Court File No.: CV-24-00715321-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

Applicant

- and –

MIZRAHI (128 HAZELTON) INC. AND
MIZRAHI 128 HAZELTON RETAIL INC.

Respondents

AIDE MEMOIRE OF SAM MIZRAHI

1. Mr. Sam Mizrahi takes no position on the Receiver's motion to disclaim the Agreement of Purchase of Sale for Unit 901.
2. Mr. Mizrahi disagrees with Mr. Berry's argument in paragraph 25 of his factum that the loans advanced by Mr. Berry for an unrelated development project at 1451 Wellington in Ottawa (the "Ottawa Project") are outstanding. On the contrary, as Mr. Berry knows, these loans have been repaid.
3. The dispute as to whether or not Loan Facility #1 and Loan Facility #2 have been repaid will be addressed in the *CCAA* application for the Ottawa Project. Attached as Tab 1 is an affidavit of Mr. Mizrahi, sworn October 22, 2024, which sets out the repayment of the loans in paragraphs 17 and 18. This affidavit was served on Mr. Berry as part of a motion in the Ottawa *CCAA* proceeding. Mr. Berry has a charge on the Ottawa Project for Loan Facility #1, without prejudice to Mr. Mizrahi's position and the position of the Ottawa Project that both loans have been repaid.

4. This court should not determine whether Loan Facility #1 and Loan Facility #2 is outstanding on the Receiver's motion to disclaim the Agreement of Purchase and Sale for Unit #901. This determination should be made in the *CCAA* proceeding for the Ottawa Project, with the involvement of the monitor and upon hearing submissions of all interested parties in the Ottawa Project including the DIP Lender and other creditors.

February 20, 2025

Court File No. BK24-00000230-0033

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 22, 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 the 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. I swear this Affidavit in support of WellingtonCo's motion for an Amended and Restated Initial Order (the "**Amended and Restated Initial Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c C-36, as amended (the "**CCAA**"), among other things:

(a) extending the Initial Stay Period (as defined below) to and including January 10, 2025;

(b) increasing the maximum principal amount that the Applicant can borrow under the DIP Facility (as defined below) to $25,000,000; and

(c) increasing the quantum of:

(i) the Administration Charge to a maximum amount of $300,000; and

(ii) the DIP Lender's Charge to a maximum principal amount of $25,000,000 plus accrued and unpaid interest, fees and expenses.

3. All capitalized terms not otherwise defined herein have the meaning ascribed to them in the affidavit that I swore on October 15, 2024 in support of the Applicant's initial application for the Initial Order (as defined below) (the "**First Mizrahi Affidavit**"). A copy of the First Mizrahi Affidavit (without exhibits) is attached hereto as **Exhibit "A".**

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

I. BACKGROUND AND STATUS OF THE CCAA PROCEEDINGS

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 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 with the interior finishings on the lower floors in an advanced stage. Pre-sales launched in or about 2017. Approximately seventy-two (72) of the ninety-three (93) units[1] (each a "**Unit**" and collectively, the "**Units**") have been sold.

[1] A number of the units have been consolidated into single suites. As a result, the total number of suites sold in the total Project will be less than 93.

8. 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, material and fuel costs).

9. WellingtonCo's filing for CCAA protection was necessary given its dire liquidity crisis. The Applicant sought 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.

10. On October 15, 2024, the Honourable Justice Kershman of the Ontario Superior Court of Justice (the "**Court**") granted an initial order (the "**Initial Order**") which, among other things:

(a) appointed MNP Ltd. ("**MNP**") as the monitor of the Applicant in these CCAA proceedings (in such capacity, the "**Monitor**");

(b) stayed, until October 25, 2024 (the "**Initial Stay Period**"), all proceedings and remedies taken or that might be taken in respect of the Applicant, Mizrahi Inc. (the "**General Contractor**"), the Monitor, and their respective subsidiaries, affiliates, directors, officers, employees, or representatives, or affecting the Business or Property (each as defined in the Initial Order), except as otherwise set forth in the Initial Order (the "**Stay of Proceedings**");

(c) granted the following priority charges (collectively as the "**Charges**") over the Property in the following priorities:

(i) First - an administration charge in favour of the Monitor, its counsel and counsel to the Applicant for services rendered in respect of the Applicant in connection with the Project and these CCAA proceedings, to the maximum amount of $100,000.00 (the "**Administration Charge**"); and

(ii) Second - a charge in favour of TCC Mortgage Holdings Inc. ("**TCC**" or the "**DIP Lender**") securing all funds advanced under the DIP Facility (the "**DIP Lender's Charge**");

(d) authorized and empowered 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 dated October 15, 2024 (the "**DIP Agreement**") to finance the Applicant's working capital requirements and other general corporate purposes, post-filing expenses and costs during the Initial Stay Period; and

(e) granted 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 supplied 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.

