

**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

REPLY APPLICATION RECORD OF CONSTANTINE ENTERPRISES INC.

April 16, 2024

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

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Lawyers for the Applicant

TO: THE SERVICE LIST

**ONTARIO
SUPERIOR COURT OF JUSTICE
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**MIZRAHI (128 HAZELTON) INC. AND
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Respondents

**SERVICE LIST
(As of April 16, 2024)**

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AND TO:	<p>KSV RESTRUCTURING INC. 220 Bay Street Toronto, ON M5H 1J9</p>

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AND TO:	<p>MIZRAHI DEVELOPMENTS INC. 189 Forest Hill Road, Toronto, ON M5P 2N3</p> <p>McCarter Grespan Beynon Weir PC 675 Riverbend Drive</p>

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AND TO:	<p>MINISTRY OF FINANCE (ONTARIO) Legal Services Branch 33 King Street West, 6th Floor Oshawa ON L1H 8H5</p> <p>Email: insolvency.unit@ontario.ca</p>
AND TO:	<p>CANADA REVENUE AGENCY c/o Department of Justice Ontario Regional Office 120 Adelaide St. W., Suite 400 Toronto, ON M5H 1T1</p> <p>Email: AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</p>
AND TO:	<p>BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide St. W. Toronto, ON M5H 4E3</p> <p>Email: DBambrough@blg.com</p> <p><i>Counsel to Aviva Insurance Company of Canada</i></p>
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AND TO:	<p>CITY OF TORONTO (Legal Services Division) Stn 1260, Metro Hall, 26th Floor, 55 John Street Toronto ON M5V 3C6</p> <p>Georgia Tanner Tel: 416.392.8364 Email: Georgia.tanner@toronto.ca</p> <p>Christopher Henderson Email: Christopher.hederson@toronto.ca</p> <p><i>Counsel to City of Toronto</i></p>
AND TO:	<p>SHIBLEY RIGHTON LLP 250 University Avenue, Suite 700 Toronto, Ontario M5H 3E5</p> <p>John De Vellis 416.214.5232 john.devellis@shibleyrighton.com</p> <p><i>Counsel to Toronto Standard Condominium Corporation No. 2967 ("TSCC 2967")</i></p>
AND TO:	<p>CLM GENERAL ENTERPRISES 7611 Pine Valley Drive, Unit 13, Second Floor Vaughan, Ontario L4L 0A2</p> <p>Cathy Villegas Tel: 905.605-3000 Email: clmenterprise@rogers.com</p>
AND TO:	<p>MORSE SHANNON LLP 133 Richmond St. West Suite 501 Toronto, Ontario M5H 2L3</p> <p>David Trafford Tel: 416.941.5850 Email: DTrafford@morseshannon.com</p> <p>Jerome Morse Tel: 416.941.5867 Email: jmorse@morseshannon.com</p> <p><i>Counsel to Sam Mizrahi</i></p>

EMAIL SERVICE LIST

(as of April 16, 2024)

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D.	Exhibit "D" – General Assignment of Rents
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**ONTARIO
SUPERIOR COURT OF JUSTICE
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B E T W E E N:

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Applicant

- and -

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

Respondents

**REPLY AFFIDAVIT OF ROBERT HISCOX
(sworn April 16, 2024)**

I, Robert Hiscox, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

I. OVERVIEW

1. I swear this affidavit in reply to the Affidavit of Sam Mizrahi sworn April 5, 2024 (the “**First Mizrahi Affidavit**”) and the Supplementary Affidavit of Sam Mizrahi sworn April 8, 2024 (the “**Supplemental Mizrahi Affidavit**”, together with the First Mizrahi Affidavit, the “**Mizrahi Affidavits**”), which were delivered in response to an application brought by Constantine Enterprises Inc. (“**CEI**”) to appoint KSV Restructuring Inc. (“**KSV**”) as receiver and manager without security over the Property of Mizrahi (128 Hazelton) Inc. and Mizrahi 128 Hazelton Retail Inc. (the “**Receivership Application**”). I have personal knowledge of the matters to which I

hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

2. Unless otherwise indicated, capitalized terms used in this affidavit and not otherwise defined shall have the meanings given to them in the affidavit I previously swore in support of the Receivership Application on February 23, 2024 (the “**First Hiscox Affidavit**”).

3. The purpose of this affidavit is to

- (a) reply to the Mizrahi Affidavits;
- (b) provide an update to the Court with respect to CEI having delivered a demand letter and notice of intention to enforce security pursuant to the BIA to Hazelton in respect of the Hazelton Subordinate Indebtedness;
- (c) provide information to the Court regarding the payment of condominium fees in relation to common expenses for the Hazelton Project by CEI on account of Hazelton; and
- (d) correct an inadvertent omission in the First Hiscox Affidavit regarding a construction lien registered on title by CLM General Enterprises in the amount of \$68,262 against one of the PIN numbers making up the Real Property.

II. REPLY TO MIZRAHI AFFIDAVITS

4. In reply to paragraphs 2-4 of the First Mizrahi Affidavit and the Supplemental Mizrahi Affidavit, if the amended statement of claim is served, which it has not been to date, the allegations in the amended statement of claim will be vigorously defended and the subject of a motion to strike. Neither Mizrahi nor the Debtors have submitted any evidence to support Mizrahi’s bald assertions. CEI denies that it has acted in bad faith or breached any duties allegedly owed by CEI

to any one or more of Mizrahi or the Debtors. CEI, Mr. Edward S. Rogers III, and I have at all times acted in good faith in our dealings with Mizrahi and the Debtors.

III. HAZELTON SUBORDINATE INDEBTEDNESS DEMAND

5. At the time of swearing the First Hiscox Affidavit, demands and NITES had only been issued in respect of the Hazelton Priority Indebtedness. CEI had not taken steps to enforce the Hazelton Subordinate Indebtedness as doing so was not permitted under the DUCA Commitment.

6. On February 27, 2024, CEI delivered a demand letter and notice of intention to enforce security under section 244 of the BIA in relation to the Hazelton Subordinate Indebtedness to Hazelton. A copy of the demand letter and notice is attached as **Exhibit "A"**. Attached as **Exhibits "B"-“E"**, respectively, are copies of the 2015 Credit Agreement (as amended) and the related mortgage, general assignment of rents, and general security agreement that Hazelton granted as security for the Hazelton Subordinate Indebtedness.

7. The amounts owing in respect of the Hazelton Subordinate Indebtedness remain outstanding as of the date of this affidavit, which as of February 29, 2024 was \$31,041,763.16 plus interest accruing from and after February 29, 2024 and fees, legal expenses and disbursements incurred and accruing before and after such date.

IV. CONDOMINIUM FEE INDEBTEDNESS

8. At this time, Hazelton is responsible for condominium fees each month in the amount of \$42,498.23 in relation to common expenses for the Hazelton Project. These fees represent almost half of the total common expenses and the condominium corporation for the Hazelton Project, Toronto Standard Condominium Corporation No. 2967 ("**TSCC 2967**"), relies on timely payment when due to properly maintain the Hazelton Project. Without funding the common expenses, the

Hazelton Project could not be properly maintained, which could put the safety of the residents and tenants at risk and significantly diminish the value of the Hazelton Project.

9. Notwithstanding the critical nature of Hazelton's timely payment of condominium fees, Hazelton has failed to make certain of those payments because it did not have the required funds. As a result of Hazelton's missed payments, on February 25, 2024, TSCC 2967 issued to Hazelton a notice of lien for unpaid common expenses for the period between December 2023 and January 2024. Hazelton also failed to pay the condominium fees for March 2024 when due.

10. To preserve the value of Hazelton's Property and protect CEI's collateral, on March 11, 2024 and April 5, 2024, CEI made payments in the respective amounts of \$31,765.17 and \$38,142.89 directly to TSCC 2967 on account the condominium fees owed by Hazelton (collectively, the "**Condominium Fee Indebtedness**"). In particular, the common expenses arrears referred to in paragraph 10 of the Affidavit of Jeff Stevenson sworn April 5, 2024 were paid for in full by CEI. CEI confirmed these payments were made to TSCC 2967 by email to Hazelton, Mizrahi, and MDI on April 10, 2024. Attached as **Exhibit "F"** is a copy of the email correspondence.

11. CEI is entitled to pay expenses, including the condominium fees, on behalf of Hazelton to preserve and protect its collateral pursuant to the DUCA Commitment and DUCA Security (which CEI purchased and assumed on February 1, 2024). In accordance with the DUCA Commitment and DUCA Security, the amounts paid by CEI in respect of the expenses are due and owing by Hazelton and have been added to the principal amount owing under the DUCA Commitment.

12. I believe that Hazelton is now current in its condominium fee obligations but will not necessarily have the funds required to pay condominium fees going forward as and when due.

V. CONSTRUCTION LIEN REGISTERED ON TITLE TO THE REAL PROPERTY

13. Paragraphs 11 and 38 and Exhibit "T" (which is a table summarizing the financial encumbrances in respect of the Real Property) of the First Hiscox Affidavit inadvertently omitted that the Title Searches disclosed a construction lien registered by CLM General Enterprises on February 2, 2024 in the amount of \$68,262 in respect of PIN number 21196-0353 (LT).

14. I am advised by Stephanie Fernandes of Cassels, legal counsel to CEI, that CLM General Enterprises was served with a copy of CEI's Application Record for the Receivership Application on February 27, 2024, four days after the Receivership Application was commenced.

VI. CONCLUSION

15. As of the date of this affidavit,

(a) the total Indebtedness remains outstanding, which was \$15,869,394.36 as of February 29, 2024, being (i) \$13,015,116.36 in respect of the Hazelton Priority Indebtedness and (ii) \$2,854,278 in respect of the Retail Indebtedness, in each case plus interest accruing from and after February 29, 2024 and fees, legal expenses and disbursements incurred and accruing before and after such date, in addition to the Condominium Fee Indebtedness and the Hazelton Subordinate Indebtedness, which are also outstanding, in each case with applicable accruing interest, fees, legal expenses, and disbursements incurred; and

(b) no further funds have been received by Hazelton from MDI, including in respect of the capital call notice issued by CEI pursuant to the Contribution Agreement on February 12, 2024 (as described in paragraph 52 of the First Hiscox Affidavit). The terms of the capital call notice require MDI to advance the applicable amount described therein no later March 14, 2024 (31 days after delivery of the notice). As

Mizrahi refused to contribute his portion of the funds, CEI elected to only contribute a portion of its portion of the funds;

- (c) I remain concerned that without the appointment of the Receiver,
 - (A) Hazelton's expenses will not be paid unless CEI continues to directly pay costs on account of Hazelton to preserve and protect its collateral, including condominium fees and amounts required to complete the Hazelton Project units so they can be sold. In circumstances where Hazelton's expenses are not timely paid, I believe there is a significant risk that the value of the Property will be materially diminished because of the potential safety and maintenance issues relating to not properly maintaining the building and the potential stigma that could become associated with the Hazelton Project where there are a large number of vacancies in the building because construction on the Hazelton Project units is not completed for an extended period of time; and
 - (B) with Mizrahi as a partner, there is no path to monetize the Property for the benefit of CEI and Hazelton's other stakeholders in light of the breakdown in the relationship between CEI and the Mizrahi Group (which has and will continue to adversely impact decision-making in respect of Hazelton).

16. I swear this reply affidavit in response to the Mizrahi Affidavits, and in support of the Receivership Application.

SWORN BEFORE ME by videoconference on April 16, 2024 in accordance with O.Reg. 431/20: Administering Oath or Declaration Remotely. The deponent and I were located in the City of Toronto in the Province of Ontario.



Laura Cloutier, a Commissioner, etc.,
Province of Ontario, while a Student-at-
Law. Expires May 29, 2025

*Commissioner for Taking Affidavits
(or as may be)*

Laura Cloutier, a
Commissioner, etc., Province of
Ontario, while a Student-at-Law.
Expires May 29, 2025.



Robert Hiscox

This is Exhibit "A" referred to in the Affidavit of Robert Hiscox of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 16, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

LAURA CLOUTIER

A Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires May 29, 2025

Cassels

February 27, 2024

By Email and Registered Mail

jdietrich@cassels.com

tel: +1 416 860 5223

Mizrahi (128 Hazelton) Inc.

189 Forest Hill Road,
Toronto, Ontario M5P 2N3
Attention: Sam Mizrahi
Email: sam@mizrahicorp.com

With copy to:

Baldwin Sennecke Halman, LLP

25 Adelaide Street East, Suite 900
Toronto, Ontario M5C 3A1
Attention: Jeffrey A. Halman
Email: jhalman@bashllp.com

Dear Sirs:

Re: Credit Agreement dated June 19, 2015, between Mizrahi (128 Hazelton) Inc. (the “Borrower”), Mizrahi Enterprises Inc., as pledgor, and Constantine Enterprises Inc. (the “Lender”), as amended on August 13, 2015, May 9, 2017 and October 31, 2028 (and as may be further amended, amended and restated, modified or supplemented from time to time, the “Credit Agreement”)

And Re: Mortgage by the Borrower to the Lender in connection with the real property located at 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario (the “Mortgage”)

We are counsel to the Lender. Terms not otherwise defined herein have the meaning provided to them in the Credit Agreement or the Mortgage, as applicable.

As of February 29, 2024, the Borrower is expected to be indebted to the Lender in the aggregate principal amount of \$31,041,763 plus interest continuing to accrue from and after February 29, 2024 and legal fees and expenses from before and after that date (the “**Outstanding Amount**”) in respect of the Credit Agreement and Mortgage. Please be advised that interest, fees, expenses, and disbursements continue to accrue.

Pursuant to section 5.01 of the Credit Agreement, the Borrower was required to repay all Obligations on the Maturity Date on June 30, 2020 (or 90 days after in circumstances of an extension in accordance with the terms of the Credit Agreement) and failed to do so. Accordingly, a Default under the Credit Agreement has occurred. In addition, in accordance with

the terms of the Mortgage, a breach of the Credit Agreement constitutes a breach and event of default of the Mortgage.

On behalf of the Lender, we formally make demand for the payment of the Outstanding Amount, plus interest, fees, legal expenses and disbursements continuing to accrue.

As security for the obligations under the Credit Agreement, the Borrower delivered, in favour of the Lender: (i) a general security agreement dated June 19, 2015, (ii) the Mortgage registered on June 19, 2015 in the land registry office for Toronto in the Province of Ontario as Instrument No. AT3921042 and (iii) a general assignment of rents dated June 19, 2015 (collectively, the "**Security**").

If repayment in full of the Outstanding Amount is not received by March 8, 2024, the Lender intends to take further steps as provided for by law. In this regard, we enclose and serve the Borrower with a Notice of Intention to Enforce Security, pursuant to the *Bankruptcy and Insolvency Act* (Canada).

The Lender hereby expressly reserves all rights, remedies, and claims with respect to the Credit Agreement and the Security, any of which rights, remedies and claims may be exercised or pursued at any time and from time to time and without further notice, in the sole discretion of the Lender.

Yours truly,

Cassels Brock & Blackwell LLP



Jane Dietrich
Partner

Enclosed

**NOTICE OF INTENTION TO ENFORCE SECURITY UNDER SECTION 244(1) OF
THE BANKRUPTCY AND INSOLVENCY ACT (CANADA)**

TO: **Mizrahi (128 Hazelton) Inc.**, an insolvent person (the "**Debtor**")

Take notice that:

1. Under section 244(1) of the *Bankruptcy and Insolvency Act* (Canada), Constantine Enterprises Inc. (the "**Secured Party**") intends to enforce its security on the collateral of the Debtor, including without limitation as described below:

- a) all of the Debtor's present and after-acquired personal property (including all accounts, chattel paper, books, accounts, invoices, letters, papers, security certificates, documents, and other records (including customer lists and records, subject however, to privacy, confidentiality, and access rights of customers), in any form evidencing or relating to any part of the collateral, together with all agreements, licences, and other rights and benefits relating to any of them, documents of title, equipment, goods, instruments, intangibles, inventory, investment property, licences, money, securities, security entitlements, undertaking, proceeds together with the Debtor's interest in any of them) but excluding consumer goods; and
- b) certain real property on the lands and premises located at the address municipally known as 126 Hazelton Avenue, Toronto, Ontario and 128 Hazelton Avenue, Toronto, Ontario, and legally described by PIN numbers: 21196-0353 (LT), 76967-0001 (LT), 76967-0004 (LT), 76967-0008 (LT), 76967-0010 (LT) to 76967-0012 (LT) inclusive, 76967-0017 (LT) to 76967-0021 (LT) inclusive, 76967-0023 (LT) to 76967-0028 (LT) inclusive, 76967-0030 (LT) to 76967-0032 (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, 76967-0053 (LT), 76967-0054 (LT), 76967-0057 (LT) to 76967-0060 (LT) inclusive, 76967-0062 (LT), 76967-0065 (LT) to 76967-0067 (LT) inclusive, 76967-0073 (LT), 76967-0074 (LT), and 76967-0076 (LT), as more specifically described in **Schedule "A"** hereto.

2. The security that is to be enforced is in the form of:

- a) a general security agreement by the Debtor dated June 19, 2015 (the "**GSA**");
 - b) a general assignment of rents by the Debtor dated June 19, 2015; and
 - c) a mortgage registered in the land registry office for Toronto in the Province of Ontario as Instrument No. AT3921042 on June 19, 2015,
- (collectively, the "**Security**").

3. As of February 29, 2024, the principal amount of indebtedness is \$31,041,763 plus legal fees and expenses from before and after February 29, 2024. All applicable interest continues

to accrue from and after February 29, 2024, and the Secured Party is entitled to payment of all fees and expenses incurred by the Secured Party (including, without limitation, all legal fees and disbursements) to the date of payment in full.

4. The Secured Party will not have the right to enforce the Security until after the expiry of the 10-day period following the sending of this notice.

Date February 27, 2024.

Constantine Enterprises Inc.

by its lawyers,

CASSELS BROCK & BLACKWELL LLP

Suite 3200, Bay Adelaide Centre – North Tower

40 Temperance St.

Toronto, Ontario M5H 0B4

By:



Name: Jane Dietrich

Title: Partner

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 76967-0008(LT)

UNIT 4, LEVEL 3, 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 76967-0010(LT)

UNIT 2, 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 76967-0011(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 76967-0017(LT)

UNIT 1, LEVEL 7, 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 76967-0021(LT)

UNIT 1, 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 76967-0023(LT)

UNIT 3, 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 76967-0024(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 76967-0028(LT)

UNIT 8, 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 76967-0030(LT)

UNIT 10, 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 76967-0031(LT)

UNIT 11, 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 76967-0032(LT)

UNIT 12, 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)

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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 76967-0053(LT)

UNIT 5, 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 76967-0054(LT)

UNIT 6, 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 76967-0057(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 76967-0066 (LT)

UNIT 18, 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

This is Exhibit "B" referred to in the Affidavit of Robert Hiscox of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 16, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

LAURA CLOUTIER

A Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires May 29, 2025

CREDIT AGREEMENT

BETWEEN

MIZRAHI (128 HAZELTON) INC.
(as "Borrower")

- and -

MIZRAHI ENTERPRISES INC.
(as "Pledgor")

- and -

CONSTANTINE ENTERPRISES INC.
(as "Lender")

June 19, 2015



CASSELS BROCK
LAWYERS

2100 Scotia Plaza
40 King Street West, Toronto, Ontario M5H 3C2

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CREDIT AGREEMENT

THIS AGREEMENT is made as of June 19, 2015,

BETWEEN:

Mizrahi (128 Hazelton) Inc., a corporation incorporated under the laws of Ontario (the "**Borrower**")

- and -

Mizrahi Enterprises Inc., a corporation incorporated under the laws of Ontario ("**Pledgor**")

- and -

Constantine Enterprises Inc., a corporation incorporated under the laws of Ontario (the "**Lender**").

The Parties agree as follows:

Article 1 INTERPRETATION

1.01 Definitions

In this Agreement unless something in the subject matter or context is inconsistent therewith:

"**Advance**" means a borrowing hereunder by the Borrower;

"**Advance Date**" means any date an Advance is to be made hereunder;

"**Agreement**" means this Agreement, including all schedules hereto, as amended, revised, replaced, supplemented or restated from time to time;

"**Agreement of Purchase and Sale**" means an agreement of purchase and sale and any amendments thereto relating to the sale of a Unit or Units.

"**Applicable Accounting Standards**" means those accounting standards that the Borrower is required to comply with pursuant to the CICA Handbook.

"**Applicable Law**" means, in respect of a Person, property, transaction or event, as applicable, any Law relating or applicable to that Person, property, transaction or event, including any interpretation of Law by any Governmental Authority applicable to and binding on such Person or its Property;

"Applicable Order" means any applicable domestic or foreign order, judgment, award or decree of any Governmental Authority applicable to and binding on such Person and its Property;

"Architect" means the accredited architect retained by the Borrower for the Project and acceptable to the Lender;

"Borrower" has the meaning ascribed to that term in the first paragraph of this Agreement, and includes its successors and assigns;

"Borrower's Counsel" means the firm of Baldwin Sennecke Halman, LLP, or such other firm of legal counsel as the Borrower may from time to time designate;

"Budget" means the budget and report issued by Altus Group Limited on April 24, 2015, as amended from time to time with the prior written approval of the Lender;

"Business Day" means any day excluding Saturday, Sunday and any other day which is a statutory holiday in Toronto, Ontario. Unless otherwise expressly provided for in this Agreement, if any payment or calculation is to be made under, or any other action is to be taken in accordance with, this Agreement on or as of a day that is not a Business Day, that payment or calculation is to be made, and that other action is to be taken, as applicable, on or as of the next day that is a Business Day;

"Closing Date" means June 19, 2015;

"Compliance Certificate" means a certificate delivered by an officer of the Borrower to the Lender in the form of Schedule 4;

"Construction Loan" means a loan made to the Borrower for the purpose of financing the construction of the Project;

"Construction Schedule" means the construction schedule for the Project provided to and approved by the Lender, as it may be amended from time to time with the approval of the Lender pursuant to the provisions hereof;

"Contingency Amount" means the amount, if any, of any contingency amount provided for in the Budget;

"Contingent Obligation" means, in respect of any Person, any obligation, whether secured or unsecured, of that Person guaranteeing, or in effect guaranteeing, any Debt (the **"primary obligations"**) of any other Person;

"Contract" means any contract, agreement or instrument, written or oral, to which the Borrower is a party or otherwise bound;

"Control" (including with correlative meanings the terms **"controlled by"** and **"under common control with"**) in respect of a corporation has the meaning given thereto in the *Business Corporations Act* (Ontario) and in respect of any other Person means the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of shares or voting interests or by contract or otherwise;

"Cost Overruns" means any amount by which any category of costs in the Budget exceeds the amount ascribed to such category in the original Budget;

"Cost to Complete" means, at any time, the cost, at such time, to complete the Project as determined by the Project Monitor;

"Credit Documents" means this Agreement, the Security, and all other documents, certificates and instruments at any time during the term of this Agreement executed and delivered by an Obligor to the Lender pursuant hereto, as the same may be modified, amended, extended, restated or supplemented from time to time and **"Credit Document"** shall mean any one of the Credit Documents;

"Credit Facility" has the meaning given thereto in Section 2.01;

"Debt" means, with respect to any Person, at any time, without duplication:

- (a) indebtedness in respect of borrowed money, including, for greater certainty, principal, interest, fees and expenses relating thereto, or for the deferred purchase price of Property or services, or an indebtedness which is evidenced by a note, bond, debenture or any other similar instrument;
- (b) a transfer of Property with recourse or with an obligation to repurchase, to the extent of that Person's liability;
- (c) indebtedness secured by any Encumbrance on any of that Person's Property to the extent attributable to that Person's respective interest in such Property, even though it has not assumed or become liable for its payment;
- (d) the principal component of a capital lease obligation;
- (e) reimbursement obligations arising in connection with bankers' acceptances, letters of credit or letters of guarantee; or
- (f) a Contingent Obligation to the extent that the primary obligation guaranteed is not otherwise classified as a liability on that Person's consolidated balance sheet;

provided, however, that there shall not be included for the purpose of this definition any item which is on account of any trade account payable and accrued liability (including deferred revenues and taxes payable) incurred in the ordinary course of business, except to the extent any such trade account payable or accrued liability remains unpaid and undisputed for more than 120 days after the date of the invoice received in relation thereto;

"Deposit Availment" means a utilization by the Borrower of Purchasers' Deposits in accordance with Section 7.19;

"Deposit Trust Account" has the meaning ascribed to that term in Section 7.18;

"Disclosure Letter" means the letter provided to the Lender by the Borrower on the Closing Date containing the disclosure contemplated by this Agreement;

"Disposition" means any sale, assignment, transfer, conveyance, lease, license or other disposition of any right, title or interest in or to any Property, and the verb **"Dispose"** shall have a correlative meaning;

"ECDI" has the meaning ascribed to that term in Section 7.19;

"Encumbrance" means, in respect of any Person, any mortgage, debenture, pledge, hypothec, lien, charge, encumbrance, assignment by way of security, hypothecation or security interest granted by that Person or arising by operation of law, in respect of any of that Person's Property, or any consignment or capital lease of Property by that Person as consignee or lessee or any other security agreement, trust or arrangement intended by such Person to have the effect of granting security for the payment of any debt, liability or obligation, and **"Encumbrances"**, **"Encumbrancer"**, **"Encumber"** and **"Encumbered"** shall have corresponding meanings;

"Equity Interests" means, with respect to any Person, all shares, interests, units, partnership, membership or other interests, participations or other equivalent rights in the Person's equity or capital, however designated, whether voting or non-voting, whether now outstanding or issued after the date of this Agreement, together with warrants, options or other rights to acquire any such equity interests of such Person and securities convertible into or exchangeable for any such equity interests of such Person;

"Event of Default" has the meaning ascribed to that term in Section 9.01;

"Extended Tranche 2 Advance" means that portion of the Tranche 2 Advance not repaid from the proceeds of the first draw under the Construction Loan;

"Financial Assistance" means, without duplication and with respect to any Person, all loans granted by that Person and Contingent Obligations incurred by that Person for the purpose of, or having the intended effect of, providing financial assistance to another Person or Persons, including, without limitation, letters of guarantee, letters of credit, legally binding comfort letters or indemnities issued in connection with them, endorsements of bills of exchange (other than for collection or deposit in the ordinary course of business), obligations to purchase assets regardless of the delivery or non-delivery of those assets and obligations to make advances or otherwise provide financial assistance to any other entity, and for greater certainty **"Financial Assistance"** shall include any guarantee of any third party lease obligations;

"Fiscal Year" means the fiscal year of the Borrower ending on December 31st in each calendar year;

"Force Majeure" means any of the following events which prevents or materially impairs the construction or operation of the Project and is not caused by and is beyond the reasonable control of the Borrower: acts of God, floods, earthquakes, tidal waves, ice storms, weather, strikes, hurricanes, windstorms, lightning, fire, wars (whether declared or not), riots, insurrections, rebellions, or civil commotions. For greater certainty, lack of funds, the state of the market for selling the Units or any wilful or negligent act or omission on the part of the Borrower does not constitute Force Majeure.

