

**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

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF *THE COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED**

**MOTION RECORD
(Retail APS Sale Process)
returnable June 21, 2024**

June 14, 2024

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TABLE OF CONTENTS

Tab No.	Document	Page No.
1.	Notice of Motion returnable June 21, 2024	001
2.	First Report of the Receiver dated June 13, 2024	009
	Appendix A – List of PIN numbers	025
	Appendix B – Receivership Order dated June 4, 2024	030
	Appendix C – Corporate Profile Report of Mizrahi 128 Hazelton Retail Inc. (Retail)	056
	Appendix D – Amended Retail APS dated June 14, 2024	064
	Appendix E –Stalking Horse Agreement of Purchase and Sale dated June 14, 2024	080
3.	Draft Retail APS Sale Process Approval Order	097

TAB 1

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

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

B E T W E E N:

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

**NOTICE OF MOTION
(Retail APS Sale Process)**

KSV Restructuring Inc. ("**KSV**"), in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") of: (a) certain condominium units located at 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario (as legally described in the Receivership Order, defined below); and (b) all of the assets, undertakings and properties of Mizrahi (128 Hazelton) Inc. ("**Hazelton**") and Mizrahi 128 Hazelton Retail Inc. ("**Retail**", together with Hazelton, the "**Debtors**"), or either of them, acquired for, or used in relation to a business carried on by the Debtors, or either of them, including all proceeds thereof (the "**Property**"), will make a motion to a Judge of the Superior Court of Justice (Commercial List) on **Friday, June 21, 2024 at 11:00 a.m.**, by judicial videoconference via Zoom at Toronto, Ontario. Please advise if you intend to join the motion by emailing Katie Parent at katie.parent@nortonrosefulbright.com.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR AN ORDER, among other things:

- 1 If necessary, abridging the time for service and filing of this notice of motion and motion record;
- 2 Approving a sale process (the “**Retail APS Sale Process**”) for the sale of the Retail APS (as defined below);
- 3 Approving a proposed stalking horse agreement of purchase and sale dated June 14, 2024 (the “**Stalking Horse APA**”) between the Receiver and Constantine Enterprises Inc. (“**CEI**”), solely for the purpose of constituting the “stalking horse bid” in the Retail APS Sale Process; and
- 4 Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Background

- 1 Capitalized terms used herein and not otherwise defined have the meaning given to them in the first report of the Monitor dated June 14, 2024 (the “**First Report**”);
- 2 Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on June 4, 2024 (the “**Receivership Order**”) KSV was appointed as receiver and manager of the Property;

3 Hazelton is the registered owner of the Real Property, a nearly complete nine-storey, 20-unit luxury condominium development project located in Toronto's Yorkville (the "**Hazelton Project**");

4 Hazelton is responsible for development and construction and is currently the registered owner of 7 condominium units, and one ground floor commercial retail space, and the parking spaces allocated to the units and the retail space;

5 A primary purpose of the receivership proceedings is for the Receiver to realize on the Property in an efficient and orderly manner which includes, among other things, conducting a sale process for an amended and restated agreement of purchase and sale dated as of June 14, 2024 (the "**Retail APS**"), pursuant to which Retail has a right to purchase a commercial retail/office unit on level 1 of the Hazelton Project together with four parking spaces and one locker, on the terms and conditions set out therein (the "**Level 1 Unit**");

Retail APS Sale Process

6 The Retail APS was originally entered into between Mizrahi Inc. and Hazelton, however, pursuant to an assignment agreement dated November 10, 2020, Mizrahi Inc. assigned its interest in the Retail APS to Retail;

7 The Retail APS was amended and restated by the Receiver to facilitate the sale of the Retail APS to, among other things, allow for the unit to be sold in its current state and on an "as is, where is basis", however, the purchase price is unchanged;

8 With the consent of CEI, the primary economic stakeholder, the Receiver has engaged CBRE Limited ("**CBRE**"), a leading international real estate brokerage, to market the Retail APS and the Level 1 Unit for sale;

9 If approved, CBRE will work with the Receiver to prepare market the Retail APS and the Level 1 Unit using traditional methods of sale for this type of real property;

10 Bidders will be given an opportunity to conduct diligence and submit bids on or before the date that is 30 days after the Retail APS Sale Process is approved by the Court (the “**Bid Deadline**”);

11 Any bids must adhere to the criteria set out in the Sale Process including, without, limitation, a purchase price of at least \$350,000 (including an overbid amount of \$50,000) and be accompanied by a deposit of the aggregate amounts of (i) 10% of the purchase price for the Retail APS and (ii) \$239,000 being 10% of the Level 1 Unit sale price under the Retail APS;

12 Upon receipt of offers, CBRE and the Receiver may declare the successful bid, and/or back up bid, or seek further amendments or clarifications to any bids including the Stalking Horse APA or establish further procedures for determining a successful bid, and/or back up bid, including as many rounds of bidding as determined necessary in the discretion of the Receiver;

The Stalking Horse APA

13 The key terms and conditions of the Stalking Horse APS are provided below:

- (a) Purchaser: CEI;
- (b) Purchased Assets: All of Retail’s right, title and interest in the Retail APS;
- (c) Purchase Price: The purchase price under the Stalking Horse APA is the aggregate of (i) the amount of \$300,000 (which is to be satisfied by way of credit bid of a portion of the amount owing by Retail to CEI); and (ii) the amount of the

Assumed Liabilities (defined below) as of Closing, which includes the obligation to purchase the Level 1 Unit;

- (d) Deposit: All offers must include a deposit equal to the sum of 10% of the purchase price for the Retail APS (such portion of the deposit being \$239,300) and 10% of the purchase price for the Stalking Horse APA (such portion of the deposit being at least \$35,000);
- (e) Assumed Liabilities: The Purchaser shall assume as of the Closing Date (defined below) and shall pay, discharge and perform, as the case may be, from and after the Closing Date, all liabilities and obligations of Retail arising in respect of the Retail APS (collectively, the “**Assumed Liabilities**”), including the obligation to complete the sale of the Level 1 Unit. The Purchaser covenants to close the transaction under the Retail APS forthwith after Closing;
- (f) Closing Date: No later than the day that is 10 days after the date on which the Court grants the approval and vesting order (the “**Sale Approval Order**”);
- (g) Material Conditions: (i) the granting of the Sale Approval Order and the acceptance of the Stalking Horse APA as the successful bid; and (ii) all conditions to closing to purchase the Level 1 Unit under the Retail APS shall have been either satisfied or waived;

14 The Receiver believes that the proposed Retail APS Sale Process and acceptance of the Stalking Horse APS solely for the purpose of acting as a stalking horse is reasonable and should be approved for, among other things, the following reasons:

- (a) the value of the Stalking Horse APA was based on the Receiver’s discussions with

CBRE and presents a reasonable floor price for the Retail APS, when considered in the context of the purchase price of the Level 1 Unit;

- (b) the Stalking Horse APA does not include a break fee or expense reimbursement;
- (c) the Retail APS Sale Process is reasonable and appropriate at this time and is supported by CEI, being Retail's most significant and senior ranking stakeholder;
- (d) the Retail APS Sale Process is a fair, open and transparent process developed with input from CBRE, and is intended to canvass the market broadly on an efficient basis to obtain the highest and best price;
- (e) the Retail APS Sale Process is flexible and provides the Receiver with the timelines, procedures and discretion that it believes are necessary to maximize value;
- (f) the CBRE marketing process includes procedures commonly used to sell real estate assets of this nature, including by KSV in other court-supervised real property sale processes; and
- (g) CBRE is a leading national brokerage, with the experience and expertise to market the Retail APS, including significant knowledge of the Toronto market in which the Hazelton Project is located;

General

15 The provisions of the CCAA and the inherent and equitable jurisdiction of this Court;

16 Rules 1.04, 2.03, 3.02, 16 and 37 of the *Rules of Civil Procedure*; and

17 Such further and other grounds as counsel may advise and this Honourable Court may deem just;

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- 1 The First Report; and
- 2 Such further and other evidence as counsel may advise and this Court may permit.

June 14, 2024

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MIZRAHI 128 HAZELTON RETAIL INC.

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

Respondents

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Retail APS Sale Process)**

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Lawyers for the Receiver

TAB 2



**First Report to Court of
KSV Restructuring Inc.
as Receiver and Manager of
Mizrahi (128 Hazelton) Inc. and
Mizrahi 128 Hazelton Retail Inc.**

June 14, 2024

Contents

	Page
1.0 Introduction.....	1
1.1 Purposes of this Report.....	2
1.2 Restrictions	2
2.0 Background	3
3.0 Creditors.....	4
3.1 Secured Creditors	4
3.2 Other Known Creditors.....	7
4.0 Hazelton’s Ongoing Operations	7
4.1 Funding for these Proceedings.....	7
4.2 Project Management.....	8
5.0 Retail APS Sale Process	8
5.1 Sale Process.....	8
5.2 The Stalking Horse APA.....	12
5.3 Retail APS Sale Process Recommendation	13
6.0 Conclusion.....	14

Appendices

Appendix	Tab
PIN Numbers	A
Receivership Order dated June 4, 2024.....	B
Corporate Profile of Retail	C
Amended Retail APS.....	D
Stalking Horse APA	E

COURT FILE NUMBERS: 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

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED**

**FIRST REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER**

JUNE 14, 2024

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (the “**Court**”) issued on June 4, 2024 (the “**Receivership Order**”), KSV Restructuring Inc. (“**KSV**”) was appointed as the receiver and manager (the “**Receiver**”) of (a) certain condominium units located at 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario and legally described by the PIN numbers listed in Appendix “A” (collectively, the “**Real Property**”); and (b) all of the assets, undertakings and properties of Mizrahi (128 Hazelton) Inc. (“**Hazelton**”) and Mizrahi 128 Hazelton Retail Inc. (“**Retail**”, together with Hazelton, the “**Debtors**”), or either of them, acquired for, or used in relation to a business carried on by the Debtors, or either of them, including all proceeds thereof (the “**Personal Property**”, and together with the Real Property, the “**Property**”). A copy of the Receivership Order is provided in Appendix “B”.

2. The purpose of these receivership proceedings is for the Receiver to realize on the Property in an efficient and orderly manner which includes:
 - a) constructing and completing some or all of the Unfinished Units (as defined below) so that they can be sold; and
 - b) conducting a sale process for an agreement of purchase and sale effective as of November 10, 2020, as amended, (the “**Retail APS**”) pursuant to which Retail has a right to purchase a commercial retail/office unit on level 1 of the Hazelton Project (as defined below) together with four parking spaces and one locker, on the terms and conditions set out therein (the “**Level 1 Unit**”) for a purchase price of \$2,393,000, subject to customary adjustments for a transaction of this nature.
3. This report (the “**Report**”) is filed by KSV in its capacity as Receiver.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Debtors;
 - b) provide information regarding the Unfinished Units;
 - c) set out a proposed sale process (the “**Retail APS Sale Process**”) for the sale of the Retail APS and the terms of a proposed stalking horse agreement of purchase and sale dated June 14, 2024 (the “**Stalking Horse APA**”) between the Receiver and CEI; and
 - d) recommend that this Court issue an order (the “**Sale Process Order**”) approving:
 - i. the Retail APS Sale Process; and
 - ii. the Stalking Horse APA for the purposes of acting as a “stalking horse” in the Retail APS Sale Process as set out in the Stalking Horse APA.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon (i) discussions and information provided by representatives of Constantine Enterprises Inc. (“**CEI**”); (ii) certain of the Debtors’ unaudited financial information; and (iii) the receivership application materials filed by CEI and materials filed by the Debtors (collectively, the “**Information**”).
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.

3. Additional background information regarding the Debtors and the reasons for the appointment of the Receiver are provided in affidavits of Robert Hiscox sworn February 23, 2024 and April 16, 2024 (the “**Hiscox Affidavits**”). Copies of the Court materials filed in these proceedings are available on the Receiver’s case website at: <https://www.ksvadvisory.com/experience/case/128Hazelton>.

2.0 Background

2.1 Hazelton

1. Hazelton is the registered owner of the Real Property, which are certain premises in relation to a nearly complete nine-storey, 20-unit luxury condominium development project located in Toronto’s Yorkville neighbourhood with approximately 1,993 square feet of ground floor commercial retail space and three levels of underground parking (the “**Hazelton Project**”).
2. Hazelton is responsible for development and construction and is currently the registered owner of seven condominium units, and one ground floor commercial retail space, and the parking spaces allocated to the units and the retail space. The development and construction management of the Hazelton Project was performed by Mizrahi Inc.
3. The shares in the capital of Hazelton are owned 50% by Mizrahi Developments Inc. (“**MDI**”) and 50% by CEI. The Receiver understands that MDI is controlled by Sam Mizrahi.
4. Mr. Mizrahi was the President of Hazelton and one of two directors of Hazelton until he resigned on May 13, 2024. Mr. Hiscox, a nominee of CEI, is the other director. Mr. Mizrahi is also the principal of the Mizrahi development group of companies, a condominium development group (the “**Mizrahi Group**”). The Mizrahi Group is CEI’s operating and development counterpart in connection with the development of the Hazelton Project.
5. Hazelton is the borrower under the DUCA Commitment, the 2015 Credit Agreement, the 2020 Grid Note and the 2021 Grid Note (each as defined below).
6. The following condominium units are under contract to be sold: 801, 802 and 901 (the “**Unfinished Units**”); however, these sales have not closed, and the Receiver intends to engage with each purchaser to address issues relevant to each transaction. Construction on each of these units has not been completed and, as discussed below, the Receiver intends to engage Gillam Communities LP (“**Gillam**”) for this purpose.

2.2 Retail

1. Retail is the purchaser of the Level 1 Unit under the Retail APS and is the borrower under the Retail Note (as defined below). The Receiver understands that the shares of Retail are owned by Mr. Mizrahi or his designee.

- The Retail APS was originally entered into between Mizrahi Inc. and Hazelton. Pursuant to an assignment agreement dated November 10, 2020, Mizrahi Inc. assigned its interest in the Retail APS to Retail. The Retail APS was amended by the Receiver to facilitate the sale of the Retail APS. The changes provide that the unit is to be sold (in its current condition) on an “as is, where is basis”. The purchase price is unchanged.
- Until recently, Mr. Mizrahi was the President and sole director of Retail. Based on a recent corporate profile report, as of March 1, 2024, Amanda Brown is the sole director and president of Retail. Attached as Appendix “C” is a copy of a corporate profile for Retail.

3.0 Creditors

3.1 Secured Creditors

- As set out below, a preliminary summary of the Debtors’ secured creditors is as follows:¹

(Unaudited; \$000s)	Amount
<u>Hazelton</u>	
Hazelton Priority Indebtedness (as defined below)	13,015,116
Aviva ²	18,500,000
Hazelton Subordinate Indebtedness (as defined below)	31,041,763
CEC Mechanical Ltd. (“ CEC ”) (construction lien)	507,658
CLM General Enterprises (“ CLM ”) (construction lien)	68,262
385277 Ontario Limited (“ 385 Ontario ”) (construction lien)	47,503
Penegal Trim & Supply Ltd. (“ Penegal ”) (construction lien)	138,765
	63,319,067
<u>Retail</u>	
Retail Indebtedness (as defined below)	2,854,278

- Norton Rose Fulbright Canada LLP (“**NRF**”), the Receiver’s independent counsel, has conducted a review of the security held in respect of the Hazelton Priority Indebtedness, the Hazelton Subordinate Indebtedness and the Retail Indebtedness. NRF has provided the Receiver with opinions that, subject to standard assumptions and qualifications, the security outlined therein is valid and enforceable.

Hazelton Priority Indebtedness

- CEI is a Toronto-based private real estate fund that has assisted in the financing of the Hazelton Project since 2015. CEI purchased and took an assignment of the Hazelton Priority Indebtedness (as defined below) from DUCA Financial Services Credit Union Ltd. (“**DUCA**”) on February 1, 2024, which commenced a receivership application against Hazelton on January 19, 2024. The DUCA receivership

¹ The amounts in the table are subject to change for interest, fees and costs, which continue to accrue.

² Aviva’s registration is discussed below.

application was dismissed following the assignment by DUCA of its rights in the DUCA Commitment and DUCA Security (as defined below) to CEI.

2. Pursuant to the terms of a commitment letter dated June 27, 2017, as amended (the “**DUCA Commitment**”), DUCA made available certain demand credit facilities to Hazelton to finance construction of the Hazelton Project in the approximate amount of \$33.5 million (the “**DUCA Loan**”).
3. As security for the DUCA Loan, DUCA obtained from Hazelton, among other things, (i) a first-ranking mortgage against its Real Property (the “**DUCA Mortgage**”); (ii) a general assignment of rents (the “**DUCA GAR**”); and (iii) a general security agreement (the “**DUCA GSA**”, and together with the DUCA Mortgage and DUCA GAR, the “**DUCA Security**”).
4. As of February 29, 2024, the amount owing under the DUCA Loan and other amounts due and owing under the DUCA Commitment and DUCA Security (collectively, the “**Hazelton Priority Indebtedness**”) was \$13,015,116, with interest and costs accruing, including certain protective advances made by CEI for overdue condominium fees on behalf of Hazelton to preserve and protect CEI’s collateral from a potential lien being registered on title to the Real Property by the Hazelton Project condominium corporation for unpaid common expenses.

Hazelton Subordinate Indebtedness

1. Pursuant to the terms of a credit agreement dated June 19, 2015, CEI also advanced a non-revolving loan facility to Hazelton in the principal amount of \$21,000,000 (the “**Hazelton Subordinate Indebtedness**”).
2. As security for the Hazelton Subordinate Indebtedness, CEI obtained from Hazelton, among other things, (i) a mortgage against its Real Property; (ii) a general assignment of rents; and (iii) a general security agreement.
3. As of February 29, 2024, the amount owing under the Hazelton Subordinate Indebtedness and other amounts due and owing under the 2015 Credit Agreement and related security was \$31,041,763, with interest and costs accruing.
4. CEI granted a subordination, assignment, postponement and standstill agreement in favour of DUCA on June 22, 2017, pursuant to which CEI subordinated its mortgage to DUCA and registered a postponement in favour of Aviva and the City of Toronto.