11. A true copy of the Initial Order is attached hereto as **Exhibit "B"**.

12. A true copy of the Endorsement of the Honourable Justice Kershman, granting the Initial Order, is attached hereto as **Exhibit "C"**.

13. Details regarding the Applicant's financial circumstances, liquidity crisis and need for relief under the CCAA are set out in the First Mizrahi Affidavit. Such details are not repeated herein. Additional materials filed in these CCAA proceedings are available on the Monitor's website at www.mnpdebt.ca/mizrahiottawa.

14. Since the granting of the Initial Order, the Applicant has, with the assistance and oversight of the Monitor, acted in good faith and with due diligence to, among other things:

(a) stabilize and continue operations in the ordinary course;

(b) begin its restructuring initiatives, which, among other things, includes:

(i) continuing construction under the oversight of the Monitor and the DIP Lender's Cost Consultant; (as defined in the DIP Agreement); and

(ii) securing interim financing through the DIP Facility;

(c) prepare and implement a communication plan to advise stakeholders of these CCAA proceedings and the granting of the Initial Order;

(d) provide a Notice to Creditors with respect to the Initial Order and these CCAA proceedings;

(e) engage with, provide information to, and answer questions of various stakeholders including, among others, purchasers who have already entered into Pre-Sale Agreements for a Unit (the "**Purchasers**"), suppliers, trades and subtrades;

(f) pay trades, subtrades and suppliers in accordance with the DIP Term Sheet in furtherance of completion of the Project;

(g) assist the Monitor in preparing notices to creditors and other stakeholders as required under the Initial Order;

(h) engage in discussions, which remain ongoing, with certain stakeholders, including V2I and David Berry; and

(i) obtain an initial advance from the DIP Lender in accordance with the DIP Agreement.

15. As counsel advised the Court on the return of the Applicant's initial application, the cross-examination of a representative of V2I in connection with V2I's application bearing Court File No. CV-24-00095643-0000 proceeded on October 17, 2024.

16. The Applicant continues to work with the Monitor in good faith to respond to creditor and stakeholder inquiries on a regular and timely basis.

17. Paragraph 55 of my affidavit sworn on October 15, 2024 (the "**First Affidavit**") requires correction. In the First Affidavit, I stated that the Mizrahi Bridge Payment was made to Mizrahi Hazelton. This statement was made in error as this payment was not made. The Berry APS for the Berry Unit has not closed. I understand that the Receiver appointed for the Hazelton Project intends to seek to disclaim the Berry APS. The Supplementary Agreement only provided that the Mizrahi

Bridge Payment would be made if, at the time of the closing of the Berry Unit, amounts were owing under the Berry Loan. However, as previously advised, the Berry Loan was repaid in full.

18. For greater clarity, my position with respect to the Berry Loan, correctly summarized, is that Berry Loan #1 was paid in full on account of a wire payment to Berry in the amount of $4,000,000.00 in November 2019 and the assignment of corporate shares in 2659100 Ontario Inc. ("**265 Ontario**"), valued at $7,257,575.87 (approximately $2.8 Million of which paid the remaining balance of Berry Loan #1), to Berry. Berry Loan #2 was paid in full on account of the to Berry. Berry Loan #2 was paid in full on account of the transfer to Berry of the remaining shares in 265 Ontario not attributed to Berry Loan #1, a purchase price reduction by way of an offset of outstanding interest accrued for two (2) Units in the Project, and a credit in the amount of $2,566,200.00 applied to Berry's acquisition of at least two (2) units in a separate project located in Toronto, Ontario.

19. The Applicant now seeks additional relief intended to advance the purposes of these CCAA proceedings and facilitate the Applicant's restructuring efforts.

II. THE AMENDED AND RESTATED INITIAL ORDER

20. As described in the First Mizrahi Affidavit, the relief sought under the Initial Order was limited to only what was absolutely necessary to provide the breathing room and urgently needed liquidity to overcome the financial difficulties the Applicant has encountered and to ensure the Project's completion occurs in a supervised, organized and stable environment.

21. The Applicant, as was previewed in the First Mizrahi Affidavit, now seeks to extend and expand certain of the limited relief granted under the Initial Order pursuant to the proposed Amended and Restated Initial Order. Such further relief is in the best interests of the Applicant, the General Contractor and its stakeholders, including Purchasers, trades, subtrades and suppliers for the Project.