“Governmental Authority” means the government of Canada or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government;

“Hazardous Substance” means any substance, product, waste, pollutant, chemical, contaminant, dangerous good, ozone-depleting substance, or other material, including any constituent of any of them, which is or becomes listed, regulated, or addressed under any Requirements of Environmental Law, including, without limitation, asbestos, petroleum and polychlorinated biphenyls;

“Holdback” means any amount required to be retained by the Borrower in respect of the value of work, services and materials actually done, performed, placed or furnished on or in the Project in accordance with the *Construction Lien Act* (Ontario) or which the Borrower will be required under the said Act to retain from any payment currently due or about to become due pursuant to any contract related to construction and for which an Advance has been requested;

“Holdback Account” has the meaning given to such term in Section 7.15;

“Initial Advance” means the first Advance made by the Lender hereunder;

“Insolvency Legislation” means the *Companies’ Creditors Arrangement Act* (Canada), the *Bankruptcy and Insolvency Act* (Canada) or any other applicable bankruptcy, insolvency or analogous laws in any jurisdiction;

“Interest Payment Date” means the 1st day of each calendar month and the Maturity Date, provided that when the 1st day of a calendar month is not a Business Day, the Interest Payment Date shall be the next Business Day thereafter;

“Interest Reserve Account” has the meaning given to that term in Section 7.16;

“Investment” in any Person means any direct or indirect

- (a) acquisition of any shares of capital stock or other equity securities of such Person; or
- (b) acquisition, by purchase or otherwise, of all or substantially all of the business, assets or stock or other evidence of beneficial ownership of that Person;

“ITA” means the *Income Tax Act* (Canada) and the regulations promulgated thereunder;

“Lands” means those lands municipally known as 126 and 128 Hazelton Avenue, being all of PINs 21196-0060(LT) and 21196-0059(LT);

“Law” means all laws, (including the common law), by-laws, ordinances, rules, statutes, regulations, treaties, orders, rules, judgments and decrees, and all official directives, guidelines and other requirements of any Governmental Authority having the force of law or which are nonetheless binding on a Person and its Property;

“**Lender**” has the meaning ascribed to that term in the first paragraph of this Agreement, and includes its successors and assigns;

“**Lender’s Counsel**” means the firm of Cassels Brock & Blackwell LLP or any other firm of legal counsel that the Lender may from time to time designate;

“**Licence**” means any licence, franchise, permit or approval issued by any Governmental Authority to the Borrower;

“**Maturity Date**” means the date that is 4 years following the Closing Date;

“**Net Proceeds**” means, in connection with the sale of any Unit, all proceeds arising from or in connection with such sale, net of deposits and HST and after deduction of all reasonable selling and legal expenses and any amounts owing in respect of Priority Encumbrances;;

“**Non-Arm’s Length**” and similar phrases have the meaning attributed thereto for the purposes of the ITA, and “**Arm’s Length**” shall have the opposite meaning;

“**Notice of Request for Advance**” means a notice in the form attached hereto as Schedule 3;

“**Obligations**” means, with respect to an Obligor, all of that Obligor’s present and future indebtedness, liabilities and obligations of any and every kind, nature or description whatsoever (whether direct or indirect, joint or several or joint and several, absolute or contingent, matured or unmatured, in any currency and whether as principal debtor, guarantor, surety or otherwise, including without limitation any interest that accrues thereon or would accrue thereon but for the commencement of any case, proceeding or other action, whether voluntary or involuntary, relating to the bankruptcy, insolvency or reorganization whether or not allowed or allowable as a claim in any such case, proceeding or other action) to the Lender under the Credit Documents;

“**Obligors**” means, collectively, the Borrower and Pledgor and their respective successors and assigns and “**Obligor**” means any one of them;

“**Operating Account**” has the meaning given to that term in Section 7.16;

“**Organizational Documents**” means, with respect to any Person, that Person’s articles of incorporation, articles of association or other charter documents, by-laws, unanimous shareholder agreement, partnership agreement, and any and all other similar formative agreements, documents and instruments integral to that Person’s existence;

“**Parties**” means the Borrower, the Lender and any other Person that may become a party to this Agreement;

“**Pending Event of Default**” means an event which, but for the giving of notice, lapse of time, the failure to cure, or any combination of the foregoing, would constitute an “**Event of Default**”;

"Permitted Debt" means:

- (a) Debt under this Agreement;
- (b) a Construction Loan that has been approved by the Lender;
- (c) Debt in favour of the Surety to allow for Deposit Availments as contemplated in Section 7.19;
- (d) Debt consented to in writing by the Lender from time to time;

"Permitted Encumbrances" means, with respect to any Person:

- (a) Encumbrances for taxes, rates, assessments or other governmental charges or levies not yet due, or for which instalments have been paid based on reasonable estimates pending final assessments, or if due, the validity of which is being contested diligently and in good faith by appropriate proceedings by that Person;
- (b) (i) deemed Encumbrances and trusts arising by operation of Law (ii) or pledges of deposits in connection with workers' compensation, employment insurance and other social security legislation, in each case, which secure obligations not at the time due or delinquent or, if due or delinquent, the validity of which is being contested diligently and in good faith by the appropriate proceedings by that Person;
- (c) undetermined or inchoate Encumbrances, charges, rights of distress, privileges, statutory Encumbrances, adverse claims or Encumbrances of any nature whatsoever incidental to construction or current operations which have not at such time been filed or exercised, or which relate to obligations not due or payable;
- (d) licences, easements, rights-of-way, servitudes or other similar rights in land (including, without limitation, licences, easements, rights-of-way, servitudes and other similar rights in land for railways, sidewalks, public ways, sewers, drains, gas and oil and other pipelines, gas, steam and water mains or electric light and power, or telephone and telegraph conduits, poles, wires and cables) which individually or in the aggregate do not impair the ability to complete the Project in accordance with Budget and the Plans and Specifications;
- (e) the right reserved to, or vested in, any Governmental Authority under the terms of any lease, licence, concession, franchise, grant or permit acquired by that Person, or under any statutory provision, to terminate any such lease, licence, concession, franchise, grant or permit, or to require annual or other payments as a condition to the continuance thereof;
- (f) any carrier's, warehouseman's, builder's, mechanic's, garageman's, labourer's or materialman's Encumbrances or other similar Encumbrances arising in the ordinary course of business or out of the construction or improvement of any land or arising out of the furnishing of materials or supplies, provided that such Encumbrances secure monies not at the time due or delinquent;

- (g) in respect of any land, any defects or irregularities in the title to such land which are of a minor nature and which, individually or in the aggregate, will not materially impair the use of such land for the purposes for which such land is held, including the ability to complete the Project in accordance with Budget and the Plans and Specifications;
- (h) security given by that Person to a public utility or any Governmental Authority when required by such public utility or Governmental Authority in connection with the operations of such Person, all in the ordinary course of its business which individually or in the aggregate do not impair the ability to complete the Project in accordance with Budget and the Plans and Specifications;
- (i) the Security;
- (j) Encumbrances on cash or securities and bankers' liens, rights of set off and other similar Encumbrances existing solely with respect to such cash and securities on deposit in one or more accounts maintained by that Person, or delivered by that Person to a secured party, granted in the ordinary course of business securing amounts with respect to cash management and operating account arrangements;
- (k) Encumbrances in favour of Tarion;
- (l) Encumbrances securing the Construction Loan that are approved by the Lender; and
- (m) any other Encumbrances as agreed to in writing by the Lender;

"Person" is to be broadly interpreted and includes an individual, a corporation, an incorporated association, an incorporated syndicate, any other incorporated organization; a partnership, a trust, an unincorporated association, an unincorporated syndicate, an unincorporated organization, a trustee, an executor, an administrator, any other legal representative, a joint venture, and any other Governmental Authority;

"Plans and Specifications" means the plans and specifications pertaining to the development and construction of the Project prepared by or at the direction of the Borrower and as approved by the Lender, such approval not to be unreasonably or arbitrarily withheld;

"Pledgor" means Mizrahi Enterprises Inc., and its successors and assigns;

"Priority Encumbrances" means Encumbrances provided in respect of Permitted Debt of the type described in paragraphs (b) and (c) of the definition of Permitted Debt and Encumbrances in favour of Tarion;

"Project" means the development, construction and sale of a 28 Unit, 9 story residential condominium building with approximately 62,000 square feet of gross area including 2,691 square feet of retail space, and a 2 level below grade parking garage with 29 stalls located on the Lands;

"Project Monitor" means such consultant or quantity surveyor appointed by the Lender from time to time for purpose of acting as Project Monitor hereunder;

"Property" means, with respect to any Person, all or any portion of that Person's undertaking, property and assets, both real and personal;

"Purchasers' Deposits" means deposits made by purchasers pursuant to Agreements of Purchase and Sale;

"Repayment Notice" means a notice substantially in the form attached as Schedule 1 of this Agreement;

"Requirements of Environmental Law" means all Applicable Laws in any jurisdiction in which the Borrower has operations or Property, which relate to environmental or occupational health and safety matters relevant to the Property of the Borrower and the intended uses thereof, including, without limitation, all Law relating to:

- (a) the protection, preservation or remediation of the natural environment (the air, land, surface water or groundwater);
- (b) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation;
- (c) occupational or public safety and health; and
- (d) Hazardous Substances;

"Security" means all security, evidenced by the documents referred to in Article 8 held from time to time by or on behalf of the Lender, securing or intended to secure repayment of the Obligations;

"STA" means the *Securities Transfer Act*, 2006 (Ontario);

"Surety" has the meaning ascribed to such term in Section 7.20;

"Tarion" means Tarion Warranty Corporation.

"Tax" or **"Taxes"** means all taxes, charges, fees, levies, imposts and other assessments or reassessments, including all income, sales, use, goods and services, harmonized sales, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, payroll, employer health, excise, franchise, real property and personal property taxes, and any other taxes, customs duties, fees, assessments, royalties, duties, deductions, compulsory loans or similar charges in the nature of a tax, together with any instalments, and any interest, fines and penalties, additions to tax or other additional amounts, imposed, assessed, reassessed or collected by any Governmental Authority, whether disputed or not;

"Tax Returns" means all returns (whether in tangible, electronic or other form) and including any amendments, schedules, attachments, supplements, appendices and exhibits thereto, made, prepared, filed or required to be made, prepared or filed with any Governmental Authority by Applicable Law in respect of Taxes;

“**Tranche 1 Advance**” means an Advance in the amount of \$13,100,000;

“**Tranche 2 Advance**” means an Advance in the amount of \$6,900,000;

“**Tranche 3 Advance**” means an Advance in the amount of \$1,000,000;

“**Units**” means condominium units in the registered condominium for the Project;

1.02 References to Specific Terms

- (a) **Accounting Principles.** Unless otherwise specified, where the character or amount of any asset or liability, item of revenue, or expense is required to be determined, or any consolidation or other accounting computation is required to be made, that determination or calculation will be made in accordance with Applicable Accounting Standards. Unless otherwise provided herein, all financial terms used in this Agreement shall be determined in accordance with Applicable Accounting Standards in effect at the date of such determination. Where the character or amount of any asset or liability or item of revenue or expense is required to be determined, or any consolidation or other computation is required to be made for the purpose of this Agreement, such determination or calculation shall be made in accordance with Applicable Accounting Standards applied on a consistent basis, unless otherwise indicated.
- (b) **Currency.** Unless specified otherwise, all dollar amounts expressed in this Agreement refer to Canadian Dollars.
- (c) **“Including.”** Where this Agreement uses the word “including,” it means “including without limitation,” and where it uses the word “includes,” it means “includes without limitation.”
- (d) **“Knowledge.”** Where any representation, warranty, or other statement in this Agreement, or in any other document delivered under this Agreement, is expressed by an Obligor to be “to its knowledge,” or is otherwise expressed to be limited in scope to facts or matters known to an Obligor or of which an Obligor is aware, it means (a) the current, actual knowledge of Sam, and (b) the knowledge that would have come to the attention of Sam had he duly investigated the facts related to that statement with, and made reasonable inquiries of, those individuals employed by him or Persons he controls which would reasonably be expected to have knowledge of facts related to that statement.
- (e) **Statutes, etc.** Unless specified otherwise, any reference in this Agreement to a statute includes the regulations, rules, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those regulations, rules, or policies.
- (f) **“Permitted Encumbrances.”** The inclusion of any reference to “Permitted Encumbrances” in any Credit Document should not be interpreted as an intention on the part of the Lender to subordinate any Encumbrance created by any of the Security to any Permitted Encumbrance.

1.03 Headings

The headings used in this Agreement and its division into articles, sections, schedules, and other subdivisions do not affect its interpretation.

1.04 Internal References

References in this Agreement to articles, sections, schedules, and other subdivisions are to those parts of this Agreement, except with respect to references to the schedules of the Disclosure Letter.

1.05 Number and Gender

Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.

1.06 Calculation of Time

In this Agreement, a period of days begins at 12:00 am on the first day after the event that began the period and ends at 11:59 p.m. (Toronto, Ontario time) on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period expires, or the action or event is considered to occur, at 11:59 p.m. (Toronto, Ontario time) on the next Business Day.

1.07 Construction of Terms

The Parties have each participated in settling the terms of this Agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting party will not apply in interpreting this Agreement.

1.08 Schedules

The following are the Schedules annexed hereto and incorporated by reference and deemed to be part hereof:

Schedule 1	Repayment Notice
Schedule 2	Wire Instructions
Schedule 3	Notice of Request for Advance
Schedule 4	Compliance Certificate
Schedule 5	Construction Contract

Article 2 THE CREDIT FACILITIES

2.01 Credit Facility

Subject to the terms and conditions of this Agreement, the Lender establishes in favour of the Borrower a non-revolving loan facility (the "**Credit Facility**") in the aggregate principal amount of \$21,000,000, which Credit Facility will be made available from and after the date of this Agreement. The Credit Facility shall terminate in the event the Closing Date does not occur prior to June 19, 2015.

2.02 Purpose of Credit Facility

Advances under the Credit Facility shall only be used to fund expenditures contemplated by the Budget and interest and fees contemplated by this agreement.

2.03 Non-Revolving Nature of the Credit Facility

The Credit Facility is non-revolving and, accordingly, no principal amounts repaid under the Credit Facility may be re-borrowed and the limit of the Credit Facility will be automatically and permanently reduced by the amount of any principal repayment thereunder.

2.04 Advances

Subject to the terms of this Agreement and satisfaction of all applicable conditions set out in Section 3.01, the Tranche 1 Advance and the Tranche 2 Advance will be made on the Closing Date. Subject to the terms of this Agreement and satisfaction of all applicable conditions set out in Section 3.02, the Tranche 3 Advance will be made no sooner than January 1, 2016.

2.05 Lender's Obligations for Advances

Subject to the terms of this Agreement, prior to 1:00 p.m. (Toronto, Ontario time) on the Advance Date specified by the Borrower in a Notice of Request for Advance, the Lender shall make available to the Borrower the full amount so specified in that Notice of Request for Advance.

2.06 Irrevocability

Except as permitted by the Lender in writing, the Notice of Request for Advance given by the Borrower in respect of the Tranche 3 Advance is irrevocable and shall oblige the Borrower to complete the Advance on the date specified in that Notice of Request for Advance.

Article 3 DISBURSEMENT CONDITIONS

3.01 Conditions Precedent to the Initial Advance

The obligation of the Lender under this Agreement to make the Initial Advance is subject to, and conditional upon, all of the following conditions precedent being satisfied as at the Closing Date in form and substance satisfactory to the Lender in its sole discretion:

- (a) receipt by the Lender of the following:
 - (i) a duly executed copy of this Agreement;
 - (ii) certified true copies of the Organizational Documents of each Obligor, the resolutions authorizing the execution, delivery and performance of each Obligor's respective obligations under the Credit Documents and the transactions contemplated by this Agreement and the Credit Documents;
 - (iii) certificates of status or good standing, as applicable, for the jurisdiction in which each Obligor is incorporated or exists;

- (iv) copies, if any, of all required shareholder, regulatory, governmental, and other approvals, necessary in connection with the execution and delivery of the Credit Documents and the consummation of the transactions contemplated by the Credit Documents, certified by Sam to be true and correct and in full force and effect;
- (v) copies of any releases, discharges, subordinations and postponements (in registerable form where appropriate) of all Encumbrances affecting the collateral encumbered by the Security which are not Permitted Encumbrances;
- (vi) (x) copies of duly executed copies of the Security (along with, where applicable, certificates representing all certificated shares or other securities pledged, together with an endorsement on the certificates or separate stock powers duly executed in blank in accordance with the requirements of the STA), and (y) evidence of the due registration, filing and recording of the Security in all applicable offices or places of registration;
- (vii) currently-dated letters of opinion of Borrower's Counsel that, collectively, encompass all Obligors, in form and substance satisfactory to Lender, acting reasonably;
- (viii) certificates of insurance of the Borrower evidencing insurance, all in accordance with Section 7.06;
- (ix) copies of the Obligors' latest annual and interim financial statements;
- (x) executed copies of all other Credit Documents not specifically referenced in this Section 3.01;
- (xi) copy of the Budget in a form acceptable to the Lender;
- (xii) executed development management agreement in a form acceptable to the Lender;
- (xiii) form of construction management agreement acceptable to the Lender;
- (b) issuance to the Lender of 100 class B shares in the capital of the Borrower and execution of a shareholders agreement in a form acceptable to the Lender;
- (c) the Disclosure Letter;
- (d) payment in full of all amounts of reasonable documented out-of-pocket fees and expenses required, under this Agreement, to be paid on or prior to the Closing Date, with such amounts to be deducted on the Closing Date from the Initial Advance; and
- (e) the non-existence of any continuing Event of Default or Pending Event of Default, including any Event of Default or Pending Event of Default that would result from

making the Advance, and delivery to the Lender of a certificate signed by Sam certifying that non-existence;

provided that all documents delivered pursuant to this Section 3.01 shall be in full force and effect.

3.02 Condition Precedent to Tranche 3 Advance

The Lender's obligation to complete the Tranche 3 Advance is subject to, and conditional upon, all of the following conditions precedent being satisfied by the Borrower in form and substance satisfactory to the Lender, in its sole discretion:

- (a) receipt by the Lender of a Notice of Request for Advance as required under Section 2.04 (Advances);
- (b) the non-existence of any continuing Event of Default or Pending Event of Default on the Advance Date, including any Event of Default or Pending Event of Default that would result from making the Advance, and receipt by the Lender of a certificate of Sam certifying that non-existence; and
- (c) delivery of evidence that the Tranche 3 Advance is required in order to complete the Project in accordance with the Budget and the Plans and Specifications.

3.03 Waiver

The conditions set forth in Section 3.01 and Section 3.02 are inserted for the sole benefit of the Lender and may be waived by the Lender, in whole or in part (with or without terms or conditions) in respect of any Advance, without prejudicing the Lender's right at any time to assert such conditions in respect of any subsequent Advance.

Article 4 PAYMENTS OF INTEREST AND FEES

4.01 Interest

- (a) Except for Extended Tranche 2 Advances, the Borrower shall pay interest on all Advances in Canadian Dollars at a rate per annum equal to 12.5%. The Borrower shall pay interest on all Extended Tranche 2 Advances in Canadian Dollars at a rate per annum equal to 14.5%.
- (b) Interest at the rate of 8.5% per annum on all Tranche 1 Advances, interest at the rate of 12.5% per annum on all Tranche 3 Advances and interest at the rate of 14.5% per annum on all Extended Tranche 2 Advances, shall be calculated in arrears on each Interest Payment Date, "capitalized" and added to the principal amount owing hereunder.
- (c) Interest at the rate of 4.0% per annum on all Tranche 1 Advances and 12.5% per annum on all Tranche 2 Advances shall be payable in arrears on each Interest Payment Date.

- (d) All interest shall accrue from day to day for the actual number of days elapsed for the period from and including the date of the Advance to and including the day preceding that Interest Payment Date, and shall be calculated on the principal amount outstanding during that period on the basis of the actual number of days in the relevant calendar year.

4.02 General Interest Rules

All interest payments to be made under this Agreement shall be paid both before and after maturity and before and after default and/or judgment, if any, until payment, and interest shall accrue on overdue interest, if any, compounded on each Interest Payment Date. In calculating interest or fees payable under this Agreement for any period, unless otherwise specifically stated, the first day of a period will be included and the last day of a period will be excluded.

4.03 Maximum Interest Rate

- (a) In the event that any provision of this Agreement or any other Credit Document would oblige an Obligor to make any payment of interest or any other payment which is construed by a court of competent jurisdiction to be interest in an amount or calculated at a rate which would be prohibited by Law or would result in a receipt by the Lender of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada) or other Applicable Law), then notwithstanding such provision, such amount or rate shall be deemed to have been adjusted *nunc pro tunc* to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by Law or so result in a receipt by the Lender of interest at a criminal rate, such adjustment to be effected, to the extent necessary as follows:
 - (i) firstly, by reducing the amount or rate of interest required to be paid under Section 4.01 of this Agreement; and
 - (ii) thereafter by reducing any fees, commissions, premiums and other amounts which would constitute interest for the purposes of Section 347 of the *Criminal Code* (Canada) or other Applicable Law in such order as the Lender may decide.
- (b) If, notwithstanding the provisions of clause (a) of this Section and after giving effect to all adjustments contemplated thereby, the Lender shall have received an amount in excess of the maximum permitted by such clause, then such excess shall be applied by the Lender to the reduction of the principal balance outstanding and not to the payment of interest, or if such excessive interest exceeds such principal balance, such excess shall be refunded to the Borrower.

4.04 Facility Fees

As consideration for entering into this Credit Agreement and agreeing to make the Advances, the Borrower shall pay to the Lender a facility fee in the amount of \$250,000 on the date of the Initial Advance and on each anniversary of such date until all Obligations have paid in full and this agreement has terminated, and such amounts shall be fully earned as of the date of this Agreement.

Article 5
REPAYMENTS

5.01 Mandatory Repayment of Principal

Unless the Obligations are required to be repaid at an earlier date pursuant to the terms hereof, the Borrower agrees to repay all Obligations on the Maturity Date.

5.02 Mandatory Repayments from the Construction Loan Proceeds

The maximum amount of all advances made to the Borrower under the Construction Loan that are, pursuant to the terms of the Construction Loan, permitted to be used to repay Advances shall be paid by or on the Borrower's behalf to the Lender upon receipt of such advances under the Construction Loan and shall be applied by the Lender in permanent repayment of the Tranche 2 Advance hereunder.

5.03 Mandatory Repayment on Sale of Units

Subject to the prior repayment of the Construction Loan, on the closing date of any sale of a Unit, an amount equal to the Net Proceeds of such sale shall be paid by or on behalf of the Borrower to the Lender and shall be applied in permanent repayment of the outstanding principal amount of the Obligations.

5.04 Mandatory Repayments from Proceeds of Insurance

If the Borrower or the Lender receives any proceeds of insurance in relation to the Borrower, or any of the Property of the Borrower, then an amount equal to the entire net amount of those proceeds which is not within 60 days of the receipt of such proceeds applied or under contract for application to the repair or replacement of damaged property shall be paid by or on behalf of the Borrower to the Lender forthwith and shall be applied in permanent repayment of outstanding principal amount of the Obligations.

5.05 Place of Payment

All payments by the Borrower under any Credit Document, unless otherwise expressly provided, shall be made to the Lender by wire transfer to such account as set out in Schedule 2 of this Agreement or certified cheque or bank draft, provided the Lender has received same not later than 2:00 p.m. (Toronto, Ontario time) for value on the date when due, and shall be made in immediately available funds without any right of the Borrower to set-off or counterclaim.

5.06 Account of Record

The Lender shall open and maintain books of account evidencing all Advances and all other amounts owing by the Borrower to the Lender under this Agreement. The Lender shall enter in those books details of all amounts from time to time owing, paid or repaid by the Borrower, and this information shall constitute prima facie evidence of the Obligations of the Borrower to the Lender under this Agreement. After a request by the Borrower, the Lender shall promptly advise the Borrower of any entries made in the Lender's books of account.

Article 6
REPRESENTATIONS AND WARRANTIES OF THE BORROWER

6.01 Representations and Warranties

Except as otherwise provided in this Article 6, the Borrower makes the following representations and warranties to the Lender with effect on and as of the Closing Date, and acknowledges and confirms that the Lender is relying upon such representations and warranties:

6.02 Existence and Qualification

It has been duly incorporated, and is validly subsisting under the laws of its jurisdiction of formation, and is duly qualified and has all required material Licences to carry on its business in each jurisdiction in which the nature of its business requires qualification.

6.03 Power and Authority

It has the power and capacity,

- (a) to enter into, and to exercise its rights and perform its obligations under, the Credit Documents to which it is a party;
- (b) to own its Property and carry on its business as currently conducted.

6.04 Execution, Delivery

The execution, delivery and performance of each of the Credit Documents to which it is a party has been duly authorized, and each of such documents has been duly executed and delivered.

6.05 Credit Documents Comply with Applicable Law, Organizational Documents and Contractual Obligations

None of the execution or delivery by it of, the performance by it of its obligations under, or compliance by it with the applicable terms, conditions and provisions of any of, the Credit Documents, conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under or contravention of, any Applicable Law, Organizational Document, material Contract, or material Licence, or results or will result in the creation or imposition of any Encumbrance upon any of its Property, other than Permitted Encumbrances.

6.06 Consent Respecting Credit Documents

It has obtained, made, or taken all consents, approvals, authorizations, declarations, registrations, filings and other actions whatsoever required in connection with the execution and delivery by it of each of the Credit Documents, to which it is a party, and the performance by it of its obligations under the Credit Documents.

6.07 Enforceable Obligations

The Credit Documents constitute its legal, valid and binding obligations (with regard to each agreement or instrument to which it is a party) enforceable against it by the Lender in accordance with their respective terms.