Retail Note

1. On November 10, 2020, Retail issued a promissory note in favour of CEI (the “**Retail Note**”) pursuant to which CEI advanced a loan to Retail in the aggregate principal amount of \$2,174,130 (the “**Retail Indebtedness**”, together with the Hazelton Priority Indebtedness and the Hazelton Subordinate Indebtedness, the “**Indebtedness**”).

2. The use of the funds advanced under the Retail Note were for Retail to make contemporaneous advances to Hazelton in the same amount (which amounts were advanced by Retail to Hazelton pursuant to the terms of a promissory note issued by Hazelton to Retail on November 10, 2020 (the “**Retail Flow-Through Note**”)).
3. As security for the Retail Note, CEI obtained i) a general security agreement by Retail (the “**Retail GSA**”); ii) an agreement between Retail and CEI pursuant to which Retail granted CEI an option to purchase the Retail APS and the Retail Flow-Through Note for one dollar in certain circumstances (which have not yet occurred) in accordance with the terms thereof (the “**Option Agreement**”); and iii) an unlimited guarantee by Mr. Mizrahi in respect of all obligations owing by Retail to CEI (the “**Retail Guarantee**” and collectively with the Retail GSA and the Option Agreement, the “**Retail Security**”).

Additional Secured Creditors

1. Based on searches dated as of June 10, 2024, the following charges are also registered against the Real Property:
 - a) a charge in favour of Aviva Insurance Company of Canada (“**Aviva**”) registered on September 22, 2016 in the maximum principal amount of \$18.5 million in respect of Hazelton’s deposit insurance indemnification obligations for homebuyers who paid deposits for units that have not yet closed;
 - b) a construction lien registered by CEC on September 29, 2023, of which \$507,658 was outstanding as of November 21, 2023;
 - c) a construction lien registered by CLM, on February 2, 2024, of which \$68,262 is outstanding;
 - d) a construction lien registered by 385 Ontario, on March 8, 2024 in the amount of \$47,502.80; and
 - e) a construction lien registered by Penegal, on May 10, 2024 in the amount of \$138,765.14.
2. Aviva entered into a priority agreement with DUCA dated June 27, 2017 pursuant to which Aviva subordinated its mortgage to the DUCA Mortgage.
3. The Receiver is continuing to review and assess the construction liens, including seeking further information from lienholders, where necessary.
4. The Receiver also understands that the following registrations were made pursuant to the *Personal Property Security Act* in Ontario:

Hazelton

- a) two registrations in favour of CEI in connection with the Hazelton Priority Indebtedness;
- b) a registration in favour of Aviva; and
- c) a registration in favour of CEI in connection with the Hazelton Subordinate Indebtedness.

Retail

- a) a registration in favour of Mizrahi Constantine (180 SAW) LP³; and
- b) two registrations in favour of CEI in connection with the Retail Indebtedness.

3.2 Other Known Creditors

1. CEI is also a creditor of Hazelton in connection with:
 - a) an unsecured promissory note issued to CEI by Hazelton on November 10, 2020 pursuant to which CEI advanced loans to Hazelton in the aggregate principal amount of \$3,200,000 (the “**2020 Grid Note**”);
 - b) an unsecured promissory note issued to CEI by Hazelton on December 3, 2021 pursuant to which CEI advanced loans to Hazelton in the aggregate principal amount of \$1,500,000 (the “**2021 Grid Note**”); and
 - c) the indebtedness relating to a construction lien previously registered on title to the Real Property in the amount of \$1,351,861, which indebtedness has been purchased by CEI.
2. According to a creditors list provided to the Receiver, Hazelton’s known unsecured creditors (other than CEI in respect of (a) and (b) above), total approximately \$4.2 million in respect of amounts owing to consultants, law firms, trade contractors and other parties.

4.0 Hazelton’s Ongoing Operations

4.1 Funding for these Proceedings

1. The Debtors have no cash available to advance any of their business activities, including construction. Accordingly, the Receiver intends to borrow from CEI under receiver’s certificates, in accordance with paragraph 23 of the Receivership Order.

³ There are no obligations are outstanding in respect of this registration.

4.2 Project Management

1. Mizrahi Inc. was the construction manager (the “**Construction Manager**”) and the development manager of the Hazelton Project pursuant to a construction management agreement dated March 31, 2017 (the “**CM Agreement**”) and development management agreement dated June 19, 2015 (the “**DM Agreement**”), respectively. On May 10, 2024, Mizrahi Inc., as Construction Manager, delivered a notice of termination of the CM Agreement to Hazelton. As of the date of this Report, the Receiver was considering the termination of the DM Agreement. The Receiver may file a supplemental report concerning the DM Agreement prior to the return of this motion.
2. The Receiver is in discussions with Gillam to complete certain outstanding construction pursuant to the CCDC-2 Contract (the “**CCDC-2**”). The Receiver understands that CEI consents to the Receiver’s retention of Gillam for this purpose. The total cost of the work to be completed under the CCDC-2 Contract is budgeted to be approximately \$4.2 million. As of the date of this Report, the CCDC-2 has not been finalized.

5.0 Retail APS Sale Process

1. The purpose of the Retail APS Sale Process is to market for sale the Retail APS and to sell the Level 1 Unit. The Retail APS Sale Process is a stalking horse sale process, pursuant to which the Stalking Horse APA provides a base-line purchase price for the Retail APS, while also enabling the Receiver to test the market to obtain a higher selling price. The successful purchaser of the Retail APS will be required to close on the Level 1 Unit in accordance with the terms of the amended Retail APS, a copy of which is provided in Appendix “D”. The completion of the sale of the Retail APS and the Level 1 Unit is contemplated to be contemporaneous.
2. With the consent of CEI, the Receiver has engaged CBRE Limited (“**CBRE**”) to market the Retail APS and Level 1 Unit for sale. CBRE is a leading international real estate brokerage and is well known to the Receiver from other real estate insolvencies.
3. CBRE’s listing fee (4%) is consistent with the market for the sale of condominium units and CEI consents to the amount of the listing fee. The listing fee is a percentage of the total purchase price under the Retail APS plus the successful transaction under the Retail APS Sale Process. The listing fee is payable if CEI is the successful bidder pursuant to a credit bid. The Receiver believes CBRE’s fee is reasonable in the circumstances.
4. The Receiver understands that CEI consents to the Retail APS Sale Process.

5.1 Sale Process

1. The Retail APS Sale Process is set out in the table below. The timelines are based on KSV’s experience selling real estate assets in court-supervised proceedings, as well as guidance from CBRE. The timelines assume that the Court approves the Retail APS Sale Process on the return of this motion.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Pre-Sale Process Preparation</i>		
Retention of Agent	➤ Receiver to retain CBRE as sales agent for the Retail APS Sale Process (the “ Listing Agent ”)	Complete
Due diligence	<ul style="list-style-type: none"> ➤ Listing Agent to upload documentation concerning the opportunity to a virtual data room (the “VDR”) so that interested parties can review the Stalking Horse APA and conduct diligence on the Retail APS and the Level 1 Unit. ➤ The VDR will include information required to allow interested parties to perform due diligence, including a copy of the Stalking Horse APA and a form of agreement of purchase and sale for bid submissions (the “Bid Form”). 	To be completed within five business days of court approval of the sale process
Marketing materials	➤ The Listing Agent will prepare a document summarizing the opportunity and explaining the Sale Process, including the deadline for submitting offers, being approximately 30 days from the launch of the Retail APS Sale Process (the “ Bid Deadline ”).	
Prospect Identification	<ul style="list-style-type: none"> ➤ The Listing Agent, in consultation with the Receiver, will market the Retail APS using traditional methods to sell similar properties in the City of Toronto, including listing it on the multiple listing system (if possible), email blasts, preparation of a marketing brochure, direct solicitation and signage. ➤ The Listing Agent will advise bidders of the Stalking Horse APA and that any offer must be equal to the value of the Stalking Horse APA, plus a bid increment of \$50,000 (the “Initial Bid Increment”). 	
<i>Phase 2 – Marketing, Due Diligence and Offer Solicitation</i>		
Stage 1	➤ Market introduction	No later than June 24, 2024, subject to Court approval
Stage 2	<ul style="list-style-type: none"> ➤ Due Diligence – based on feedback from CBRE, interested parties will be provided approximately 30 days to review information in the VDR, tour the Level 1 Unit and submit an offer. ➤ Interested parties will be advised of the Bid Deadline. 	Approximately 30 days
Stage 3	<ul style="list-style-type: none"> ➤ Bids must be received on or before the Bid Deadline. ➤ To be considered a qualified bid (a “Qualified Bid”) a bid must meet the following criteria (the “Qualified Bid Criteria”): <ul style="list-style-type: none"> ○ a blackline to the Bid Form (a soft copy of the Stalking Horse APA will be made available in the VDR); ○ provide a purchase price consisting solely of cash consideration with a value of not less than \$300,000⁴ 	

⁴ This amount was determined based on discussions with CBRE.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
	<p>(being the total consideration under the Stalking Horse APA), plus the assumed liabilities, plus the Initial Bid Increment;</p> <ul style="list-style-type: none"> o include a deposit equal to the sum of 10% of the purchase price for the Retail APS (such portion of the deposit being \$239,300) and 10% of the purchase price for the Stalking Horse APA (such portion of the deposit being at least \$35,000); o not be conditional on the outcome of any further due diligence or financing; o provide the names of the representatives who are authorized to appear and act on behalf of the bidder; o provide evidence sufficient for the Receiver to determine that the bidder has the ability to complete the transaction and the subsequent purchase of the Level 1 Unit; o include acknowledgements and representations that confirm that the transaction is on an "as is, where is" basis; the bidder has had an opportunity to conduct any and all due diligence necessary prior to entering into the Qualified Bid and has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the property in making its bid; and it did not rely upon any written or oral statements, representations, warranties, or guarantees whatsoever, whether express, implied, statutory or otherwise, regarding the completeness of any information provided in connection therewith, except as expressly stated in the Qualified Bid; o includes a covenant that the bidder will close the transaction under the Retail APS immediately after Closing; o provides that the Qualified Bid shall remain open until the latest of (a) the date on which the Listing Agent advises the bidder that its bid is not the successful bid or the back-up bid, if one is selected; (b) in the case of the Successful Bid, the closing of the transaction; and (c) in the case of a back-up bid, if one is selected, the earlier of the closing of another successful transaction and the closing of the transaction under the back-up bid; and o include any other terms or conditions the Potential Bidder believes are material to the transaction. 	

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 3 – Offer Review and Negotiations</i>		
Selection of the Successful Bid and Back-Up Bid	<ul style="list-style-type: none"> ➤ The Stalking Horse APA shall be considered a Qualified Bid. ➤ If any additional Qualified Bids are received, the Listing Agent and the Receiver may declare one or more Qualified Bids as the successful bid and back up bid or seek further amendments or clarifications to any Qualified Bids including the Stalking Horse APA or establish further procedures for determining a successful bid and/or back-up bid, including as many rounds of bidding as determined necessary in the discretion of the Receiver. 	
Sale Approval Motion and Closing	<ul style="list-style-type: none"> ➤ Prepare materials to seek approval of the transaction. ➤ Close transaction following court approval. 	ASAP after finalizing definitive documents

2. Additional terms of the Retail APS Sale Process include:

- a) the transaction contemplated by the Stalking Horse APA will be marketed and sold on an “as-is, where-is” basis, with standard representations and warranties for a receivership transaction;
- b) the amendment to the Retail APS indicates that the sale of the Level 1 Unit would also be completed on an “as-is, where-is” basis and otherwise in accordance with the terms of the amended Retail APS;
- c) to the extent permitted by law, all of the right, title and interest of Retail in the Retail APS will be sold free and clear of all pledges, liens, security interests, encumbrances and claims, pursuant to an approval and vesting order to be sought by the Receiver;
- d) the Receiver will have the right to reject any and all offers, including the highest and best offers other than the Stalking Horse APA;
- e) if, in the Receiver’s sole discretion, it will assist to maximize recoveries, the Receiver will have the right to: (i) waive strict compliance with the terms of the Retail APS Sale Process, including the right to amend any of the deadlines in the table above; and (ii) modify and adopt such other procedures that will better promote the sale of the Retail APS or increase recoveries for stakeholders;
- f) any material modifications to, or the termination of, the Retail APS Sale Process shall require Court approval; and
- g) any transaction or transactions entered into by the Receiver shall be subject to Court approval.

5.2 The Stalking Horse APA

1. The following is a summary description of the Stalking Horse APA only. Readers are encouraged to read the entirety of the Stalking Horse APA for its terms and conditions, a copy of which is provided in Appendix “E”.
2. The key terms and conditions of the Stalking Horse APA are provided below⁵.
 - a) Purchaser: CEI.
 - b) Purchased Assets: All of Retail’s right, title and interest in the Retail APS.
 - c) Excluded Assets: The Seller shall not sell to the Purchaser and the Purchaser shall not purchase from the Seller any assets other than the Purchased Assets.
 - d) Purchase Price: The Purchase Price under the Stalking Horse APA is (i) \$300,000 owing by Retail to the Purchaser on Closing (which is to be satisfied by way of credit bid of a portion of the amount owing by Retail to the Purchaser); and (ii) the amount of the Assumed Liabilities as of Closing, which includes the obligation to purchase the Level 1 Unit for \$2,393,000, subject to customary adjustments for a transaction of this nature.
 - e) Deposit: All offers must include a deposit equal to the sum of 10% of the purchase price for the Retail APS (such portion of the deposit being \$239,300) and 10% of the purchase price for the Stalking Horse APA (such portion of the deposit being at least \$35,000).
 - f) Assumed Liabilities: The Purchaser shall assume as of the Closing Date and shall pay, discharge and perform, as the case may be, from and after the Closing Date, all liabilities and obligations of Retail arising in respect of the Retail APS (collectively, the “Assumed Liabilities”). The Purchaser covenants to close the transaction under the Retail APS immediately after Closing.
 - g) Closing Date: No later than the day that is 10 days after the date on which the Court grants the Sale Approval and Vesting Order.
 - h) Material Conditions: As follows:
 - i. no legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets;
 - ii. all conditions to closing to purchase the Unit (as defined in the amended Retail APS) under the amended Retail APS (subject to the release of any signed documents from escrow) shall have been either satisfied or waived;

⁵ Capitalized terms not otherwise defined are defined in the Stalking Horse APA.

- iii. the Court shall have issued the Sale Process Order by no later than June 21, 2024; and
 - iv. the Court shall have granted the Sale Approval and Vesting Order by no later than 14 calendar days following the transaction being selected as the Successful Bid.
- i) Acceptance of Successful Bid: The sale of the Purchased Assets to any Successful Bidder by the Receiver is conditional upon the approval of the Successful Bid by the Court.

5.3 Retail APS Sale Process Recommendation

1. The Receiver recommends that the Court issue an order approving the Retail APS Sale Process and the Stalking Horse APA as the Stalking Horse Bid for the following reasons:
 - a) the value of the Stalking Horse APA was based on the Receiver's discussions with CBRE and presents a reasonable floor price for the Retail APS, when considered in the context of the purchase price of the Level 1 Unit;
 - b) the Stalking Horse APA does not include a break fee or expense reimbursement;
 - c) the Retail APS Sale Process is reasonable and appropriate at this time and is supported by CEI, being Retail's most significant and senior ranking stakeholder;
 - d) the Retail APS Sale Process is a fair, open and transparent process developed with input from CBRE, and is intended to canvass the market broadly on an efficient basis to obtain the highest and best price;
 - e) the Retail APS Sale Process is flexible and provides the Receiver with the timelines, procedures and discretion that it believes are necessary to maximize value;
 - f) the CBRE marketing process includes procedures commonly used to sell real estate assets, including by KSV in other court-supervised real property sale processes; and
 - g) CBRE is a leading national brokerage, with the experience and expertise to market the Retail APS, including significant knowledge of the Toronto market in which the Hazelton Project is located.

6.0 Conclusion

- 1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(d) of this Report.

* * *

All of which is respectfully submitted,



**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
MIZRAHI (128 HAZELTON) INC. AND
MIZRAHI 128 HAZELTON RETAIL INC.**

Appendix “A”

Schedule "A"

DESCRIPTION OF REAL PROPERTY

PIN 21196-0353(LT)

PART LOT 1, PLAN 687E & PART BLOCK A, PLAN 411 PART 1, 66R32656; SUBJECT TO AN EASEMENT AS IN AT4864056; SUBJECT TO AN EASEMENT AS IN AT5237797; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 1 AND 2, PLAN 687-E DESIGNATED AS PART 1 ON PLAN 66R-31612 AS IN AT5927858; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS OF TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AS IN AT6281433; TOGETHER WITH AN EASEMENT OVER PART TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 BEING PART 3, 66R32656 AS IN AT6281433; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS ON LEVELS 1 & A AND UNITS 8, 9, 10, 12 & 13, LEVEL A TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AS IN AT6281433; SUBJECT TO AN EASEMENT IN FAVOUR OF TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AS IN AT6281433; CITY OF TORONTO

PIN 76967-0001(LT)

UNIT 1, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0004(LT)

UNIT 4, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0011(LT)

UNIT 3, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0012(LT)

UNIT 4, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0018(LT)

UNIT 1, LEVEL 8, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0019(LT)

UNIT 2, LEVEL 8, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0020(LT)

UNIT 1, LEVEL 9, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0024(LT)

UNIT 4, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0025(LT)

UNIT 5, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0026(LT)

UNIT 6, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0027(LT)

UNIT 7, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0034(LT)

UNIT 2, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0035(LT)

UNIT 3, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0036(LT)

UNIT 4, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0037(LT)

UNIT 5, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0038(LT)

UNIT 6, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0041(LT)

UNIT 9, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0042(LT)

UNIT 10, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0043(LT)

UNIT 11, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0045(LT)

UNIT 13, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0046(LT)

UNIT 14, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0047(LT)

UNIT 15, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0048(LT)

UNIT 16, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0057(LT)

UNIT 9, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0058(LT)

UNIT 10, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0059(LT)

UNIT 11, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0060(LT)

UNIT 12, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0062(LT)

UNIT 14, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0065(LT)

UNIT 17, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0067(LT)

UNIT 19, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0073(LT)

UNIT 25, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0074(LT)

UNIT 26, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0076(LT)

UNIT 28, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

Appendix “B”



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE CAVANAGH) TUESDAY, THE 4TH
DAY OF JUNE, 2024

CONSTANTINE ENTERPRISES INC.