22. The material relief sought under the proposed Amended and Restated Initial Order is discussed below.

Extending the Stay of Proceedings

23. The Stay of Proceedings under the Initial Order will expire at the end of the Initial Stay Period, being October 25, 2024. Pursuant to the proposed Amended and Restated Initial Order, the Applicant is seeking to extend the Stay of Proceedings to and including January 10, 2025 (the "**Stay Period**").

24. As described in the First Mizrahi Affidavit, the Applicant requires the Stay of Proceedings to prevent further enforcement action by certain contractual counterparties and to provide the Applicant with the necessary breathing space while it attempts to effect a restructuring, all while permitting the Project to progress towards completion.

25. The Stay of Proceedings has, and if extended, will continue to preserve the *status quo* and afford the Applicant the breathing space and stability necessary to advance its restructuring efforts and continue its ordinary course operations. Specifically, the proposed extension of the Stay of Proceedings will, among other things:

(a) enable the Applicant to continue construction under the monitoring of the Monitor, the Project Monitor (as defined in the DIP Agreement) and the DIP Lender's Cost Consultant, who will collectively ensure proper oversight during the Applicant's restructuring; and

(b) ensure continued access to the urgently required interim financing through the DIP Facility, which will allow the Applicant to resume construction and complete the Project.

26. I understand that in connection with its application for the Initial Order, the Applicant, with the assistance of the Monitor, conducted a cash flow analysis to determine the amount of funding required to finance its ordinary course business operations, assuming the Initial Order was granted, over the 13-week period through to the week of January 12, 2025 (the "**Cash Flow Forecast**"). A copy of the Cash Flow Forecast was attached as Exhibit "A" to the Pre-Filing Report of MNP dated October 15, 2024. The Cash Flow Forecast demonstrates that the Applicant, subject to the Court granting the Amended and Restated Initial Order, will have sufficient liquidity during the Stay Period to support its ordinary business operations, continue construction of the Project and fund the costs of these CCAA proceedings.

27. In light of the foregoing, I believe that the proposed extension of the Stay of Proceedings is in the best interests of the Applicant, the General Contractor, the Purchasers, trades and Applicant's other stakeholders. I understand that the Monitor supports an extension of the Stay of Proceedings and believes such an extension is reasonable and appropriate in the circumstances.

Increase to the DIP Facility and the DIP Lender's Charge

28. In connection with the commencement of these CCAA proceedings, the Applicant entered into the DIP Agreement with TCC in its capacity as the DIP Lender to finance the Applicant's critically required working capital requirements, other general corporate purposes, post-filing expenses and costs to be incurred over the course of these CCAA proceedings. As referenced above, the Initial Order:

(a) authorized and empowered the Applicant to obtain and borrow up to a maximum amount of $2,345,000 plus applicable interest, fees, expenses and costs; and

(b) granted the DIP Lender's Charge to the maximum amount of the DIP Obligations at the relevant time.

29. The amount of indebtedness incurred under the DIP Facility during the Initial Stay Period was limited to the amount necessary to ensure the continued operations of the Applicant's business and progression of the Project during the Initial Stay Period. The quantum of the DIP Lender's Charge sought pursuant to the Initial Order was correspondingly limited to such amount during the Initial Stay Period.

30. Pursuant to the DIP Agreement, all advances under the DIP Facility are to be secured by the DIP Lender's Charge. Having regard to the Cash Flow Forecast and the Applicant's funding requirements during the Stay Period, the Applicant now seeks to increase the maximum borrowings available under the DIP Facility from $2,345,000 to $25,000,000. Pursuant to the Initial Order and the proposed Amended and Restated Initial Order, the DIP Lender's Charge will only secure the funds advanced under the DIP Facility and will not secure obligations incurred prior to these CCAA proceedings.

31. If the Applicant is not permitted to incur increased indebtedness under the DIP Facility or such increased indebtedness is not secured by the DIP Lender's Charge, the Applicant will not be able to obtain the additional advances under the DIP Facility required to ensure the continued operations of the Applicant's business and the progression of the Project during the Stay Period. Without approval of such relief, the Applicant would be forced to cease all construction and the Project would risk falling subject to enforcement proceedings.

32. I understand that the Monitor is supportive of the proposed increase to the Applicant's permitted borrowings under the DIP Facility and the corresponding increase to the DIP Lender's Charge, and that such increase is in the best interests of the Applicant and its stakeholders in the circumstances.

Increase to the Administration Charge

33. Pursuant to the Initial Order, the Administration Charge was granted in favour of the Monitor as well as counsel to the Monitor and the Applicant to secure payment of their respective fees and disbursements incurred in connection with the services rendered in respect of these CCAA proceedings and the Project up to a maximum amount of $100,000.