6.08 Taxes and Tax Returns

It has duly and timely (a) filed, or caused to be duly and timely filed, all Tax Returns in respect of Taxes required to be filed by it with the appropriate Governmental Authority, (b) paid all Taxes that are due and payable by it. There is no inquiry, action, suit, dispute, objection, appeal, investigation, audit, claim or other proceeding either in progress, pending, or to the knowledge of the Borrower threatened by any Governmental Authority regarding any Taxes or Tax Returns.

6.09 Accounts

Except as set out in Schedule 1 of the Disclosure Letter, it has not established or maintained any (a) chequing, savings, or other accounts at any bank or other financial institution or any other account where money is or may be deposited or maintained with any Person; or (b) securities accounts or have any securities entitlements (as those terms are defined in the STA).

6.10 Judgments, Etc.

It is not subject to any judgment, order, writ, injunction, decree or award.

6.11 Absence of Litigation

There are no actions, suits or proceedings of any kind or nature pending or, to its knowledge, threatened against or affecting it or its Property.

6.12 Debt

It has no Debt other than Permitted Debt.

6.13 Non Arm's Length Transactions

No agreement, arrangement or transactions between it, on the one hand, and any other Person not dealing at Arm's Length with the Borrower or Sam, on the other hand, is in existence at the date of this Agreement except as set forth in Schedule 2 of the Disclosure Letter.

6.14 Ownership

(a) The Borrower

(i) is the sole legal and beneficial owner of the Lands:

(ii) has good and marketable title to the Lands; and

(iii) owns all of its other Property;

in each case subject to no Encumbrances other than Permitted Encumbrances.

(b) It enjoys peaceful and undisturbed possession of the Lands and there is no pending or, to its knowledge, threatened condemnation or expropriation proceeding relating to the Lands. All of Lands and the structures thereon and other tangible assets owned, leased or used by it in the conduct of its business are:

- (i) insured to the extent, and in a manner customary, in the industry in which the Borrower is engaged; and
 - (ii) in conformity with all Applicable Law and other requirements (including applicable zoning, environmental, occupational safety and health laws and regulations) relating thereto.
- (c) No Person has any agreement or right to acquire an interest in any of its Property.

6.15 Insurance

It maintains or has maintained on its behalf insurance which is in full force and effect and which complies with all of the requirements of this Agreement. The details of all existing insurance policies maintained by it are outlined as to carrier, policy number, expiration date, type and amount in Schedule 3 of the Disclosure Letter.

6.16 Zoning

To the Borrower's knowledge, the advice provided in the letter from Adam Brown to the Mizrahi Developments dated September 26, 2014 in respect of development potential of the Lands and the Project is complete and accurate.

6.17 No Employees

The Borrower does not currently have, nor has it ever had, any employees.

6.18 Compliance with Law

It has not violated or failed to comply with any Applicable Law or any Applicable Order. It has not received any notice to the effect that, or otherwise been advised that, it is not in compliance with any Applicable Law, and it does not know of any currently existing circumstances that are likely to result in the violation of any Applicable Law.

6.19 No Event of Default or Pending Event of Default

No Event of Default or Pending Event of Default has occurred. It is not in default under any agreement, guarantee, indenture or instrument to which it is a party or by which it is bound.

6.20 Corporate Structure

The Borrower's outstanding share capital is validly issued and is fully paid and non-assessable and is owned as set forth in Schedule 4 of the Disclosure Letter. Except as provided for pursuant to this Agreement or disclosed in Schedule 4 of the Disclosure Letter, it does not have outstanding any securities convertible into or exchangeable for its share capital nor does any Person have outstanding any rights to subscribe for or to purchase, or any options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to its share capital. The Borrower's chief executive office is located in Ontario.

6.21 Contracts and Licences

- (a) Schedule 5 of the Disclosure Letter accurately sets out all of its Contracts and all of its Licences.
- (b) A true and complete copy of each such Contract and Licence has been delivered to the Lender prior to the Closing Date and each such Contract and Licence to which it is a party or which it was issued is in full force and effect, unamended except as disclosed in Schedule 5 of the Disclosure Letter.
- (c) No event related to an act or omission of it has occurred and is continuing which would constitute a breach of, or a default under, any Contract or Licence.
- (d) Each Contract to which it is a party is binding upon it and, to its knowledge is a binding agreement of each other Person who is a party to the Contract.

6.22 Fiscal Year

Its Fiscal Year end is December 31.

6.23 Financial Information

All financial statements which have been furnished to the Lender in connection with this Agreement fairly present in all material respects the consolidated financial position of the Obligors as of the dates referred to therein and have been prepared in accordance with Applicable Accounting Standards. All other financial information (including, without limitation, the Budget) provided to the Lender is complete in all material respects and based on assumptions believed to be reasonable and fair.

6.24 Environmental

- (a) It is not subject to any administrative, civil or criminal proceeding or known investigation relating to Requirements of Environmental Law and to its knowledge, there is no threatened proceeding or investigation.
- (b) The Lands are currently in compliance with the Requirements of Environmental Law.
- (c) No Hazardous Substances are or have been stored, disposed of or otherwise used by it in violation of any applicable Requirements of Environmental Law.
- (d) All aboveground and underground storage tanks now or previously located in, on or under any real property now owned or leased by it have been operated, maintained and decommissioned or closed, as applicable, in compliance with applicable Requirements of Environmental Law.
- (e) To its knowledge, no real property or groundwater in, on or under any property now or previously owned or leased by it (i) is or has been contaminated by any Hazardous Substance, or (ii) is named in any list of hazardous waste or contaminated sites maintained under any Requirements of Environmental Law.

6.25 Full Disclosure

All information furnished by it to the Lender for purposes of, or in connection with any Credit Document is true and accurate in all material respects on the date as of which such information is dated or certified, and not incomplete by omitting to state any material fact necessary to make such information not misleading.

Article 7 COVENANTS

POSITIVE COVENANTS

7.01 Covenants

While this Agreement is in effect and until the Obligations have been paid in full and the Credit Facilities have been terminated (with the exception of those Obligations and provisions of the Credit Documents that by their terms survive termination), except as otherwise permitted by the Lender's prior written consent or otherwise set out in this Article 7, the Borrower shall maintain or perform the covenants contained in this Article.

7.02 Conduct of Business, Maintenance of Existence, Compliance with Law

It shall: (i) engage only in the business of developing and constructing the Project, and marketing and selling the Units; (ii) carry on and conduct its business and operations in a proper, efficient and businesslike manner, in accordance with good business practice; (iii) preserve, renew and keep in full force and effect its existence; (iv) and take all commercially reasonable action to maintain all rights, privileges, and franchises necessary in the normal conduct of its business and comply in all material respects with its obligations under and those limitations contained in or imposed by all Contracts, Licences, Organizational Documents and Applicable Law.

7.03 Access to Information

It shall promptly provide the Lender with all information reasonably requested by the Lender from time to time concerning its financial condition and Property, and during normal business hours and from time to time upon reasonable notice, permit representatives of the Lender to inspect any of its Property, and to request for purposes of examination, copies of extracts from its financial books, accounts and records including but not limited to accounts and records stored in computer data banks and computer software systems, and to discuss its financial condition with its officers, employees and contractors and its accountants.

7.04 Obligations and Taxes

- (a) It shall pay or discharge, or cause to be paid or discharged, before they become delinquent all Taxes that are due and payable by it and all required payments under any of its Debt.
- (b) It shall prepare and file, or cause to be prepared and filed, all Tax Returns that are required to be prepared and filed by it with the appropriate Governmental Authority on a timely basis all in accordance with Applicable Law.

7.05 Use of Credit Facilities

The Borrower shall use the proceeds of the Credit Facility as contemplated by Section 2.02 (Purpose of Credit Facilities).

7.06 Insurance

- (a) The Borrower shall maintain or cause to be maintained with reputable insurers satisfactory to the Lender acting reasonably comprehensive general liability insurance and insurance coverage against risk of loss or damage to Property of the Borrower (including public liability and damage to property of third parties, business interruption insurance, fire and extended peril insurance, and boiler and machinery insurance) in such amounts and otherwise covering such risks as is reasonable and prudent for a business analogous to the business of the Borrower, and provide to the Lender, on an annual basis, evidence of such coverage. The Borrower shall, on an annual basis prior to the expiry or replacement of any insurance policy, send copies of all renewal or replacement notices relating to such policies to the Lender.
- (b) The Lender shall be indicated in all property insurance policies as a loss payee as its interests may appear or additional insured on all general liability policies, as applicable.

7.07 Notices

The Borrower shall give notice to the Lender promptly of:

- (a) any violation of any Applicable Law;
- (b) any entering into, termination of, amendment of, or default by an Obligor under a Contract;
- (c) any damage to or destruction of any Property of the Borrower having a replacement cost in excess of \$75,000;
- (d) any Encumbrance registered against any Property of an Obligor, other than a Permitted Encumbrance;
- (e) any Event of Default or Pending Event of Default;
- (f) the occurrence or threatened occurrence of any litigation, dispute, arbitration, or proceeding or other circumstance the result of which, if determined adversely, would be a judgment or award against the Borrower:
 - (i) in excess of \$25,000; or
 - (ii) would reasonably be expected to result in the Borrower not being able to complete the Project in accordance with the Budget or the Plans and Specifications; or

- (g) the occurrence of any event which the Borrower has knowledge of which could material delay or change the construction of the Project or prevent the Project from being completed in accordance with the Budget.

and from time to time provide the Lender with all information reasonably requested by the Lender concerning any such proceedings.

7.08 Environmental Compliance

It shall operate its business in compliance with applicable Requirements of Environmental Law, and operate all Property owned, leased or otherwise used by it so as to prevent any obligation, including a clean-up or remedial obligation, from arising under any Requirements of Environmental Law (as a result of the operation of its business and all such Property), provided however, that if any claim is made or any obligation arises under Requirements of Environmental Law, it shall take such commercially reasonable action as is necessary to satisfy or contest such claim or obligation at its own cost and expense. It shall promptly notify the Lender of:

- (a) the existence of Hazardous Substance located on, above or below the surface of any land which it owns, leases, operates, occupies or controls (except those being stored, used or otherwise handled in substantial compliance with applicable Requirements of Environmental Law), or contained in the soil or water constituting such land; or
- (b) the occurrence of any reportable release, spill, leak, emission, discharge, leaching, dumping or disposal of Hazardous Substances that has occurred on or from such land; or
- (c) the occurrence of any environmental damage resulting directly or indirectly from its activities.

7.09 Maintenance of Property

Subject to the eventual demolition of the structures currently situated on the Lands, it shall keep all Property useful and necessary in its business in good working order and condition, normal wear and tear excepted, and do and cause to be done all things necessary to preserve and keep in full force all intellectual property and registrations thereof necessary to carry on its business.

7.10 Consents re Contracts

At the request of the Lender acting reasonably, the Borrower shall use commercially reasonable efforts to obtain the consent of each Person (other than the Borrower) which is party to a Contract to the assignment of the Borrower's interest therein to the Lender pursuant to the Security.

7.11 Annual Financial Information.

As soon as practicable and in any event within 90 days of the end of the Borrower's fiscal year-end, the Borrower shall deliver to the Lender copies of the latest annual unaudited financial statements of the Borrower, which financial statements shall include balance sheets and related

statements of operations, shareholders' equity and cash flows, stating in comparative form on a consistent basis the respective figures as of the end of and for such financial year and as of the end of and for the previous financial year together with a management discussion and analysis.

7.12 Project Monitor.

The Lender shall be permitted at all times to appoint and remove one or more Project Monitors for the purposes of:

- (a) issuing progress certificates required by the Lender;
- (b) issuing the monthly Project status reports provided for herein;
- (c) from time to time reviewing the operations of the Project (including payment of accounts and review of cheque payments) and some or all of the agreements relating to the Project;
- (d) from time to time projecting the Cost to Complete;
- (e) advising the Lender as to whether the Project is being constructed and operated in accordance with (a) prudent industry practice, (b) all Applicable Laws, and (c) the Budget, the Plans and Specifications, the Construction Schedule and the other agreements relating to the Project; or
- (f) performing such additional functions as the Lender may from time to time reasonably request.

The Borrower shall pay all reasonable fees, costs and expenses of any such Project Monitor.

7.13 Monthly Project Status Report.

The Borrower shall deliver, or cause to be delivered, to the Lender, not later than 25 days within the end of each month, a Project status report prepared by the Project Monitor outlining, in detail;

- (a) an update to the original Budget together with any comments on any material variances from the original Budget or Construction Schedule;
- (b) costs incurred to date and costs paid to date;
- (c) estimates of the Cost to Complete and accounts payable;
- (d) a listing of aged accounts payable and outstanding cheques;
- (e) details of Holdbacks in a form approved by the Lender;
- (f) an updated schedule of sales in respect of which the Project Monitor has certified that: (A) it has reviewed the Agreements of Purchase of Sale for each such sale and a report from the holder of the Deposit Trust Account setting out the debits and credits of such account, (B) such schedule accurately reflects the terms of

the Agreements of Purchase and Sale and the activity in the Deposit Trust Account; and

- (g) a Compliance Certificate in respect of such month.

7.14 Construction Schedule.

The Borrower shall complete the Project in accordance with the Construction Schedule, and in any event, prior to the Maturity Date.

7.15 Construction Lien Act.

The Borrower shall comply with the provisions of the *Construction Lien Act* (Ontario) including, without limitation, payments into and administration of all bank accounts in respect of Holdbacks (each, a "**Holdback Account**"), and the Lender will supply such information to any lien claimant as may be required under the applicable legislation. Any lien claims shall be removed from title to the Project forthwith. It is specifically acknowledged and agreed that neither the establishment of a Holdback Account nor the depositing of any amount into a Holdback Account shall constitute a Holdback by the Lender under the *Construction Lien Act* (Ontario) or participation in the administration of the Holdback or the Holdback Account by the Lender.

7.16 Interest Reserve and Operating Accounts.

The Borrower shall maintain the operating account for the Project (the "**Operating Account**") at HSBC Bank Canada bearing account number 362-145830-001. An interest reserve account (the "**Interest Reserve Account**") with an escrow agent shall be established pursuant to an escrow agreement in such form as is satisfactory to the Lender, acting reasonably. The Interest Reserve Account shall be funded with \$2,865,750 from the initial Advance and such amount shall be held in the Interest Reserve Account and not used except to make payments of interest to the Lender pursuant to Section 4.01(c) or as the Lender may otherwise direct.

7.17 Tarion.

The Borrower shall, at all times, comply in all respects with the requirements of Tarion including, without limitation, all requirements set out in any directives or bulletins applicable to the technical requirements of the Project.

7.18 Purchasers' Deposits.

All Purchasers' Deposits shall be deposited in a trust account with a Canadian bank in the name of a law firm mutually agreed to by the Borrower and the Lender ("**Deposit Trust Account**"). Such law firm shall sign an acknowledgement and undertaking pertaining to the Deposit Trust Account in form satisfactory to the Lender and shall have exclusive signing authority for the Deposit Trust Account in accordance with the terms of the Deposit Trust Account Agreement. All monies held from time to time in the Deposit Trust Account shall be subject to a security interest/pledge in favour of the Surety subject to the obligations, if any, imposed by law pursuant to the Condominium Act.

7.19 Deposit Insurance.

The Borrower and a surety acceptable to the Lender (the "**Surety**") will enter into arrangements to provide the Borrower with a surety bond which shall be satisfactory to Tarion and shall

provide excess condominium deposit insurance ("ECDI") contemplated by the *Condominium Act* such that the Borrower, with the concurrence or authorization of the Surety, shall be legally entitled to apply the full amount of Purchasers' Deposits on deposit in the Deposit Trust Account at any time or times as Deposit Availments towards the payment of the costs of construction of the Project. Upon cancellation of the surety bond and ECDI policies, the balance of monies in the Deposit Trust Account shall be released, paid, subject to any restriction in the Construction Loan, to the Lender as repayment of the Obligations remaining unpaid, and otherwise to the Borrower.

7.20 Postponement and Subordination in favour of Surety and Construction Lender.

- (a) If required, the Lender shall enter into a subordination, postponement and standstill agreement with the Construction Lender which is satisfactory to the Construction Lender, acting reasonably, pursuant to which the Lender shall, inter alia, agree to i) postpone the Lender's indebtedness in favour of the Construction Lender's indebtedness provided that interest paid to the Lender from the Interest Reserve Account shall, at all times, be permitted, and ii) not take any enforcement process against the Borrower, the Lands, the Project or any personal property relating thereto prior to the payment in full of the indebtedness owed to the Construction Lender, without the consent of the Construction Lender, which consent may be given or withheld by the Construction Lender in its sole, absolute and subjective discretion, and iii) provide postponements, discharges, and consents required by the Construction Lender to facilitate the development of the Lands, and iv) provide partial discharges of Units without payment provided that the Construction Lender is repaid from the net closing proceeds from the sale of such Units.
- (b) If required, the Lender shall enter into a subordination, postponement and standstill agreement with the Surety which is satisfactory to the Surety, acting reasonably, pursuant to which the Lender shall, inter alia, agree to i) postpone the Lender's indebtedness in favour of the Surety's indebtedness provided that interest paid to the Lender from the Interest Reserve Account shall, at all times, be permitted, and ii) not take any enforcement process against the Borrower, the Lands, the Project or any personal property relating thereto prior to the payment in full of the indebtedness owed to the Surety, without the consent of the Surety, which consent may be given or withheld by the Surety in its sole, absolute and subjective discretion, and iii) provide postponements, discharges, and consents required by the Surety to facilitate the development of the Lands, and iv) provide partial discharges of Units without payment provided that the Surety is repaid from the net closing proceeds from the sale of such Units.

7.21 Sale of Units.

The Borrower shall use all commercially reasonable efforts to sell Units in accordance with prudent industry standards and with a view to preserving and protecting the Project and maximizing the revenue to be generated therefrom. The Borrower shall deliver copies of each Agreement of Purchase and Sale to the Lender within 5 days of execution thereof. If any purchaser purports to terminate its Agreement of Purchase and Sale, the Borrower will take reasonable steps to contest such action and advise the Lender of the details thereof.

7.22 Construction contract

Upon final approval of the Plans and Specifications, Mizrahi Inc. and the Borrower will enter into a stipulated price construction contract substantially in the form attached hereto as Schedule 5, subject to any modifications to such form of agreement required by the lender under the Construction Loan.

NEGATIVE COVENANTS

7.23 Disposition of Property

Without the prior written approval of the Lender, it shall not enter into an agreement in respect of the Disposition of, or complete a Disposition of, Property except for Dispositions of Units in the ordinary course of business pursuant to an Agreement of Purchase and Sale that

- (a) contemplates a price equal to or greater than the list price previously approved by the Lender for such Unit; and
- (b) is in a form that does not have any substantive or material differences from the form of Agreement of Purchase and Sale previously approved by the Lender.

7.24 No Consolidation, Amalgamation, etc.

It shall not amalgamate with any other Person, enter into any merger, consolidation, corporate reorganization or other transaction intended to effect or otherwise permit a change in its existing corporate structure, enter into any capital reorganization or liquidate, wind-up or dissolve itself, or permit any liquidation, winding-up or dissolution.

7.25 No Change of Name

It shall not change its name.

7.26 No Debt

It shall not shall create, incur, assume or permit any Debt to remain outstanding, other than Permitted Debt.

7.27 No Investments

It shall not make, directly or indirectly, any Investment, except for Investments in cash equivalents.

7.28 No Financial Assistance

It shall not give any Financial Assistance.

7.29 No Encumbrances

It shall not create, incur, assume or permit to exist any Encumbrance upon any of its Property, except Permitted Encumbrances.

7.30 No Change to Year End

It shall not make any change to its Fiscal Year.

7.31 No Continuance

It shall not continue into any other jurisdiction.

7.32 Location of Assets in Other Jurisdictions

It shall not suffer or permit in any other manner any of its Property which is subject to the Encumbrance of the Security to not be subject to that Encumbrance or to be or become located in a jurisdiction in which that Encumbrance is not perfected.

7.33 Restrictions on Business Activities

It shall not carry on business other than the business of acquiring the Lands, constructing the Project and marketing and selling the Units, and all business or activities directly related or ancillary thereto or necessary or desirable to permit the Borrower to engage in the above described activities.

7.34 Amendments to Organizational Documents

It shall not amend any of its Organizational Documents.

7.35 Contracts

Except for entering into Agreements of Purchase and Sale as permitted by Section 7.23, it shall not enter into any Contract, or amend, vary or alter, consent to any assignment or transfer of, or waive or surrender any of its rights or entitlements which would be considered material under, any Contracts, without the prior consent of the Lender, which consent shall not be unreasonably withheld or delayed.

7.36 No New Subsidiaries

It shall not create any subsidiary.

7.37 Accounts

Except for the Operating Account and the Interest Reserve Account, it shall not open, maintain or otherwise have any chequing, savings, or other accounts at any bank or other financial institution or any other account where money is or may be deposited or maintained with any Person, or a securities account or have any securities entitlement (as those terms are defined in the STA).

7.38 Non-Arm's Length Transactions

It shall not enter into any transaction or series of transactions, whether or not in the ordinary course of business, with any Person who is Non-Arm's Length to the Borrower or Sam other than upon terms and conditions which are approved by the Lender.

7.39 Prepayment of Other Debt

It will not pay, purchase, redeem, retire or otherwise acquire for value, or set apart any money for a sinking fund, defeasance or other analogous fund for the purchase, redemption, retirement or other acquisition of, or make any payment or prepayment of the principal of or interest on, or any other amount owing in respect of, any Debt other than the Construction Loan in accordance with its terms.

7.40 Plans and Specifications, Construction Schedule and Site Plan.

- (a) The Borrower shall not commence construction of the Project without first obtaining the Lender's approval of the Plans and Specifications and the Construction Schedule, such approval not to be unreasonably or arbitrarily withheld.
- (b) Following approval by the Lender, the Borrower shall not revise, change or amend the Budget, Plans and Specifications or the Construction Schedule in any material respect without obtaining a further approval from the Lender, such approval not to be unreasonably or arbitrarily withheld.
- (c) The Borrower shall not submit a site plan in respect of the Project to the city for approval without obtaining the Lender's approval of such site plan, such approval not to be unreasonably or arbitrarily withheld.

7.41 Professionals

The Borrower shall not engage, or terminate the engagement of, any architect, accountant, engineer, or law firm without the prior consent of the Lender, which consent shall not be unreasonably withheld or delayed.

7.42 Litigation

The Borrower shall not commence or settle any actions, suits or proceedings of any kind without the prior written approval of the Lender, such approval not to be unreasonably or arbitrarily withheld

Article 8 SECURITY

8.01 Form of Security

- (a) As general and continuing security for the due payment and performance of the Obligations of the Borrower to the Lender under the Credit Documents, the following Security shall be granted to the Lender:
 - (i) a general security agreement from the Borrower in favour of the Lender, constituting a first priority Encumbrance (subject only to the Priority Encumbrances) on all present and after-acquired Property of the Borrower;

- (ii) mortgages or charges, as applicable, duly registered in first position (subject to Priority Encumbrances) against all present and after-acquired real property rights owned by the Borrower;
 - (iii) an general assignment of rents and leases;
 - (iv) a pledge by the Pledgor of its shares in the capital of the Borrower; and
 - (v) an escrow agreement in respect of the Interest Reserve Account.
- (b) The documents referred to above shall be in form satisfactory to the Lender.

8.02 After Acquired Property and Further Assurances

The Borrower shall take such actions as are necessary or as the Lender may reasonably request from time to time to ensure that the Obligations of the Borrower under the Credit Documents are secured by a first priority Encumbrance (subject only to Permitted Encumbrances or Priority Encumbrances) in favour of the Lender over all of the Property of the Borrower, as the Lender may determine. The Borrower shall from time to time execute and deliver all such deeds or other instruments of conveyance, assignment, transfer, mortgage, pledge or charge in connection with all Property acquired by the Borrower after the date of this Agreement and intended to be subject to the Security, as may be reasonably requested by the Lender from time to time.

8.03 Registration

The Borrower shall, at its expense, cause to be registered, filed or recorded the Security in all offices in each applicable jurisdiction where such registration, filing or recording is necessary to the creation, perfection and preserving of the Security applicable to it except for registrations under the PPSA against the Pledgor. The Borrower shall renew such registrations, filings and recordings from time to time as and when required to keep them in full force and effect and shall, from time to time as reasonably required, provide to the Lender an opinion of counsel acceptable to the Lender that all such registrations, filings and recordings have been made and perfect the security interests created by the Security.

8.04 Release of Security

At such time as the Borrower has satisfied all of its respective indebtedness, liabilities and obligations in relation to this Agreement in full and shall have terminated the same (other than arising under any term of any Credit Document which by its terms survives the termination of this Agreement), the Lender shall, at the expense and request of the Borrower, without any representations, warranties or recourse of any kind whatsoever, enter into such agreements and other instruments and do such things as may be necessary to release, reassign, re-convey and discharge the Security. Provided no Event of Default has occurred and is continuing, the Borrower shall be entitled to a partial discharge of the Security as it relates to each of the Units, upon payment to the Lender of 100% of the Net Proceeds of such Unit subject to the prior payment in full of the Construction Loan and any restrictions imposed by Tarion. The Lender shall execute such releases of the Security in respect of any Unit in respect of which a partial discharge is sought in form and substance as the Borrower may reasonably require and shall deliver same to the Borrower's legal counsel upon delivery to the Lender of the amount set forth

in this Section or an acceptable undertaking by the Borrower's legal counsel to remit the amounts described in this Section forthwith after the closing of such sale.