Applicant

- and -

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

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED; AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, C. C.43, AS AMENDED

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") without security, over (a) the real property comprised of certain condominium units located at the address municipally known as 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario, and as legally described by PIN numbers 21196-0353 (LT), 76967-0001 (LT), 76967-0004 (LT), 76967-0011 (LT), 76967-0012 (LT) inclusive, 76967-0018 (LT) to 76967-0020 (LT) inclusive, 76967-0024 (LT) to 76967-0027 (LT) inclusive, 76967-0034 (LT) to 76967-0038 (LT)

-2-

inclusive, 76967-0041 (LT) to 76967-0043 (LT) inclusive, 76967-0045 (LT) to 76967-0048 (LT) inclusive, 76967-0057 (LT) to 76967-0060 (LT) inclusive, 76967-0062 (LT), 76967-0065 (LT), 76967-0067 (LT) inclusive, 76967-0073 (LT), 76967-0074 (LT), and 76967-0076 (LT), as more specifically described in Schedule “A” hereto (the “**Real Property**”); and (b) all of the assets, undertakings and properties of Mizrahi (128 Hazelton) Inc. and Mizrahi 128 Hazelton Retail Inc. (collectively, the “**Debtors**”), or either of them, acquired for, or used in relation to a business carried on by the Debtors, or either of them, including all proceeds thereof (the “**Personal Property**”, and together with the Real Property, the “**Property**”), was heard on May 13, 2024 by judicial videoconference at Toronto, Ontario.

ON READING the Affidavits of Robert Hiscox sworn February 22 and April 16, 2024, the Affidavits of Sam Mizrahi affirmed April 5, April 8, April 23, and May 3, 2024, the Affidavit of Jeff Stevenson sworn April 5, 2024, and in each case the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel to the Debtors and such other parties listed on the Counsel Slip, no one appearing although duly served as appears from the Affidavits of Service of Stephanie Fernandes sworn February 23, February 26 and February 27, 2024 and on reading the consent of KSV to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property.

RECEIVER’S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property, including without limitation the Debtors' bank accounts related to the Property wherever located;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtors, or either of them, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtors, or either of them, in respect of the Property;
- (d) to engage consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

-4-

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or either of them with respect to the Property or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors, or either of them with respect to the Property and to exercise all remedies of the Debtors, or either of them, in collecting such monies, including, without limitation, to enforce any security held by the Debtors, or either of them;
- (g) to take steps to commence a process to confirm the deposit amounts, if any, being held by the Debtors, or either of them, pursuant to agreements of purchase and sale between the Debtors, or either of them, and a purchaser for the sale and purchase of a residential condominium unit planned to be situated at the development located on the Real Property;
- (h) to settle, extend or compromise any indebtedness owing to the Debtors, or either of them, with respect to the Property;
- (i) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtors, or either of them, for any purpose pursuant to this Order;
- (j) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors, or either of them, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

-5-

- (k) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (l) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$100,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.
- (m) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (n) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

-6-

- (o) to consult with the Applicant on all matters relating to the Property and the receivership, subject to such terms as to confidentiality as the Receiver deems advisable;
- (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (q) to apply for any permits, licences, approvals or permissions with respect to the Property as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors, or either of them;
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, or either of them, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors, or either of them;
- (s) to exercise any shareholder, partnership, joint venture or other rights which the Debtors, or either of them may have; and
- (t) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, or either of them, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and equity investors including without limitation investors and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver’s request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, or either of them, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person’s possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully

copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. **THIS COURT ORDERS** that all Persons, including without limitation, Sam Mizrahi, 1000041090 Ontario Inc., Mizrahi Developments Inc. and Mizrahi Inc. (collectively, the “**Mizrahi Group**”), and each of them, shall be required to cooperate, and share information, with the Receiver, in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or either of them, and the Property. In addition to the foregoing, general cooperation and information sharing requirements, the Mizrahi Group, or any of them, shall be required to do the following: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days’ written notice to the Receiver of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required in the Receiver’s discretion, acting reasonably, in consultation with the Applicant.

NO PROCEEDINGS AGAINST THE RECEIVER

8. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors, or either of them, or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors, or either of them, or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtors, or either of them, the Receiver, or affecting the Property, including without limitation, licenses and permits, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors, or either of them, to carry on any business which the Debtors, or either of them, is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors, or either of them, from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien. Notwithstanding paragraph 9 and paragraph 10 of this Order, Toronto Standard Condominium Corporation No. 2967 ("**TSCC 2967**") is authorized to return to this Court on five days' notice to seek leave to commence enforcement proceedings in respect of a lien registered by TSCC 2967, pursuant to section 85 of the *Condominium Act, 1998*, against any portion of the Real Property.

NO INTERFERENCE WITH THE RECEIVER

11. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors, or either of them, in connection with or relating to the Property without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons, including, without limitation, the Mizrahi Group, having oral or written agreements with the Debtors, or either of them, in connection with or relating to the Property or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors, or either of them, in connection with or relating to the Property are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors', or either of their current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtors, or either of their, or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part in connection with or relating to the

-11-

Property, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the “**Post Receivership Accounts**”) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtors, or either of them, shall remain the employees of such Debtor until such time as the Receiver, on behalf of the Debtors, or either of them, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “**Sale**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors, or either of them,

-12-

and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver 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 Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’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.

LIMITATION ON THE RECEIVER’S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$2,000,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may

-14-

arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, fees, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver’s Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver’s Certificates.

25. **THIS COURT ORDERS** that the Applicant shall for the duration of the receivership provide sufficient funds to the Receiver to pay in the ordinary course the monthly common expense fees owing to TSCC 2967 by Mizrahi (128 Hazelton) Inc., including relating to the Real Property.

SERVICE AND NOTICE

26. **THIS COURT ORDERS** that The Guide Concerning Commercial List E-Service (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of

-15-

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 <https://www.ksvadvisory.com/experience/case/128Hazelton>.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is 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 transmission to the Debtors', or either of their creditors or other interested parties at their respective addresses as last shown on the records of the Debtors, or either of them, and that any such service or distribution by courier, personal delivery or facsimile 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.

GENERAL

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

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a Trustee in bankruptcy of the Debtors, or either of them.

30. **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

-16-

effect to this Order and to assist the Receiver and its 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Receiver 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 Receiver 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.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors, or either of their estates with such priority and at such time as this Court may determine.

33. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

34. **THIS COURT ORDERS** that this Order is effective from today's date and it is not required to be entered.

-17-



Mr. Justice
Cavanagh



Schedule "A"

DESCRIPTION OF REAL PROPERTY

PIN 21196-0353(LT)

PART LOT 1, PLAN 687E & PART BLOCK A, PLAN 411 PART 1, 66R32656; SUBJECT TO AN EASEMENT AS IN AT4864056; SUBJECT TO AN EASEMENT AS IN AT5237797; TOGETHER WITH AN EASEMENT OVER PART OF LOTS 1 AND 2, PLAN 687-E DESIGNATED AS PART 1 ON PLAN 66R-31612 AS IN AT5927858; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS OF TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AS IN AT6281433; TOGETHER WITH AN EASEMENT OVER PART TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 BEING PART 3, 66R32656 AS IN AT6281433; TOGETHER WITH AN EASEMENT OVER COMMON ELEMENTS ON LEVELS 1 & A AND UNITS 8, 9, 10, 12 & 13, LEVEL A TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AS IN AT6281433; SUBJECT TO AN EASEMENT IN FAVOUR OF TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AS IN AT6281433; CITY OF TORONTO

PIN 76967-0001(LT)

UNIT 1, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0004(LT)

UNIT 4, LEVEL 2, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0011(LT)

UNIT 3, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0012(LT)

UNIT 4, LEVEL 4, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0018(LT)

UNIT 1, LEVEL 8, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0019(LT)

UNIT 2, LEVEL 8, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0020(LT)

UNIT 1, LEVEL 9, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0024(LT)

UNIT 4, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0025(LT)

UNIT 5, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0026(LT)

UNIT 6, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0027(LT)

UNIT 7, LEVEL A, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0034(LT)

UNIT 2, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0035(LT)

UNIT 3, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0036(LT)

UNIT 4, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0037(LT)

UNIT 5, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0038(LT)

UNIT 6, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0041(LT)

UNIT 9, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0042(LT)

UNIT 10, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0043(LT)

UNIT 11, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0045(LT)

UNIT 13, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0046(LT)

UNIT 14, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0047(LT)

UNIT 15, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0048(LT)

UNIT 16, LEVEL B, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0057(LT)

UNIT 9, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0058(LT)

UNIT 10, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0059(LT)

UNIT 11, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0060(LT)

UNIT 12, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0062(LT)

UNIT 14, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0065(LT)

UNIT 17, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0067(LT)

UNIT 19, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0073(LT)

UNIT 25, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0074(LT)

UNIT 26, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

PIN 76967-0076(LT)

UNIT 28, LEVEL C, TORONTO STANDARD CONDOMINIUM PLAN NO. 2967 AND ITS APPURTENANT INTEREST; SUBJECT TO AND TOGETHER WITH EASEMENTS AS SET OUT IN SCHEDULE A AS IN AT6281433; CITY OF TORONTO

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. ●

AMOUNT \$ ●

1. **THIS IS TO CERTIFY** that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") without security, of (a) the real property comprised of certain condominium units located at the address municipally known as 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario, and as legally described by PIN numbers 21196-0353 (LT), 76967-0001 (LT), 76967-0004 (LT), 76967-0011 (LT), 76967-0012 (LT) inclusive, 76967-0018 (LT) to 76967-0020 (LT) inclusive, 76967-0024 (LT) to 76967-0027 (LT) inclusive, 76967-0034 (LT) to 76967-0038 (LT) inclusive, 76967-0041 (LT) to 76967-0043 (LT) inclusive, 76967-0045 (LT) to 76967-0048 (LT) inclusive, 76967-0057 (LT) to 76967-0060 (LT) inclusive, 76967-0062 (LT), 76967-0065 (LT), 76967-0067 (LT) inclusive, 76967-0073 (LT), 76967-0074 (LT), and 76967-0076 (LT) (the "**Real Property**"); and (b) all of the assets, undertakings and properties of Mizrahi (128 Hazelton) Inc. and Mizrahi 128 Hazelton Retail Inc. (collectively, the "**Debtors**"), or either of them, acquired for, or used in relation to a business carried on by the Debtors, or either of them, including all proceeds thereof (the "**Personal Property**", and together with the Real Property, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ___ day of _____, 2024 (the "**Order**") made in an application having Court file number CV-24-24-00715321-00CL has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the ___ day of each

-6-

month] after the date hereof at a notional rate per annum equal to the rate of ___ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____, day of _____, 2024.

-7-

KSV Restructuring Inc., solely in its capacity as
Receiver of the Property, and not in its personal
capacity

Per: _____

Name: Bobby Kofman

Title: Managing Director

CONSTANTINE ENTERPRISES INC.

Applicant

- and -

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

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(APPOINTING RECEIVER)**

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4

Jane Dietrich LSO #: 49302U

Tel: 416.860.5223

jdietrich@cassels.com

Jeremy Bornstein LSO #: 65425C

Tel: 416.640.6041

jbornstein@cassels.com

Stephanie Fernandes LSO # 85819M

Tel: 416.860.6481

sfernandes@cassels.com

Lawyers for the Applicant

Appendix “C”

Ministry of Public and
Business Service Delivery

Profile Report

MIZRAHI 128 HAZELTON RETAIL INC. as of May 09, 2024

Act	Business Corporations Act
Type	Ontario Business Corporation
Name	MIZRAHI 128 HAZELTON RETAIL INC.
Ontario Corporation Number (OCN)	2756960
Governing Jurisdiction	Canada - Ontario
Status	Active
Date of Incorporation	May 22, 2020
Registered or Head Office Address	125 Hazelton Avenue, Toronto, Ontario, M5R 2E4, Canada

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

A handwritten signature in black ink, appearing to read "V. Quintanilla W.".

Director/Registrar

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

Active Director(s)

Minimum Number of Directors 1
Maximum Number of Directors 10

Name AMANDA BROWN
Address for Service 105 Harrison Garden Boulevard, Suite 1512, Toronto,
Ontario, M2N 0C3, Canada
Resident Canadian Yes
Date Began March 01, 2024

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

V. Quintanilla W.

Director/Registrar

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

Active Officer(s)

Name AMANDA BROWN
Position President
Address for Service 105 Harrison Garden Boulevard, Suite 1512, Toronto,
Ontario, M2N 0C3, Canada
Date Began March 01, 2024

Name AMANDA BROWN
Position Secretary
Address for Service 105 Harrison Garden Boulevard, Suite 1512, Toronto,
Ontario, M2N 0C3, Canada
Date Began March 01, 2024

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

V. Quintanilla W.

Director/Registrar

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

Corporate Name History**Name****Effective Date**

MIZRAHI 128 HAZELTON RETAIL INC.

May 22, 2020

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

V. Quintanilla W.

Director/Registrar

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Active Business Names

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

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

V. Quintanilla W.

Director/Registrar

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

Expired or Cancelled Business Names

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

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

V. Quintanilla W.

Director/Registrar

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

Document List

Filing Name	Effective Date
CIA - Notice of Change PAF: AMANDA BROWN	March 11, 2024
CIA - Notice of Change PAF: SAM MIZRAHI	March 11, 2024
BCA - Articles of Incorporation	May 22, 2020

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

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

V. Quintanilla W.

Director/Registrar

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

Appendix “D”

128 HAZELTON
COMMERCIAL AGREEMENT

AMENDED AND RESTATED AGREEMENT OF PURCHASE AND SALE

WHEREAS Mizrahi Inc. and the Vendor (defined below) entered into an Agreement of Purchase and Sale dated November 29, 2016 in respect of the Unit, the Parking Units and the Locker Unit (all defined below) (the "**Original Agreement**");

AND WHEREAS Mizrahi Inc. assigned all of its rights in the Original Agreement to the Purchaser (as defined below) pursuant to an assignment agreement dated November 10, 2020;

AND WHEREAS the parties to the Original Agreement wish to amend and restate the Original Agreement on the terms and conditions set out herein;

The parties hereto agree as follows:

The undersigned, **MIZRAHI 128 HAZELTON RETAIL INC.** (the "**Purchaser**"), hereby agrees with **MIZRAHI (128 HAZELTON) INC.** (the "**Vendor**") to purchase the real property described in section 1 of Schedule "E" attached hereto (the "**Unit**"), together with the **FOUR (4) Parking Units and ONE (1) Locker Unit** described in section 2 of Schedule "E" attached hereto, together with the Vendor's proportionate undivided tenancy-in-common interest in the common elements appurtenant to the Parking Units and the Locker Unit as described in the Declaration (as defined herein) on the following terms and conditions:

1. The purchase price of the Purchased Property (the "**Purchase Price**") is **TWO MILLION THREE HUNDRED NINETY-THREE THOUSAND (\$2,393,000.00) DOLLARS** in lawful money of Canada, payable as follows:
 - (a) to Harris, Sheaffer, LLP, In Trust (the "**Vendor's Solicitor**") on 10th day following the issuance of an order of the Ontario Superior Court of Justice (Commercial List), in form and substance satisfactory to the Vendor, acting reasonably, approving the sale of this Agreement by the Purchaser to an assignee, and vesting in such assignee this Agreement and the Purchased Property, free and clear of and from any and all encumbrances, and if such day is not a business day, then the next business day thereafter (the "**Transfer Date**").
2.
 - (a) Deleted
 - (b) The transfer of title to the Purchased Property shall be completed on the Transfer Date, and all references to the Occupancy Date in this Agreement shall mean the Transfer Date.
 - (c) The Purchaser's address for delivery of any notices pursuant to this Agreement or the Act is as follows:


Address:
KSV Restructuring Inc. solely in its capacity as receiver and manager of the property, assets and undertaking of 128 Hazelton Retail Inc. and not in its personal capacity
220 Bay Street, 13th Floor, PO Box 20
Toronto, ON M5J 2W4
Attention: Bobby Kofman
Email: bkofman@ksvadvisory.com
 - (d) Deleted
 - (e) The meaning of the following words are as follows:
 - (i) "**Area of the Unit**" means approximately 1,993 square feet, more or less;
 - (ii) "**Business**" means the operation of a Professional Office;
 - (iii) Deleted.

Paragraphs 3 through 50 and Schedules "A", "E" and "F" of this Agreement are an integral part hereto and are contained on subsequent pages. The Purchaser acknowledges that he has read all paragraphs and schedules of this Agreement.

This Agreement amends and restates the Original Agreement in its entirety.

DATED at Toronto, this 14th day of June, 2024.

**MIZRAHI 128 HAZELTON RETAIL INC., by its court appointed receiver,
KSV Restructuring Inc.**

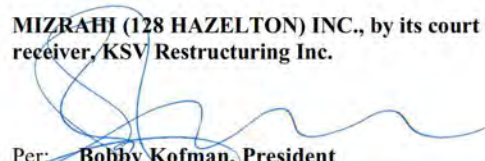

**Per: Bobby Kofman, President
Authorized signing Officer
I have the authority to bind the Corporation**

The undersigned accepts the above offer and agrees to complete this transaction in accordance with the terms thereof.

DATED at Toronto, this 14th day of June, 2024.

