of this Order.~~

## **APPOINTMENT OF MONITOR**

18. ~~23.~~ **THIS COURT ORDERS** that ~~[MONITOR'S NAME]~~MNP is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicant with the powers and obligations set out in the CCAA or set forth herein and that the Applicant and its shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the ~~Monitor's~~Monitor's functions.

19. ~~24.~~ **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

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~~<sup>8</sup>Section 11.51(3) provides that the Court may not make this security/charging order if in the Court's opinion the Applicant could obtain adequate indemnification insurance for the director or officer at a reasonable cost.~~

- (a) monitor the ~~Applicant's~~Applicant's receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) liaise with and assist the Applicant with respect to all matters relating to the Business, Property, the Project and related restructuring, and such other matters as may be relevant to the proceedings herein;
- (d) in the Monitor's discretion, receive and collect, on behalf of the Applicant, all monies and accounts now owed or hereafter owing to the Applicant and to exercise all remedies of the Applicant, on behalf of the Applicant and in consultation with the Applicant and with the consent of the DIP Lender, in collecting such monies, including without limitation, to enforce any security held by the Applicant;
- (e) ~~(e)~~ assist the Applicant, to the extent required by the Applicant, in its dissemination, to the DIP Lender and its counsel ~~on a [TIME INTERVAL] basis of~~ at the times set out in the DIP Term Sheet, financial and other information as agreed to between the Applicant and the DIP Lender which may be used in these proceedings including reporting on a basis to be agreed with the DIP Lender;
- (f) ~~(d)~~ advise the Applicant in its preparation of the Applicant's cash flow statements and reporting required by the DIP Lender, which information shall be reviewed with the Monitor and delivered to the DIP Lender and its counsel on a periodic basis, ~~but not less than [TIME INTERVAL]~~ at the times set out in the DIP Term Sheet, or as otherwise agreed to by the DIP Lender;
- ~~(e) advise the Applicant in its development of the Plan and any amendments to the Plan;~~
- ~~(f) assist the Applicant, to the extent required by the Applicant, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;~~
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the

Applicant, to the extent that is necessary to adequately assess the ~~Applicant's~~Applicant's business and financial affairs or to perform its duties arising under this Order;

- (h) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; ~~and~~
- (i) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (j) ~~(i)~~ perform such other duties as are required by this Order or by this Court from time to time.

20. ~~25.~~ **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

21. ~~26.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the ~~Monitor's~~Monitor's duties and powers under this Order, be deemed to be in

Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

22. ~~27.~~ **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicant and the DIP Lender with information provided by the Applicant in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicant is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicant may agree.

23. ~~28.~~ **THIS COURT ORDERS** that, in addition to the rights and protections afforded to the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its respective employees and representatives acting in such capacities shall incur ~~no~~any liability or obligation as a result of ~~its~~the appointment of the Monitor or the carrying out by it of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded to the Monitor by the CCAA or any applicable legislation.

24. ~~29.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicant shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicant as part of the costs of these proceedings. The Applicant is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor and counsel for the Applicant on a ~~[TIME INTERVAL] basis and, in addition, the Applicant is hereby authorized to pay to the Monitor, counsel to the Monitor, and counsel to the Applicant, retainers in the amount[s] of \$●[, respectively,] to be held by them as security for payment of their respective fees and disbursements outstanding from time to time~~monthly basis, or pursuant to such other arrangements as may be agreed to between the Applicant and such parties.

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

26. ~~31.~~ **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, ~~if any,~~ and the Applicant's counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$~~100,000.00~~, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, in connection with the Project and these proceedings, both before and after the making of this Order in respect of these proceedings.- The Administration Charge shall have the priority set out in paragraphs ~~38~~33 and ~~40~~35 hereof.

## **DIP FINANCING**

27. ~~32.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to obtain and borrow under a credit facility from ~~[DIP LENDER'S NAME]~~ (the "DIP Lender")- in order to finance the ~~Applicant's~~Applicant's working capital requirements and other general corporate purposes and capital expenditures, provided that ~~borrowings~~the indebtedness under such credit facility shall not exceed \$~~2,345,000.00~~ plus applicable interest, fees, expenses and costs (the total amount outstanding from time to time, the "DIP Obligations") unless permitted by further Order of this Court.