Article 9
DEFAULT

9.01 Events of Default

The occurrence of any one or more of the following events (each an "**Event of Default**") shall constitute a default under this Agreement:

- (a) the failure of the Borrower to pay any amount of principal hereunder, or to pay interest, fees or other Obligations when due and payable and such failure shall continue for a period of 10 days following receipt by the Borrower from the Lender of notice of non-payment;
- (b) the failure of the Borrower to observe or perform any covenant or obligation applicable to it under any Credit Document (other than a covenant or condition whose breach or default in performance is specifically dealt with elsewhere in this Section 9.01), provided that if such default is capable of being cured within 30 days, the Borrower fails to cure such default within 30 days from the earlier of the date:
 - (i) it has knowledge of the default; and
 - (ii) the Lender delivers written notice of the default to the Borrower;
- (c) any representation or warranty made by the Borrower in any Credit Document or in any certificate or other document at any time delivered hereunder to the Lender was incorrect or misleading in any material respect;
- (d) the failure of the Borrower to observe or perform any agreement or condition in relation to any Debt to any Person, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event shall occur or condition exist, the effect of which default or other condition is to cause, or to permit the holder of such Debt to cause such Debt to become due prior to its stated maturity date and the Obligor shall have failed to cure that breach or alleged breach, provided same is curable, within 10 days after the Borrower has knowledge thereof;
- (e) the denial by the Borrower of its obligations under any Credit Document, or the claim by the Borrower that any of the Credit Documents is invalid or has been withdrawn in whole or in part;
- (f) a decree or order has been entered by a court of competent jurisdiction adjudging the Borrower bankrupt or insolvent or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of any of them under any Insolvency Legislation or insolvency or appointing a receiver and/or a receiver and manager or decreeing or ordering a winding-up or liquidation of the affairs of any of them;

- (g) the Borrower files a proposal pursuant to Insolvency Legislation or shall institute proceedings to be adjudicated a bankrupt or insolvent or shall consent to the institution of bankruptcy, or insolvency proceedings against it or shall file a petition or answer or consent seeking reorganization or relief under any applicable laws relating to bankruptcy or insolvency, or shall consent to the filing of any such petition or shall consent to the appointment of a receiver and/or a receiver and manager or shall have made an assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due;
- (h) the taking of possession by an Encumbrancer, by appointment of a receiver, receiver and manager, or otherwise, of any material portion of the Property of the Borrower;
- (i) the entering or obtaining of a final judgment or decree for the payment of money due against an Obligor in an amount in excess of \$500,000 if that judgment or decree is not vacated, discharged or stayed pending appeal within the applicable appeal period;
- (j) if the Construction Schedule is delayed such that the expected completion of the Project will not occur prior to the Maturity Date for any reason other than Force Majeure;
- (k) if, at anytime, the Cost to Complete exceeds the Budget by 5% or more;
- (l) if either (a) Mizrahi Inc. defaults under the development management agreement between Mizrahi Inc. and the Borrower or (b) Mizrahi Inc. defaults under the construction management agreement between Mizrahi Inc. and the Borrower and, in either case, such default has not been cured within the cure periods provided in such agreements.

9.02 Acceleration and Termination of Rights

If any Event of Default occurs and is continuing, (i) all Obligations shall, at the option of the Lender, become immediately due and payable with interest, at the rate or rates determined as provided in this Agreement, to the date of their actual payment, all without notice, presentment, protest, demand, notice of dishonour or any other demand or notice whatsoever, all of which are hereby expressly waived by the Borrower, and (ii) the Lender will be under no further obligation to provide any further Advances. In that event, the Security shall become immediately enforceable and the Lender may, in its sole discretion, exercise any right or recourse and/or proceed by any action, suit, remedy or proceeding against any Obligor authorized or permitted by law for the recovery of all the Obligations of the Obligors to the Lender, and proceed to exercise any and all rights hereunder and under the Security, and no such remedy for the enforcement of the rights of the Lender shall be exclusive of, or dependent on, any other remedy, but any one or more of such remedies may from time to time be exercised independently or in combination.

9.03 Remedies Cumulative

For greater certainty, the rights and remedies of the Lender under any Credit Document are cumulative and are in addition to, and not in substitution for, any rights or remedies provided by

Law or by equity; and any single or partial exercise by the Lender of any right or remedy for a default or breach of any term, covenant, condition or agreement contained in any Credit Document shall not be deemed to be a waiver of or to alter, affect or prejudice any other right or remedy or other rights or remedies to which the Lender may be lawfully entitled for such default or breach.

9.04 Saving

The Lender shall have no obligation to the Obligors or any other Person to realize any collateral or enforce the Security or any part thereof or to allow any of the collateral to be sold, dealt with or otherwise disposed of. The Lender shall not be responsible or liable to the Obligors or any other Person for any loss or damage upon the realization or enforcement of, the failure to realize or enforce the collateral or any part thereof or the failure to allow any of the collateral to be sold, dealt with or otherwise disposed of or for any act or omission on their respective parts or on the part of any director, officer, agent, servant or adviser in connection with any of the foregoing, except that the Lender may be responsible or liable for any loss or damage arising from the wilful misconduct or gross negligence of the Lender.

9.05 Perform Obligations

If an Event of Default has occurred and is continuing, and if any Obligor has failed to perform any of its covenants or agreements in the Credit Documents at such time, the Lender may, but shall be under no obligation to, perform any such covenants or agreements in any manner deemed fit by the Lender without thereby waiving any rights to enforce the Credit Documents. The reasonable documented out-of-pocket fees and expenses (including any legal costs on a full indemnity basis) incurred by the Lender in respect of the foregoing shall be an Obligation and shall be secured by the Security.

9.06 Third Parties

No Person dealing with the Lender or any agent of the Lender shall be concerned to inquire whether the Security has become enforceable, or whether the powers which the Lender is or purporting to exercise have been exercisable, or whether any Obligations remain outstanding upon the Security thereof, or as to the necessity or expediency of the stipulations and conditions subject to which any sale shall be made, or otherwise as to the propriety or regularity of any sale or other Disposition or any other dealing with the collateral charged by such Security or any part thereof.

9.07 Set-Off or Compensation

In addition to, and not in limitation of, any rights now or hereafter granted under Applicable Law, if repayment is accelerated pursuant to Section 9.02, the Lender may, at any time without notice to any Obligor or any other Person, the right to receive any notice being expressly waived by each Obligor, set off and compensate and apply any and all indebtedness or obligation of any kind at any time owing by the Lender to or for the credit of or the account of an Obligor, against and on account of the Obligations, notwithstanding that any of them are contingent or unmatured.

9.08 Application of Payments

Notwithstanding any other provisions of this Agreement, after the occurrence and during the continuance of an Event of Default, all payments made by an Obligor under this Agreement, or

from the proceeds of realization of any Security, or otherwise collected or received by the Lender on account of amounts outstanding with respect to any of the Obligations, shall be paid over or delivered to make the following payments (as the same become due at maturity, by acceleration or otherwise):

- (a) first, to payment of any fees owed to the Lender hereunder or under any other Credit Document;
- (b) second, to the payment of all reasonable documented out-of-pocket costs and expenses (including without limitation reasonable legal fees) of the Lender in connection with enforcing the rights of the Lender under the Credit Documents;
- (c) third, to the payment of all Obligations consisting of interest payable to the Lender hereunder;
- (d) fourth, to all other Obligations; and
- (e) fifth, to the payment of the surplus, if any, to whoever may be lawfully entitled to receive such surplus.

Article 10 COSTS, EXPENSES AND INDEMNIFICATION

10.01 Costs and Expenses

The Borrower shall pay promptly following (and in any event no later than 10 days following) receipt of written notice together with copies of applicable invoices from the Lender all reasonable documented out-of-pocket costs and expenses in connection with the preparation, execution and delivery of the Credit Documents and the other instruments, registrations, certificates and documents to be delivered thereunder, whether or not a closing has occurred or any Advance has been made under this Agreement, including, without limitation, the reasonable documented out-of-pocket fees and expenses of Lender's Counsel with respect thereto and with respect to advising the Lender as to its rights and responsibilities under this Agreement and the other Credit Documents to be delivered under this Agreement. The Borrower further agrees to pay all reasonable documented out-of-pocket fees and expenses in connection with the preparation or review of waivers, consents and amendments requested by the Borrower, questions of interpretation of this Agreement, and in connection with the establishment of the validity and enforceability of this Agreement and the preservation or enforcement of rights of the Lender under this Agreement, and other documents to be delivered under this Agreement, including, without limitation, all reasonable documented out-of-pocket costs and expenses sustained by the Lender as a result of any failure by any of the Obligors to perform or observe any of their respective obligations under this Agreement, together with interest at 18% per annum from and after the 10th day of having been given notice from the Lender, if payment is not made by that time. Such costs and expenses shall be payable whether or not an Advance is made under this Agreement.

10.02 Specific Third Party Claim Indemnification

In addition to any liability of the Borrower to the Lender under any other provision of this Agreement, the Borrower covenants to indemnify and hold harmless the Indemnified Parties from and against any and all actions, proceedings, claims, assessments in respect of required

withholding losses, damages, liabilities, expenses and obligations of any kind that may be incurred by, or asserted against, any of them by any third party, including any Governmental Authority, as a result of, or in connection with, the entering into of the Credit Documents or the transactions therein contemplated, including where related to or as a result of actions on the part of any Obligor related to, or as a consequence of, environmental matters or a failure to comply with Requirements of Environmental Law, other than any claim arising from the gross negligence or wilful misconduct of an Indemnified Party. Whenever any such claim arises, an Indemnified Party (if not the Lender) shall promptly notify the Lender, and the Lender shall in turn promptly notify the Borrower, of the claim and, when known, the facts constituting the basis for the claim, and if known, the amount or an estimate of the amount of the claim. The failure of an Indemnified Party to promptly give notice of a claim shall not adversely affect the Indemnified Party's rights to indemnity, except to the extent such failure adversely affects the right of the Borrower to assert any reasonable defence to the claim. An Indemnified Party shall not settle or compromise any claim by a third party for which it is entitled to indemnification under this Section 10.02 without the prior written consent of the Borrower (which consent shall not be unreasonably withheld). The Borrower shall have the sole right, at its expense, to control any such legal action or claim and to settle on terms and conditions approved by the Borrower and approved by the party named in such legal action or claim acting reasonably provided that if, in the opinion of the Lender the interests of the Lender are different from those of the Borrower in connection with such legal action or claim, the Lender shall have the right, at the Borrower's expense, to defend its own interests provided that any settlement of such legal action or claim shall be on terms and conditions approved by the Borrower, acting reasonably. The Borrower shall not settle or compromise any such claim or any legal proceeding resulting therefrom without the prior written consent of the applicable Indemnified Parties (which consent shall not be unreasonably withheld). The applicable Indemnified Parties shall be entitled to participate in (but not control) the defence of any action, with their own counsel and at their own expense. If the Borrower does not assume the defence of any claim or litigation resulting therefrom, the applicable Indemnified Parties may defend against that claim or litigation using one set of counsel for those Indemnified Parties, in the manner as it deems appropriate and at the expense of Borrower, including, but not limited to, settling the claim or litigation, after giving notice of the proposed settlement to, and receiving the consent of, the Borrower (which consent shall not be unreasonably withheld). In that case the Borrower shall be entitled to participate in (but not control) the defence of the action, with its own counsel and at its own expense. The defense and indemnity obligations contained throughout this Agreement shall survive the termination of this Agreement and repayment of the Obligations.

Article 11

SUCCESSORS AND ASSIGNS AND ADDITIONAL LENDERS

11.01 Binding Effect

Each Credit Document enures to the benefit of and binds the Parties and their respective successors and permitted assigns.

11.02 Assignment

- (a) No Obligor may assign any rights or obligations relating to this Agreement or any other Credit Document without the Lender's prior written consent.
- (b) The Lender shall not be entitled to assign its rights and obligations without the prior written consent of Mizrahi, such consent not to be unreasonably withheld or

delayed. The Lender may permit other Persons to participate in the Credit Facilities provided the Lender has given the Borrower prior written notice of such participation and the name of such participant. The Borrower hereby consents to the disclosure of any all information in respect of the Borrower, the Project and the Credit Documents to any potential Lender or participant provided that the potential Lender or participant agrees in writing to keep the such information confidential in a manner that is legally enforceable by the Borrower and other Obligors directly against such Person.

Article 12 GENERAL PROVISIONS

12.01 Entire Agreement

This Agreement together with the other Credit Documents constitutes the entire agreement between the Parties relating to its subject matter. This Agreement supersedes all previous agreements and discussions between the Parties (including the summary of terms dated June 9, 2015 between the Borrower, the Lender and Sam Mizrahi). There are no representations, covenants, or other terms other than those set forth in this Agreement and the other Credit Documents.

12.02 Further Assurances

Each party, upon receipt of Notice by another party, shall sign (or cause to be signed) all further documents, do (or cause to be done) all further acts, and provide all reasonable assurances as may reasonably be necessary or desirable to give effect to the terms of this Agreement.

12.03 Amendment

This Agreement may only be amended by a written document signed by each of the Parties.

12.04 Conflict of Terms

If there is any inconsistency between the terms of this Agreement and those in any schedule to this Agreement, any agreement entered into under this Agreement, or under any of the Credit Documents, the terms giving the Lender greater rights or remedies will govern (to the maximum extent permitted by Applicable Law), it being understood that the purpose of this Agreement and any other Credit Document is to add to, and not detract from, the rights granted to the Lender under the Credit Documents.

12.05 No Partnership

Nothing contained in this Agreement will create a partnership, joint venture, principal-and-agent relationship, or any similar relationship between the Parties.

12.06 Notice

To be effective, a Notice must be in writing and delivered (a) personally, either to the individual designated below for that party or to an individual having apparent authority to accept deliveries on behalf of that individual at its address set out below, (b) by fax, or (c) by registered mail, or (d) by electronic mail, to the address or electronic mail address set out opposite the party's

name below or to any other address or electronic mail address for a party as that party from time to time designates to the other parties in the same manner:

in the case of the Borrower, to:

189 Forest Hill Road,
Toronto, Ontario M5P 2N3
Attention: Sam Mizrahi
Email: sam@mizrahicorp.com

With a copy to:

Baldwin Sennecke Halman, LLP
25 Adelaide Street East, Suite 900
Toronto, ON M5C 3A1
Attention: Jeffrey A. Halman
Email: JHalman@bashllp.com

in the case of the Lender, to:

Constantine Enterprises Inc.
333 Bloor Street East, 10th Floor
Toronto ON M4W 1G9
Attention: Robert Hiscox
Email: robert@hiscox.org

with a copy to:

Cassels Brock & Blackwell LLP
Scotia Plaza, Suite 2100
40 King Street West,
Toronto ON M5H 3C2
Attention: Jason Arbuck
Email: jarbuck@casselsbrock.com

Any Notice is effective (i) if personally delivered as described above, on the day of delivery if that day is a Business Day and it was delivered before 5:00 p.m. local time in the place of receipt and otherwise on the next Business Day, (ii) if sent by fax, on the day of transmission, if that day is a Business Day and the fax transmission was made before 5:00 p.m. local time in the place of receipt and otherwise on the next Business Day, or (iii) if sent by registered mail, on the fourth Business Day following the day on which it is mailed, except that if at any time between the date of mailing and the fourth Business Day thereafter there is a disruption of postal service then Notice must be given by means other than mail, or (iv) if sent by electronic mail, on the day the sender receives confirmation of receipt by return electronic mail from the recipient if that day is a Business Day and if the sender received confirmation before 5:00 p.m. local time in the place of receipt, and otherwise on the next Business Day.

12.07 Remedies Cumulative

The rights, remedies, and powers provided in this Agreement or under any other Credit Document to a party are cumulative and in addition to, and are not exclusive of or in substitution for, any rights, remedies, and powers otherwise available to that party.

12.08 Non-Merger

The rights, obligations, and representations and warranties under this Agreement and each other Credit Document will not merge on the Closing Date.

12.09 Survival

Sections 12.07, 12.12, 12.13 and all of Article 10 survive the termination of this Agreement.

12.10 Severability

The invalidity or unenforceability of any particular term of this Agreement will not affect or limit the validity or enforceability of the remaining terms.

12.11 Waiver

No waiver of satisfaction of a condition or non-performance of an obligation under any Credit Document is effective unless it is in writing and signed by the party granting the waiver. No waiver under this section affects the exercise of any other rights or remedies under this Agreement. Any failure or delay in exercising any right or remedy will not constitute, or be deemed to constitute, a waiver of that right or remedy. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

12.12 Governing Law

The laws of Ontario and the laws of Canada applicable in Ontario, excluding any rule or principle of conflicts of law that may provide otherwise, govern this Agreement.

12.13 Submission to Jurisdiction

The Obligors irrevocably attorn to the jurisdiction of the courts of Ontario, which will have non-exclusive jurisdiction over any matter arising out of this Agreement.

12.14 Counterparts

This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. Counterparts may be transmitted by fax or in electronically scanned form. Parties transmitting by fax or electronically shall also deliver the original counterpart to each other party, but failure to do so does not invalidate this Agreement.

12.15 Effective Date

This Agreement is effective as of the date shown at the top of the first page, even if any signatures are made after that date.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

MIZRAHI (128 HAZELTON) INC.

By: 
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation

CONSTANTINE ENTERPRISES INC.

By: _____
Name: Edward S. Rogers
Title: Chairman

By: _____
Name: Robert Hiscox
Title: President

I/We have authority to bind the Corporation

MIZRAHI ENTERPRISES INC.

By: 
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation

[Signature Page to Credit Agreement]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

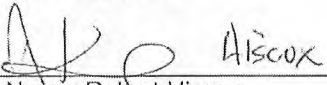
MIZRAHI (128 HAZELTON) INC.

By: _____
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation

CONSTANTINE ENTERPRISES INC.

By:  _____
Name: Edward S. Rogers
Title: Chairman

By:  _____
Name: Robert Hiscox
Title: President

I/We have authority to bind the Corporation

MIZRAHI ENTERPRISES INC.

By: _____
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation

[Signature Page to Credit Agreement]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

MIZRAHI (128 HAZELTON) INC.

By: _____
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation

CONSTANTINE ENTERPRISES INC.

By: _____
Name: Edward S. Rogers
Title: Chairman

By: _____
Name: Robert Hiscox
Title: President

I/We have authority to bind the Corporation

MIZRAHI ENTERPRISES INC.

By: _____
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation

[Signature Page to Credit Agreement]

Schedule 1
Repayment Notice

TO: Constantine Enterprises Inc. ("Lender")
FROM: Mizrahi (128 Hazelton) Inc. ("Borrower")
DATE: ●

1. This Repayment Notice is delivered to you pursuant to the credit agreement made as of June 26, 2015, between the Borrower, the Pledgor and the Lender, as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All defined terms set forth, but not otherwise defined, in this notice shall have the respective meanings set forth in the Credit Agreement, unless the context requires otherwise.
2. The Borrower hereby gives you notice of a repayment as follows:
 - (a) Date of Repayment:
 - (b) Amount of Repayment:

MIZRAHI (128 HAZELTON) INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the Corporation

Schedule 2
Wire Instructions

Beneficiary	CONSTANTINE ENTERPRISES INC.
Address	333 BLOOR STREET EAST FLOOR 10 TORONTO ONTARIO M5W 1G9
Bank	TD Canada Trust
Bank Address	2 ST. CLAIR AVE EAST TORONTO ONTARIO M4T 2V4
Branch Transit #	19682
Bank #	004
Account #	0617 5305133
Swift code	TDOMCATTOR (all letters)

Schedule 3
Notice of Request for Advance

TO: Constantine Enterprises Inc. ("Lender")
FROM: Mizrahi (128 Hazelton) Inc. ("Borrower")
DATE: ●

This Notice of Request for Advance is delivered to you pursuant to the credit agreement made as of June 16, 2015, between the Borrower, the Pledgor, and the Lender as amended, supplemented, restated or replaced from time to time (the "**Credit Agreement**"). All defined terms set forth, but not otherwise defined, in this notice shall have the respective meanings set forth in the Credit Agreement, unless the context requires otherwise.

The Borrower hereby requests an Advance in the amount of \$● on ●.

All of the conditions precedent to the Advance hereby requested have been satisfied.

MIZRAHI (128 HAZELTON) INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the Corporation

Schedule 4
Compliance Certificate

TO: Constantine Enterprises Inc. (the "Lender")
FROM: Mizrahi (128 Hazelton) Inc. (the "Borrower")
RE: Credit Agreement dated as of June 16, 2015 between the Borrower, Mizrahi Enterprises Inc. and the Lender (as amended, modified, supplemented, restated or replaced from time to time, the "Credit Agreement")

Capitalized terms used and not defined herein have the meanings given to them in the Credit Agreement.

I, Sam Mizrahi, an officer of the Borrower, after due investigation, hereby certify to the Lender on behalf of the Borrower and without personal liability, as of **[insert date]**:

1. The representations and warranties in the Credit Agreement are true and correct in all material respects as if made on the date hereof.
2. No Event of Default has occurred and is continuing under the Credit Agreement as of the date hereof.
3. The Borrower is in compliance with all of its obligations under to the Credit Agreement.
4. The Cost to Complete in respect of the Project (including holdbacks and accounts payable) in accordance with the Budget and the approved Plans and Specifications is approximately \$_____.
5. If the Construction Loan has been entered into, the undrawn balance of the Construction Loan is \$_____.
6. The amount of cash or cash equivalents held by the Borrower is \$_____.
7. Holdbacks currently retained in respect of the Project total \$_____.
8. Any Cost Overruns in respect of the Project, including appropriate allowances for ongoing financing charges based on then prevailing financing rates, are less than the contingency amounts set out in the Budget.
9. Construction of the Project to the date hereof has been completed in accordance with the Budget and in compliance with all material permits and all applicable zoning and building laws and ordinances and the Plans and Specifications relating to the Project; and all of the work, materials and fixtures customarily furnished and installed at the current stage of construction have been furnished and installed and are of acceptable quality.

10. All subcontractors and all other Persons who have supplied materials and services in connection with the Project have received payment in full (except for any permitted holdbacks); and the Borrower has received no notice (verbal or written) of any construction lien or other security interest (except a Permitted Encumbrance) claimed or registered against title to the Lands.
11. All of the statements contained in this certificate are true, complete and accurate in all respects as of the date hereof.

Dated this ____ day of _____, 20__ .

MIZRAHI (128 HAZELTON) INC.

Per:

Name:

Title:

Schedule 5
Construction Contract

See attached.

CCDC 2

stipulated price contract

2008

128 Hazelton

Apply a CCDC 2 copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 2 – 2008 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

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The Canadian Construction Documents Committee (CCDC) is a national joint committee responsible for the development, production and review of standard Canadian construction contracts, forms and guides. Formed in 1974 the CCDC is made up of volunteer representatives from:

- Public Sector Owners
- Private Sector Owners
- Canadian Bar Association (Ex-Officio)
- * The Association of Canadian Engineering Companies
- * The Canadian Construction Association
- * Construction Specifications Canada
- * The Royal Architectural Institute of Canada

*Committee policy and procedures are directed and approved by the four constituent national organizations.

CCDC 2 is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 2 can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 2.

CCDC Copyright 2008

Must not be copied in whole or in part without the written permission of the CCDC.

AGREEMENT BETWEEN OWNER AND CONTRACTOR

For use when a stipulated price is the basis of payment.

This Agreement made on the 31 day of May in the year 2015 .

by and between the parties

Mizrahi (128 Hazelton) Inc.

hereinafter called the "Owner"

and

Mizrahi Inc.

hereinafter called the "Contractor"

The Owner and the Contractor agree as follows:

ARTICLE A-1 THE WORK

The Contractor shall:

1.1 perform the Work required by the Contract Documents for

Construction of Condominium

insert above the name of the Work

located at

126 & 128 Hazelton Ave. Toronto, Ont.

insert above the Place of the Work

for which the Agreement has been signed by the parties, and for which

Altus Group

insert above the name of the Consultant

is acting as and is hereinafter called the "Consultant" and

1.2 do and fulfill everything indicated by the Contract Documents, and

1.3 commence the Work by the 2nd day of January in the year 2016 and, subject to adjustment in Contract Time as provided for in the Contract Documents, attain Substantial Performance of the Work, by the 30th day of September in the year 2018 .

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

2.1 The Contract supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the Work, including the bidding documents that are not expressly listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS.

2.2 The Contract may be amended only as provided in the Contract Documents.

ARTICLE A-3 CONTRACT DOCUMENTS

3.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement - THE WORK:

- Agreement between *Owner* and *Contractor*
- Definitions
- The General Conditions of the Stipulated Price Contract
- *

Schedule 'B' - Scope of Work

* *(Insert here, attaching additional pages if required, a list identifying all other Contract Documents e.g. supplementary conditions; information documents; specifications, giving a list of contents with section numbers and titles, number of pages and date; material finishing schedules; drawings, giving drawing number, title, date, revision date or mark; addenda, giving title, number, date)*

ARTICLE A-4 CONTRACT PRICE

4.1 The *Contract Price*, which excludes *Value Added Taxes*, is:

TWENTY ONE MILLION SIX HUNDRED THREE THOUSAND ONE
HUNDRED /100 dollars \$ 21,603,100

4.2 *Value Added Taxes* (of 13 %) payable by the *Owner* to the *Contractor* are:

TWO MILLION EIGHT HUNDRED EIGHT THOUSAND FOUR
HUNDRED THREE. /100 dollars \$ 2,808,403

4.3 Total amount payable by the *Owner* to the *Contractor* for the construction of the *Work* is:

TWENTY FOUR MILLION FOUR HUNDRED ELEVEN THOUSAND /100 dollars \$ 24,411,503

4.4 These amounts shall be subject to adjustments as provided in the *Contract Documents*.

4.5 All amounts are in Canadian funds.

ARTICLE A-5 PAYMENT

5.1 Subject to the provisions of the *Contract Documents*, and in accordance with legislation and statutory regulations respecting holdback percentages and, where such legislation or regulations do not exist or apply, subject to a holdback of TEN percent (10 %), the *Owner* shall:

- .1 make progress payments to the *Contractor* on account of the *Contract Price* when due in the amount certified by the *Consultant* together with such *Value Added Taxes* as may be applicable to such payments, and
- .2 upon *Substantial Performance of the Work*, pay to the *Contractor* the unpaid balance of the holdback amount when due together with such *Value Added Taxes* as may be applicable to such payment, and
- .3 upon the issuance of the final certificate for payment, pay to the *Contractor* the unpaid balance of the *Contract Price* when due together with such *Value Added Taxes* as may be applicable to such payment.

5.2 In the event of loss or damage occurring where payment becomes due under the property and boiler insurance policies, payments shall be made to the *Contractor* in accordance with the provisions of GC 11.1 – INSURANCE.

5.3 Interest

- .1 Should either party fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
 - (1) 2% per annum above the prime rate for the first 60 days.
 - (2) 4% per annum above the prime rate after the first 60 days.Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by HSBC Bank of Canada

(Insert name of chartered lending institution whose prime rate is to be used)

for prime business loans as it may change from time to time.

- .2 Interest shall apply at the rate and in the manner prescribed by paragraph 5.3.1 of this Article on the settlement amount of any claim in dispute that is resolved either pursuant to Part 8 of the General Conditions – DISPUTE RESOLUTION or otherwise, from the date the amount would have been due and payable under the *Contract*, had it not been in dispute, until the date it is paid.