Vendor's Solicitors:
Harris, Sheaffer, LLP
Suite 610 - 4100 Yonge Street
Toronto, Ontario
M2P 2B5
Phone: 416-250-5800
Fax: 416-250-5300
Attn: Jeffrey P. Silver

**MIZRAHI (128 HAZELTON) INC., by its court appointed
receiver, KSV Restructuring Inc.**


**Per: Bobby Kofman, President
Authorized Signing Officer
I have the authority to bind the Corporation.**

3. The meaning of words and phrases used in this Agreement and its Schedules shall have the meaning ascribed to them in the Condominium Act, 1998, S.O. 1998, C.19, the regulations thereunder and any amendments thereto (the "Act") and other terms used herein shall have ascribed to them the definitions in the Declaration unless otherwise provided for as follows:
- (a) **"Agreement"** means this Agreement of Purchase and Sale including all Schedules attached hereto and made a part hereof;
 - (b) **"Condominium"** means the condominium registered against the Property pursuant to the Declaration and the Act;
 - (c) **"Condominium Documents"** means the Declaration, the description, the by-laws and rules of the Condominium, as may be amended from time to time;
 - (d) **"Corporation"** shall mean Toronto Standard Condominium Corporation No. 2967;
 - (e) **"Declaration"** means the condominium declaration and description registered on title to the Residential Condominium Lands on February 15, 2023 as Instrument No. AT6281433;
 - (f) **"Locker Unit"** means the real property described in paragraph 2(a) of Schedule "E" attached hereto;
 - (g) **"Parking Units"** means the real property described in paragraph 2(b) of Schedule "E" attached hereto;
 - (h) **"Property"** shall mean, collectively, the Residential Condominium Lands and the Purchased Property;
 - (i) **"Purchased Property"** shall mean the collectively the Unit, the Parking Units and the Locker Unit, together with the Vendor's proportionate undivided tenancy-in-common interest in the common elements appurtenant to the Parking Units and the Locker Unit as described in the Declaration;
 - (j) **"Residential Condominium Lands"** means the real property described in Schedule "A" to the Declaration;
 - (k) **"Shared Facilities Agreement"** means the shared facilities agreement dated October 15, 2022 between the Vendor as the owner of the Unit and the Vendor as the owner of the Residential Condominium (as defined therein) as assigned by the Vendor as owner of the Residential Condominium to the Corporation for the purposes of providing for the mutual use, maintenance, repair, replacements, governance and cost-sharing of various facilities which service and benefit the Unit and the Condominium lands, notice of which was registered on title as Instrument No. AT6296916 and notice of the assignment (to the Corporation) of which was registered on title as Instrument No. AT6296920.
 - (l) **"Unit"** means the real property described in section 1 of Schedule "E" attached hereto.

Vendor's Work

4. (a) It is understood and agreed by the parties hereto that the Purchased Property shall be completed by the Vendor only to the state of those finishes existing as of June 21, 2024,
- (b) The Purchaser further acknowledges and agrees that it shall be responsible for supplying, installing and completing all of the Purchaser's Work, and all other betterments or improvements to the Unit, in accordance with the drawings, plans and specifications prepared by qualified designers, architects and/or engineers engaged by or on behalf of the Purchaser, all at the Purchaser's sole cost and expense.
- (c) Notwithstanding anything to the contrary contained in this Agreement, the Purchaser further acknowledges and agrees to the following:
- (i) That any sprinkler modifications for the Unit which may be required by the Purchaser shall be arranged with the Vendor and only be completed by the Vendor's sprinkler contractor solely at the Purchaser's cost and expense.
 - (ii) That any underground plumbing work for the Unit required by the Purchaser shall be arranged with the Vendor and only be performed by the Vendor's contractor solely at the Purchaser's cost and expense.
 - (iii) That any electrical work required in any common electrical rooms for service to the Unit shall be arranged with the Vendor and only be performed by the Vendor's electrical contractor at the Purchaser's cost and expense.
 - (iv) That the Purchaser shall assume responsibility of all utility accounts for the Purchased Property on the Occupancy Date and shall provide satisfactory written evidence to the Vendor of all utility account transfers to the Purchaser on or before the Occupancy Date.
 - (v) That the Purchaser shall be obligated and responsible for payment of all utility charges attributable to the Purchased Property as of the Occupancy Date. Any charges from local utility companies or other suppliers as of the Occupancy Date are the direct responsibility and obligation of the Purchaser for payment and shall form part of the final closing adjustments, if applicable. All utility new account fees, meter charges; deposits etc. are the responsibility of the Purchaser and, if applicable shall form part of the final adjustments on closing.

Deposits

5. Deleted

Adjustments

6. (a) Deleted

- (b) Deleted
 - (b) Deleted.
 - (c) The Purchaser shall, in addition to the Purchase Price, pay the following amounts to the Vendor on the Transfer Date:
 - (i) any other taxes imposed on the Purchased Property by the federal, provincial, or municipal government;
 - (ii) deleted
 - (iii) deleted
 - (iv) a sum of Three Hundred (\$300.00) Dollars as a contribution towards the cost of fees payable by the Vendor to its lenders including the cost of obtaining (partial) discharges of mortgages not intended to be assumed by the Purchaser;
 - (v) deleted
 - (vi) The cost of water meter installations, water and sewer service connection charges and hydro and gas installation and connection or energization charges for the Purchased Property and/or the Condominium, and where such costs or charges or any portion thereof are assessed against the Property and not the Purchased Property separately, then the Purchaser's portion of such installation and/or connection or energization charges and costs shall be calculated by dividing the total amount of such charges and costs by the number of units in the Condominium and by charging the Purchaser in the statement of adjustments with that portion of the charges and costs. A letter from the Vendor's engineers certifying the said charges and costs shall be final and binding on the Purchaser.
 - (vii) The charge imposed upon the Vendor or its solicitors by the Law Society of Upper Canada upon registration of a Transfer/Deed of Land or Charge/Mortgage of Land or any other instrument.
 - (viii) Deleted
 - (d) Deleted
 - (e) Deleted
 - (f) It is expressly understood and agreed by the parties hereto that the Purchase Price and the monthly occupancy fees payable by the Purchaser hereunder are exclusive of the applicable harmonized goods and services tax or single sales tax exigible with respect to this purchase and sale transaction (hereinbefore and hereinafter referred to as the "HST"). The Purchaser shall also be solely responsible for any HST applicable to (or eligible in respect of) the forfeiture of all or any portion of the Purchaser's deposits paid hereunder as a result of the termination of this Agreement consequent upon the Purchaser's default. The Purchaser hereby warrants, covenants and agrees that the Purchaser is (or on the Transfer Date will be) registered under the Excise Tax Act, and shall be solely responsible for paying and remitting any applicable HST exigible whatsoever or howsoever in connection with this transaction, on its own, pursuant to the Excise Tax Act. Moreover, the Purchaser covenants and agrees to provide the Vendor, forthwith upon demand, and in any event prior to the Transfer Date, with evidence of the Purchaser's registration under the Excise Tax Act, which evidence shall be in a form acceptable to the Vendor in its sole and unfettered discretion, together with the undertaking of the Purchaser to self-assess and to indemnify the Vendor with respect to HST penalties in a form acceptable to the Vendor. If, prior to the Transfer Date, the Purchaser has not provided the Vendor with such satisfactory evidence that the Purchaser is registered under the Excise Tax Act, then the Purchaser shall pay to the Vendor on the Transfer Date the amount of any HST payable in this transaction, notwithstanding that same may not have been formally or finally levied and/or payable by the Transfer Date. In the event that the Purchaser fails to pay and/or reimburse the Vendor with respect to such taxes (including without limitation, the Purchaser's failure to pay or remit to the Vendor on the Transfer Date the HST exigible in connection with this transaction), and the Purchaser fails to provide satisfactory evidence to the Vendor that the Purchaser is registered under the Excise Tax Act, then in addition to any other rights or remedies available to the Vendor at law or in equity, the Vendor shall have the unilateral right to terminate this agreement by delivering a notice to that effect to the Purchaser at any time on or before the Transfer Date, and all monies theretofore paid by the Purchaser to the Vendor shall be forfeited to the Vendor as its liquidated damages, and not as a penalty, without prejudice to the Vendor's pursuit of a claim in damages against the Purchaser as a result of the Purchaser's default.
 - (g) Notwithstanding any other provision herein contained in this Agreement, the Purchaser further acknowledges and agrees that the Purchase Price does not include any HST exigible with respect to any of the adjustments payable by the Purchaser pursuant to this Agreement and the Purchaser covenants and agrees to pay such HST to the Vendor in accordance with the Excise Tax Act (Canada).
 - (h) An administration fee of Three Hundred and Fifty (\$350.00) Dollars shall be charged to the Purchaser for any cheque delivered to the Vendor's Solicitor and not accepted by the Vendor's Solicitor's bank for any reason.
- 6A (a) Adjustments shall be made as of the day immediately preceding the Transfer Date (the "Adjustment Date") and shall be paid on the Transfer Date. The adjustments shall include all prepaid expenses relating to the Purchased Property, if any, taxes (including realty taxes, local improvement charges and assessments and business taxes), and other adjustments established by the usual practice in Toronto, Ontario for the purchase and sale of a property similar to the Purchased Property. The Vendor shall be responsible for all expenses and entitled to all revenue accrued from the Purchased Property for that period ending on the Adjustment Date. The Purchaser shall receive all of the revenue and be responsible for all of the expenses in respect of the Purchased Property for the period from and after the Adjustment Date. A statement of adjustments shall be delivered to the Purchaser by the Vendor at least five (5) Business Days prior to the Transfer Date. If the final cost or amount of any item which is to be adjusted hereunder cannot be determined at the Transfer Date, then an initial adjustment for such item shall be made in the statement of adjustments, such amount to be estimated by the Vendor and the Purchaser, each acting reasonably, as of the Transfer Date on the basis of the best evidence available on the Transfer Date as to what the final cost or amount of such item will be. All amounts which have been estimated as at the Transfer Date because they have not been finally determined at that date (the "Post-Closing Adjustments") shall be finally adjusted on a post closing basis once the Post-Closing Adjustments have been determined and finalized. In each case when a Post-Closing Adjustment is determined, the Vendor or the Purchaser that has made such determination, as the case may be, shall within thirty (30) days of making such determination, provide a complete

statement thereof, together with particulars relating thereto in reasonable detail, to the other party and within thirty (30) days thereafter the Vendor and the Purchaser shall make a final adjustment as of the Transfer Date for the Post-Closing Adjustment in question. If the Vendor and the Purchaser are unable to agree as to the final amount of any Post-Closing Adjustment, such Post-Closing Adjustment shall be determined pursuant to Subsection 6A(b). The Vendor and the Purchaser shall co-operate and shall provide each other with access to the records relating to such Post-Closing Adjustments upon receipt of a request therefore from the other party.

(b) The Vendor and Purchaser shall execute and deliver on the Transfer Date a mutual undertaking to readjust and pay the amount of any adjustments or other Post-Closing Adjustments as may be owing pursuant to the provisions of this Agreement. The Vendor and the Purchaser agree to readjust after the Transfer Date any errors, omissions or changes in the statement of adjustments delivered by the Vendor on the Transfer Date and not otherwise provided for in this Section 6A, upon either party delivering to the other a complete statement proving such error, omission or change, provided that, in any event, such final adjustment and all Post-Closing Adjustments shall be made no later than the day that is six (6) months after the Transfer Date (the "**Readjustment Date**") and no claim for any re-adjustment may be made by either party thereafter. In the absence of agreement by the Vendor and the Purchaser hereto in respect of any Post-Closing Adjustments to be made pursuant to this Section 6A, the amount of any such Post-Closing Adjustments shall be determined by auditors, upon either the Vendor or the Purchaser referring any disagreement over Post-Closing Adjustments to a firm of auditors selected by the Vendor and the Purchaser, acting reasonably. The determination of such auditors shall be final and binding on the Vendor and the Purchaser. The cost of such determination by such auditors shall be shared equally between the Vendor and the Purchaser. Any such reference shall be made prior to the Readjustment Date.

Title

7. The Purchaser shall be allowed until the date that is five (5) days prior to the Transfer Date (the "**Examination Period**") to examine title to the Purchased Property at the Purchaser's own expense and shall not call for the production of any surveys, title deeds, abstracts of title, grading certificates, occupancy permits or certificates, nor any other proof or evidence of the title or occupiability of the Purchased Property, except such copies thereof as are in the Vendor's possession. If within the Examination Period, any valid objection to title or to any outstanding work order is made in writing to the Vendor which the Vendor shall be unable or unwilling to remove and which the Purchaser will not waive, this Agreement shall, notwithstanding any intervening acts or negotiations in respect of such objections, be null and void and the deposit monies together with the interest required by the Act to be paid after deducting any payments due to the Vendor by the Purchaser as provided for in this Agreement shall be returned to the Purchaser and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages. Save as to any valid objections so made within the Examination Period, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Purchased Property. The Purchaser acknowledges and agrees that the Vendor shall be entitled to respond to some or all of the requisitions submitted by or on behalf of the Purchaser through the use of a standard title memorandum or title advice statement prepared by the Vendor's Solicitors, and that same shall constitute a satisfactory manner of responding to the Purchaser's requisitions, thereby relieving the Vendor and the Vendor's Solicitors of the requirement to respond directly or specifically to the Purchaser's requisitions.
8. Deleted.
9. (a) The Purchaser agrees to accept title subject to the following:
 - (i) with respect to the Parking Units and the Locker Unit, the Condominium Documents;
 - (ii) registered restrictions or covenants that run with the Property, including any encroachment agreement(s) with any governmental authorities or adjacent land owner(s), provided that same are complied with as at the Transfer Date;
 - (iii) easements, rights-of-way and/or licences now registered (or to be registered hereafter) for the supply and installation of utility services, drainage, telephone services, electricity, gas, storm and/or sanitary sewers, water, cable television and/or any other service(s) to or for the benefit of the Condominium (or to any adjacent or neighbouring properties), including any easement(s) which may be required by the Vendor (or by the owner of the Property, if not one and the same as the Vendor), or by any owner(s) of adjacent or neighbouring properties, for servicing and/or access to (or entry from) such properties, together with any easement and cost-sharing agreement(s) or reciprocal agreement(s) confirming (or pertaining to) any easement or right-of-way for access, egress, support and/or servicing purposes, and/or pertaining to the sharing of any services, facilities and/or amenities with adjacent or neighbouring property owners provided that any such easement and cost-sharing agreements or reciprocal agreements are (insofar as the obligations thereunder pertaining to the Property, or any portion thereof, are concerned) complied with as at the Transfer Date;
 - (iv) any other municipal requirements including building and zoning by-laws, noise attenuation provisions or environmental notices, warnings or covenants affecting or relating to the use or development of the Purchased Property, the Condominium or other improvements to the Property;
 - (v) all leases, service or maintenance contracts and license rights to occupy portions of the common elements, if any, which are in accordance with the Condominium Documents or the Act;
 - (vi) registered municipal agreements and registered agreements with publicly regulated utilities and/or with local ratepayer associations, including without limitation, any development, site plan, subdivision, engineering and/or other municipal agreement (or similar agreements entered into with any governmental authorities), (with all of such agreements being hereinafter collectively referred to as the "Development Agreements"), provided that same are complied with as at the Transfer Date, or security has been posted in such amounts and on such terms as may be required by the governmental authorities to ensure compliance therewith and/or the completion of any outstanding obligations thereunder;
 - (vii) unregistered or inchoate liens for unpaid utilities in respect of which no formal bill, account or invoice has been issued by the relevant utility authority (or if issued, the time for payment of same has not yet expired), without any claim or request by the Purchaser for any utility holdback(s) or reduction/abatement in the Purchase Price, provided that the Vendor delivers to the Purchaser the Vendor's written undertaking to pay all outstanding utility accounts owing with respect to the Property (including any amounts owing in connection with any final meter reading(s) taken on or immediately prior to the Transfer Date, if applicable), as soon as reasonably possible after the completion of this transaction; and