28. ~~33.~~ **THIS COURT ORDERS** ~~THAT~~that such credit facility shall be on the terms and subject to the conditions set forth in the ~~commitment letter~~term sheet between the Applicant and the DIP Lender dated as of ~~[DATE]~~October 15, 2024 (the ~~"Commitment Letter"~~"DIP Term Sheet"), filed.

29. ~~34.~~ **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents, including for greater certainty the DIP Term Sheet (collectively, the "Definitive Documents"), as are contemplated by the ~~Commitment Letter~~DIP Term Sheet or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Applicant is hereby authorized and directed to pay and perform all of its indebtedness, interest, fees, liabilities and obligations to the DIP Lender under and pursuant to the ~~Commitment Letter~~DIP Term Sheet and the Definitive Documents as and

when the same become due and are to be performed, notwithstanding any other provision of this Order.

30. ~~35.~~ **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property, which ~~DIP Lender's~~ Lender's Charge shall not secure an obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs ~~38~~ 33 and ~~40~~ 35 hereof.

31. ~~36.~~ **THIS COURT ORDERS** that, notwithstanding any other provision of this Order:

- (a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the DIP Term Sheet, Definitive Documents or the DIP Lender's Charge, the DIP Lender, ~~upon~~ may cease making advances to the Applicant, and with leave of the Court sought on not less than three (3) business days' notice to the Applicant and the Monitor, may exercise any and all of its others rights and remedies against the Applicant or the Property under or pursuant to the ~~Commitment Letter~~ DIP Term Sheet, Definitive Documents and the DIP Lender's Charge, including without limitation, to ~~cease making advances to the Applicant and~~ set off and/or consolidate any amounts owing by the DIP Lender to the Applicant against the obligations of the Applicant to the DIP Lender under the ~~Commitment Letter~~ DIP Term Sheet, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Applicant and for the appointment of a trustee in bankruptcy of the Applicant; and
- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Applicant or the Property.



32. ~~37.~~ **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicant under the CCAA, or any proposal filed by the Applicant under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

#### **VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER**

33. ~~38.~~ **THIS COURT ORDERS** that the priorities of the ~~Directors' Charge, the~~ Administration Charge and the DIP Lender's Charge (collectively, the "Charges"), as among them, shall be as follows<sup>9</sup>:

First – Administration Charge (to the maximum amount of \$~~●~~100,000.00; and

Second – DIP Lender's Charge;~~and~~

~~Third – Directors' Charge~~ (to the maximum amount of \$~~●~~the DIP Obligations at the relevant time).

34. ~~39.~~ **THIS COURT ORDERS** that the filing, registration or perfection of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge (collectively, the "Charges")~~ shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

35. ~~40.~~ **THIS COURT ORDERS** that ~~each of the Directors' Charge, the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein)~~ shall the Charges shall constitute a charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory

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<sup>9</sup>~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

or otherwise (collectively, "Encumbrances") in favour of any Person; provided that the Charges shall rank behind Encumbrances in favour of any Persons that have not been served with notice of the application for this Order. The Applicant and the beneficiaries of the Charges shall be entitled to seek priority of the Charges ahead of such Encumbrances on a subsequent motion including, without limitation, on the Comeback Date (as defined below), on notice to those Persons likely to be affected thereby.

36. ~~41.~~ **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicant shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the ~~Directors' Charge, the Administration Charge or the DIP Lender's Charge~~ Charges, unless the Applicant also obtains the prior written consent of the Monitor, the DIP Lender and the beneficiaries of the ~~Directors' Charge and the Administration Charge~~ Charges, or further Order of this Court.

37. ~~42.~~ **THIS COURT ORDERS** that the ~~Directors' Charge, the Administration Charge, the Commitment Letter, Charges, the DIP Term Sheet, and~~ the Definitive Documents ~~and the DIP Lender's Charge~~ shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the DIP Lender thereunder shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy or receivership order(s) issued pursuant to the BIA or otherwise, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing constating or governance documents, loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicant, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the ~~Commitment Letter~~ DIP Term Sheet or the Definitive

Documents shall create or be deemed to constitute a breach by the Applicant of any Agreement to which it is a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Applicant entering into the ~~Commitment Letter~~DIP Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Applicant pursuant to this Order, the ~~Commitment Letter~~DIP Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

38. ~~43.~~ **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the ~~Applicant's~~Applicant's interest in such real property leases.