ARTICLE A-6 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

6.1 *Notices in Writing* will be addressed to the recipient at the address set out below. The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender. A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day. A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof. An address for a party may be changed by *Notice in Writing* to the other party setting out the new address in accordance with this Article.

Owner

Mizrahi (128 Hazelton) Inc.

*name of Owner**

189 Forest Hill Road
Toronto, Ont. M5P 2N3

address

reception@mizrahiCorp.com

facsimile number

email address

Contractor

Mizrahi Inc.

*name of Contractor**

126 Hazelton Ave
Toronto, On. M5R 2E5

address

866-300-0219

reception@mizrahidevelopments.com

facsimile number

email address

Consultant

Altus Group

*name of Consultant**

33 Yonge Street Suite 500
Toronto, On. M5E 1G4

address

416-641-9501

stuart.wilson@altusgroup.com

facsimile number

email address

* If it is intended that the notice must be received by a specific individual, that individual's name shall be indicated.

ARTICLE A-7 LANGUAGE OF THE CONTRACT

7.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English / ~~French~~ # language shall prevail.
Complete this statement by striking out inapplicable term.

7.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.

ARTICLE A-8 SUCCESSION

8.1 The *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors, and assigns.

In witness whereof the parties hereto have executed this Agreement by the hands of their duly authorized representatives.

SIGNED AND DELIVERED
in the presence of:

WITNESS

OWNER

Mizrahi (128 Hazelton) Inc.

name of owner

signature

signature

Remy Del Bel
name of person signing

Sam Mizrahi - President

name and title of person signing

signature

signature

name of person signing

name and title of person signing

WITNESS

CONTRACTOR

Mizrahi Inc.

name of Contractor

signature

signature

Remy Del Bel
name of person signing

Sam Mizrahi - President

name and title of person signing

signature

signature

name of person signing

name and title of person signing

N.B. Where legal jurisdiction, local practice or Owner or Contractor requirement calls for:
(a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
(b) the affixing of a corporate seal, this Agreement should be properly sealed.

DEFINITIONS

The following Definitions shall apply to all *Contract Documents*.

1. **Change Directive**
A *Change Directive* is a written instruction prepared by the *Consultant* and signed by the *Owner* directing the *Contractor* to proceed with a change in the *Work* within the general scope of the *Contract Documents* prior to the *Owner* and the *Contractor* agreeing upon adjustments in the *Contract Price* and the *Contract Time*.
2. **Change Order**
A *Change Order* is a written amendment to the *Contract* prepared by the *Consultant* and signed by the *Owner* and the *Contractor* stating their agreement upon:
 - a change in the *Work*;
 - the method of adjustment or the amount of the adjustment in the *Contract Price*, if any; and
 - the extent of the adjustment in the *Contract Time*, if any.
3. **Construction Equipment**
Construction Equipment means all machinery and equipment, either operated or not operated, that is required for preparing, fabricating, conveying, erecting, or otherwise performing the *Work* but is not incorporated into the *Work*.
4. **Consultant**
The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Work*. The term *Consultant* means the *Consultant* or the *Consultant's* authorized representative.
5. **Contract**
The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.
6. **Contract Documents**
The *Contract Documents* consist of those documents listed in Article A-3 of the Agreement - CONTRACT DOCUMENTS and amendments agreed upon between the parties.
7. **Contract Price**
The *Contract Price* is the amount stipulated in Article A-4 of the Agreement - CONTRACT PRICE.
8. **Contract Time**
The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement - THE WORK from commencement of the *Work* to *Substantial Performance of the Work*.
9. **Contractor**
The *Contractor* is the person or entity identified as such in the Agreement. The term *Contractor* means the *Contractor* or the *Contractor's* authorized representative as designated to the *Owner* in writing.
10. **Drawings**
The *Drawings* are the graphic and pictorial portions of the *Contract Documents*, wherever located and whenever issued, showing the design, location and dimensions of the *Work*, generally including plans, elevations, sections, details, and diagrams.
11. **Notice in Writing**
A *Notice in Writing*, where identified in the *Contract Documents*, is a written communication between the parties or between them and the *Consultant* that is transmitted in accordance with the provisions of Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.
12. **Owner**
The *Owner* is the person or entity identified as such in the Agreement. The term *Owner* means the *Owner* or the *Owner's* authorized agent or representative as designated to the *Contractor* in writing, but does not include the *Consultant*.
13. **Place of the Work**
The *Place of the Work* is the designated site or location of the *Work* identified in the *Contract Documents*.
14. **Product**
Product or Products means material, machinery, equipment, and fixtures forming the *Work*, but does not include *Construction Equipment*.

15. **Project**
The *Project* means the total construction contemplated of which the *Work* may be the whole or a part.
16. **Provide**
Provide means to supply and install.
17. **Shop Drawings**
Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, *Product* data, and other data which the *Contractor* provides to illustrate details of portions of the *Work*.
18. **Specifications**
The *Specifications* are that portion of the *Contract Documents*, wherever located and whenever issued, consisting of the written requirements and standards for *Products*, systems, workmanship, quality, and the services necessary for the performance of the *Work*.
19. **Subcontractor**
A *Subcontractor* is a person or entity having a direct contract with the *Contractor* to perform a part or parts of the *Work* at the *Place of the Work*.
20. **Substantial Performance of the Work**
Substantial Performance of the Work is as defined in the lien legislation applicable to the *Place of the Work*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* is ready for use or is being used for the purpose intended and is so certified by the *Consultant*.
21. **Supplemental Instruction**
A *Supplemental Instruction* is an instruction, not involving adjustment in the *Contract Price* or *Contract Time*, in the form of *Specifications*, *Drawings*, schedules, samples, models or written instructions, consistent with the intent of the *Contract Documents*. It is to be issued by the *Consultant* to supplement the *Contract Documents* as required for the performance of the *Work*.
22. **Supplier**
A *Supplier* is a person or entity having a direct contract with the *Contractor* to supply *Products*.
23. **Temporary Work**
Temporary Work means temporary supports, structures, facilities, services, and other temporary items, excluding *Construction Equipment*, required for the execution of the *Work* but not incorporated into the *Work*.
24. **Value Added Taxes**
Value Added Taxes means such sum as shall be levied upon the *Contract Price* by the Federal or any Provincial or Territorial Government and is computed as a percentage of the *Contract Price* and includes the Goods and Services Tax, the Quebec Sales Tax, the Harmonized Sales Tax, and any similar tax, the collection and payment of which have been imposed on the *Contractor* by the tax legislation.
25. **Work**
The *Work* means the total construction and related services required by the *Contract Documents*.
26. **Working Day**
Working Day means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Work*.

GENERAL CONDITIONS OF THE STIPULATED PRICE CONTRACT**PART 1 GENERAL PROVISIONS****GC 1.1 CONTRACT DOCUMENTS**

- 1.1.1 The intent of the *Contract Documents* is to include the labour, *Products* and services necessary for the performance of the *Work* by the *Contractor* in accordance with these documents. It is not intended, however, that the *Contractor* shall supply products or perform work not consistent with, not covered by, or not properly inferable from the *Contract Documents*.
- 1.1.2 Nothing contained in the *Contract Documents* shall create any contractual relationship between:
- .1 the *Owner* and a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*.
 - .2 the *Consultant* and the *Contractor*, a *Subcontractor*, a *Supplier*, or their agent, employee, or other person performing any portion of the *Work*.
- 1.1.3 The *Contract Documents* are complementary, and what is required by any one shall be as binding as if required by all.
- 1.1.4 Words and abbreviations which have well known technical or trade meanings are used in the *Contract Documents* in accordance with such recognized meanings.
- 1.1.5 References in the *Contract Documents* to the singular shall be considered to include the plural as the context requires.
- 1.1.6 Neither the organization of the *Specifications* nor the arrangement of *Drawings* shall control the *Contractor* in dividing the work among *Subcontractors* and *Suppliers*.
- 1.1.7 If there is a conflict within the *Contract Documents*:
- .1 the order of priority of documents, from highest to lowest, shall be
 - the Agreement between the *Owner* and the *Contractor*,
 - the Definitions,
 - Supplementary Conditions,
 - the General Conditions,
 - Division 1 of the *Specifications*,
 - technical *Specifications*,
 - material and finishing schedules,
 - the *Drawings*.
 - .2 *Drawings* of larger scale shall govern over those of smaller scale of the same date.
 - .3 dimensions shown on *Drawings* shall govern over dimensions scaled from *Drawings*.
 - .4 later dated documents shall govern over earlier documents of the same type.
- 1.1.8 The *Owner* shall provide the *Contractor*, without charge, sufficient copies of the *Contract Documents* to perform the *Work*.
- 1.1.9 *Specifications*, *Drawings*, models, and copies thereof furnished by the *Consultant* are and shall remain the *Consultant's* property, with the exception of the signed *Contract* sets, which shall belong to each party to the *Contract*. All *Specifications*, *Drawings* and models furnished by the *Consultant* are to be used only with respect to the *Work* and are not to be used on other work. These *Specifications*, *Drawings* and models are not to be copied or altered in any manner without the written authorization of the *Consultant*.
- 1.1.10 Models furnished by the *Contractor* at the *Owner's* expense are the property of the *Owner*.

GC 1.2 LAW OF THE CONTRACT

- 1.2.1 The law of the *Place of the Work* shall govern the interpretation of the *Contract*.

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the *Owner*, *Consultant* or *Contractor* shall constitute a waiver of any right or duty afforded any of them under the *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

GC 1.4 ASSIGNMENT

- 1.4.1 Neither party to the *Contract* shall assign the *Contract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

PART 2 ADMINISTRATION OF THE CONTRACT

GC 2.1 AUTHORITY OF THE CONSULTANT

- 2.1.1 The *Consultant* will have authority to act on behalf of the *Owner* only to the extent provided in the *Contract Documents*, unless otherwise modified by written agreement as provided in paragraph 2.1.2.
- 2.1.2 The duties, responsibilities and limitations of authority of the *Consultant* as set forth in the *Contract Documents* shall be modified or extended only with the written consent of the *Owner*, the *Contractor* and the *Consultant*.
- 2.1.3 If the *Consultant's* employment is terminated, the *Owner* shall immediately appoint or reappoint a *Consultant* against whom the *Contractor* makes no reasonable objection and whose status under the *Contract Documents* shall be that of the former *Consultant*.

GC 2.2 ROLE OF THE CONSULTANT

- 2.2.1 The *Consultant* will provide administration of the *Contract* as described in the *Contract Documents*.
- 2.2.2 The *Consultant* will visit the *Place of the Work* at intervals appropriate to the progress of construction to become familiar with the progress and quality of the work and to determine if the *Work* is proceeding in general conformity with the *Contract Documents*.
- 2.2.3 If the *Owner* and the *Consultant* agree, the *Consultant* will provide at the *Place of the Work*, one or more project representatives to assist in carrying out the *Consultant's* responsibilities. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing to the *Contractor*.
- 2.2.4 The *Consultant* will promptly inform the *Owner* of the date of receipt of the *Contractor's* applications for payment as provided in paragraph 5.3.1.1 of GC 5.3 – PROGRESS PAYMENT.
- 2.2.5 Based on the *Consultant's* observations and evaluation of the *Contractor's* applications for payment, the *Consultant* will determine the amounts owing to the *Contractor* under the *Contract* and will issue certificates for payment as provided in Article A-5 of the Agreement - PAYMENT, GC 5.3 - PROGRESS PAYMENT and GC 5.7 - FINAL PAYMENT.
- 2.2.6 The *Consultant* will not be responsible for and will not have control, charge or supervision of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs required in connection with the *Work* in accordance with the applicable construction safety legislation, other regulations or general construction practice. The *Consultant* will not be responsible for the *Contractor's* failure to carry out the *Work* in accordance with the *Contract Documents*. The *Consultant* will not have control over, charge of or be responsible for the acts or omissions of the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees, or any other persons performing portions of the *Work*.
- 2.2.7 Except with respect to GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER, the *Consultant* will be, in the first instance, the interpreter of the requirements of the *Contract Documents*.
- 2.2.8 Matters in question relating to the performance of the *Work* or the interpretation of the *Contract Documents* shall be initially referred in writing to the *Consultant* by the party raising the question for interpretations and findings and copied to the other party.
- 2.2.9 Interpretations and findings of the *Consultant* shall be consistent with the intent of the *Contract Documents*. In making such interpretations and findings the *Consultant* will not show partiality to either the *Owner* or the *Contractor*.
- 2.2.10 The *Consultant's* interpretations and findings will be given in writing to the parties within a reasonable time.
- 2.2.11 With respect to claims for a change in *Contract Price*, the *Consultant* will make findings as set out in GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.
- 2.2.12 The *Consultant* will have authority to reject work which in the *Consultant's* opinion does not conform to the requirements of the *Contract Documents*. Whenever the *Consultant* considers it necessary or advisable, the *Consultant* will have authority to require inspection or testing of work, whether or not such work is fabricated, installed or completed. However, neither the authority of the *Consultant* to act nor any decision either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the *Consultant* to the *Contractor*, *Subcontractors*, *Suppliers*, or their agents, employees, or other persons performing any of the *Work*.

- 2.2.13 During the progress of the *Work* the *Consultant* will furnish *Supplemental Instructions* to the *Contractor* with reasonable promptness or in accordance with a schedule for such instructions agreed to by the *Consultant* and the *Contractor*.
- 2.2.14 The *Consultant* will review and take appropriate action upon *Shop Drawings*, samples and other *Contractor's* submittals, in accordance with the *Contract Documents*.
- 2.2.15 The *Consultant* will prepare *Change Orders* and *Change Directives* as provided in GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 2.2.16 The *Consultant* will conduct reviews of the *Work* to determine the date of *Substantial Performance of the Work* as provided in GC 5.4 - SUBSTANTIAL PERFORMANCE OF THE WORK.
- 2.2.17 All certificates issued by the *Consultant* will be to the best of the *Consultant's* knowledge, information and belief. By issuing any certificate, the *Consultant* does not guarantee the *Work* is correct or complete.
- 2.2.18 The *Consultant* will receive and review written warranties and related documents required by the *Contract* and provided by the *Contractor* and will forward such warranties and documents to the *Owner* for the *Owner's* acceptance.

GC 2.3 REVIEW AND INSPECTION OF THE WORK

- 2.3.1 The *Owner* and the *Consultant* shall have access to the *Work* at all times. The *Contractor* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Work*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.
- 2.3.2 If work is designated for tests, inspections or approvals in the *Contract Documents*, or by the *Consultant's* instructions, or by the laws or ordinances of the *Place of the Work*, the *Contractor* shall give the *Consultant* reasonable notification of when the work will be ready for review and inspection. The *Contractor* shall arrange for and shall give the *Consultant* reasonable notification of the date and time of inspections by other authorities.
- 2.3.3 The *Contractor* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.
- 2.3.4 If the *Contractor* covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the *Contractor* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Contractor's* expense.
- 2.3.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Contractor* shall correct the work and pay the cost of examination and correction. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.
- 2.3.6 The *Contractor* shall pay the cost of making any test or inspection, including the cost of samples required for such test or inspection, if such test or inspection is designated in the *Contract Documents* to be performed by the *Contractor* or is designated by the laws or ordinances applicable to the *Place of the Work*.
- 2.3.7 The *Contractor* shall pay the cost of samples required for any test or inspection to be performed by the *Consultant* or the *Owner* if such test or inspection is designated in the *Contract Documents*.

GC 2.4 DEFECTIVE WORK

- 2.4.1 The *Contractor* shall promptly correct defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Contractor*.
- 2.4.2 The *Contractor* shall make good promptly other contractors' work destroyed or damaged by such corrections at the *Contractor's* expense.
- 2.4.3 If in the opinion of the *Consultant* it is not expedient to correct defective work or work not performed as provided in the *Contract Documents*, the *Owner* may deduct from the amount otherwise due to the *Contractor* the difference in value between the work as performed and that called for by the *Contract Documents*. If the *Owner* and the *Contractor* do not agree on the difference in value, they shall refer the matter to the *Consultant* for a determination.

PART 3 EXECUTION OF THE WORK

GC 3.1 CONTROL OF THE WORK

- 3.1.1 The *Contractor* shall have total control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformity with the *Contract Documents*.
- 3.1.2 The *Contractor* shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the *Work* under the *Contract*.

GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

- 3.2.1 The *Owner* reserves the right to award separate contracts in connection with other parts of the *Project* to other contractors and to perform work with own forces.
- 3.2.2 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Owner* shall:
- .1 provide for the co-ordination of the activities and work of other contractors and *Owner's* own forces with the *Work* of the *Contract*;
 - .2 assume overall responsibility for compliance with the applicable health and construction safety legislation at the *Place of the Work*;
 - .3 enter into separate contracts with other contractors under conditions of contract which are compatible with the conditions of the *Contract*;
 - .4 ensure that insurance coverage is provided to the same requirements as are called for in GC 11.1 - INSURANCE and co-ordinate such insurance with the insurance coverage of the *Contractor* as it affects the *Work*; and
 - .5 take all reasonable precautions to avoid labour disputes or other disputes on the *Project* arising from the work of other contractors or the *Owner's* own forces.
- 3.2.3 When separate contracts are awarded for other parts of the *Project*, or when work is performed by the *Owner's* own forces, the *Contractor* shall:
- .1 afford the *Owner* and other contractors reasonable opportunity to store their products and execute their work;
 - .2 cooperate with other contractors and the *Owner* in reviewing their construction schedules; and
 - .3 promptly report to the *Consultant* in writing any apparent deficiencies in the work of other contractors or of the *Owner's* own forces, where such work affects the proper execution of any portion of the *Work*, prior to proceeding with that portion of the *Work*.
- 3.2.4 Where the *Contract Documents* identify work to be performed by other contractors or the *Owner's* own forces, the *Contractor* shall co-ordinate and schedule the *Work* with the work of other contractors and the *Owner's* own forces as specified in the *Contract Documents*.
- 3.2.5 Where a change in the *Work* is required as a result of the co-ordination and integration of the work of other contractors or *Owner's* own forces with the *Work*, the changes shall be authorized and valued as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 3.2.6 Disputes and other matters in question between the *Contractor* and other contractors shall be dealt with as provided in Part 8 of the General Conditions - DISPUTE RESOLUTION provided the other contractors have reciprocal obligations. The *Contractor* shall be deemed to have consented to arbitration of any dispute with any other contractor whose contract with the *Owner* contains a similar agreement to arbitrate.

GC 3.3 TEMPORARY WORK

- 3.3.1 The *Contractor* shall have the sole responsibility for the design, erection, operation, maintenance, and removal of *Temporary Work*.
- 3.3.2 The *Contractor* shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 3.3.1 where required by law or by the *Contract Documents* and in all cases where such *Temporary Work* is of such a nature that professional engineering skill is required to produce safe and satisfactory results.

3.3.3 Notwithstanding the provisions of GC 3.1 - CONTROL OF THE WORK, paragraphs 3.3.1 and 3.3.2 or provisions to the contrary elsewhere in the *Contract Documents* where such *Contract Documents* include designs for *Temporary Work* or specify a method of construction in whole or in part, such designs or methods of construction shall be considered to be part of the design of the *Work* and the *Contractor* shall not be held responsible for that part of the design or the specified method of construction. The *Contractor* shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the *Work*.

GC 3.4 DOCUMENT REVIEW

3.4.1 The *Contractor* shall review the *Contract Documents* and shall report promptly to the *Consultant* any error, inconsistency or omission the *Contractor* may discover. Such review by the *Contractor* shall be to the best of the *Contractor's* knowledge, information and belief and in making such review the *Contractor* does not assume any responsibility to the *Owner* or the *Consultant* for the accuracy of the review. The *Contractor* shall not be liable for damage or costs resulting from such errors, inconsistencies or omissions in the *Contract Documents*, which the *Contractor* did not discover. If the *Contractor* does discover any error, inconsistency or omission in the *Contract Documents*, the *Contractor* shall not proceed with the work affected until the *Contractor* has received corrected or missing information from the *Consultant*.

GC 3.5 CONSTRUCTION SCHEDULE

3.5.1 The *Contractor* shall:

- .1 prepare and submit to the *Owner* and the *Consultant* prior to the first application for payment, a construction schedule that indicates the timing of the major activities of the *Work* and provides sufficient detail of the critical events and their inter-relationship to demonstrate the *Work* will be performed in conformity with the *Contract Time*;
- .2 monitor the progress of the *Work* relative to the construction schedule and update the schedule on a monthly basis or as stipulated by the *Contract Documents*; and
- .3 advise the *Consultant* of any revisions required to the schedule as the result of extensions of the *Contract Time* as provided in Part 6 of the General Conditions - CHANGES IN THE WORK.

GC 3.6 SUPERVISION

3.6.1 The *Contractor* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Work* while work is being performed. The appointed representative shall not be changed except for valid reason.

3.6.2 The appointed representative shall represent the *Contractor* at the *Place of the Work*. Information and instructions provided by the *Consultant* to the *Contractor's* appointed representative shall be deemed to have been received by the *Contractor*, except with respect to Article A-6 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

GC 3.7 SUBCONTRACTORS AND SUPPLIERS

3.7.1 The *Contractor* shall preserve and protect the rights of the parties under the *Contract* with respect to work to be performed under subcontract, and shall:

- .1 enter into contracts or written agreements with *Subcontractors* and *Suppliers* to require them to perform their work as provided in the *Contract Documents*;
- .2 incorporate the terms and conditions of the *Contract Documents* into all contracts or written agreements with *Subcontractors* and *Suppliers*; and
- .3 be as fully responsible to the *Owner* for acts and omissions of *Subcontractors*, *Suppliers* and of persons directly or indirectly employed by them as for acts and omissions of persons directly employed by the *Contractor*.

3.7.2 The *Contractor* shall indicate in writing, if requested by the *Owner*, those *Subcontractors* or *Suppliers* whose bids have been received by the *Contractor* which the *Contractor* would be prepared to accept for the performance of a portion of the *Work*. Should the *Owner* not object before signing the *Contract*, the *Contractor* shall employ those *Subcontractors* or *Suppliers* so identified by the *Contractor* in writing for the performance of that portion of the *Work* to which their bid applies.

3.7.3 The *Owner* may, for reasonable cause, at any time before the *Owner* has signed the *Contract*, object to the use of a proposed *Subcontractor* or *Supplier* and require the *Contractor* to employ one of the other subcontract bidders.

3.7.4 If the *Owner* requires the *Contractor* to change a proposed *Subcontractor* or *Supplier*, the *Contract Price* and *Contract Time* shall be adjusted by the differences occasioned by such required change.

- 3.7.5 The *Contractor* shall not be required to employ as a *Subcontractor* or *Supplier*, a person or firm to which the *Contractor* may reasonably object.
- 3.7.6 The *Owner*, through the *Consultant*, may provide to a *Subcontractor* or *Supplier* information as to the percentage of the *Subcontractor's* or *Supplier's* work which has been certified for payment.

GC 3.8 LABOUR AND PRODUCTS

- 3.8.1 The *Contractor* shall provide and pay for labour, *Products*, tools, *Construction Equipment*, water, heat, light, power, transportation, and other facilities and services necessary for the performance of the *Work* in accordance with the *Contract*.
- 3.8.2 Unless otherwise specified in the *Contract Documents*, *Products* provided shall be new. *Products* which are not specified shall be of a quality consistent with those specified and their use acceptable to the *Consultant*.
- 3.8.3 The *Contractor* shall maintain good order and discipline among the *Contractor's* employees engaged on the *Work* and shall not employ on the *Work* anyone not skilled in the tasks assigned.

GC 3.9 DOCUMENTS AT THE SITE

- 3.9.1 The *Contractor* shall keep one copy of current *Contract Documents*, submittals, reports, and records of meetings at the *Place of the Work*, in good order and available to the *Owner* and the *Consultant*.

GC 3.10 SHOP DRAWINGS

- 3.10.1 The *Contractor* shall provide *Shop Drawings* as required in the *Contract Documents*.
- 3.10.2 The *Contractor* shall provide *Shop Drawings* to the *Consultant* to review in orderly sequence and sufficiently in advance so as to cause no delay in the *Work* or in the work of other contractors.
- 3.10.3 Upon request of the *Contractor* or the *Consultant*, they shall jointly prepare a schedule of the dates for provision, review and return of *Shop Drawings*.
- 3.10.4 The *Contractor* shall provide *Shop Drawings* in the form specified, or if not specified, as directed by the *Consultant*.
- 3.10.5 *Shop Drawings* provided by the *Contractor* to the *Consultant* shall indicate by stamp, date and signature of the person responsible for the review that the *Contractor* has reviewed each one of them.
- 3.10.6 The *Consultant's* review is for conformity to the design concept and for general arrangement only.
- 3.10.7 *Shop Drawings* which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Contractor* for approval.
- 3.10.8 The *Contractor* shall review all *Shop Drawings* before providing them to the *Consultant*. The *Contractor* represents by this review that:
- .1 the *Contractor* has determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
 - .2 the *Contractor* has checked and co-ordinated each *Shop Drawing* with the requirements of the *Work* and of the *Contract Documents*.
- 3.10.9 At the time of providing *Shop Drawings*, the *Contractor* shall expressly advise the *Consultant* in writing of any deviations in a *Shop Drawing* from the requirements of the *Contract Documents*. The *Consultant* shall indicate the acceptance or rejection of such deviation expressly in writing.
- 3.10.10 The *Consultant's* review shall not relieve the *Contractor* of responsibility for errors or omissions in the *Shop Drawings* or for meeting all requirements of the *Contract Documents*.
- 3.10.11 The *Contractor* shall provide revised *Shop Drawings* to correct those which the *Consultant* rejects as inconsistent with the *Contract Documents*, unless otherwise directed by the *Consultant*. The *Contractor* shall notify the *Consultant* in writing of any revisions to the *Shop Drawings* other than those requested by the *Consultant*.
- 3.10.12 The *Consultant* will review and return *Shop Drawings* in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the *Work*.

GC 3.11 USE OF THE WORK

- 3.11.1 The *Contractor* shall confine *Construction Equipment*, *Temporary Work*, storage of *Products*, waste products and debris, and operations of employees and *Subcontractors* to limits indicated by laws, ordinances, permits, or the *Contract Documents* and shall not unreasonably encumber the *Place of the Work*.
- 3.11.2 The *Contractor* shall not load or permit to be loaded any part of the *Work* with a weight or force that will endanger the safety of the *Work*.