- (viii) any notice of security interest in respect of any personal property contemplated by this Agreement or the Condominium Documents;
 - (ix) the Shared Facilities Agreement; and
 - (x) the encumbrances listed in Schedule "F".
- (b) It is understood and agreed that the Vendor shall not be obliged to obtain or register on title to the property a release of (or an amendment to) any of the aforementioned easements, development agreements, reciprocal agreements or restrictive covenants, nor shall the Vendor be obliged to have any of same deleted from the title to the Property, and the Purchaser hereby expressly acknowledges and agrees that the Purchaser shall satisfy himself or herself as to compliance therewith. The Purchaser agrees to observe and comply with the terms and provisions of the Development Agreements, and all restrictive covenants registered on title. The Purchaser further acknowledges and agrees that the retention by the local municipality within which the Property is situate (the "**Municipality**"), or by any of the other governmental authorities, of security (e.g. in the form of cash, letters of credit, a performance bond, etc., satisfactory to the Municipality and/or any of the other governmental authorities) intended to guarantee the fulfillment of any outstanding obligations under the Development Agreements shall, for the purposes of the purchase and sale transaction contemplated hereunder, be deemed to be satisfactory compliance with the terms and provisions of the Development Agreements. The Purchaser also acknowledges that the wires, cables and fittings comprising the cable television system serving the Condominium are (or may be) owned by the local cable television supplier, or by a company associated, affiliated with or related to the Vendor.
- (c) The Purchaser covenants and agrees to consent to the matters referred to in subparagraph 9(a) hereof and to execute all documents and do all things requisite for this purpose, either before or after the Transfer Date, including without limitation any documentation reasonably required by the Vendor or the Corporation with respect to the assumption of the Shared Facilities Agreement by the Purchaser.
- (d) The Vendor shall be entitled to insert in the Transfer/Deed of Land, specific covenants by the Purchaser pertaining to any or all of the restrictions, easements, covenants and agreements referred to herein or in the Condominium Documents, and in such case, the Purchaser may be required to deliver separate written covenants on closing. If so requested by the Vendor, the Purchaser covenants to execute all documents and instruments required to convey or confirm any of the easements, licences, covenants, agreements, and/or rights, required pursuant to this Agreement and shall observe and comply with all of the terms and provisions therewith. The Purchaser may be required to obtain a similar covenant (enforceable by and in favour of the Vendor), in any agreement entered into between the Purchaser and any subsequent transferee of the Purchased Property.
- (e) The Purchaser covenants and agrees to use the Unit for the Business or, subject to the terms of this Agreement following the Transfer Date. The Purchaser acknowledges that it is the Purchaser's sole responsibility to ensure that the Purchaser's use of the Unit is in compliance with all municipal by-laws. The Purchaser expressly acknowledges, confirms and agrees that the Vendor, its representatives and sales agents (including the agent) have made no warranty or representation whatsoever with respect to the Business use or permitted use(s) of the Unit or the availability of any permits, authorizations, consents or permissions as aforesaid, and the Vendor and its representatives and sales agents (including the agent) shall incur no claim and suffer no cost, loss, damage and/or liability whatsoever in the event that the use(s) intended to be made of the Unit by the Purchaser is not permitted or the Purchaser is unable to obtain the required permits, authorizations, consents or permissions as aforesaid.
- (f) The Purchaser is responsible for obtaining his or her or its own occupancy permit or other occupancy authorization from the local municipality. The Vendor shall not be liable for any damages the Purchaser may suffer in the event the Purchaser is unable to obtain same.
- (g) The Purchaser covenants and agrees that the Purchaser shall not, either before or after closing, utilize or allow the Unit to be utilized, and/or apply for or allow any person to apply for any occupancy permit in respect of the Unit which shall permit the use thereof contrary to the zoning by-law applicable to the Unit and as specified in this Agreement.
- (h) The Purchaser agrees that notwithstanding anything to the contrary contained herein the use of the Unit is hereby further restricted as follows:
- (i) The Unit shall not be used in such a manner or for any purpose which results in a level of noise and/or vibration and/or odour emanating from the Unit which is offensive and/or which is a nuisance to any one or more or all of the other units.
 - (ii) In no event shall the Unit be used for:
 - (a) massage parlour;
 - (b) a pet store or other business that offers live animals for sale;
 - (c) a tattooing establishment;
 - (d) an escort service;
 - (e) a business whose principal business is the sale of fireworks or firecrackers of any kind;
 - (f) an auction, flea market, pawn shop or similar type business;
 - (g) an adult entertainment facility, or an adult bookstore, video store or other adult facility principally selling or displaying adult paraphernalia or pornographic books, literature, videotapes, or digital video discs (material shall be considered "adult" or pornographic" for such purpose if same is not available for sale or rental to, or viewing by, persons under 18 years of age).
10. The Purchaser agrees that the Vendor shall have a Vendor's Lien for unpaid purchase monies on the Transfer Date and shall be entitled to register a Notice of Vendor's Lien against the Purchased Property any time after the Transfer Date.

11. The Purchaser acknowledges that the Purchased Property may be encumbered by mortgages (and collateral security thereto) which are not intended to be assumed by the Purchaser and that the Vendor shall not be obliged to obtain and register (partial) discharges of such mortgages insofar as they affect the Purchased Property on the Transfer Date. The Purchaser agrees to accept the Vendor's solicitors undertaking to obtain and register (partial) discharges of such mortgages, as soon as reasonably possible after the Transfer Date subject to the Vendor or its solicitors providing to the Purchaser or the Purchaser's solicitor the following:
- (a) a mortgage statement or letter from the mortgagee(s) (or from their respective solicitors) confirming the amount, if any, required to be paid to the mortgagee(s) to obtain (partial) discharges of the mortgages with respect to the Purchased Property;
 - (b) a direction from the Vendor to the Purchaser to pay such amounts to the mortgagee(s) (or to whomever the mortgagees may direct) on the Transfer Date to obtain a (partial) discharge of the mortgage(s) with respect to the Purchased Property; and
 - (c) an undertaking from the Vendor's Solicitor to deliver such amounts to the mortgagees and to register the (partial) discharge of the mortgages with respect to the Purchased Property upon receipt thereof and within a reasonable time following the Transfer Date and to advise the Purchaser or the Purchaser's solicitor concerning registration particulars.
12. Deleted.

The Planning Act

13. This Agreement and the transaction arising therefrom are conditional upon compliance with the provisions of Section 50 of the Planning Act, R.S.O. 1990, c.P.13 and any amendments thereto on or before the Transfer Date.

Occupancy

14. This Agreement shall be completed on the Occupancy Date or any extensions thereof as permitted under this Agreement, at which time vacant possession shall be given to the Purchaser.

Purchaser's Covenants, Representations and Warranties

15. The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time, and to any easement, license or other agreement concerning the Condominium or the Condominium Documents (with respect to the Parking Units and the Locker Unit), or otherwise registered on title to the Property. The Purchaser further agrees to consent to and execute all documentation as may be required by the Vendor in this regard and the Purchaser hereby irrevocably appoints the Vendor as the Purchaser's attorney to execute any consents or other documents required by the Vendor to give effect to this paragraph. The Purchaser hereby consents to the Vendor obtaining a consumer's report containing credit and/or personal information for the purposes of this transaction. The Purchaser further agrees to deliver to the Vendor, within ten (10) days of written demand from the Vendor, all necessary financial and personal information required by the Vendor in order to evidence the Purchaser's ability to pay the balance of the Purchase Price on the Transfer Date, including without limitation, written confirmation of the Purchaser's income and evidence of the source of the payments required to be made by the Purchaser in accordance with this Agreement.
16. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, Purchaser's Lien, or any other document providing evidence of this Agreement against title to the Property or the Condominium and further agrees not to give, register, or permit to be registered any encumbrance against the Property, Purchased Property or the Condominium. Should the Purchaser be in default of his obligations hereunder, the Vendor may, as agent and attorney of the Purchaser, cause the removal of notice of this Agreement, caution or other document providing evidence of this Agreement or any assignment thereof, from the title to the Property, Purchased Property or the Condominium. In addition, the Vendor, at its option, shall have the right to declare this Agreement null and void in accordance with the provisions of paragraph 26 hereof. The Purchaser hereby irrevocably consents to a court order removing such notice of this Agreement, any caution, or any other document or instrument whatsoever from title to the Property, Purchased Property or the Condominium and the Purchaser agrees to pay all of the Vendor's costs and expenses in obtaining such order (including the Vendor's Solicitor's fees on a solicitor and client basis).
17. The Purchaser covenants not to list for sale or lease, advertise for sale or lease, sell or lease, nor in any way assign his or her interest under this Agreement, or the Purchaser's rights and interests hereunder or in the Purchased Property, nor directly or indirectly permit any third party to list or advertise the Purchased Property for sale or lease, at any time until after the Transfer Date, without the prior written consent of the Vendor, which consent may be arbitrarily withheld. The Purchaser acknowledges and agrees that once a breach of the preceding covenant occurs, such breach is or shall be incapable of rectification, and accordingly the Purchaser acknowledges, and agrees that in the event of such breach, the Vendor shall have the unilateral right and option of terminating this Agreement, effective upon delivery of notice of termination to the Purchaser or the Purchaser's solicitor, whereupon the provisions of this Agreement dealing with the consequence of termination by reason of the Purchaser's default, shall apply. The Purchaser shall be entitled to direct that title to the Purchased Property be taken in the name of his or her spouse, or a member of his or her immediate family only, and shall not be permitted to direct title to any other third parties.
18. The Purchaser covenants and agrees that he or she shall not directly nor indirectly object to nor oppose any official plan amendment(s), rezoning application(s), severance application(s), minor variance application(s) and/or site plan application(s), nor any other applications ancillary thereto relating to the development of the Property, or any neighbouring or adjacent lands. The Purchaser further acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto.
19. The Purchaser covenants and agrees that he or she shall not interfere with the completion of other units and the common elements by the Vendor. Until the Condominium is completed and all units sold and transferred the Vendor may make such use of the Condominium as may facilitate the completion of the Condominium and sale of all the units, including, but not limited to the maintenance of a sales/rental/administration office and model units, and the display of signs located on the Property.

Termination without Default

20. In the event this Agreement is terminated through no fault of the Purchaser, all deposit monies paid by the Purchaser towards the Purchase Price, together with any interest required by law to be paid, shall be returned to the Purchaser; provided however, that the Vendor shall not be obligated to return any monies paid by the Purchaser for optional upgrades, changes or extras ordered by the Purchaser. In no event shall the Vendor or its agents be liable for any damages or costs whatsoever and without limiting the generality of the foregoing, for any monies paid to the Vendor for optional upgrades, changes, extras, for any loss

of bargain, for any relocating costs, or for any professional or other fees paid in relation to this transaction. This provision may be pleaded by the Vendor as a complete defence to any such claim.

Delays

21. Deleted

Warranties

22. (a) The Purchaser acknowledges and agrees that: (a) the Purchased Property is being purchased on an "as is, where is" basis; (b) no representation or warranty, either express or implied, has been or will be given by the Vendor as to the title to or the boundaries of the Purchased Property and the Property, the condition of the Purchased Property, the environmental condition of the Purchased Property and the Property, soil and subsoil conditions, the zoning and other laws, by-laws, regulations, rules or codes applicable to the Purchased Property and the Property, the size, quality, quantity, fitness for purpose and/or marketability of the Purchased Property and the Property, or any other matter or thing affecting or related to the Purchased Property or the Property or any part thereof or the transaction contemplated hereby; and (c) the Purchaser has not relied upon any representation or warranty or upon any offering material or other information furnished to the Purchaser by the Vendor or the Vendor's agent or any other person or entity including, without limitation, any reports, studies or assessments provided to the Purchaser by or on behalf of the Vendor.
- (b) The Vendor does not warranty any of the systems contained or installed in the Purchased Property or common elements, but shall provide the Purchaser with the full benefit of any warranties obtained by it to the extent that it is able to do so pursuant to the terms of the warranties. The Purchaser agrees to accept such warranties in lieu of any other warranties or guarantees, expressed or implied, at equity or at law, it being understood and agreed that there is no representation, warranty, guarantee, collateral agreement or condition precedent to, concurrent with or in any way affecting this Agreement or the Purchased Property, other than as expressed herein in writing.
- (c) Deleted

Right of Entry

23. Notwithstanding the Purchaser occupying the Purchased Property on the Occupancy Date or the closing of this transaction and the delivery of title to the Purchased Property to the Purchaser, as applicable, the Vendor or any person authorized by it shall be entitled at all reasonable times and upon reasonable prior notice to the Purchaser to enter the Purchased Property and the common elements in order to make inspections or to do any work or replace therein or thereon which may be deemed necessary by the Vendor in connection with the Purchased Property or the common elements and such right shall be in addition to any rights and easements created under the Act. A right of entry in favour of the Vendor for a period not exceeding five (5) years similar to the foregoing may be included in the Transfer/Deed provided on the Transfer Date and acknowledged by the Purchaser at the Vendor's sole discretion.

Occupancy

24. Deleted

Inspection

25. Deleted

Purchaser's Default

26. (a) In the event that the Purchaser is in default with respect to any of his or her obligations contained in this Agreement on or before the Transfer Date and fails to remedy such default forthwith, if such default is a monetary default and/or pertains to the execution and delivery of documentation required to be given to the Vendor on the Transfer Date, or within five (5) days of the Purchaser being so notified in writing with respect to any other non-monetary default, then the Vendor, in addition to (and without prejudice to) any other rights or remedies available to the Vendor (at law or in equity) may, at its sole option, unilaterally suspend all of the Purchaser's rights, benefits and privileges contained herein (including without limitation, the right to make colour and finish selections with respect to the Purchased Property as hereinbefore provided or contemplated), and/or unilaterally declare this Agreement to be terminated and of no further force or effect, whereupon all deposit monies theretofore paid, together with all monies paid for any extras or changes to the Purchased Property, shall be retained by the Vendor as its liquidated damages, and not as a penalty, in addition to (and without prejudice to) any other rights or remedies available to the Vendor at law or in equity. In the event of the termination of this Agreement by reason of the Purchaser's default as aforesaid, then the Purchaser shall be obliged to forthwith vacate the Purchased Property (or cause same to be forthwith vacated) if same has been occupied (and shall leave the Purchased Property in a clean condition, without any physical or cosmetic damages thereto, and clear of all garbage, debris and any furnishings and/or belongings of the Purchaser from the Purchased Property), and shall execute such releases and any other documents or assurances as the Vendor may require, in order to confirm that the Purchaser does not have (and the Purchaser hereby covenants and agrees that he or she does not have) any legal, equitable or proprietary interest whatsoever in the Purchased Property and/or the Property (or any portion thereof) prior to the completion of this transaction and the payment of the entire Purchase Price to the Vendor or the Vendor's solicitors as hereinbefore provided, and in the event the Purchaser fails or refuses to execute same, the Purchaser hereby appoints the Vendor to be his or her lawful attorney in order to execute such releases, documents and assurances in the Purchaser's name, place and stead, and in accordance with the provisions of The Powers of Attorney Act R.S.O. 1990, as amended, the Purchaser hereby declares that this power of attorney may be exercised by the Vendor during any subsequent legal incapacity on the part of the Purchaser. In the event the Vendor's Solicitors or an Escrow Agent is/are holding any of the deposits in trust pursuant to this Agreement, then in the event of default as aforesaid, the Purchaser hereby releases the said Vendor's Solicitors or Escrow Agent from any obligation to hold the deposit monies in trust and shall not make any claim whatsoever against the said Vendor's Solicitors or Escrow Agent and the Purchaser hereby irrevocably directs and authorizes the said Vendor's Solicitors or Escrow Agent to deliver the said deposit monies and accrued interest, if any, to the Vendor.
- (b) Notwithstanding subparagraph (a) above, the Purchaser acknowledges and agrees that if any amount, payment and/or adjustment which are due and payable by the Purchaser to the Vendor pursuant to this Agreement are not made and/or paid on the date due, but are subsequently accepted by the Vendor, notwithstanding the Purchaser's default, then such amount, payment and/or adjustment shall, until paid, bear interest at the rate equal to eight (8%) percent per annum above the bank rate as defined in subsection 19(2) of Ontario Regulation 48/01 to the Act at the date of default.

Common Elements

27. The Purchaser acknowledges that the Condominium will be constructed to Ontario Building Code requirements at the time of issuance of the building permit. The Purchaser covenants and agrees the Purchaser shall have no claims against the Vendor for any equal, higher or better standards of workmanship or materials. The Purchaser agrees that the foregoing may be pleaded by the Vendor as an estoppel in any action brought by the Purchaser or his successors in title against the Vendor. The Vendor may, from time to time, change, vary or modify in its sole discretion or at the instance of any governmental authority or mortgagee, any elevations, building specifications or site plans of any part of the Condominium, to conform with any municipal or architectural requirements related to building codes, official plan or official plan amendments, zoning by-laws, committee of adjustment and/or land division committee decisions, municipal site plan approval or architectural control. Such changes may be to the plans and specifications existing at inception of the Condominium or as they existed at the time the Purchaser entered into this Agreement, or as illustrated on any sales material, including without limitation, brochures, models or otherwise. With respect to any aspect of construction, finishing or equipment, the Vendor shall have the right, without the Purchaser's consent, to substitute materials, for those described in this Agreement or in the plans or specifications, provided the substituted materials are in the judgment of the Vendor's architect, whose determination shall be final and binding, of equal or better quality. The Purchaser shall have no claim against the Vendor for any such changes, variances or modifications nor shall the Vendor be required to give notice thereof. The Purchaser hereby consents to any such alterations and agrees to complete the sale notwithstanding any such modifications.

Executions

28. The Purchaser agrees to provide to the Vendor's Solicitors on the Occupancy Date a clear and up-to-date Execution Certificate confirming that no executions are filed at the local Land Titles Office against the individual(s) in whose name title to the Purchased Property is being taken.

Risk

29. The Purchased Property shall be and remain at the risk of the Vendor until the Transfer Date. If any part of the Condominium is damaged before the Transfer Date, the Vendor may in its sole discretion either terminate this Agreement and return to the Purchaser all deposit monies paid by the Purchaser to the Vendor, if any, or make such repairs as are necessary to complete this transaction, it being understood and agreed that all insurance policies and the proceeds thereof are to be for the benefit of the Vendor alone.