## SERVICE AND NOTICE

39. ~~44.~~ **THIS COURT ORDERS** that the Monitor shall: (i) without delay, publish ~~in~~only once in the National Post a notice containing the information prescribed under the CCAA; and (ii) within five (5) days after the date of this Order; (A) make this Order publicly available in the manner prescribed under the CCAA; (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicant of more than ~~\$1000,~~1,000; and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not be required to make the claims, names and addresses of individuals who are creditors publicly available, unless otherwise ordered by this Court.

40. ~~45.~~ **THIS COURT ORDERS** that the E-Service ~~Protocol~~Guide of the Commercial List (the "~~Protocol~~Guide") is approved and adopted by reference herein and, in this proceeding, the

service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/ shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph ~~21~~13 of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission.- This Court further orders that a Case Website shall be established in accordance with the ~~Protocol~~Guide with the following URL ~~<@>~~: www.mnpdebt.ca/mizrahiottawa.

41. THIS COURT ORDERS that the Monitor shall maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “Service List”). The Monitor shall post the Service List, as may be updated from time to time, on the case website as part of the public materials in relation to this proceeding. Notwithstanding the foregoing, the Monitor nor its counsel shall have any liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

42. ~~46.~~THIS COURT ORDERS that if the service or distribution of documents in accordance with the ~~Protocol~~Guide is not practicable, the Applicant ~~and~~, the Monitor, and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile or other electronic transmission to the ~~Applicant's~~Applicant's creditors or other interested parties at their respective addresses as last shown on the records of the Applicant and that any such service ~~or~~, distribution or notice by courier, personal delivery or facsimile or other electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing. Any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of Subsection 3(c) of the Electronic Commerce Protection Regulations (SOR/2013-221).

COMEBACK HEARING

43. **THIS COURT ORDERS** that the comeback motion in this proceeding shall be heard on October 25, 2024 (the “Comeback Date”).

#### FORBEARANCE AGREEMENT

44. **THIS COURT ORDERS** that the Applicant is hereby authorized and empowered, *nunc pro tunc*, to enter into the Forbearance Agreement. Such Forbearance Agreement is hereby approved and the Applicant is authorized and directed to comply with all terms and conditions of the Forbearance Agreement.

#### GENERAL

45. **THIS COURT ORDERS** that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than five (5) calendar days’ notice to the Service List and any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 33 and 35 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

46. **THIS COURT ORDERS** that, notwithstanding paragraph 45 of this Order, each of the Applicant, the Monitor or the DIP Lender may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of its powers and duties hereunder or in the interpretation of this Order.

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

48. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicant, the Business or the Property.

49. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in

carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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

~~51. THIS COURT ORDERS that any interested party (including the Applicant and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.~~

51. ~~52.~~ **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order without the need for entry or filing.

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*[Different first page link-to-previous setting changed from off in original to on in modified.]*

Revised: January 21, 2014

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

Court File No. BK24-0000230-0033

ONTARIO  
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT  
OTTAWA

INITIAL ORDER

*[Different first page link-to-previous setting changed from off in original to on in modified.]*

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<b>Summary report:</b>	
<b>Litera Compare for Word 11.6.0.100 Document comparison done on 10/15/2024 8:45:47 AM</b>	
<b>Style name:</b> CozenDefault	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> Model Order.doc	
<b>Modified DMS:</b> iw://work.cozen.com/LEGAL/72162636/6	
<b>Changes:</b>	
<u>Add</u>	326
<del>Delete</del>	306
<del>Move From</del>	60
<u>Move To</u>	60
<u>Table Insert</u>	1
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>753</b>

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. C-36, AS AMENDED AND IN THE MATTER OF A PLAN OF  
COMPROMISE OR ARRANGEMENT OF MIZRAHI DEVELOPMENT GROUP  
(1451 WELLINGTON) INC.

Court File No. BK24-00000230-0033

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
OTTAWA

**APPLICATION RECORD**

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