GC 3.12 CUTTING AND REMEDIAL WORK

- 3.12.1 The *Contractor* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly.
- 3.12.2 The *Contractor* shall co-ordinate the *Work* to ensure that the cutting and remedial work is kept to a minimum.
- 3.12.3 Should the *Owner*, the *Consultant*, other contractors or anyone employed by them be responsible for ill-timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 3.12.4 Cutting and remedial work shall be performed by specialists familiar with the *Products* affected and shall be performed in a manner to neither damage nor endanger the *Work*.

GC 3.13 CLEANUP

- 3.13.1 The *Contractor* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, other contractors or their employees.
- 3.13.2 Before applying for *Substantial Performance of the Work* as provided in GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK, the *Contractor* shall remove waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees, and shall leave the *Place of the Work* clean and suitable for use or occupancy by the *Owner*. The *Contractor* shall remove products, tools, *Construction Equipment*, and *Temporary Work* not required for the performance of the remaining work.
- 3.13.3 Prior to application for the final payment, the *Contractor* shall remove any remaining products, tools, *Construction Equipment*, *Temporary Work*, and waste products and debris, other than those resulting from the work of the *Owner*, other contractors or their employees.

PART 4 ALLOWANCES

GC 4.1 CASH ALLOWANCES

- 4.1.1 The *Contract Price* includes the cash allowances, if any, stated in the *Contract Documents*. The scope of work or costs included in such cash allowances shall be as described in the *Contract Documents*.
- 4.1.2 The *Contract Price*, and not the cash allowances, includes the *Contractor's* overhead and profit in connection with such cash allowances.
- 4.1.3 Expenditures under cash allowances shall be authorized by the *Owner* through the *Consultant*.
- 4.1.4 Where the actual cost of the *Work* under any cash allowance exceeds the amount of the allowance, the *Contractor* shall be compensated for the excess incurred and substantiated plus an amount for overhead and profit on the excess as set out in the *Contract Documents*. Where the actual cost of the *Work* under any cash allowance is less than the amount of the allowance, the *Owner* shall be credited for the unexpended portion of the cash allowance, but not for the *Contractor's* overhead and profit on such amount. Multiple cash allowances shall not be combined for the purpose of calculating the foregoing.
- 4.1.5 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the amount of each cash allowance and the actual cost of the work under that cash allowance.
- 4.1.6 The value of the work performed under a cash allowance is eligible to be included in progress payments.
- 4.1.7 The *Contractor* and the *Consultant* shall jointly prepare a schedule that shows when the *Consultant* and *Owner* must authorize ordering of items called for under cash allowances to avoid delaying the progress of the *Work*.

GC 4.2 CONTINGENCY ALLOWANCE

- 4.2.1 The *Contract Price* includes the contingency allowance, if any, stated in the *Contract Documents*.
- 4.2.2 The contingency allowance includes the *Contractor's* overhead and profit in connection with such contingency allowance.
- 4.2.3 Expenditures under the contingency allowance shall be authorized and valued as provided in GC 6.1 – OWNER’S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 4.2.4 The *Contract Price* shall be adjusted by *Change Order* to provide for any difference between the expenditures authorized under paragraph 4.2.3 and the contingency allowance.

PART 5 PAYMENT

GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER

- 5.1.1 The *Owner* shall, at the request of the *Contractor*, before signing the *Contract*, and promptly from time to time thereafter, furnish to the *Contractor* reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*.
- 5.1.2 The *Owner* shall give the *Contractor Notice in Writing* of any material change in the *Owner's* financial arrangements to fulfill the *Owner's* obligations under the *Contract* during the performance of the *Contract*.

GC 5.2 APPLICATIONS FOR PROGRESS PAYMENT

- 5.2.1 Applications for payment on account as provided in Article A-5 of the Agreement - PAYMENT may be made monthly as the *Work* progresses.
- 5.2.2 Applications for payment shall be dated the last day of each payment period, which is the last day of the month or an alternative day of the month agreed in writing by the parties.
- 5.2.3 The amount claimed shall be for the value, proportionate to the amount of the *Contract*, of *Work* performed and *Products* delivered to the *Place of the Work* as of the last day of the payment period.
- 5.2.4 The *Contractor* shall submit to the *Consultant*, at least 15 calendar days before the first application for payment, a schedule of values for the parts of the *Work*, aggregating the total amount of the *Contract Price*, so as to facilitate evaluation of applications for payment.
- 5.2.5 The schedule of values shall be made out in such form and supported by such evidence as the *Consultant* may reasonably direct and when accepted by the *Consultant*, shall be used as the basis for applications for payment, unless it is found to be in error.
- 5.2.6 The *Contractor* shall include a statement based on the schedule of values with each application for payment.
- 5.2.7 Applications for payment for *Products* delivered to the *Place of the Work* but not yet incorporated into the *Work* shall be supported by such evidence as the *Consultant* may reasonably require to establish the value and delivery of the *Products*.

GC 5.3 PROGRESS PAYMENT

- 5.3.1 After receipt by the *Consultant* of an application for payment submitted by the *Contractor* in accordance with GC 5.2 - APPLICATIONS FOR PROGRESS PAYMENT:
 - .1 the *Consultant* will promptly inform the *Owner* of the date of receipt of the *Contractor's* application for payment,
 - .2 the *Consultant* will issue to the *Owner* and copy to the *Contractor*, no later than 10 calendar days after the receipt of the application for payment, a certificate for payment in the amount applied for, or in such other amount as the *Consultant* determines to be properly due. If the *Consultant* amends the application, the *Consultant* will promptly advise the *Contractor* in writing giving reasons for the amendment,
 - .3 the *Owner* shall make payment to the *Contractor* on account as provided in Article A-5 of the Agreement - PAYMENT on or before 20 calendar days after the later of:
 - receipt by the *Consultant* of the application for payment, or
 - the last day of the monthly payment period for which the application for payment is made.

GC 5.4 SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.4.1 When the *Contractor* considers that the *Work* is substantially performed, or if permitted by the lien legislation applicable to the *Place of the Work* a designated portion thereof which the *Owner* agrees to accept separately is substantially performed, the *Contractor* shall, within one *Working Day*, deliver to the *Consultant* and to the *Owner* a comprehensive list of items to be completed or corrected, together with a written application for a review by the *Consultant* to establish *Substantial Performance of the Work* or substantial performance of the designated portion of the *Work*. Failure to include an item on the list does not alter the responsibility of the *Contractor* to complete the *Contract*.
- 5.4.2 The *Consultant* will review the *Work* to verify the validity of the application and shall promptly, and in any event, no later than 20 calendar days after receipt of the *Contractor's* list and application:
- .1 advise the *Contractor* in writing that the *Work* or the designated portion of the *Work* is not substantially performed and give reasons why, or
 - .2 state the date of *Substantial Performance of the Work* or a designated portion of the *Work* in a certificate and issue a copy of that certificate to each of the *Owner* and the *Contractor*.
- 5.4.3 Immediately following the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor*, in consultation with the *Consultant*, shall establish a reasonable date for finishing the *Work*.

GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK

- 5.5.1 After the issuance of the certificate of *Substantial Performance of the Work*, the *Contractor* shall:
- .1 submit an application for payment of the holdback amount,
 - .2 submit CCDC 9A 'Statutory Declaration' to state that all accounts for labour, subcontracts, *Products*, *Construction Equipment*, and other indebtedness which may have been incurred by the *Contractor* in the *Substantial Performance of the Work* and for which the *Owner* might in any way be held responsible have been paid in full, except for amounts properly retained as a holdback or as an identified amount in dispute.
- 5.5.2 After the receipt of an application for payment from the *Contractor* and the statement as provided in paragraph 5.5.1, the *Consultant* will issue a certificate for payment of the holdback amount.
- 5.5.3 Where the holdback amount required by the applicable lien legislation has not been placed in a separate holdback account, the *Owner* shall, 10 calendar days prior to the expiry of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*, place the holdback amount in a bank account in the joint names of the *Owner* and the *Contractor*.
- 5.5.4 In the common law jurisdictions, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable on the first calendar day following the expiration of the holdback period stipulated in the lien legislation applicable to the *Place of the Work*. Where lien legislation does not exist or apply, the holdback amount shall be due and payable in accordance with other legislation, industry practice or provisions which may be agreed to between the parties. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.
- 5.5.5 In the Province of Quebec, the holdback amount authorized by the certificate for payment of the holdback amount is due and payable 30 calendar days after the issuance of the certificate. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.

GC 5.6 PROGRESSIVE RELEASE OF HOLDBACK

- 5.6.1 In the common law jurisdictions, where legislation permits and where, upon application by the *Contractor*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Contractor* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, on the first calendar day following the expiration of the holdback period for such work stipulated in the lien legislation applicable to the *Place of the Work*. The *Owner* may retain out of the holdback amount any sums required by law to satisfy any liens against the *Work* or, if permitted by the lien legislation applicable to the *Place of the Work*, other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.

- 5.6.2 In the Province of Quebec, where, upon application by the *Contractor*, the *Consultant* has certified that the work of a *Subcontractor* or *Supplier* has been performed prior to *Substantial Performance of the Work*, the *Owner* shall pay the *Contractor* the holdback amount retained for such subcontract work, or the *Products* supplied by such *Supplier*, no later than 30 calendar days after such certification by the *Consultant*. The *Owner* may retain out of the holdback amount any sums required to satisfy any legal hypothecs that have been taken, or could be taken, against the *Work* or other third party monetary claims against the *Contractor* which are enforceable against the *Owner*.
- 5.6.3 Notwithstanding the provisions of the preceding paragraphs, and notwithstanding the wording of such certificates, the *Contractor* shall ensure that such subcontract work or *Products* are protected pending the issuance of a final certificate for payment and be responsible for the correction of defects or work not performed regardless of whether or not such was apparent when such certificates were issued.

GC 5.7 FINAL PAYMENT

- 5.7.1 When the *Contractor* considers that the *Work* is completed, the *Contractor* shall submit an application for final payment.
- 5.7.2 The *Consultant* will, no later than 10 calendar days after the receipt of an application from the *Contractor* for final payment, review the *Work* to verify the validity of the application and advise the *Contractor* in writing that the application is valid or give reasons why it is not valid.
- 5.7.3 When the *Consultant* finds the *Contractor's* application for final payment valid, the *Consultant* will promptly issue a final certificate for payment.
- 5.7.4 Subject to the provision of paragraph 10.4.1 of GC 10.4 - WORKERS' COMPENSATION, and any lien legislation applicable to the *Place of the Work*, the *Owner* shall, no later than 5 calendar days after the issuance of a final certificate for payment, pay the *Contractor* as provided in Article A-5 of the Agreement - PAYMENT.

GC 5.8 WITHHOLDING OF PAYMENT

- 5.8.1 If because of climatic or other conditions reasonably beyond the control of the *Contractor*, there are items of work that cannot be performed, payment in full for that portion of the *Work* which has been performed as certified by the *Consultant* shall not be withheld or delayed by the *Owner* on account thereof, but the *Owner* may withhold, until the remaining portion of the *Work* is finished, only such an amount that the *Consultant* determines is sufficient and reasonable to cover the cost of performing such remaining work.

GC 5.9 NON-CONFORMING WORK

- 5.9.1 No payment by the *Owner* under the *Contract* nor partial or entire use or occupancy of the *Work* by the *Owner* shall constitute an acceptance of any portion of the *Work* or *Products* which are not in accordance with the requirements of the *Contract Documents*.

PART 6 CHANGES IN THE WORK

GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

- 6.1.1 The *Owner*, through the *Consultant*, without invalidating the *Contract*, may make:
- .1 changes in the *Work* consisting of additions, deletions or other revisions to the *Work* by *Change Order* or *Change Directive*, and
 - .2 changes to the *Contract Time* for the *Work*, or any part thereof, by *Change Order*.
- 6.1.2 The *Contractor* shall not perform a change in the *Work* without a *Change Order* or a *Change Directive*.

GC 6.2 CHANGE ORDER

- 6.2.1 When a change in the *Work* is proposed or required, the *Consultant* will provide the *Contractor* with a written description of the proposed change in the *Work*. The *Contractor* shall promptly present, in a form acceptable to the *Consultant*, a method of adjustment or an amount of adjustment for the *Contract Price*, if any, and the adjustment in the *Contract Time*, if any, for the proposed change in the *Work*.
- 6.2.2 When the *Owner* and *Contractor* agree to the adjustments in the *Contract Price* and *Contract Time* or to the method to be used to determine the adjustments, such agreement shall be effective immediately and shall be recorded in a *Change Order*. The value of the work performed as the result of a *Change Order* shall be included in the application for progress payment.

GC 6.3 CHANGE DIRECTIVE

- 6.3.1 If the *Owner* requires the *Contractor* to proceed with a change in the *Work* prior to the *Owner* and the *Contractor* agreeing upon the corresponding adjustment in *Contract Price* and *Contract Time*, the *Owner*, through the *Consultant*, shall issue a *Change Directive*.
- 6.3.2 A *Change Directive* shall only be used to direct a change in the *Work* which is within the general scope of the *Contract Documents*.
- 6.3.3 A *Change Directive* shall not be used to direct a change in the *Contract Time* only.
- 6.3.4 Upon receipt of a *Change Directive*, the *Contractor* shall proceed promptly with the change in the *Work*.
- 6.3.5 For the purpose of valuing *Change Directives*, changes in the *Work* that are not substitutions or otherwise related to each other shall not be grouped together in the same *Change Directive*.
- 6.3.6 The adjustment in the *Contract Price* for a change carried out by way of a *Change Directive* shall be determined on the basis of the cost of the *Contractor's* actual expenditures and savings attributable to the *Change Directive*, valued in accordance with paragraph 6.3.7 and as follows:
- .1 If the change results in a net increase in the *Contractor's* cost, the *Contract Price* shall be increased by the amount of the net increase in the *Contractor's* cost, plus the *Contractor's* percentage fee on such net increase.
 - .2 If the change results in a net decrease in the *Contractor's* cost, the *Contract Price* shall be decreased by the amount of the net decrease in the *Contractor's* cost, without adjustment for the *Contractor's* percentage fee.
 - .3 The *Contractor's* fee shall be as specified in the *Contract Documents* or as otherwise agreed by the parties.
- 6.3.7 The cost of performing the work attributable to the *Change Directive* shall be limited to the actual cost of the following:
- .1 salaries, wages and benefits paid to personnel in the direct employ of the *Contractor* under a salary or wage schedule agreed upon by the *Owner* and the *Contractor*, or in the absence of such a schedule, actual salaries, wages and benefits paid under applicable bargaining agreement, and in the absence of a salary or wage schedule and bargaining agreement, actual salaries, wages and benefits paid by the *Contractor*, for personnel
 - (1) stationed at the *Contractor's* field office, in whatever capacity employed;
 - (2) engaged in expediting the production or transportation of material or equipment, at shops or on the road;
 - (3) engaged in the preparation or review of *Shop Drawings*, fabrication drawings, and coordination drawings; or
 - (4) engaged in the processing of changes in the *Work*.
 - .2 contributions, assessments or taxes incurred for such items as employment insurance, provincial or territorial health insurance, workers' compensation, and Canada or Quebec Pension Plan, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the *Contractor* and included in the cost of the *Work* as provided in paragraph 6.3.7.1;
 - .3 travel and subsistence expenses of the *Contractor's* personnel described in paragraph 6.3.7.1;
 - .4 all *Products* including cost of transportation thereof;
 - .5 materials, supplies, *Construction Equipment*, *Temporary Work*, and hand tools not owned by the workers, including transportation and maintenance thereof, which are consumed in the performance of the *Work*; and cost less salvage value on such items used but not consumed, which remain the property of the *Contractor*;
 - .6 all tools and *Construction Equipment*, exclusive of hand tools used in the performance of the *Work*, whether rented from or provided by the *Contractor* or others, including installation, minor repairs and replacements, dismantling, removal, transportation, and delivery cost thereof;
 - .7 all equipment and services required for the *Contractor's* field office;
 - .8 deposits lost;
 - .9 the amounts of all subcontracts;
 - .10 quality assurance such as independent inspection and testing services;
 - .11 charges levied by authorities having jurisdiction at the *Place of the Work*;
 - .12 royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefor subject always to the *Contractor's* obligations to indemnify the *Owner* as provided in paragraph 10.3.1 of GC 10.3 - PATENT FEES;
 - .13 any adjustment in premiums for all bonds and insurance which the *Contractor* is required, by the *Contract Documents*, to purchase and maintain;
 - .14 any adjustment in taxes, other than *Value Added Taxes*, and duties for which the *Contractor* is liable;
 - .15 charges for long distance telephone and facsimile communications, courier services, expressage, and petty cash items incurred in relation to the performance of the *Work*;
 - .16 removal and disposal of waste products and debris; and
 - .17 safety measures and requirements.

- 6.3.8 Notwithstanding any other provisions contained in the General Conditions of the *Contract*, it is the intention of the parties that the cost of any item under any cost element referred to in paragraph 6.3.7 shall cover and include any and all costs or liabilities attributable to the *Change Directive* other than those which are the result of or occasioned by any failure on the part of the *Contractor* to exercise reasonable care and diligence in the *Contractor's* attention to the *Work*. Any cost due to failure on the part of the *Contractor* to exercise reasonable care and diligence in the *Contractor's* attention to the *Work* shall be borne by the *Contractor*.
- 6.3.9 The *Contractor* shall keep full and detailed accounts and records necessary for the documentation of the cost of performing the *Work* attributable to the *Change Directive* and shall provide the *Consultant* with copies thereof when requested.
- 6.3.10 For the purpose of valuing *Change Directives*, the *Owner* shall be afforded reasonable access to all of the *Contractor's* pertinent documents related to the cost of performing the *Work* attributable to the *Change Directive*.
- 6.3.11 Pending determination of the final amount of a *Change Directive*, the undisputed value of the *Work* performed as the result of a *Change Directive* is eligible to be included in progress payments.
- 6.3.12 If the *Owner* and the *Contractor* do not agree on the proposed adjustment in the *Contract Time* attributable to the change in the *Work*, or the method of determining it, the adjustment shall be referred to the *Consultant* for determination.
- 6.3.13 When the *Owner* and the *Contractor* reach agreement on the adjustment to the *Contract Price* and to the *Contract Time*, this agreement shall be recorded in a *Change Order*.

GC 6.4 CONCEALED OR UNKNOWN CONDITIONS

- 6.4.1 If the *Owner* or the *Contractor* discover conditions at the *Place of the Work* which are:
- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* which differ materially from those indicated in the *Contract Documents*; or
 - .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,
- then the observing party shall give *Notice in Writing* to the other party of such conditions before they are disturbed and in no event later than 5 *Working Days* after first observance of the conditions.
- 6.4.2 The *Consultant* will promptly investigate such conditions and make a finding. If the finding is that the conditions differ materially and this would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 - CHANGE ORDER or GC 6.3 - CHANGE DIRECTIVE.
- 6.4.3 If the *Consultant* finds that the conditions at the *Place of the Work* are not materially different or that no change in the *Contract Price* or the *Contract Time* is justified, the *Consultant* will report the reasons for this finding to the *Owner* and the *Contractor* in writing.
- 6.4.4 If such concealed or unknown conditions relate to toxic and hazardous substances and materials, artifacts and fossils, or mould, the parties will be governed by the provisions of GC 9.2 - TOXIC AND HAZARDOUS SUBSTANCES, GC 9.3 - ARTIFACTS AND FOSSILS and GC 9.5 – MOULD.

GC 6.5 DELAYS

- 6.5.1 If the *Contractor* is delayed in the performance of the *Work* by an action or omission of the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly, contrary to the provisions of the *Contract Documents*, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.
- 6.5.2 If the *Contractor* is delayed in the performance of the *Work* by a stop work order issued by a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Contractor* or any person employed or engaged by the *Contractor* directly or indirectly, then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The *Contractor* shall be reimbursed by the *Owner* for reasonable costs incurred by the *Contractor* as the result of such delay.

- 6.5.3 If the *Contractor* is delayed in the performance of the *Work* by:
- .1 labour disputes, strikes, lock-outs (including lock-outs decreed or recommended for its members by a recognized contractors' association, of which the *Contractor* is a member or to which the *Contractor* is otherwise bound),
 - .2 fire, unusual delay by common carriers or unavoidable casualties,
 - .3 abnormally adverse weather conditions, or
 - .4 any cause beyond the *Contractor's* control other than one resulting from a default or breach of *Contract* by the *Contractor*,
- then the *Contract Time* shall be extended for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor*. The extension of time shall not be less than the time lost as the result of the event causing the delay, unless the *Contractor* agrees to a shorter extension. The *Contractor* shall not be entitled to payment for costs incurred by such delays unless such delays result from actions by the *Owner*, *Consultant* or anyone employed or engaged by them directly or indirectly.
- 6.5.4 No extension shall be made for delay unless *Notice in Writing* of the cause of delay is given to the *Consultant* not later than 10 *Working Days* after the commencement of the delay. In the case of a continuing cause of delay only one *Notice in Writing* shall be necessary.
- 6.5.5 If no schedule is made under paragraph 2.2.13 of GC 2.2 - ROLE OF THE CONSULTANT, then no request for extension shall be made because of failure of the *Consultant* to furnish instructions until 10 *Working Days* after demand for such instructions has been made.

GC 6.6 CLAIMS FOR A CHANGE IN CONTRACT PRICE

- 6.6.1 If the *Contractor* intends to make a claim for an increase to the *Contract Price*, or if the *Owner* intends to make a claim against the *Contractor* for a credit to the *Contract Price*, the party that intends to make the claim shall give timely *Notice in Writing* of intent to claim to the other party and to the *Consultant*.
- 6.6.2 Upon commencement of the event or series of events giving rise to a claim, the party intending to make the claim shall:
- .1 take all reasonable measures to mitigate any loss or expense which may be incurred as a result of such event or series of events, and
 - .2 keep such records as may be necessary to support the claim.
- 6.6.3 The party making the claim shall submit within a reasonable time to the *Consultant* a detailed account of the amount claimed and the grounds upon which the claim is based.
- 6.6.4 Where the event or series of events giving rise to the claim has a continuing effect, the detailed account submitted under paragraph 6.6.3 shall be considered to be an interim account and the party making the claim shall, at such intervals as the *Consultant* may reasonably require, submit further interim accounts giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 6.6.5 The *Consultant's* findings, with respect to a claim made by either party, will be given by *Notice in Writing* to both parties within 30 *Working Days* after receipt of the claim by the *Consultant*, or within such other time period as may be agreed by the parties.
- 6.6.6 If such finding is not acceptable to either party, the claim shall be settled in accordance with Part 8 of the General Conditions - DISPUTE RESOLUTION.

PART 7 DEFAULT NOTICE

GC 7.1 OWNER'S RIGHT TO PERFORM THE WORK, TERMINATE THE CONTRACTOR'S RIGHT TO CONTINUE WITH THE WORK OR TERMINATE THE CONTRACT

- 7.1.1 If the *Contractor* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Contractor's* insolvency, or if a receiver is appointed because of the *Contractor's* insolvency, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, terminate the *Contractor's* right to continue with the *Work*, by giving the *Contractor* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.1.2 If the *Contractor* neglects to prosecute the *Work* properly or otherwise fails to comply with the requirements of the *Contract* to a substantial degree and if the *Consultant* has given a written statement to the *Owner* and *Contractor* that sufficient cause exists to justify such action, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Contractor Notice in Writing* that the *Contractor* is in default of the *Contractor's* contractual obligations and instruct the *Contractor* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.

- 7.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Contractor* shall be in compliance with the *Owner's* instructions if the *Contractor*:
- .1 commences the correction of the default within the specified time, and
 - .2 provides the *Owner* with an acceptable schedule for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 7.1.4 If the *Contractor* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
- .1 correct such default and deduct the cost thereof from any payment then or thereafter due the *Contractor* provided the *Consultant* has certified such cost to the *Owner* and the *Contractor*, or
 - .2 terminate the *Contractor's* right to continue with the *Work* in whole or in part or terminate the *Contract*.
- 7.1.5 If the *Owner* terminates the *Contractor's* right to continue with the *Work* as provided in paragraphs 7.1.1 and 7.1.4, the *Owner* shall be entitled to:
- .1 take possession of the *Work* and *Products* at the *Place of the Work*; subject to the rights of third parties, utilize the *Construction Equipment* at the *Place of the Work*; finish the *Work* by whatever method the *Owner* may consider expedient, but without undue delay or expense, and
 - .2 withhold further payment to the *Contractor* until a final certificate for payment is issued, and
 - .3 charge the *Contractor* the amount by which the full cost of finishing the *Work* as certified by the *Consultant*, including compensation to the *Consultant* for the *Consultant's* additional services and a reasonable allowance as determined by the *Consultant* to cover the cost of corrections to work performed by the *Contractor* that may be required under GC 12.3 - WARRANTY, exceeds the unpaid balance of the *Contract Price*; however, if such cost of finishing the *Work* is less than the unpaid balance of the *Contract Price*, the *Owner* shall pay the *Contractor* the difference, and
 - .4 on expiry of the warranty period, charge the *Contractor* the amount by which the cost of corrections to the *Contractor's* work under GC 12.3 - WARRANTY exceeds the allowance provided for such corrections, or if the cost of such corrections is less than the allowance, pay the *Contractor* the difference.
- 7.1.6 The *Contractor's* obligation under the *Contract* as to quality, correction and warranty of the work performed by the *Contractor* up to the time of termination shall continue after such termination of the *Contract*.