34. The Applicant requires the expertise, knowledge and continued participation of the beneficiaries of the Administration Charge in order to ensure a successful restructuring during these CCAA proceedings.

35. The quantum of the Administration Charge under the Initial Order was limited to the fee exposure of the applicable professionals during the initial 10-day stay period. Pursuant to the Amended and Restated Initial Order, the Applicant is seeking to increase the quantum of the Administration Charge up to a maximum of $300,000.

36. I understand that the Monitor is of the view that the proposed increase to the Administration Charge is fair and reasonable in the circumstances, and that the DIP Lender supports the proposed increase to the Administration Charge.

Priority of Charges

37. Pursuant to the Initial Order, the Charges rank in priority to all Encumbrances (as defined in the Initial Order), save for Encumbrances in favour of any persons that were not served with the Applicants' notice of application for the Initial Order. The Initial Order preserved the entitlement of the Applicant and the beneficiaries of the Charges to seek priority of the Charges ahead of such Encumbrances on a subsequent motion, including the within motion. Under the proposed Amended and Restated Initial Order, the Applicant seeks to have the Charges rank in priority to all Encumbrances.

38. I am advised by Steve Weisz of Cozen O'Connor LLP, counsel to the Applicant, and believe that, the persons benefiting from the Encumbrances will be given notice of the within motion and the proposed form of Amended and Restated Initial Order. Further, I am advised by Mr. Weisz that such persons were on the service list at the time the Applicants' application materials were served in support of the Initial Order.

III. CONCLUSION

39. Since the granting of the Initial Order, the Applicant has acted in good faith and with due diligence to, among other things, stabilize and continue operations in the ordinary course, work towards completion of the Project, apprise its stakeholders of these CCAA proceedings and advance its restructuring efforts. In that time, the Applicant has maintained its ordinary course operations. With the benefit of the relief proposed under the Amended and Restated Initial Order and with the assistance of the Monitor, I believe the Applicant will be able to continue to its ordinary course operations, complete the Project and pursue its restructuring objectives for the benefit of its stakeholders.

40. In consultation with the Applicant's professional advisors, I believe that the relief sought on the within motion and described above is in the best interests of the Applicant and its stakeholders. Such relief will advance the purposes of these CCAA proceedings and is supported, in each case, by the Monitor and the DIP Lender. I swear this affidavit in support of the Applicant's motion for the Amended and restated Initial Order, 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 22 day of October, 2024, in accordance with O. Reg. 431.20, Administering Oath or Declaration Remotely.

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SAM MIZRAHI

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

This is Exhibit A to the Affidavit of Sam Mizrahi, sworn on October 22, 2024 
A Commissioner for taking affidavits

Court File No. BK24-00000230-0033

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[1] (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.

[1] 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 lessor 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. [2] ("**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 [3], 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.

[2] MDI is an affiliate of the Applicant and the General Contractor.
[3] 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.

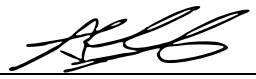
CONCLUSION

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 15th day of October, 2023, in accordance with O. Reg. 431.20, Administering Oath or Declaration Remotely.



SAM MIZRAHI

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

This is Exhibit B to the Affidavit of Sam Mizrahi, sworn on October 22, 2024 
A Commissioner for taking affidavits

Court File No. BK24-00000230-0033

ONTARIO

SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	TUESDAY, THE 15th 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 unsold 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.

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 at 2:00 PM EST (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) business 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.

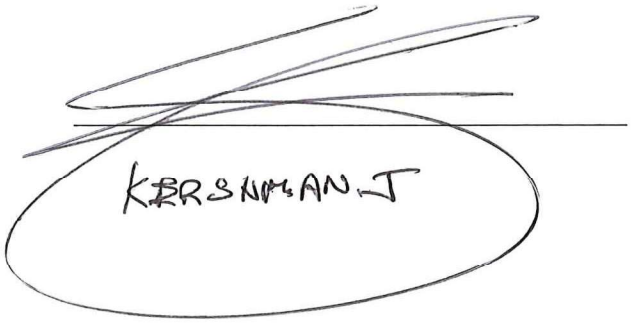
47. **THIS COURT ORDERS** that the Applicant or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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.



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.

This is Exhibit C to the Affidavit of Sam Mizrahi, sworn on October 22, 2024 
A Commissioner for taking affidavits

Court File No. BK24-00000230-0033

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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Lawyers for the Applicant

Oct 15/24

Endorsement

Order to go under CCAA as requested

KERSHMAN J

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.

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PROCEEDING COMMENCED AT
OTTAWA

AFFIDAVIT OF SAM MIZRAHI
(Sworn October 22, 2024)

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and the General Contractor, Mizrahi Inc.