General

30. The Vendor represents and warrants that it is not a non-resident of Canada within the meaning of the Income Tax Act (Canada).
31. The Vendor and Purchaser agree to pay the costs of registration of their own documents and any tax in connection therewith.
32. The Vendor and the Purchaser agree that there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property or supported hereby other than as expressed herein in writing.
33. This Offer and its acceptance is to be read with all changes of gender or number required by the context and the terms, provisions and conditions hereof shall be for the benefit of and be binding upon the Vendor and the Purchaser, and as the context of this Agreement permits, their respective heirs, estate trustees, successors and assigns.
34. It is acknowledged and agreed by the Purchaser that the dimensions, floor area or square footage of the Purchased Property, as represented to the Purchaser in any brochure, sketch, floor plan, or other advertising material is approximate, and may differ from the actual size and defined boundaries of the Purchased Property, and the Purchaser consents to same. The Purchaser is further advised that the actual usable floor space may vary from any stated floor area. Notwithstanding any stated ceiling height (whether in any schedule to this Agreement or in any brochure, sketch, floor plan or other advertising material), where ceiling bulk heads are installed within the Unit and/or where drop ceilings are required, then the ceiling height of the Unit will necessarily be less than that stated in any brochure, sketch, floor plan or other advertising material and the Purchaser shall be obliged to accept the same without any abatement or claim for compensation whatsoever.
35. (a) The parties waive personal tender and agree that tender, in the absence of any other mutually acceptable arrangement and subject to the provisions of paragraph 36 of this Agreement shall be validly made by the Vendor upon the Purchaser, by a representative of the Vendor attending at the offices of Harris, Sheaffer, LLP at 12:00 noon on the Transfer Date or the Occupancy Date as the case may be and remaining there until 4:30 p.m. and is ready, willing and able to complete the transaction. The Vendor's advice that the keys are available shall be valid tender of possession of the Purchased Property to the Purchaser. In the event the Purchaser or his Solicitor fails to appear or appears and fails to close, such attendance by the Vendor's representative shall be deemed satisfactory evidence that the Vendor is ready, willing and able to complete the sale at such time. Payment shall be tendered by certified cheque drawn on any Canadian chartered bank; and
- (b) It is further provided that, notwithstanding subparagraph 35(a) hereof, in the event the Purchaser or his Solicitor advise the Vendor or its Solicitors, on or before the Occupancy Date or Transfer Date, as applicable, that the Purchaser is unable or unwilling to complete the purchase or take occupancy, the Vendor is relieved of any obligation to make any formal tender upon the Purchaser or his Solicitor and may exercise forthwith any and all of its right and remedies provided for in this Agreement and at law.
36. As the electronic registration system (hereinafter referred to as the "**Teraview Electronic Registration System**" or "**TERS**") is operative in the applicable Land Titles Office in which the Property is registered, then the following provisions shall prevail:
- (a) The Purchaser shall be obliged to retain a lawyer, who is both an authorized TERS user and in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of the transaction, and shall authorize such lawyer to enter into an escrow closing agreement with the Vendor's solicitor on the latter's standard form (hereinafter referred to as the "**Escrow Document Registration Agreement**"), establishing the procedures and timing for completing this transaction and to be executed by the Purchaser's solicitor and returned to the Vendor's solicitors at least ten (10) days prior to the Transfer Date.
- (b) The delivery and exchange of documents, monies and keys to the Unit and the release thereof to the Vendor and the Purchaser, as the case may be:

- (i) shall not occur contemporaneously with the registration of the Transfer/Deed (and other registerable documentation); and
 - (ii) shall be governed by the Escrow Document Registration Agreement, pursuant to which the solicitor receiving the documents, keys and/or certified funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the Escrow Document Registration Agreement.
- (c) If the Purchaser's lawyer is unwilling or unable to complete this transaction via TERS, in accordance with the provisions contemplated under the Escrow Document Registration Agreement, then said lawyer (or the authorized agent thereof) shall be obliged to personally attend at the office of the Vendor's solicitor, at such time on the scheduled closing date as may be directed by the Vendor's solicitor or as mutually agreed upon, in order to complete this transaction via TERS utilizing the computer facilities in the Vendor's solicitor's office, and shall pay a fee as determined by the Vendor's solicitor, acting reasonably for the use of the Vendor's computer facilities.
- (d) The Purchaser expressly acknowledges and agrees that he or she will not be entitled to receive the Transfer/Deed to the Purchased Property for registration until the balance of funds due on closing, in accordance with the statement of adjustments, are either remitted by certified cheque via personal delivery or by electronic funds transfer to the vendor's solicitor (or in such other manner as the latter may direct) prior to the release of the Transfer/Deed for registration.
- (e) Each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Purchased Property may be delivered to the other party hereto by telefax transmission (or by a similar system reproducing the original) or by electronic transmission of electronically signed documents through the Internet, provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto which may be by electronic signature. The party transmitting any such document shall also deliver the original of same (unless the document is an electronically signed document) to the recipient party by overnight courier sent the day of closing or within 7 business days of closing, if same has been so requested by the recipient party.
- (f) Notwithstanding anything contained in this agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by the Vendor upon the Purchaser when the Vendor's solicitor has:
- (i) delivered all closing documents, keys and/or funds to the Purchaser's solicitor in accordance with the provisions of the Escrow Document Registration Agreement;
 - (ii) advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
 - (iii) has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Vendor's solicitor without the cooperation or participation of the Purchaser's solicitor, and specifically when the "completeness signatory" for the transfer/deed has been electronically "signed" by the Vendor's solicitor;
- without the necessity of personally attending upon the Purchaser or the Purchaser's solicitor with the aforementioned documents, keys and/or funds and without any requirement to have an independent witness evidencing the foregoing.
37. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
38. The headings of this Agreement form no part hereof and are inserted for convenience of reference only.
39. Each of the provisions of this Agreement shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in any manner the validity, enforceability or effect of the remainder of this Agreement, and in such event all the other provisions of this Agreement shall continue in full force and effect as if such invalid provision had never been included herein.
40. The Purchaser acknowledges that the Vendor may from time to time lease any and all unsold units in the Condominium and this paragraph shall constitute notice to the Purchaser as registered owner of the Purchased Property after the Transfer Date pursuant to the Act.
41. (a) If any documents required to be executed and delivered by the Purchaser to the Vendor are, in fact, executed by a third party appointed as the attorney for the Purchaser, then the power of attorney appointing such person must be registered in the Land Titles office where the Lands are registered, and a duplicate registered copy thereof (together with a statutory declaration sworn by the Purchaser's solicitor unequivocally confirming, without any qualification whatsoever, that said power of attorney has not been revoked) shall be delivered to the Vendor along with such documents.
- (b) Where the Purchaser is a corporation, or where the Purchaser is buying in trust for a corporation to be incorporated, the execution of this Agreement by the principal or principals of such corporation, or by the person named as the Purchaser in trust for a corporation to be incorporated, as the case may be, shall be deemed and construed to constitute the personal guarantee of such person or persons so signing with respect to the obligations of the Purchaser herein.

Notice

42. Any notice give pursuant to the terms of this Agreement shall be deemed to have been properly given if it is in writing and is delivered by hand, ordinary prepaid post or email transmission to the attention of the Purchaser or to the Purchaser's solicitor to their respective addresses indicated herein or to the address of the Unit after the Occupancy Date and to the Vendor at the address set out in Subsection 2(d) above or such other address as may from time to time be given by notice in accordance with the foregoing. Such notice shall be deemed to have been received on the day it was delivered by hand or one day following email transmission and upon the third day following posting, excluding Saturdays, Sundays and holidays.

Cause of Action/Assignment

43. (a) The Purchaser acknowledges and agrees that notwithstanding any rights which he or she might otherwise have at law or in equity arising out of this Agreement, the Purchaser shall not assert any of such rights, nor have any claim or

cause of action whatsoever as a result of any matter or thing arising under or in connection with this Agreement (whether based or founded in contract law, tort law or in equity, and whether for innocent misrepresentation, negligent misrepresentation, breach of contract, breach of fiduciary duty, breach of constructive trust or otherwise), against any person, firm, corporation or other legal entity, other than the person, firm, corporation or legal entity specifically named or defined as the Vendor herein, even though the Vendor may be (or may ultimately be found or adjudged to be) a nominee or agent of another person, firm, corporation or other legal entity, or a trustee for and on behalf of another person, firm, corporation or other legal entity, and this acknowledgment and agreement may be pleaded as an estoppel and bar against the Purchaser in any action, suit, application or proceeding brought by or on behalf of the Purchaser to assert any of such rights, claims or causes of action against any such third parties.

- (b) At any time prior to the Transfer Date, the Vendor shall be permitted to assign this Agreement (and its rights, benefits and interests hereunder) to any person, firm, partnership or corporation and upon any such assignee assuming all obligations under this Agreement and notifying the Purchaser or the Purchaser's solicitor of such assignment, the Vendor named herein shall be automatically released from all obligations and liabilities to the Purchaser arising from this Agreement, and said assignee shall be deemed for all purposes to be the vendor herein as if it had been an original party to this Agreement, in the place and stead of the Vendor.

Economic Viability

44. Deleted

Irrevocability

45. Deleted.

Non-Merger

46. The covenants and agreements of each of the parties hereto shall not merge on the Transfer Date, but shall remain in full force and effect according to their respective terms, until all outstanding obligations of each of the parties hereto have been duly performed or fulfilled in accordance with the provisions of this Agreement. No further written assurances evidencing or confirming the non-merger of the covenants of either of the parties hereto shall be required or requested by or on behalf of either party hereto.

Notice/Warning Provisions

47. (a) The Purchaser acknowledges that it is anticipated by the Vendor that in connection with the Vendor's application to the appropriate governmental authorities for draft plan of condominium approval certain requirements may be imposed upon the Vendor by various governmental authorities. These requirements (the "**Requirements**") usually relate to warning provisions to be given to Purchasers in connection with environmental or other concerns (such as warnings relating to noise levels, the proximity of the Condominium to major streets and similar matters). Accordingly, the Purchaser covenants and agrees that on the Transfer Date, the Purchaser shall execute any and all documents required by the Vendor acknowledging, inter alia, that the Purchaser is aware of the Requirements.
- (b) The Purchaser is hereby advised that the Vendor's builder's risk and/or comprehensive liability insurance (effective prior to the registration of the Condominium), and the Condominium's master insurance policy (effective from and after the registration of the Condominium) will only cover the common elements and the standard unit and will not cover any betterments or improvements made to the standard unit, nor any furnishings or personal belongings of the Purchaser or other occupants of the Unit, and accordingly the Purchaser should arrange for his or her own insurance coverage with respect to same, effective from and after the Occupancy Date, all at the Purchaser's sole cost and expense.
- (c) The Purchaser acknowledges and agrees that the Vendor (and any of its authorized agents, representatives and/or contractors), as well as one or more authorized representatives of the Condominium, shall be permitted to enter the Unit after closing, from time to time, in order to enable the Vendor to correct outstanding deficiencies or incomplete work for which the Vendor is responsible, and to enable the Condominium to inspect the condition or state of repair of the Unit and undertake or complete any requisite repairs thereto (which the owner of the Unit has failed to do) in accordance with the Act.

Pre-Approval

48. Deleted

Purchaser's Work

49. The Purchaser agrees that he or she shall not be entitled to commence improvements which he or she wishes to make to the Unit (the "**Purchaser's Work**") without fulfilling the following conditions:
- (a) The Purchaser has obtained the written approval of the Vendor prior to any commencement of the Purchaser's Work, which approval shall not be unreasonably withheld;
- (b) (i) If the Purchaser wishes to commence the Purchaser's Work, the Purchaser shall submit to the Vendor for approval in accordance with the Vendor's requirements a complete set of plans, drawings, specifications, construction schedule(s), construction contract(s) and other information (collectively, the "**Purchaser's Plans**") as may be necessary or desirable for the complete and particular identification of all work to be performed by the Purchaser.
- (ii) The Purchaser's Plans shall be subject to the approval of the Vendor, which approval shall not be unreasonably or arbitrarily withheld. The Vendor shall notify the Purchaser of its approval of the Purchaser's Plans or of the specific changes required in writing and the Purchaser shall then prepare and submit to the Vendor within ten (10) days revised Purchaser's Plans satisfactory to the Vendor.
- (iii) No Purchaser's Work shall be commenced until the Purchaser's Plans have been approved in writing by the Vendor and the Purchaser's Work shall be performed strictly in accordance with the Purchaser's Plans as previously approved to be in writing by the Vendor. The Vendor shall be entitled to an administration fee for reviewing and approving the Purchaser's Plans, which fee shall be equivalent to one dollar (\$1.00) times

the Area of the Unit. A set of the Purchaser's Plans with the Vendor's consent endorsed thereon shall be kept at the Unit at all times throughout the period when the Purchaser's Work is being performed. The Vendor may, at its sole option, at the expense of the Purchaser, payable on demand, rectify or remove any Purchaser's Work which does not comply with the Purchaser's Plans as previously approved by the Vendor, the Ontario Building Code or any other governmental requirements.

- (iv) The Purchaser shall not be permitted to perform any Purchaser's Work in the common elements.
- (v) The Purchaser shall keep the Unit insured during the period of time in which the Purchaser is carrying out the Purchaser's Work as may be required by the Condominium and/or the Vendor, including builders risk insurance during the course of construction of Purchaser's Work, liability insurance of a minimum of Two Million (\$2,000,000.00) Dollars and worker's compensation coverage. The Purchaser shall be responsible for and keep insured all improvements to the standard unit and shall assume all liability in respect of same.
- (vi) The Purchaser shall deliver to the Vendor a letter of credit in the form and in an amount required by the Vendor acting reasonably in order to secure the Purchaser's obligations under this paragraph 49.
- (c) Prior to the performing any work, the Purchaser shall obtain all necessary consents, permits, licences, certificates and inspections from all municipal, governmental and regulatory authorities having jurisdiction, and shall make available to the Vendor copies of same and shall post permits as required.
- (d)
 - (i) All the Purchaser's Work, as well as the operations which the Purchaser carries out within the Unit, shall comply with all applicable laws, by-laws, building codes, permits and approvals for such work, as well as with the requirements of the Vendor's and/or the Condominium's insurers. If any of the foregoing are not in compliance and the Purchaser fails to remedy such non-compliance forthwith, the Vendor may, at its sole option, remedy same, at the Purchaser's expense, payable on demand.
 - (ii) The Purchaser shall in no event make any structural alterations nor any alternations which shall alter the structural parts of the building constituting part of the common elements.
 - (iii) Any damage to the Unit, the Condominium or the Property during the performance of the Purchaser's work by the Purchaser, its contractors, subcontractors, tradesmen or material suppliers shall immediately be repaired by the Purchaser or, at the Vendor's option, by the Vendor, at the expense of the Purchaser, payable on demand.
 - (iv) Upon termination of this Agreement, the Purchaser shall forthwith remove all of the Purchaser's Work from the Unit and restore the Unit to its original condition as it existed on the day immediately prior to the date the Purchaser's Work commenced or, at the Vendor's option, the Purchaser's Work to the extent it has been completed shall then remain in the Unit and shall become the property of the Vendor.
- (e) The opinion in writing of the Vendor's architect or other qualified consultants shall be binding on both the Vendor and the Purchaser respecting all matters of dispute regarding the Purchaser's Work, including the state of completion and whether or not the Purchaser's Work is completed in a good and workmanlike manner and in accordance with the Vendor's requirements, the Purchaser's Plans as approved by the Vendor and this Agreement.
- (f) The Purchaser shall ensure that no construction lien or any other lien affects the Condominium or the Property or any part thereof, including the Purchased Property, in respect of materials supplied or work done or to be done by the Purchaser or on behalf of the Purchaser or related to the Purchaser's Work and if the Purchaser fails to discharge or cause any such lien to be discharged no later than five (5) days after notice thereof has been given to the Purchaser, then in addition to any other rights or remedies of the Vendor, the Vendor may, but shall not be obligated to, discharge the lien by paying the amount claimed to be due into court or directly to the lien claimant and the amount so paid and all costs and expenses (including legal costs on a solicitor and his client basis), shall be payable by the Purchaser to the Vendor forthwith on demand.
- (g) Deleted.
- (h) The Purchaser shall be obligated to obtain any occupancy permit required by any municipal, governmental, or regulatory authority having jurisdiction and shall make available to the Vendor copies of same.
- (i) Wherever in this paragraph the Vendor performs work due to some default by the Purchaser which the Purchaser is required to pay for, then the Purchaser shall, together with all other recoveries permitted hereunder, pay to the Vendor, an administration fee equal to fifteen per cent (15%) of the recoveries.
- (j) The Purchaser covenants and agrees that the Purchaser shall not, either before or after closing, be entitled to erect, affix, or maintain any signage whatsoever, advertising the name of the occupiers of the Unit and/or the use of the Unit and/or other matters, to any portion of the common elements, including without limitation to the interior or exterior surface of any windows or doors adjacent to the Unit, except as herein specifically provided.

In the event of failure of the Purchaser to comply with any of the provisions of this paragraph, including the provisions to pay to the Vendor on demand any amounts expended by the Vendor in accordance with the provisions thereof, the Vendor may, at its option, by notice to the Purchaser, declare this Agreement null and void, and retain all deposit moneys paid hereunder, together with any interest earned thereon, as liquidated damages and not as a penalty.