GC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

- 7.2.1 If the *Owner* is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of the *Owner's* insolvency, or if a receiver is appointed because of the *Owner's* insolvency, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, terminate the *Contract* by giving the *Owner* or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 7.2.2 If the *Work* is suspended or otherwise delayed for a period of 20 *Working Days* or more under an order of a court or other public authority and providing that such order was not issued as the result of an act or fault of the *Contractor* or of anyone directly or indirectly employed or engaged by the *Contractor*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, terminate the *Contract* by giving the *Owner* *Notice in Writing* to that effect.
- 7.2.3 The *Contractor* may give *Notice in Writing* to the *Owner*, with a copy to the *Consultant*, that the *Owner* is in default of the *Owner's* contractual obligations if:
- .1 the *Owner* fails to furnish, when so requested by the *Contractor*, reasonable evidence that financial arrangements have been made to fulfill the *Owner's* obligations under the *Contract*, or
 - .2 the *Consultant* fails to issue a certificate as provided in GC 5.3 - PROGRESS PAYMENT, or
 - .3 the *Owner* fails to pay the *Contractor* when due the amounts certified by the *Consultant* or awarded by arbitration or court, or
 - .4 the *Owner* violates the requirements of the *Contract* to a substantial degree and the *Consultant*, except for GC 5.1 - FINANCING INFORMATION REQUIRED OF THE OWNER, confirms by written statement to the *Contractor* that sufficient cause exists.
- 7.2.4 The *Contractor's* *Notice in Writing* to the *Owner* provided under paragraph 7.2.3 shall advise that if the default is not corrected within 5 *Working Days* following the receipt of the *Notice in Writing*, the *Contractor* may, without prejudice to any other right or remedy the *Contractor* may have, suspend the *Work* or terminate the *Contract*.
- 7.2.5 If the *Contractor* terminates the *Contract* under the conditions set out above, the *Contractor* shall be entitled to be paid for all work performed including reasonable profit, for loss sustained upon *Products* and *Construction Equipment*, and such other damages as the *Contractor* may have sustained as a result of the termination of the *Contract*.

PART 8 DISPUTE RESOLUTION

GC 8.1 AUTHORITY OF THE CONSULTANT

- 8.1.1 Differences between the parties to the *Contract* as to the interpretation, application or administration of the *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, which are not resolved in the first instance by findings of the *Consultant* as provided in GC 2.2 - ROLE OF THE CONSULTANT, shall be settled in accordance with the requirements of Part 8 of the General Conditions - DISPUTE RESOLUTION.
- 8.1.2 If a dispute arises under the *Contract* in respect of a matter in which the *Consultant* has no authority under the *Contract* to make a finding, the procedures set out in paragraph 8.1.3 and paragraphs 8.2.3 to 8.2.8 of GC 8.2 - NEGOTIATION, MEDIATION AND ARBITRATION, and in GC 8.3 - RETENTION OF RIGHTS apply to that dispute with the necessary changes to detail as may be required.
- 8.1.3 If a dispute is not resolved promptly, the *Consultant* will give such instructions as in the *Consultant's* opinion are necessary for the proper performance of the *Work* and to prevent delays pending settlement of the dispute. The parties shall act immediately according to such instructions, it being understood that by so doing neither party will jeopardize any claim the party may have. If it is subsequently determined that such instructions were in error or at variance with the *Contract Documents*, the *Owner* shall pay the *Contractor* costs incurred by the *Contractor* in carrying out such instructions which the *Contractor* was required to do beyond what the *Contract Documents* correctly understood and interpreted would have required, including costs resulting from interruption of the *Work*.

GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

- 8.2.1 In accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing, the parties shall appoint a Project Mediator
- .1 within 20 *Working Days* after the *Contract* was awarded, or
 - .2 if the parties neglected to make an appointment within the 20 *Working Days*, within 10 *Working Days* after either party by *Notice in Writing* requests that the Project Mediator be appointed.
- 8.2.2 A party shall be conclusively deemed to have accepted a finding of the *Consultant* under GC 2.2 - ROLE OF THE CONSULTANT and to have expressly waived and released the other party from any claims in respect of the particular matter dealt with in that finding unless, within 15 *Working Days* after receipt of that finding, the party sends a *Notice in Writing* of dispute to the other party and to the *Consultant*, which contains the particulars of the matter in dispute and the relevant provisions of the *Contract Documents*. The responding party shall send a *Notice in Writing* of reply to the dispute within 10 *Working Days* after receipt of such *Notice in Writing* setting out particulars of this response and any relevant provisions of the *Contract Documents*.
- 8.2.3 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 8.2.4 After a period of 10 *Working Days* following receipt of a responding party's *Notice in Writing* of reply under paragraph 8.2.2, the parties shall request the Project Mediator to assist the parties to reach agreement on any unresolved dispute. The mediated negotiations shall be conducted in accordance with the Rules for Mediation of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing.
- 8.2.5 If the dispute has not been resolved within 10 *Working Days* after the Project Mediator was requested under paragraph 8.2.4 or within such further period agreed by the parties, the Project Mediator shall terminate the mediated negotiations by giving *Notice in Writing* to the *Owner*, the *Contractor* and the *Consultant*.
- 8.2.6 By giving a *Notice in Writing* to the other party and the *Consultant*, not later than 10 *Working Days* after the date of termination of the mediated negotiations under paragraph 8.2.5, either party may refer the dispute to be finally resolved by arbitration under the Rules for Arbitration of Construction Disputes as provided in CCDC 40 in effect at the time of bid closing. The arbitration shall be conducted in the jurisdiction of the *Place of the Work*.
- 8.2.7 On expiration of the 10 *Working Days*, the arbitration agreement under paragraph 8.2.6 is not binding on the parties and, if a *Notice in Writing* is not given under paragraph 8.2.6 within the required time, the parties may refer the unresolved dispute to the courts or to any other form of dispute resolution, including arbitration, which they have agreed to use.

- 8.2.8 If neither party, by *Notice in Writing*, given within 10 *Working Days* of the date of *Notice in Writing* requesting arbitration in paragraph 8.2.6, requires that a dispute be arbitrated immediately, all disputes referred to arbitration as provided in paragraph 8.2.6 shall be
- .1 held in abeyance until
 - (1) *Substantial Performance of the Work*,
 - (2) the *Contract* has been terminated, or
 - (3) the *Contractor* has abandoned the *Work*,whichever is earlier; and
 - .2 consolidated into a single arbitration under the rules governing the arbitration under paragraph 8.2.6.

GC 8.3 RETENTION OF RIGHTS

- 8.3.1 It is agreed that no act by either party shall be construed as a renunciation or waiver of any rights or recourses, provided the party has given the *Notice in Writing* required under Part 8 of the General Conditions - DISPUTE RESOLUTION and has carried out the instructions as provided in paragraph 8.1.3 of GC 8.1 – AUTHORITY OF THE CONSULTANT.
- 8.3.2 Nothing in Part 8 of the General Conditions - DISPUTE RESOLUTION shall be construed in any way to limit a party from asserting any statutory right to a lien under applicable lien legislation of the jurisdiction of the *Place of the Work* and the assertion of such right by initiating judicial proceedings is not to be construed as a waiver of any right that party may have under paragraph 8.2.6 of GC 8.2 – NEGOTIATION, MEDIATION AND ARBITRATION to proceed by way of arbitration to adjudicate the merits of the claim upon which such a lien is based.

PART 9 PROTECTION OF PERSONS AND PROPERTY

GC 9.1 PROTECTION OF WORK AND PROPERTY

- 9.1.1 The *Contractor* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Work* from damage which may arise as the result of the *Contractor's* operations under the *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*;
 - .2 acts or omissions by the *Owner*, the *Consultant*, other contractors, their agents and employees.
- 9.1.2 Before commencing any work, the *Contractor* shall determine the location of all underground utilities and structures indicated in the *Contract Documents* or that are reasonably apparent in an inspection of the *Place of the Work*.
- 9.1.3 Should the *Contractor* in the performance of the *Contract* damage the *Work*, the *Owner's* property or property adjacent to the *Place of the Work*, the *Contractor* shall be responsible for making good such damage at the *Contractor's* expense.
- 9.1.4 Should damage occur to the *Work* or *Owner's* property for which the *Contractor* is not responsible, as provided in paragraph 9.1.1, the *Contractor* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Contract Price* and *Contract Time* shall be adjusted as provided in GC 6.1 – OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.

GC 9.2 TOXIC AND HAZARDOUS SUBSTANCES

- 9.2.1 For the purposes of applicable legislation related to toxic and hazardous substances, the *Owner* shall be deemed to have control and management of the *Place of the Work* with respect to existing conditions.
- 9.2.2 Prior to the *Contractor* commencing the *Work*, the *Owner* shall,
- .1 take all reasonable steps to determine whether any toxic or hazardous substances are present at the *Place of the Work*, and
 - .2 provide the *Consultant* and the *Contractor* with a written list of any such substances that are known to exist and their locations.
- 9.2.3 The *Owner* shall take all reasonable steps to ensure that no person's exposure to any toxic or hazardous substances exceeds the time weighted levels prescribed by applicable legislation at the *Place of the Work* and that no property is damaged or destroyed as a result of exposure to, or the presence of, toxic or hazardous substances which were at the *Place of the Work* prior to the *Contractor* commencing the *Work*.
- 9.2.4 Unless the *Contract* expressly provides otherwise, the *Owner* shall be responsible for taking all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to dispose of, store or otherwise render harmless toxic or hazardous substances which were present at the *Place of the Work* prior to the *Contractor* commencing the *Work*.

- 9.2.5 If the *Contractor*
- .1 encounters toxic or hazardous substances at the *Place of the Work*, or
 - .2 has reasonable grounds to believe that toxic or hazardous substances are present at the *Place of the Work*, which were not brought to the *Place of the Work* by the *Contractor* or anyone for whom the *Contractor* is responsible and which were not disclosed by the *Owner* or which were disclosed but have not been dealt with as required under paragraph 9.2.4, the *Contractor* shall
 - .3 take all reasonable steps, including stopping the *Work*, to ensure that no person's exposure to any toxic or hazardous substances exceeds any applicable time weighted levels prescribed by applicable legislation at the *Place of the Work*, and
 - .4 immediately report the circumstances to the *Consultant* and the *Owner* in writing.
- 9.2.6 If the *Owner* and *Contractor* do not agree on the existence, significance of, or whether the toxic or hazardous substances were brought onto the *Place of the Work* by the *Contractor* or anyone for whom the *Contractor* is responsible, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and the *Contractor*.
- 9.2.7 If the *Owner* and *Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were not brought onto the place of the *Work* by the *Contractor* or anyone for whom the *Contractor* is responsible, the *Owner* shall promptly at the *Owner's* own expense:
- .1 take all steps as required under paragraph 9.2.4;
 - .2 reimburse the *Contractor* for the costs of all steps taken pursuant to paragraph 9.2.5;
 - .3 extend the *Contract* time for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and the expert referred to in 9.2.6 and reimburse the *Contractor* for reasonable costs incurred as a result of the delay; and
 - .4 indemnify the *Contractor* as required by GC 12.1 - INDEMNIFICATION.
- 9.2.8 If the *Owner* and *Contractor* agree or if the expert referred to in paragraph 9.2.6 determines that the toxic or hazardous substances were brought onto the place of the *Work* by the *Contractor* or anyone for whom the *Contractor* is responsible, the *Contractor* shall promptly at the *Contractor's* own expense:
- .1 take all necessary steps, in accordance with applicable legislation in force at the *Place of the Work*, to safely remove and dispose the toxic or hazardous substances;
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the place of the *Work* as provided in paragraph 9.1.3 of GC 9.1 – PROTECTION OF WORK AND PROPERTY;
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.2.6; and
 - .4 indemnify the *Owner* as required by GC 12.1 - INDEMNIFICATION.
- 9.2.9 If either party does not accept the expert's findings under paragraph 9.2.6, the disagreement shall be settled in accordance with Part 8 of the General Conditions - Dispute Resolution. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraph 9.2.7 or 9.2.8 it being understood that by so doing, neither party will jeopardize any claim that party may have to be reimbursed as provided by GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

GC 9.3 ARTIFACTS AND FOSSILS

- 9.3.1 Fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the *Place or Work* shall, as between the *Owner* and the *Contractor*, be deemed to be the absolute property of the *Owner*.
- 9.3.2 The *Contractor* shall take all reasonable precautions to prevent removal or damage to discoveries as identified in paragraph 9.3.1, and shall advise the *Consultant* upon discovery of such items.
- 9.3.3 The *Consultant* will investigate the impact on the *Work* of the discoveries identified in paragraph 9.3.1. If conditions are found that would cause an increase or decrease in the *Contractor's* cost or time to perform the *Work*, the *Consultant*, with the *Owner's* approval, will issue appropriate instructions for a change in the *Work* as provided in GC 6.2 - CHANGE ORDER or GC 6.3 CHANGE DIRECTIVE.

GC 9.4 CONSTRUCTION SAFETY

- 9.4.1 Subject to paragraph 3.2.2.2 of GC 3.2 - CONSTRUCTION BY OWNER OR OTHER CONTRACTORS, the *Contractor* shall be solely responsible for construction safety at the *Place of the Work* and for compliance with the rules, regulations and practices required by the applicable construction health and safety legislation and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the *Work*.

GC 9.5 MOULD

- 9.5.1 If the *Contractor* or *Owner* observes or reasonably suspects the presence of mould at the *Place of the Work*, the remediation of which is not expressly part of the *Work*,
- .1 the observing party shall promptly report the circumstances to the other party in writing, and
 - .2 the *Contractor* shall promptly take all reasonable steps, including stopping the *Work* if necessary, to ensure that no person suffers injury, sickness or death and that no property is damaged as a result of exposure to or the presence of the mould, and
 - .3 if the *Owner* and *Contractor* do not agree on the existence, significance or cause of the mould or as to what steps need be taken to deal with it, the *Owner* shall retain and pay for an independent qualified expert to investigate and determine such matters. The expert's report shall be delivered to the *Owner* and *Contractor*.
- 9.5.2 If the *Owner* and *Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was caused by the *Contractor's* operations under the *Contract*, the *Contractor* shall promptly, at the *Contractor's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 make good any damage to the *Work*, the *Owner's* property or property adjacent to the *Place of the Work* as provided in paragraph 9.1.3 of GC 9.1 - PROTECTION OF WORK AND PROPERTY, and
 - .3 reimburse the *Owner* for reasonable costs incurred under paragraph 9.5.1.3, and
 - .4 indemnify the *Owner* as required by GC 12.1 - INDEMNIFICATION.
- 9.5.3 If the *Owner* and *Contractor* agree, or if the expert referred to in paragraph 9.5.1.3 determines that the presence of mould was not caused by the *Contractor's* operations under the *Contract*, the *Owner* shall promptly, at the *Owner's* own expense:
- .1 take all reasonable and necessary steps to safely remediate or dispose of the mould, and
 - .2 reimburse the *Contractor* for the cost of taking the steps under paragraph 9.5.1.2 and making good any damage to the *Work* as provided in paragraph 9.1.4 of GC 9.1 - PROTECTION OF WORK AND PROPERTY, and
 - .3 extend the *Contract Time* for such reasonable time as the *Consultant* may recommend in consultation with the *Contractor* and the expert referred to in paragraph 9.5.1.3 and reimburse the *Contractor* for reasonable costs incurred as a result of the delay, and
 - .4 indemnify the *Contractor* as required by GC 12.1 - INDEMNIFICATION.
- 9.5.4 If either party does not accept the expert's finding under paragraph 9.5.1.3, the disagreement shall be settled in accordance with Part 8 of the General Conditions - DISPUTE RESOLUTION. If such disagreement is not resolved promptly, the parties shall act immediately in accordance with the expert's determination and take the steps required by paragraphs 9.5.2 or 9.5.3, it being understood that by so doing neither party will jeopardize any claim the party may have to be reimbursed as provided by GC 9.5 - MOULD.

PART 10 GOVERNING REGULATIONS

GC 10.1 TAXES AND DUTIES

- 10.1.1 The *Contract Price* shall include all taxes and customs duties in effect at the time of the bid closing except for *Value Added Taxes* payable by the *Owner* to the *Contractor* as stipulated in Article A-4 of the Agreement - CONTRACT PRICE.
- 10.1.2 Any increase or decrease in costs to the *Contractor* due to changes in such included taxes and duties after the time of the bid closing shall increase or decrease the *Contract Price* accordingly.

GC 10.2 LAWS, NOTICES, PERMITS, AND FEES

- 10.2.1 The laws of the *Place of the Work* shall govern the *Work*.
- 10.2.2 The *Owner* shall obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits, except for the permits and fees referred to in paragraph 10.2.3 or for which the *Contract Documents* specify as the responsibility of the *Contractor*.
- 10.2.3 The *Contractor* shall be responsible for the procurement of permits, licences, inspections, and certificates, which are necessary for the performance of the *Work* and customarily obtained by contractors in the jurisdiction of the *Place of the Work* after the issuance of the building permit. The *Contract Price* includes the cost of these permits, licences, inspections, and certificates, and their procurement.
- 10.2.4 The *Contractor* shall give the required notices and comply with the laws, ordinances, rules, regulations, or codes which are or become in force during the performance of the *Work* and which relate to the *Work*, to the preservation of the public health, and to construction safety.

- 10.2.5 The *Contractor* shall not be responsible for verifying that the *Contract Documents* are in compliance with the applicable laws, ordinances, rules, regulations, or codes relating to the *Work*. If the *Contract Documents* are at variance therewith, or if, subsequent to the time of bid closing, changes are made to the applicable laws, ordinances, rules, regulations, or codes which require modification to the *Contract Documents*, the *Contractor* shall advise the *Consultant* in writing requesting direction immediately upon such variance or change becoming known. The *Consultant* will make the changes required to the *Contract Documents* as provided in GC 6.1 - OWNER'S RIGHT TO MAKE CHANGES, GC 6.2 - CHANGE ORDER and GC 6.3 - CHANGE DIRECTIVE.
- 10.2.6 If the *Contractor* fails to advise the *Consultant* in writing; and fails to obtain direction as required in paragraph 10.2.5; and performs work knowing it to be contrary to any laws, ordinances, rules, regulations, or codes; the *Contractor* shall be responsible for and shall correct the violations thereof; and shall bear the costs, expenses and damages attributable to the failure to comply with the provisions of such laws, ordinances, rules, regulations, or codes.
- 10.2.7 If, subsequent to the time of bid closing, changes are made to applicable laws, ordinances, rules, regulations, or codes of authorities having jurisdiction which affect the cost of the *Work*, either party may submit a claim in accordance with the requirements of GC 6.6 – CLAIMS FOR A CHANGE IN CONTRACT PRICE.

GC 10.3 PATENT FEES

- 10.3.1 The *Contractor* shall pay the royalties and patent licence fees required for the performance of the *Contract*. The *Contractor* shall hold the *Owner* harmless from and against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention by the *Contractor* or anyone for whose acts the *Contractor* may be liable.
- 10.3.2 The *Owner* shall hold the *Contractor* harmless against claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of the *Contractor's* performance of the *Contract* which are attributable to an infringement or an alleged infringement of a patent of invention in executing anything for the purpose of the *Contract*, the model, plan or design of which was supplied to the *Contractor* as part of the *Contract Documents*.

GC 10.4 WORKERS' COMPENSATION

- 10.4.1 Prior to commencing the *Work*, again with the *Contractor's* application for payment of the holdback amount following *Substantial Performance of the Work* and again with the *Contractor's* application for final payment, the *Contractor* shall provide evidence of compliance with workers' compensation legislation at the *Place of the Work*, including payments due thereunder.
- 10.4.2 At any time during the term of the *Contract*, when requested by the *Owner*, the *Contractor* shall provide such evidence of compliance by the *Contractor* and *Subcontractors*.

PART 11 INSURANCE AND CONTRACT SECURITY

GC 11.1 INSURANCE

- 11.1.1 Without restricting the generality of GC 12.1 - INDEMNIFICATION, the *Contractor* shall provide, maintain and pay for the following insurance coverages, the minimum requirements of which are specified in CCDC 41 – CCDC Insurance Requirements in effect at the time of bid closing except as hereinafter provided:
- .1 General liability insurance in the name of the *Contractor* and include, or in the case of a single, blanket policy, be endorsed to name, the *Owner* and the *Consultant* as insureds but only with respect to liability, other than legal liability arising out of their sole negligence, arising out of the operations of the *Contractor* with regard to the *Work*. General liability insurance shall be maintained from the date of commencement of the *Work* until one year from the date of *Substantial Performance of the Work*. Liability coverage shall be provided for completed operations hazards from the date of *Substantial Performance of the Work*, as set out in the certificate of *Substantial Performance of the Work*, on an ongoing basis for a period of 6 years following *Substantial Performance of the Work*.
 - .2 Automobile Liability Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.
 - .3 Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Work*
 - .4 "Broad form" property insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The "Broad form" property insurance shall be provided from the date of commencement of the *Work* until the earliest of:
 - (1) 10 calendar days after the date of *Substantial Performance of the Work*;

- (2) on the commencement of use or occupancy of any part or section of the *Work* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Work*;
 - (3) when left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
- 5 Boiler and machinery insurance in the joint names of the *Contractor*, the *Owner* and the *Consultant*. The policy shall include as insureds all *Subcontractors*. The coverage shall be maintained continuously from commencement of use or operation of the boiler and machinery objects insured by the policy and until 10 calendar days after the date of *Substantial Performance of the Work*.
- 6 The “Broad form” property and boiler and machinery policies shall provide that, in the case of a loss or damage, payment shall be made to the *Owner* and the *Contractor* as their respective interests may appear. In the event of loss or damage:
- (1) the *Contractor* shall act on behalf of the *Owner* for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, the *Contractor* shall proceed to restore the *Work*. Loss or damage shall not affect the rights and obligations of either party under the *Contract* except that the *Contractor* shall be entitled to such reasonable extension of *Contract Time* relative to the extent of the loss or damage as the *Consultant* may recommend in consultation with the *Contractor*;
 - (2) the *Contractor* shall be entitled to receive from the *Owner*, in addition to the amount due under the *Contract*, the amount which the *Owner's* interest in restoration of the *Work* has been appraised, such amount to be paid as the restoration of the *Work* proceeds in accordance with the progress payment provisions. In addition the *Contractor* shall be entitled to receive from the payments made by the insurer the amount of the *Contractor's* interest in the restoration of the *Work*; and
 - (3) to the *Work* arising from the work of the *Owner*, the *Owner's* own forces or another contractor, the *Owner* shall, in accordance with the *Owner's* obligations under the provisions relating to construction by *Owner* or other contractors, pay the *Contractor* the cost of restoring the *Work* as the restoration of the *Work* proceeds and as in accordance with the progress payment provisions.
- 7 Contractors' Equipment Insurance from the date of commencement of the *Work* until one year after the date of *Substantial Performance of the Work*.
- 11.1.2 Prior to commencement of the *Work* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the *Contractor* shall promptly provide the *Owner* with confirmation of coverage and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Work*.
- 11.1.3 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of the *Contract*.
- 11.1.4 If the *Contractor* fails to provide or maintain insurance as required by the *Contract Documents*, then the *Owner* shall have the right to provide and maintain such insurance and give evidence to the *Contractor* and the *Consultant*. The *Contractor* shall pay the cost thereof to the *Owner* on demand or the *Owner* may deduct the cost from the amount which is due or may become due to the *Contractor*.
- 11.1.5 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Work*.
- 11.1.6 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies reduced insurance requirements, the parties shall address such reduction, prior to the *Contractor's* insurance policy becoming due for renewal, and record any agreement in a *Change Order*.
- 11.1.7 If a revised version of CCDC 41 – INSURANCE REQUIREMENTS is published, which specifies increased insurance requirements, the *Owner* may request the increased coverage from the *Contractor* by way of a *Change Order*.
- 11.1.8 A *Change Directive* shall not be used to direct a change in the insurance requirements in response to the revision of CCDC 41 – INSURANCE REQUIREMENTS.

GC 11.2 CONTRACT SECURITY

- 11.2.1 The *Contractor* shall, prior to commencement of the *Work* or within the specified time, provide to the *Owner* any *Contract* security specified in the *Contract Documents*.

11.2.2 If the *Contract Documents* require surety bonds to be provided, such bonds shall be issued by a duly licensed surety company authorized to transact the business of suretyship in the province or territory of the *Place of the Work* and shall be maintained in good standing until the fulfillment of the *Contract*. The form of such bonds shall be in accordance with the latest edition of the CCDC approved bond forms.

PART 12 INDEMNIFICATION, WAIVER OF CLAIMS AND WARRANTY

GC 12.1 INDEMNIFICATION

12.1.1 Without restricting the parties' obligation to indemnify as described in paragraphs 12.1.4 and 12.1.5, the *Owner* and the *Contractor* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to their involvement as parties to this *Contract*, provided such claims are:

.1 caused by:

(1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or

(2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and

.2 made by *Notice in Writing* within a period of 6 years from the date of *Substantial Performance of the Work* as set out in the certificate of *Substantial Performance of the Work* issued pursuant to paragraph 5.4.2.2 of GC 5.4 – SUBSTANTIAL PERFORMANCE OF THE WORK or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Work*.

The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.

12.1.2 The obligation of either party to indemnify as set forth in paragraph 12.1.1 shall be limited as follows:

.1 In respect to losses suffered by the *Owner* and the *Contractor* for which insurance is to be provided by either party pursuant to GC 11.1 – INSURANCE, the general liability insurance limit for one occurrence as referred to in CCDC 41 in effect at the time of bid closing.

.2 In respect to losses suffered by the *Owner* and the *Contractor* for which insurance is not required to be provided by either party in accordance with GC 11.1 – INSURANCE, the greater of the *Contract Price* as recorded in Article A-4 – CONTRACT PRICE or \$2,000,000, but in no event shall the sum be greater than \$20,000,000.

.3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 12.1.2.1 and 12.1.2.2 shall apply.

12.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 12.1.1 and 12.1.2 shall be inclusive of interest and all legal costs.

12.1.4 The *Owner* and the *Contractor* shall indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings arising out of their obligations described in GC 9.2 – TOXIC AND HAZARDOUS SUBSTANCES.

12.1.5 The *Owner* shall indemnify and hold harmless the *Contractor* from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings:

.1 as described in paragraph 10.3.2 of GC 10.3 – PATENT FEES, and

.2 arising out of the *Contractor's* performance of the *Contract* which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the *Place of the Work*.