Purchaser's Consent to the Collection and Limited Use of Personal Information

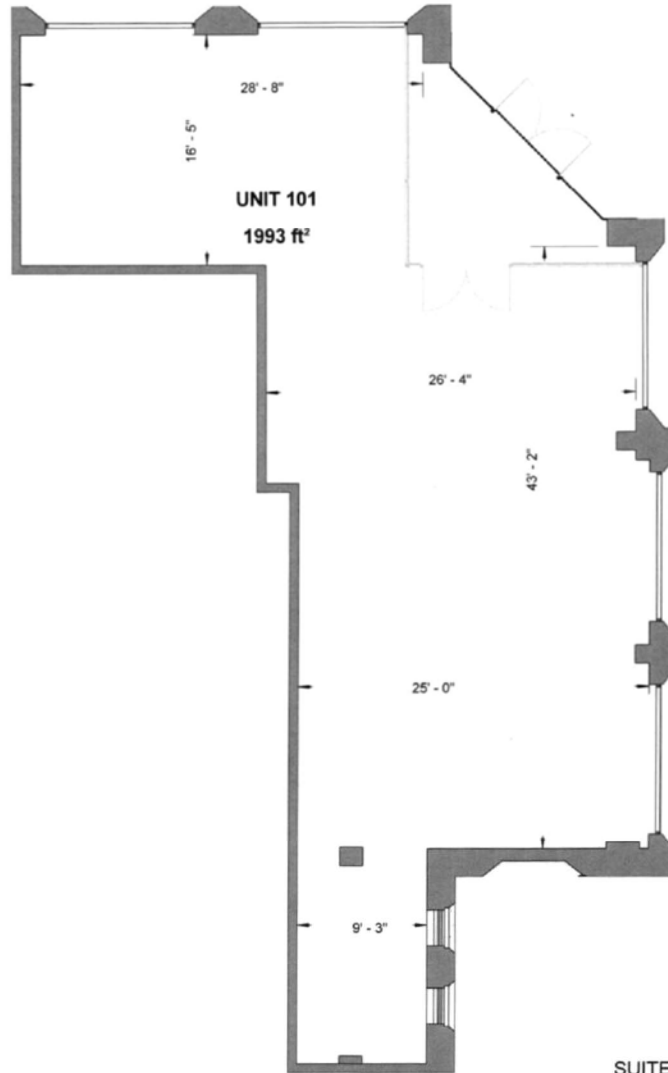
50. For the purposes of facilitating compliance with the provisions of any applicable Federal and/or Provincial privacy legislation (including without limitation, the Personal Information Protection and Electronic Documents Act, S.C. 2000, as amended), the Purchaser hereby consents to the Vendor's collection and use of the Purchaser's personal information necessary and sufficient to enable the Vendor to proceed with the Purchaser's purchase of the Purchased Property, including without limitation, the Purchaser's name, home address, e-mail address, telefax/telephone number, age, date of birth, and in respect of marital status only for the limited purposes described in subparagraphs (c), (g), (h) and (i) below, and in respect of residency status, and social insurance number only for the limited purpose described in subparagraph (h) below, as well as the Purchaser's financial information and desired suite design(s) and colour/finish selections, in connection with the completion of this transaction and for post-closing and after-sales customer care purposes, and to the disclosure and/or distribution of any or all of such personal information to the following entities, on the express understanding and agreement that the Vendor shall not sell or otherwise provide or distribute such personal information to anyone other than the following entities, namely to

- (a) any companies or legal entities that are associated with, related to or affiliated with the Vendor, other future condominium declarants that are likewise associated with, related to or affiliated with the Vendor (or with the Vendor's parent/holding company) and are developing one or more other condominium projects or communities that may be of interest to the Purchaser or members of the Purchaser's family, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Purchaser and/or members of the Purchaser's family;
- (b) one or more third party data processing companies which handle or process marketing campaigns on behalf of the Vendor or other companies that are associated with, related to or affiliated with the Vendor, and who may send (by e-mail or other means) promotional literature/brochures about new condominiums and/or related services to the Purchaser and/or members of the Purchaser's family;
- (c) any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Purchaser and/or members of the Purchaser's family, including without limitation, the Vendor's construction lender(s), the project monitor, the Vendor's designated construction lender(s), any warranty bond provider and/or excess condominium deposit insurer, required in connection with the development and/or construction financing of the Condominium and/or the financing of the Purchaser's acquisition of the Property from the Vendor;
- (d) any insurance companies providing (or wishing to provide) insurance coverage with respect to the Property (or any portion thereof) and/or the common elements of the Condominium, including without limitation, any title insurance companies providing (or wishing to provide) title insurance to the Purchaser or the Purchaser's mortgage lender(s) in connection with the completion of this transaction;
- (e) any trades/suppliers or sub-trades/suppliers, who have been retained by or on behalf of the Vendor (or who are otherwise dealing with the Vendor) to facilitate the completion and finishing of the Unit and the installation of any extras or upgrades required to be provided by the Vendor, if any;
- (f) one or more providers of cable television, telephone, telecommunication, security alarm systems, hydro-electricity, chilled water/hot water, gas and/or other similar or related services to the Property (or any portion thereof) and/or the Condominium, unless the Purchaser advises the Vendor in writing not to provide such personal information to an entity providing security alarm systems and services;
- (g) any relevant governmental authorities or agencies, including without limitation, the Land Titles Office (in which the Condominium is registered), the Ministry of Finance for the Province of Ontario (i.e. with respect to Land Transfer Tax), and Canada Customs & Revenue Agency (i.e. with respect to HST);
- (h) Canada Customs & Revenue Agency, to whose attention the T-5 interest income tax information return and/or the NR4 non-resident withholding tax information return is submitted (where applicable), which will contain or refer to the Purchaser's social insurance number or business registration number (as the case may be), as required by Regulation 201(1) (b) (ii) of The Income Tax Act R.S.C. 1985, as amended;
- (i) the Vendor's solicitors, to facilitate the interim occupancy and/or final closing of this transaction, including the closing by electronic means via the Teraview Electronic Registration System, and which may (in turn) involve the disclosure of such personal information to an Internet application service provider for distribution of documentation;
- (j) the condominium corporation, for purposes of facilitating the completion of the corporation's voting, leasing and/or other relevant records, and to the condominium's property manager for the purposes of facilitating the issuance of notices, the collection of common expenses and/or implementing other condominium management/administration functions; and
- (k) any person, where the Purchaser further consents to such disclosure or disclosures required by law.

SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE

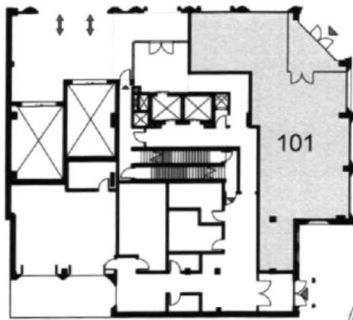
SKETCH

Level 1, Legal Unit No UNIT 1



SUITE AREA: 1993 ft²

*AREAS PROVIDED BY KRCMAR SURVEYORS LTD.



*NOTE:
 -STRUCTURAL LAYOUT TO BE COORDINATED
 -COLUMNS MAY BE ADDED AS REQUIRED

Materials, specifications, floor plans and dimensions are subject to change without notice. Window sizes and type may vary. Actual usable floor space may vary from the stated floor area. Landscaping, patio and balcony areas, subject to change E. & O.E.



[Signature]
 Purchaser Acknowledgement

NOV 29 2016
 Date



128 HAZELTON AVENUE
 TORONTO, ONTARIO

UNIT 101

Schedule "E" to Agreement of Purchase and Sale**(legal description)**

1. Legal Description of the Unit:

Part of Lot 1, Plan 687E and Part of Block A, Plan 411, designated as Part 1 on Plan 66R-32656; Subject to an easement as in Instrument No. AT4864056; Subject to an easement as in Instrument No. AT5237797; Together with an easement over Part of Lots 1 and 2, Plan 687-E, designated as Part 1 on Plan 66R-31612 as in Instrument No. AT5927858; Together with an easement over the Common Elements of Toronto Standard Condominium Plan No. 2967 as in Instrument No. AT6281433; Together with an easement over part of Toronto Standard Condominium Plan No. 2967, being Part 3 on Plan 66R-32656 as in Instrument No. AT6281433; Together with an easement over the common elements on Levels 1 and A and Units 8, 9, 10, 12 and 13, Level A, Toronto Standard Condominium Plan No. 2967 as in Instrument No. AT6281433; Subject to an easement in favour of Toronto Standard Condominium Plan No. 2967, as in Instrument No. AT6281433; now in the City of Toronto, being the whole of PIN 211960-0353(LT)

2. Legal Description of the Locker Unit and the Parking Units:

Locker Unit:

- (i) Unit 16, Level B, Toronto Standard Condominium Plan No. 2967 and its appurtenant interest; Subject to and together with easements as set out in Schedule A as in Instrument No. AT6281433; City of Toronto, being the whole of PIN 76967-0048 (LT)

Parking Units:

- (ii) Unit 4, Level A, Toronto Standard Condominium Plan No. 2967 and its appurtenant interest; Subject to and together with easements as set out in Schedule A as in Instrument No. AT6281433; City of Toronto, being the whole of PIN 76967-0024 (LT)
- (iii) Unit 5, Level A, Toronto Standard Condominium Plan No. 2967 and its appurtenant interest; Subject to and together with easements as set out in Schedule A as in Instrument No. AT6281433; City of Toronto, being the whole of PIN 76967-0025 (LT)
- (iv) Unit 6, Level A, Toronto Standard Condominium Plan No. 2967 and its appurtenant interest; Subject to and together with easements as set out in Schedule A as in Instrument No. AT6281433; City of Toronto, being the whole of PIN 76967-0026 (LT)
- (v) Unit 7, Level A, Toronto Standard Condominium Plan No. 2967 and its appurtenant interest; Subject to and together with easements as set out in Schedule A as in Instrument No. AT6281433; City of Toronto, being the whole of PIN 76967-0027 (LT)

Schedule "F" to Agreement of Purchase and Sale**(additional permitted encumbrances)****Unit:**

1. Instrument No. CT782576, registered on April 24, 1986, being a Development Agreement with the City of Toronto;
2. Instrument No. AT4448518, registered on January 4, 2017, being Notice in favour of the City of Toronto;
3. Instrument No. AT4864056, registered on May 15, 2018, being a Transfer of Easement in favour of Rogers Communications Inc.;
4. Instrument No. AT5237797, registered on September 16, 2019, being a Transfer of Easement in favour of Enbridge Gas Inc.;
5. Instrument No. AT5380642, registered on March 4, 2020, being a Certificate of Requirement;
6. Instrument No. AT5576657, registered on November 20, 2020, being an Application for Absolute Title;
7. Instrument No. AT5927857, registered on December 2, 2021, being a Notice in favour of the City of Toronto;
8. Instrument No. AT6281433, registered on February 15, 2023, being a condominium declaration including new easements in favour of Toronto Standard Condominium Plan No. 2967;
9. Instrument No. AT6296916, registered on March 16, 2023, being Notice of the Shared Facilities Agreement; and
10. Instrument No AT6296920, registered on March 16, 2023, being Notice of Assignment and Assumption Agreement with respect to the Shared Facilities Agreement.

Locker Unit and Parking Units

1. Instrument No. CT782576, registered on April 24, 1986, being a Development Agreement with the City of Toronto;
2. Instrument No. AT4448518, registered on January 4, 2017, being Notice in favour of the City of Toronto;
3. Instrument No. AT4864056, registered on May 15, 2018, being a Transfer of Easement in favour of Rogers Communications Inc.;
4. Instrument No. AT5237797, registered on September 16, 2019, being a Transfer of Easement in favour of Enbridge Gas Inc.;
5. Instrument No. AT5380642, registered on March 4, 2020, being a Certificate of Requirement;
6. Instrument No. AT5927857, registered on December 2, 2021, being a Notice in favour of the City of Toronto;
7. Instrument No. AT6281433, registered on February 15, 2023, being a condominium declaration including new easements in favour of Toronto Standard Condominium Plan No. 2967;
8. Instrument No. AT6296916, registered on March 16, 2023, being Notice of the Shared Facilities Agreement;
9. Instrument No. AT6296917, registered on March 16, 2023, being Condo Bylaw No. 98;
10. Instrument No. AT6296918, registered on March 16, 2023, being Condo Bylaw No. 98;
11. Instrument No. AT6296919, registered on March 16, 2023, being Condo Bylaw No. 98; and
12. Instrument No AT6296920, registered on March 16, 2023, being Notice of Assignment and Assumption Agreement with respect to the Shared Facilities Agreement.

Appendix “E”

AGREEMENT OF PURCHASE AND SALE**CONSTANTINE ENTERPRISES INC.****and****KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver and
manager of Mizrahi 128 Hazelton Retail Inc. and not in its personal capacity****June 14, 2024**

THIS AGREEMENT is made as of the 14th day of June, 2024.

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

(hereinafter referred to as the “**Purchaser**”)

AND:

KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver and manager and not in its personal or corporate capacity of all of the assets, undertakings and properties of Mizrahi 128 Hazelton Retail Inc., including all proceeds thereof

(hereinafter referred to as the “**Seller**”)

WHEREAS pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated June 4, 2024, in the proceeding bearing Court file number CV-24-00715321-00CL, KSV Restructuring Inc. was appointed as receiver and manager, without security, of all of the assets, undertakings and properties of Mizrahi 128 Hazelton Retail Inc. (“**Retail**”), including all proceeds thereof;

AND WHEREAS as soon as possible following execution of this Agreement, the Seller intends to seek the Sale Process Order (as defined herein), among other things approving (a) the Sale Process (as defined herein) and (b) this Agreement solely as a “stalking horse bid” pursuant to the Sale Process;

AND WHEREAS the Purchaser has agreed to act as a “stalking horse bidder” in accordance with the terms and conditions of this Agreement and the Sale Process;

AND WHEREAS, if this Agreement is selected as the Successful Bid (as defined in the Sale Process), the Seller desires to sell and assign to the Purchaser and the Purchaser desires to purchase and assume from the Seller the Purchased Assets (as defined herein) in accordance with the terms of this Agreement;

AND WHEREAS the Seller is prepared to sell to the Purchaser, and the Purchaser is prepared to purchase from the Seller, the Purchased Assets (as defined herein) on the terms and subject to the conditions set out herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Seller and the Purchaser agree as follows:

ARTICLE 1

INTERPRETATION

1.1 Defined Terms

For the purposes of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings:

“**Assumed Liabilities**” has the meaning set out in Section 2.3;

“**Business Day**” means any day, other than a Saturday or a Sunday, on which commercial banks in Toronto, Ontario, are open for business during normal banking hours;

“**Closing**” means the closing of the Transaction, including the satisfaction of the Purchase Price and the delivery of the Closing Deliveries on the Closing Date;

“**Closing Date**” means the day that is no later than ten days after the date on which the Court grants the Sale Approval and Vesting Order (or such earlier day after the Court grants the Sale Approval and Vesting Order that is agreed to by the parties), provided that if such day is not a Business Day, then the Closing Date shall be the next following Business Day;

“**Closing Deliveries**” means the agreements, instruments and other documents to be delivered by the Seller to the Purchaser pursuant to Section 3.2 and the agreements, instruments, money and other documents to be delivered by the Purchaser to the Seller pursuant to Section 3.3;

“**Court**” has the meaning set out in the Recitals to this Agreement;

“**Credit Bid Amount**” has the meaning set out in Section 2.4;

“**Encumbrance**” means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, encroachment, servitude, restriction on use, right of occupation, any matter capable of registration against title, option, right of first offer or refusal or similar right, restriction on voting (in the case of any voting or equity interest), right of pre-emption or privilege or any contract to create any of the foregoing;

“**Excluded Assets**” has the meaning set out in Section 2.2;

“**Evidence of Release**” has the meaning set out in Section 2.5;

“**Governmental Authority**” means any domestic or foreign government, including any federal, provincial, state, territorial or municipal government and any government department, body, ministry, agency, tribunal, commission, board, court, bureau or other authority exercising or purporting to exercise executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government;

“**HST**” means all taxes payable under the *Excise Tax Act* (Canada), including goods and services taxes and any harmonized sales taxes in applicable provinces, or under any provincial legislation similar to the *Excise Tax Act* (Canada), and any reference to a specific provision of the *Excise Tax Act* (Canada) or any such provincial legislation shall refer to any successor provision thereto of like or similar effect;

“**HST Undertaking and Indemnity**” has the meaning set out in Section 2.6;

“**Outside Date**” means the day that is 30 days after the date on which the Court grants the Sale Approval and Vesting Order or such other date as agreed to by the parties;

“**Purchase Price**” has the meaning set out in Section 2.2;

“**Purchased Assets**” means all of the right, title and interest of Retail in the Retail APS;

“**Retail APS**” means the agreement of purchase and sale between Retail (as assigned by Mizrahi Inc. to Retail pursuant to an Assignment and Assumption of Purchase Agreement effective November 10, 2020), as purchaser, and Mizrahi (128 Hazelton) Inc., as vendor, dated November 29, 2016, as amended by an amendment dated June 14, 2024, and as may be further amended, supplemented, restated, replaced or otherwise modified from time to time;

“**Sale Approval and Vesting Order**” means an order of the Court, in form and substance satisfactory to the Seller and the Purchaser, acting reasonably, approving this Agreement and vesting in and to the Purchaser the Purchased Assets and the Purchased Property (as defined in the Retail APS), free and clear of and from any and all Encumbrances;

“**Sale Process**” means the sale process in form and substance acceptable to the Seller and the Purchaser, each acting reasonably;

“**Sale Process Order**” has the meaning ascribed thereto in Section 4.3(a);

“**Superior Transaction**” means a transaction for the direct or indirect acquisition of some or all of the Purchased Assets which requires completion on or before the Outside Date and which, in the opinion of the Seller, is capable of being completed by the Outside Date and provides for cash consideration payable on closing in excess of the Purchase Price; and

“**Transaction**” means the transaction of purchase and sale contemplated by this Agreement.

1.2 Currency

Unless otherwise indicated, all dollar amounts in this Agreement are expressed in Canadian currency.

1.3 Sections and Headings

The division of this Agreement into Articles and Sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement. Unless otherwise indicated, any reference in this Agreement to an Article, Section or Schedule refers to the specified Article, Section or Schedule of or to this Agreement.

1.4 Number, Gender and Persons

In this Agreement, words importing the singular number only shall include the plural and *vice versa*, words importing gender shall include all genders and words importing persons shall include individuals, corporations, partnerships, associations, trusts, unincorporated organizations, governmental bodies and other legal or business entities of any kind whatsoever.

1.5 Interpretation of Certain Non-Capitalized Terms

The word “**including**” means including without limitation.

1.6 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether written or oral. There are no conditions, covenants, agreements, representations, warranties or other provisions, express or implied, collateral, statutory or otherwise, relating to the subject matter hereof except as herein provided.

1.7 Time of Essence

Time shall be of the essence of this Agreement.

1.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such determination shall not impair or affect the validity, legality or enforceability of the remaining provisions hereof, and each provision is hereby declared to be separate, severable and distinct.

1.9 Applicable Law

This Agreement shall be construed, interpreted and enforced in accordance with, and the respective rights and obligations of the parties shall be governed by, the laws of the Province of Ontario and the federal laws of Canada applicable therein, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of such province and all courts competent to hear appeals therefrom.

ARTICLE 2

PURCHASE AND SALE

2.1 Purchase and Sale

The Seller hereby agrees to sell the Purchased Assets to the Purchaser and the Purchaser hereby agrees to purchase the Purchased Assets from the Seller in consideration of the payment of the Purchase Price on the Closing Date, on the terms and subject to the conditions set out in this Agreement.

2.2 Excluded Assets

The Seller shall not sell to the Purchaser and the Purchaser shall not purchase from the Seller any assets other than the specifically enumerated Purchased Assets (collectively, the “**Excluded Assets**”).

2.3 Assumption of Liabilities

The Purchaser shall assume as of the Closing Date and shall pay, discharge and perform, as the case may be, from and after the Closing Date, all liabilities and obligations of Retail arising under the Retail APS from and after the Closing Date (collectively, the “**Assumed Liabilities**”). The Purchaser covenants to close the transaction under the Retail APS immediately after Closing.

2.4 Purchase Price.

The purchase price (the “**Purchase Price**”) payable by the Purchaser to the Seller for the Purchased Assets shall be the aggregate of (i) the amount of \$300,000 owing by Retail to the Purchaser on Closing (the “**Credit Bid Amount**”), plus applicable taxes, if any; and (ii) the amount of the Assumed Liabilities as of Closing.

2.5 Satisfaction of Purchase Price

The Purchase Price shall be satisfied on Closing by the Purchaser (i) as to the amount of the Assumed Liabilities by assuming such Assumed Liabilities; and (ii) as to the Credit Bid Amount by providing evidence to the Seller of the release of \$300,000 owing by Retail to the Purchaser (the “**Evidence of Release**”).

2.6 Registration and Transfer Taxes

(a) The Seller and the Purchaser shall each be responsible for the costs of their respective solicitors. The Purchaser shall be responsible, if applicable, for all sales taxes and HST payable in connection with the sale and transfer of the Purchased Assets pursuant to this Agreement. The Seller shall be responsible for registration fees payable, if any, in connection with the discharges of any Encumbrances.

(b) With respect to HST, the parties agree that the Seller shall not collect HST from the Purchaser in connection with transfer of the Purchased Assets if, on the Closing Date, the

Purchaser delivers to the Seller (i) a certificate of the Purchaser setting out the registration number of the Purchaser for HST purposes, and (ii) an undertaking by the Purchaser to pay all applicable HST in connection with the transaction contemplated by this Agreement and an indemnity by the Purchaser whereby the Purchaser agrees to indemnify and hold the Seller harmless from and against any and all losses that may be suffered or incurred, directly or indirectly, by the Seller or may become payable by the Seller arising from or in respect of any failure by the Purchaser to register for the purposes of the HST imposed under the *Excise Tax Act* (Canada) or to perform its obligations under such Act in connection with the transaction contemplated by this Agreement (collectively, the “**HST Undertaking and Indemnity**”).

ARTICLE 3 **CLOSING AND CLOSING CONDITIONS**

3.1 Transfer

Subject to compliance with the terms and conditions hereof, the transfer of possession of the Purchased Assets shall be deemed to take effect, and Closing shall be deemed to have occurred, upon the delivery of the Receiver’s Certificate pursuant to the Sale Approval and Vesting Order (and as defined therein).

3.2 Closing Deliveries by Seller

On or before the Closing Date, subject to the provisions of this Agreement, the Seller shall execute (as applicable) and deliver to the Purchaser, each of which shall be in form and substance satisfactory to the Purchaser acting reasonably:

- (a) a receipt for the satisfaction of the Purchase Price;
- (b) a copy of the issued and entered Sale Approval and Vesting Order;
- (c) a certificate of an officer of the Seller confirming that all conditions to Closing in its favour are either satisfied or waived; and
- (d) any other documents required pursuant to this Agreement in form and substance satisfactory to the Purchaser and the Seller, each acting reasonably.

3.3 Closing Deliveries by the Purchaser

On or before the Closing Date, subject to the provisions of this Agreement, the Purchaser shall execute (as applicable) and deliver to the Seller, each of which shall be in form and substance satisfactory to the Seller acting reasonably:

- (a) the Evidence of Release;
- (b) an assignment and assumption agreement with respect to the Retail APS and the Assumed Liabilities;
- (c) the HST Undertaking and Indemnity;

- (d) a certificate of the Purchaser certifying that all of the representations and warranties of the Purchaser contained in this Agreement are true and correct as if made as of the Closing Date;
- (e) a certificate of an officer of the Purchaser confirming that all conditions to Closing in its favour are either satisfied or waived; and
- (f) any other documents required pursuant to this Agreement in form and substance satisfactory to the Purchaser and the Seller, each acting reasonably.

3.4 Further Assurances

Each party to this Agreement covenants and agrees that it will at all times after the Closing Date, at the expense of the requesting party, promptly execute and deliver all such documents, including, without limitation, all such additional conveyances, transfers, consents and other assurances and do all such other acts and things as the other party, acting reasonably, may from time to time request be executed or done in order to better evidence or perfect or effectuate any provision of this Agreement or of any agreement or other document executed pursuant to this Agreement or any of the respective obligations intended to be created hereby or thereby.

ARTICLE 4 **CONDITIONS**

4.1 Conditions of Closing in Favour of the Purchaser

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of the Purchaser, to be performed or fulfilled at or prior to Closing (or such earlier date as may be specified below):

- (a) Representations and Warranties. On Closing, the representations and warranties of the Seller contained in this Agreement shall be true and correct as if made as of the Closing Date;
- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Seller on or before the Closing shall have been complied with or performed in all material respects; and
- (c) Documents. The Seller shall have delivered the documents referred to in Section 3.2.

4.2 Conditions of Closing in Favour of the Seller

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the exclusive benefit of the Seller, to be performed or fulfilled at or prior to Closing (or such earlier date as may be specified below):

- (a) Representations and Warranties. On Closing, the representations and warranties of the Purchaser contained in this Agreement shall be true and correct as if made as of the Closing Date;
- (b) Covenants. All of the terms, covenants and conditions of this Agreement to be complied with or performed by the Purchaser on or before the Closing shall have been complied with or performed in all material respects;
- (c) Documents. The Purchaser shall have made the payments and delivered the documents referred to in Section 3.3; and
- (d) Retail APS Transaction. All conditions to closing the purchase of the Unit (as defined in the Retail APS) under the Retail APS (subject to the release of any signed documents from escrow) shall have been either satisfied or waived.

4.3 Conditions of Closing for the Mutual Benefit of the Seller and Purchaser

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the mutual benefit of the Seller and the Purchaser, to be performed or fulfilled at or prior to Closing (or such earlier date as may be specified below):

- (a) Sale Process Order. (i) By no later than June 21, 2024 or the first available Court date thereafter (or such later date as the Seller and the Purchaser may agree in their sole discretion), the Court shall have entered and issued an order, *inter alia*, approving (y) the Sale Process and (z) this Agreement solely as the “stalking horse bid” pursuant to the Sale Process (the “**Sale Process Order**”), which Sale Process Order shall be in form and substance satisfactory to the Seller and the Purchaser, each acting reasonably; and (ii) on Closing, the Sale Process Order shall not have been stayed, varied in any material respect or set aside;
- (b) Successful Bid. The Transaction shall have been selected as the Successful Bid (as defined in the Sale Process) in accordance with the Sale Process Order and the Sale Process;
- (c) Sale Approval and Vesting Order. (i) By no later than fourteen (14) calendar days following the Transaction being selected as the Successful Bid or the first available Court date thereafter (or such later date as the Seller and the Purchaser may agree in their sole discretion), the Seller shall have obtained the Sale Approval and Vesting Order; and (ii) on Closing, the Sale Approval and Vesting Order shall not have been stayed, varied in any material respect or set aside;
- (d) No Action or Proceeding. No legal or regulatory action or proceeding shall be pending or threatened by any Governmental Authority to enjoin, restrict or prohibit the purchase and sale of the Purchased Assets contemplated hereby; and
- (e) Injunctions. There shall be in effect no injunction against closing the Transaction entered by a court of competent jurisdiction.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties of the Seller

The Seller represents and warrants to and in favour of the Purchaser that, as of the date of this Agreement:

- (a) the Seller is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada); and
- (b) the Seller has been appointed by the Court as receiver and manager, without security, of the Purchased Assets. Subject only to the entry of the Sale Process Order and the Approval and Vesting Order, (i) it will on Closing have the necessary authority to enter into this Agreement and to carry out the Transaction on the terms and subject to the conditions set out in this Agreement and (ii) this Agreement constitutes a legal, valid and binding obligation of the Seller, enforceable against the Seller by the Purchaser in accordance with its terms

5.2 Representations and Warranties of the Purchaser

The Purchaser represents and warrants to and in favour of the Seller that, as of the date of this Agreement:

- (a) the Purchaser is a corporation duly incorporated and organized and validly subsisting under the laws of the Province of Ontario pursuant to the Business Corporations Act (Ontario) and has the corporate power to enter into this Agreement and to perform its obligations hereunder and to consummate the Transaction;
- (b) this Agreement has been duly authorized, executed and delivered by the Purchaser and is a legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser by the Seller in accordance with its terms;
- (c) the Purchaser is a “Canadian”, as defined in the *Investment Canada Act* (Canada);
- (d) the Purchaser is not a non-resident of Canada for purposes of the *Income Tax Act* (Canada); and
- (e) the Purchaser is a registrant for purposes of Part IX of the *Excise Tax Act* (Canada) whose registration number is 84061 7575 RT0001.

5.3 Survival

The representations, warranties and certifications of the Seller and the Purchaser contained in this Agreement and in any Closing Deliveries shall merge on Closing and not survive following Closing. Notwithstanding the foregoing, the Seller’s covenant to close the transaction under the Retail APS immediately following Closing shall survive Closing.

ARTICLE 6
AS IS, WHERE IS SALE

6.1 **“As is, Where is”**

The Purchaser acknowledges that the Seller is selling the Purchased Assets on an “as is, where is” basis as they shall exist on the Closing Date and that, as of the date of this Agreement, the Purchaser has completed all of its due diligence in respect of the transaction contemplated by this Agreement and has satisfied itself in all respects as to the Purchased Assets. Any information provided by the Seller to the Purchaser describing the Purchased Assets has been prepared solely for the convenience of prospective purchasers and is not warranted to be complete, accurate or correct. Unless specifically stated in this Agreement, no representation, warranty, covenant or condition, whether statutory, express or implied, oral or written, legal, equitable, conventional, collateral or otherwise is being given in this Agreement or in any instrument furnished in connection with this Agreement as to title, outstanding liens, Encumbrances, description, merchantability, value, suitability or marketability thereof or in respect of any other matter or thing whatsoever including, without limitation, the respective rights, titles and interests of the Seller, if any, therein. The Purchaser shall be deemed to have relied entirely on its own inspection and investigation in proceeding with the Transaction.

ARTICLE 7
TERMINATION

7.1 **Termination**

This Agreement may be terminated at any time prior to Closing as follows:

- (a) automatically and without any action or notice by either party, immediately if this Agreement is not selected as the Successful Bid or the Back-Up Bid (as defined in the Sale Process) in accordance with the Sales Process;
- (b) automatically and without any action or notice by either party, immediately if the Seller completes a Superior Transaction with a party other than the Purchaser or an affiliate of the Purchaser;
- (c) automatically and without any action or notice by either party, immediately upon the issuance of a final and non-appealable order, decree, or ruling or any other action by a Governmental Authority to restrain, enjoin or otherwise prohibit the Transaction;
- (d) by mutual written consent of the Seller and the Purchaser;
- (e) by either the Seller or the Purchaser if the Closing has not occurred on or before the Outside Date; provided, however, that a party may not exercise such termination right if they are in material breach of their obligations under this Agreement;

- (f) by the Seller, if the Purchaser fails to fulfill any condition set forth in Section 4.2 by the Outside Date and failure has not been waived by the Seller or cured by the Outside Date;
- (g) by the Purchaser, if the Seller fails to fulfill any condition set forth in Section 4.1 by the Outside Date and such failure has not been waived by the Purchaser or cured by the Outside Date; or
- (h) by either, if the conditions set forth in Section 4.3 have not been satisfied by the date specified therein or, if not specified, by the Outside Date.

7.2 Effects of Termination

If this Agreement is terminated pursuant to Section 7.1, except as expressly provided herein, all further rights and obligations of the parties under or pursuant to this Agreement shall terminate without further liability of any party to the other.

ARTICLE 8 **MISCELLANEOUS**

8.1 Notices

(a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by e-mail or sent by registered mail, charges prepaid, addressed as follows:

- (i) if to the Seller:

KSV Restructuring Inc.
220 Bay Street, 13th Floor PO Box 20
Toronto, Ontario M5J 2W4

Attention: Bobby Kofman
E-Mail: bkofman@ksvadvisory.com

with a copy to, which copy shall not constitute notice:

Norton Rose Fulbright Canada LLP
220 Bay Street, Suite 3000 PO Box 53
Toronto, ON M5K 1E7

Attention: Jennifer Stam
E-Mail: Jennifer.stam@nortonrosefulbright.com

- (ii) if to the Purchaser:

Constantine Enterprises Inc.
333 Bloor Street East, 10th Floor

Toronto, ON M4W 1G9

Attention: Robert Hiscox / Chris Donlan
E-Mail: robert.hiscox@constantineinc.com /
chris.donlan@constantineinc.com

with a copy to, which copy shall not constitute notice:

Cassels Brock & Blackwell LLP
Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance Street
Toronto, Ontario M5H 0B4

Attention: Jason Arbuck / Jane Dietrich
Email: jarbuck@cassels.com / jdietrich@cassels.com

Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day or if delivery or transmission is made on a Business Day after 5:00 p.m. at the place of receipt, then on the next following Business Day) or, if mailed, on the third Business Day following the date of mailing; provided, however, that if at the time of mailing or within three Business Days thereafter there is or occurs a labour dispute or other event which might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of recorded electronic communication as aforesaid.

Either party may at any time change its address for service from time to time by giving notice to the other party in accordance with this Section 8.1.

8.2 Enurement and Assignment

This Agreement shall enure to the benefit of and shall be binding on and enforceable by the parties and, where the context so permits, their respective successors and permitted assigns. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, which consent may be unreasonably withheld or delayed. No assignment by the Purchaser shall relieve the Purchaser from any of its obligations hereunder.

8.3 Amendment and Waivers

No amendment or waiver of any provision of this Agreement shall be binding on either party unless consented by such party in a writing specifically referencing the provision waived.

8.4 No Personal Liability of the Seller

The Seller is executing this Agreement solely in its capacity as Court-appointed receiver and manager of the Purchased Assets and not in personal or corporate capacity and none of the Seller, KSV Restructuring Inc. or any of their respective directors, officers, agents, servants or employees shall have any personal or corporate liability hereunder or at common law, or by statute, or equity or otherwise as a result hereof.

8.5 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts, with the same effect as if all parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.


IN WITNESS WHEREOF this Agreement has been executed by the parties on the date first written above.

CONSTANTINE ENTERPRISES INC.

by 

Name: Chris Donlan
Title: Chief Financial Officer

KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver and manager and not in its personal or corporate capacity of all of the assets, undertakings and properties of Mizrahi 128 Hazelton Retail Inc., including all proceeds thereof

by 

Name: Bobby Kofman
Title: Managing Director

CONSTANTINE ENTERPRISES INC. -and-
Applicant

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

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

Respondents

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

Proceeding commenced at Toronto

**FIRST REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER (HAZELTON)
DATED JUNE 14, 2024**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

Jennifer Stam, LSO#: 46735J

Tel: 416.202.6707

jennifer.stam@nortonrosefulbright.com

Lawyers for the Receiver

TAB 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	FRIDAY, THE 21 st
)	
JUSTICE BLACK)	DAY OF JUNE, 2024

CONSTANTINE ENTERPRISES INC.

Applicant

- AND -

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

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED**

**ORDER
(RETAIL APS SALE PROCESS)**

THIS MOTION, made by **KSV Restructuring Inc.** (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) of a) certain condominium units located at 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario (as legally described in the Receivership Order dated June 4, 2024); and (b) all of the assets, undertakings and properties of Mizrahi (128 Hazelton) Inc. (“**Hazelton**”) and Mizrahi 128 Hazelton Retail Inc. (“**Retail**”, together with Hazelton, the “**Debtors**”), or either of them, acquired for, or used in relation to a business carried on by the Debtors, or either of them, including all proceeds thereof (collectively, the “**Property**”), for an Order, among other things, approving a sale process was heard this day at 330 University Ave, Toronto, Ontario.

ON READING the Motion Record in respect of this motion including the First Report of the Receiver dated June 14, 2024 (the “**First Report**”), filed;

AND UPON hearing the submissions of counsel for the Receiver, counsel for Constantine Enterprises Inc. (“**CEI**”), and such other counsel who were present, no one else appearing although duly served as appears from the affidavit of service of ● sworn ●, 2024, filed.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the First Report.

RETAIL APS SALE PROCESS

3. **THIS COURT ORDERS** that the Retail APS Sale Process is hereby approved and the Receiver is hereby authorized to implement the Retail APS Sale Process pursuant to the terms thereof. The Receiver is hereby authorized to perform all things reasonably necessary to carry out the Retail APS Sale Process.

4. **THIS COURT ORDERS** that the Receiver shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Retail APS Sale Process, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or willful misconduct of the Receiver in performing its obligations under the Retail APS Sale Process, as determined by this Court.

STALKING HORSE APA

5. **THIS COURT ORDERS** that the agreement of purchase and sale dated as of June 14, 2024 (the “**Stalking Horse APA**”) between the Receiver and CEI (the “**Stalking Horse APA**”) is hereby approved solely as the stalking horse bid in the Retail APS Sale Process, provided that, nothing herein approves: (i) the acceptance and/or execution of the Stalking Horse APA by the Receiver; or (ii) the sale and the vesting of any Property to the Stalking Horse Bidder pursuant to the Stalking Horse APA, and the approval and acceptance and execution of the Stalking Horse APA and/or any sale and vesting of any such Property shall be considered by this Court on a subsequent motion made to this Court.

GENERAL

6. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

7. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the Receiver, and its agents, in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, in each case as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

8. **THIS COURT ORDERS** that this Order and all of its provisions are effective from the date it is made without any need for entry and/or filing.

CONSTANTINE ENTERPRISES INC. -and-
Applicant

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

Respondents

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

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

Proceeding commenced at Toronto

**RETAIL APS SALE PROCESS
APPROVAL ORDER**

NORTON ROSE FULBRIGHT CANADA LLP
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Lawyers for the Receiver

CONSTANTINE ENTERPRISES INC. -and-
Applicant

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

Respondents

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

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

Proceeding commenced at Toronto

**MOTION RECORD
(Retail APS Sale Process)
returnable June 21, 2024**

NORTON ROSE FULBRIGHT CANADA LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

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Lawyers for the Receiver