12.1.6 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Contractor*:

.1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known;

.2 should any party be required as a result of its obligation to indemnify another to pay or satisfy a final order, judgment or award made against the party entitled by this contract to be indemnified, then the indemnifying party upon assuming all liability for any costs that might result shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 12.2 WAIVER OF CLAIMS

- 12.2.1 Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Contractor* waives and releases the *Owner* from all claims which the *Contractor* has or reasonably ought to have knowledge of that could be advanced by the *Contractor* against the *Owner* arising from the *Contractor's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Owner* from the *Contractor* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Contractor* by third parties for which a right of indemnification may be asserted by the *Contractor* against the *Owner* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Contractor* pursuant to the provisions of paragraphs 12.1.4 or 12.1.5 of GC 12.1 – INDEMNIFICATION; and
 - .4 claims resulting from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.2 The *Contractor* waives and releases the *Owner* from all claims referenced in paragraph 12.2.1.4 except for those referred in paragraphs 12.2.1.2 and 12.2.1.3 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Contractor* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.3 Subject to any lien legislation applicable to the *Place of the Work*, as of the fifth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the *Owner* waives and releases the *Contractor* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Contractor* arising from the *Owner's* involvement in the *Work*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the date of *Substantial Performance of the Work*, except as follows:
- .1 claims arising prior to or on the date of *Substantial Performance of the Work* for which *Notice in Writing* of claim has been received by the *Contractor* from the *Owner* no later than the sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*;
 - .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Contractor* pursuant to the provisions of this *Contract*;
 - .3 claims for which a right of indemnity could be asserted by the *Owner* against the *Contractor* pursuant to the provisions of paragraph 12.1.4 of GC 12.1 - INDEMNIFICATION;
 - .4 damages arising from the *Contractor's* actions which result in substantial defects or deficiencies in the *Work*. “Substantial defects or deficiencies” mean those defects or deficiencies in the *Work* which affect the *Work* to such an extent or in such a manner that a significant part or the whole of the *Work* is unfit for the purpose intended by the *Contract Documents*;
 - .5 claims arising pursuant to GC 12.3 - WARRANTY; and
 - .6 claims arising from acts or omissions which occur after the date of *Substantial Performance of the Work*.
- 12.2.4 The *Owner* waives and releases the *Contractor* from all claims referred to in paragraph 12.2.3.4 except claims for which *Notice in Writing* of claim has been received by the *Contractor* from the *Owner* within a period of six years from the date of *Substantial Performance of the Work* should any limitation statute of the Province or Territory of the *Place of the Work* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:
- .1 any limitation statute of the Province or Territory of the *Place of the Work*; or
 - .2 if the *Place of the Work* is the Province of Quebec, then Article 2118 of the Civil Code of Quebec.
- 12.2.5 The *Owner* waives and releases the *Contractor* from all claims referenced in paragraph 12.2.3.6 except for those referred in paragraph 12.2.3.2, 12.2.3.3 and those arising under GC 12.3 – WARRANTY and claims for which *Notice in Writing* has been received by the *Contractor* from the *Owner* within 395 calendar days following the date of *Substantial Performance of the Work*.
- 12.2.6 “*Notice in Writing* of claim” as provided for in GC 12.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 12.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;
 - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
 - .3 a statement of the estimated quantum of the claim.
- 12.2.7 The party giving “*Notice in Writing* of claim” as provided for in GC 12.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.

- 12.2.8 Where the event or series of events giving rise to a claim made under paragraphs 12.2.1 or 12.2.3 has a continuing effect, the detailed account submitted under paragraph 12.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events.
- 12.2.9 If a *Notice in Writing* of claim pursuant to paragraph 12.2.1.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.3.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.
- 12.2.10 If a *Notice in Writing* of claim pursuant to paragraph 12.2.3.1 is received on the seventh or sixth calendar day before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 12.2.1.1 shall be extended to two calendar days before the expiry of the lien period provided by the lien legislation applicable at the *Place of the Work*.

GC 12.3 WARRANTY

- 12.3.1 Except for extended warranties as described in paragraph 12.3.6, the warranty period under the *Contract* is one year from the date of *Substantial Performance of the Work*.
- 12.3.2 The *Contractor* shall be responsible for the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.
- 12.3.3 The *Owner*, through the *Consultant*, shall promptly give the *Contractor* *Notice in Writing* of observed defects and deficiencies which occur during the one year warranty period.
- 12.3.4 Subject to paragraph 12.3.2, the *Contractor* shall correct promptly, at the *Contractor's* expense, defects or deficiencies in the *Work* which appear prior to and during the one year warranty period.
- 12.3.5 The *Contractor* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 12.3.4.
- 12.3.6 Any extended warranties required beyond the one year warranty period as described in paragraph 12.3.1, shall be as specified in the *Contract Documents*. Extended warranties shall be issued by the warrantor to the benefit of the *Owner*. The *Contractor's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.

CCDC 41
CCDC INSURANCE REQUIREMENTS

PUBLICATION DATE: JANUARY 21, 2008

1. General liability insurance shall be with limits of not less than \$5,000,000 per occurrence, an aggregate limit of not less than \$5,000,000 within any policy year with respect to completed operations, and a deductible not exceeding \$5,000. The insurance coverage shall not be less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320. To achieve the desired limit, umbrella or excess liability insurance may be used. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts.
2. Automobile liability insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy, shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death and damage to property, covering all vehicles owned or leased by the *Contractor*. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Contractor* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Contractor*.
3. Aircraft and watercraft liability insurance with respect to owned or non-owned aircraft and watercraft (if used directly or indirectly in the performance of the *Work*), including use of additional premises, shall have limits of not less than \$5,000,000 inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof and limits of not less than \$5,000,000 for aircraft passenger hazard. Such insurance shall be in a form acceptable to the *Owner*.
4. "Broad form" property insurance shall have limits of not less than the sum of 1.1 times *Contract Price* and the full value, as stated in the *Contract*, of *Products* and design services that are specified to be provided by the *Owner* for incorporation into the *Work*, with a deductible not exceeding \$5,000. The insurance coverage shall not be less than the insurance provided by IBC Forms 4042 and 4047 (excluding flood and earthquake) or their equivalent replacement. Subject to satisfactory proof of financial capability by the *Contractor*, the *Owner* may agree to increase the deductible amounts.
5. Boiler and machinery insurance shall have limits of not less than the replacement value of the permanent or temporary boilers and pressure vessels, and other insurable objects forming part of the *Work*. The insurance coverage shall not be less than the insurance provided by a comprehensive boiler and machinery policy.
6. "Broad form" contractors' equipment insurance coverage covering *Construction Equipment* used by the *Contractor* for the performance of the *Work*, shall be in a form acceptable to the *Owner* and shall not allow subrogation claims by the insurer against the *Owner*. Subject to satisfactory proof of financial capability by the *Contractor* for self-insurance, the *Owner* may agree to waive the equipment insurance requirement.
7. Standard Exclusions
 - 7.1 In addition to the broad form property exclusions identified in IBC forms 4042(1995), and 4047(2000), the *Contractor* is not required to provide the following insurance coverage:
 - Asbestos
 - Cyber Risk
 - Mould
 - Terrorism

SCHEDULE 'B'

SCOPE OF WORK

The work to be undertaken shall consist of the furnishing of all material, labour, tools, equipment and all facilities and the satisfactory performance of all work necessary for the complete construction of luxury Condominium building including Retail at grade component and office space, ready for use and legal occupancy, in strict compliance with the plans, specifications and other related documents. Provide direction to planning, scheduling and engineering functions as required.

The principal items of construction work are listed below:

- Securing of all necessary permits and final certification for the entire construction
- Preparation and clearing of site, shoring, excavation and backfilling
- Concrete and reinforced concrete work
- Masonry and tile work
- Precast work
- Carpentry and joinery work
- Waterproofing
- Rough and finishing hardware
- Electrical work
- Plumbing work
- Mechanical work
- Security
- Fire Alarm
- Storm drainage work
- Painting work
- Provide all building equipment, operating manuals and warranty information, and coordinating startup of the building systems with operational personnel
- Commissioning
- Provide warranty program in accordance with TARION terms and conditions

SUPPLEMENTARY CONDITIONS AND AMENDMENTS TO CCDC 2 STIPULATED PRICE CONTRACT – 2008

The following Amendments to CCDC 2 STIPULATED PRICE CONTRACT – 2008 shall form a part of the Contract Documents referred to in Article A-3 of the Canadian Standard Construction Document, CCDC 2 STIPULATED PRICE CONTRACT – 2008, and shall modify, delete and/or add to the Agreement between the Owner and the Contractor, the Definitions and the General Conditions.

Throughout the Contract Documents, any reference to the General Conditions shall imply the inclusion of these Amendments.

Where any article, paragraph or subparagraph in the Agreement, the Definitions and/or the General Conditions is amended, deleted, voided, or superseded by any of the following, the provisions of such article, paragraph or subparagraph not so amended, voided, deleted or superseded, shall remain in effect.

1.1 ARTICLE A-5 PAYMENT

- 1.1.1. Amend paragraph 5.1.3, in the first line, by deleting the words "... the issuance of the..." and replacing them with "...receipt of the Consultant's..."
- 1.1.2. Delete paragraph 5.3, and all subparagraphs, in its entirety and substitute "[Intentionally left blank]".

1.2 DEFINITIONS

- 1.2.1. Amend Definition 16 "*Provide*" by adding the following to the end of the Definition: "*Provide* has this meaning whether or not the first letter is capitalized."

1.3 GC 1.5 TIME IS OF THE ESSENCE

- 1.3.1. Add a new GC 1.5 TIME IS OF THE ESSENCE as follows:

"GC 1.5 TIME IS OF THE ESSENCE

- 1.5.1 All time limits stated in the Contract Documents are of the essence of the Contract."

1.4 GC 2.2 ROLE OF THE CONSULTANT

- 1.4.1. Amend paragraph 2.2.7 by deleting the words: Except with respect to GC5.1 —FINANCING INFORMATION REQUIRED OF THE OWNER" and capitalize the word "the" in the first line.

1.5 GC 3.2 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

- 1.5.1. Delete paragraph 3.2.2.1 in its entirety and substitute “intentionally left blank”.
- 1.5.2. Delete paragraph 3.2.2.2 in its entirety and substitute “intentionally left blank”.
- 1.5.3. Delete paragraph 3.2.3.2 and replace it with the following:

“3.2.3.2 Coordinate and schedule the activities and work of other contractors with the Work of the Contractor;”

- 1.5.4. Add a new paragraph 3.2.3.4 as follows:

“3.2.3.4 Assume full responsibility for compliance with all aspects of the Occupational Health and Safety Act (Ontario) and regulations, including filing a Notice of Project with the Ontario Ministry of Labour establishing the Contractor’s designation as the Project “Constructor”.”

1.6 GC 3.4 DOCUMENT REVIEW

- 1.6.1. Amend paragraph 3.4.1 in the fourth line, at the beginning of the third sentence, by adding the words, “Provided it has exercised the degree of care and skill described in this paragraph 3.15, the Contractor...”.

1.7 GC 3.14 OCCUPANCY OF THE WORK

- 1.7.1. Add a new General Condition 3.14 as follows:

“3.14 OCCUPANCY OF THE WORK

3.14.1 The Owner reserves the right to take possession of and use for any intended purpose any portion or all of the undelivered portion of the Project even though the Work may not have reached Substantial Performance of the Work, provided that such taking possession and use will not interfere, in any material way, with the progress of the Work. The taking of possession or use of any such portion of the Project shall not be deemed to be the Owner’s acknowledgement or acceptance of the Work or Project nor shall it relieve the Contractor of any of its obligations under the Contract.”

- 1.7.2. Add a new General Condition 3.15 as follows:

“3.15 PERFORMANCE BY CONTRACTOR

3.15.1 In performing its services and obligations under the Contract, the Contractor shall exercise the standard of care, skill and diligence that

would normally be provided by an experienced and prudent contractor supplying similar services for similar projects. The Contractor acknowledges and agrees that throughout the Contract, the performance of the Contractor's obligations, duties and responsibilities shall be judged against this standard. The Contractor shall exercise the same standard of care, skill and diligence in respect of any Products, personnel or procedures which it may recommend to the Owner.

3.15.2 The Contractor further represents, covenants and warrants to the Owner that:

- .1 the personnel it assigns to the Project are appropriately experienced;
- .2 it has a sufficient staff of qualified and competent personnel to replace any of its appointed representatives, subject to the Owner's approval, in the event of death, incapacity, removal or resignation; and
- .3 there are no pending, threatened or anticipated claims, liabilities or contingent liabilities that would have a material effect on the financial ability of the Contractor to perform its work under the Contract."

1.8 PART 4 ALLOWANCES

1.8.1. Delete Part 4 in its entirety and replace it with "Intentionally left blank."

1.9 GC 5.1 FINANCING INFORMATION REQUIRED OF THE OWNER and GC 5.5 PAYMENT OF HOLDBACK UPON SUBSTANTIAL PERFORMANCE OF THE WORK.

1.9.1. Delete GC5.1 in its entirety and replace it with "Intentionally left blank."

1.9.2. Delete paragraph 5.5.3.

1.10 GC 5.3 PROGRESS PAYMENT

1.10.1. Amend paragraph 5.3.1.3 by replacing the words " 20 calendar days" with "35 calendar days".

1.11 GC 5.6 PROGRESS RELEASE OF HOLDBACK

1.11.1. Delete GC 5.6 in its entirety and replace it with "Intentionally left blank."

1.12 GC 5.8 WITHHOLDING OF PAYMENT

1.12.1. Add new paragraph 5.8.2, as follows:

“5.8.2 Notwithstanding the provisions of **GC 5.3 PROGRESS PAYMENT** and **GC 5.7 FINAL PAYMENT**, the Owner may withhold any payment, in whole or in part, and set off such funds against, or indemnify the Owner, for any costs and damages due to or arising from:

- .1 defective Work;
- .2 third party claims or reasonable evidence indicating possible commencement of third party claims;
- .3 evidence of the Contractor's failure to make payments promptly to Subcontractors or Suppliers; or
- .4 the Contractor's failure to immediately remove any liens arising from the Work pursuant to GC 13.1.

1.13 GC 6.1 OWNER'S RIGHT TO MAKE CHANGES

- 1.13.1. Amend paragraph 6.1.2 by adding the following to the end of that paragraph:

“This requirement is of the essence and it is the express intention of the parties that any claims by the Contractor for a change in the Contract Price and/or Contract Time shall be barred unless there has been strict compliance with PART 6 CHANGES IN THE WORK. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions to the Work and no claims that the Owner has been unjustly enriched by any alteration or addition to the Work, whether in fact there is any such unjust enrichment or not, shall be the basis of a claim for additional payment under this Contract or a claim for any extension of the Contract Time.”

1.14 GC 6.5 DELAYS

- 1.14.1. Amend paragraph 6.5.1 by deleting the sentence “The Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay.”
- 1.14.2. Amend paragraph 6.5.2 by deleting the sentence “The Contractor shall be reimbursed by the Owner for reasonable costs incurred by the Contractor as the result of such delay.”
- 1.14.3. Add new paragraph 6.5.6 as follows:

If the *Contract Time* is exceeded or extended through the fault of the *Contractor*, or anyone directly employed or engaged by the *Contractor*, or anyone whom the *Contractor* is responsible (including, without limitation, in the *Contractor's* role as development manager pursuant to the Development

Management Agreement dated on or about June 19, 2015, as amended from time to time), the *Contractor* shall reimburse the *Owner* for all reasonable costs incurred by the *Owner* as a result of any delay, including for any loss of profits or consequential damages.

1.15 GC 7.2 CONTRACTOR'S RIGHT TO SUSPEND THE WORK OR TERMINATE THE CONTRACT

1.15.1. Delete paragraph 7.2.3.1 in its entirety.

1.15.2. Delete paragraph 7.2.3.3 and replace it with the following:

“7.2.3.3 The Owner fails to pay the Contractor when due the amounts certified by the Consultant or awarded by arbitration or a Court, except where the Owner has a claim for setoff, or...”

1.15.3. Amend paragraph 7.2.3.4 by deleting the comma toward the end of the first line. Further amend paragraph 7.2.3.4 by deleting the phrase “except for CG 5.1 – FINANCING INFORMATION REQUIRED BY THE OWNER,”.

1.16 GC 8.2 NEGOTIATION, MEDIATION AND ARBITRATION

1.8.1 Delete paragraphs 8.2.6, 8.2.7 and 8.2.8 in their entirety.

1.17 GC 9.1 PROTECTION OF WORK AND PROPERTY

1.17.1. Amend paragraph 9.1.1.1 by adding the following words at the end of that subparagraph:

“...which the Contractor could not reasonably have discovered applying the degree of care and skill described in paragraph 3.4.1 to its review of the Contract Documents.”

1.18 GC 9.4 CONSTRUCTION SAFETY

1.18.1. Amend paragraph 9.4.1 by deleting the phrase starting “Subject to paragraph 3.2.2.2” to the comma in the first line, and by starting a new sentence line with the words “The Contractor”.

1.18.2. Add new paragraphs 9.4.2, 9.4.3 and 9.4.4 as follows:

“9.4.2 Prior to the commencement of the Work, the Contractor shall submit to the Owner:

.1 a current certificate or other document, satisfactory to the Owner, evidencing the Contractor's then current good standing under the applicable Workplace Safety and Insurance Board requirements and legislation;

- .2 copies of the Contractor's insurance policies having application to the Project or certificates of insurance, at the option of the Owner;
- .3 documentation of the Contractor's in-house safety-related programs;
- .4 a copy of the such requisite notice(s) for the Project to be posted or provided pursuant to the applicable Health and Safety legislation, and confirmation that the Contractor has assumed responsibilities of the "constructor" or project contractor under the applicable Health and Safety legislation."

9.4.3 The Contractor shall indemnify and save harmless the Owner, the Consultant, and their agents, officers, directors, employees, consultants, successors and assigns from and against the consequences of any and all safety infractions committed by the Contractor under applicable Health and Safety legislation, including the payment of legal fees and disbursements on a solicitor and client basis. Such indemnity shall apply to the extent to which the Owner is not covered by insurance, provided that the indemnity contained in this paragraph shall be limited to costs and damages resulting directly from such infractions and shall not extend to any consequential, indirect or special damages.

9.4.4 The Owner will instruct its other contractors and/or its own forces of the requirement that the other contractor or own forces, as the case may be, will comply with directions and instructions from the Contractor with respect to legislative and regulatory health and safety and related matters. The text of such instruction is attached to these Supplementary Conditions as Appendix 1."

1.19 GC 9.5 MOULD

- 1.19.1. Delete GC 9.5 MOULD in its entirety and replace it with "Intentionally left blank."

1.20 GC 10.4 WORKERS' COMPENSATION

- 1.20.1. Amend paragraph 10.4.1 in the first line by adding the words "and with all applications for payment,...", after the words "issuance of the final certificate for payment."

1.21 GC 12.1 INDEMNIFICATION

- 1.21.1. Delete paragraphs 12.1.1 through 12.1.6 in their entirety and replace them with the following:

“12.1.1 The Contractor shall indemnify and hold harmless the Owner, its agents, employees and assigns from and against all claims, demands, damages, losses, expenses, costs, including legal fees, actions, suits or proceedings by whomsoever made, brought or prosecuted in any manner, arising out of, resulting from or attributable to the Contractor’s or any Subcontractor’s performance or non-performance of the Contract, regardless of whether or not caused in part by a party indemnified hereunder. It is expressly understood that the Contractor will save harmless the Owner from all claims made by any party other than the Contractor itself, financial or otherwise, relating to labour and materials furnished by the Contractor or by others for the Work.

12.1.2 The Owner shall indemnify and hold harmless the Contractor, his agents and employees from and against claims, demands, losses, costs, damages, actions, suits or proceedings arising out of the Contractor’s performance of the Contract which are attributable to a lack of or defect in title or an alleged lack of or defect in title to the Place of the Work.

12.1.3 Notwithstanding the provisions of GC1.1 - CONTRACT DOCUMENTS, paragraph 1.1.7, GC12.1 - INDEMNIFICATION shall govern over the provisions of paragraph 1.3.1 of GC1.3 – RIGHTS AND REMEDIES.”

1.22 GC 12.2 WAIVER OF CLAIMS

- 1.22.1. Delete paragraph 12.2.3 in its entirety.
- 1.22.2. Delete paragraph 12.2.4 in its entirety.
- 1.22.3. Delete paragraph 12.2.5 in its entirety.
- 1.22.4. Change the words “The party” to “The Contractor” in paragraph 12.2.7.
- 1.22.5. In paragraph 12.2.8, change “under paragraphs 12.2.1 or 12.2.3” to “under paragraph 12.2.1” and change both instances of the words “the party” to “the Contractor”.
- 1.22.6. Delete paragraph 12.2.9 in its entirety.

1.23 “PART 13- OTHER PROVISIONS”.

- 1.23.1. Add **GC 13.1 CONSTRUCTION LIENS** as follows:

“13.1.1 In the event that a claim for lien is registered against the title to the Project, or the Owner receives a written notice of a lien, by a Supplier, Subcontractor, consultant, engineers or any other entities who

directly or indirectly received payments for this Project from funds that are being paid by the Owner to the Contractor, and provided the Owner has paid all amounts properly owing under the Contract, the Contractor shall, at its own expense:

- .1 within 10 days, ensure that any and all claims for lien and certificates of action are discharged, released, or vacated by the posting of security or otherwise; and
- .2 in the case of written notices of lien, ensure that such notices are withdrawn, in writing.

13.1.2 In the event that the Contractor fails to conform with the requirements of paragraph 13.1.1, the Owner may fulfil those requirements without *Notice in Writing* to the Contractor and set off and deduct from any amount owing to the Contractor, all costs and associated expenses, including the costs of posting security and all legal fees and disbursements, associated with getting the written notice of lien withdrawn, discharging or vacating the claim for lien or certificate of action and defending any action. If there is no amount owing by the Owner to the Contractor, then the Contractor shall reimburse the Owner for all of the said costs and associated expenses, including the Owner's reasonable legal expenses."

END OF SUPPLEMENTARY CONDITIONS AND AMENDMENTS

AMENDMENT TO CREDIT AGREEMENT

THIS AGREEMENT is made as of August 13, 2015,

BETWEEN:

Mizrahi (128 Hazelton) Inc., a corporation incorporated under the laws of Ontario (the "**Borrower**")

- and -

Mizrahi Developments Inc., a corporation incorporated under the laws of Ontario (the "**Pledgor**")

- and -

Constantine Enterprises Inc., a corporation incorporated under the laws of Ontario (the "**Lender**").

- A. The Borrower, the Lender and Mizrahi Enterprises Inc. entered into a credit agreement dated as of June 19, 2015 (as amended, restated, modified or supplemented from time to time, the "**Credit Agreement**") pursuant to which the Lender agreed to establish certain credit facilities in favour of the Borrower.
- B. As security for the Borrower's obligations under the Credit Agreement, Mizrahi Enterprises Inc. and the Lender entered into a pledge agreement dated as of June 19, 2015 pursuant to which Mizrahi Enterprises Inc. agreed to pledge all of its shares in the capital of the Borrower to the Lender.
- C. Mizrahi Enterprises transferred all of its shares in the Borrower to the Pledgor pursuant to a share transfer dated on or about the date hereof.
- D. The Parties have agreed to enter into this Amendment to Credit Agreement to add the Pledgor as a party to the Credit Agreement and to amend the Credit Agreement as provided for herein.

The Parties agree as follows:

Article 1 INTERPRETATION

1.01 Definitions

In this Agreement, all capitalized terms used but not otherwise defined herein shall have the meanings respectively ascribed thereto in the Credit Agreement.

1.02 References to "Including."

Where this Agreement uses the word "including," it means "including without limitation," and where it uses the word "includes," it means "includes without limitation."

1.03 Headings

The headings used in this Agreement and its division into articles, sections, schedules, and other subdivisions do not affect its interpretation.

1.04 Internal References

References in this Agreement to articles, sections, schedules, and other subdivisions are to those parts of this Agreement.

1.05 Number and Gender

Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.

1.06 Construction of Terms

The Parties have each participated in settling the terms of this Agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting party will not apply in interpreting this Agreement.

Article 2 **AMENDMENTS TO THE CREDIT AGREEMENT**

2.01 Addition of Pledgor as Party

The Pledgor hereby agrees to become party to the Credit Agreement and agrees to be subject to all of the rights, obligations and liabilities of Mizrahi Enterprises Inc. under the Credit Agreement as though it had been an original signatory thereto. All references to Mizrahi Enterprises Inc. in the Credit Agreement are hereby amended to instead refer to the Pledgor.

Article 3 **CONFIRMATION OF SECURITY**

3.01 Confirmation of Security

The Borrower hereby confirms that the Security given by it to the Lender and registered in the appropriate security registry remains in full force and effect as against it and continues to secure payment and performance of the Obligations under the Credit Documents, including the Credit Agreement, as amended by this Agreement, in accordance with the terms of the documents executed and delivered by it to the Lender that evidence the Security granted by it.

3.02 Supplemental Nature of Agreement

This Agreement is supplemental to and amends the Credit Agreement and the Credit Agreement shall henceforth be read in conjunction with, as amended by, this Agreement, and the Credit Agreement and this Agreement shall henceforth be read, interpreted, construed and have effect so far as it is practicable and all required re-numbering adjustments to Section references shall be deemed to have been made as if all of the provisions of the Credit Agreement and this Agreement were contained in one instrument.

3.03 Ratification and Confirmation of Credit Agreement

The Credit Agreement, as amended by this Agreement, is and shall continue to be in full force and effect and is hereby in all respects ratified and confirmed.

Article 4 CONDITIONS PRECEDENT

4.01 Conditions Precedent

The effectiveness of this Agreement is subject to, and conditional upon, all of the following conditions precedent being satisfied in form and substance satisfactory to the Lender in its sole discretion:

- (a) receipt by the Lender of the following:
 - (i) a duly executed copy of this Agreement;
 - (ii) certified true copies of the Organizational Documents of the Pledgor, the resolutions authorizing the execution, delivery and performance of the Pledgor's respective obligations under this Agreement and the transactions contemplated by this Agreement and any other Credit Documents entered into in connection with this Agreement;
 - (iii) certificates of status or good standing, as applicable, for the jurisdiction in which each Obligor is incorporated or exists;
 - (iv) copies, if any, of all required shareholder, regulatory, governmental, and other approvals, necessary in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement and the other Credit Documents entered into in connection with this Agreement, certified by Sam to be true and correct and in full force and effect;
 - (v) copies of any releases, discharges, subordinations and postponements (in registerable form where appropriate) of all Encumbrances affecting the collateral encumbered by the Security which are not Permitted Encumbrances;
 - (vi) a copy of a pledge agreement duly executed by the Pledgor pursuant to which the shares it owns in the capital of the Borrower are pledged to the Lender (along with, where applicable, certificates representing all certificated shares or other securities pledged, together with an endorsement on the certificates or separate stock powers duly executed in blank in accordance with the requirements of the STA);
 - (vii) currently-dated letters of opinion of Pledgor's counsel in respect of the Pledgor, in form and substance satisfactory to Lender, acting reasonably;
- (b) an updated copy of the Disclosure Letter;

- (c) payment in full of all amounts of reasonable documented out-of-pocket fees and expenses of the Lender; and
- (d) the non-existence of any continuing Event of Default or Pending Event of Default;

provided that all documents delivered pursuant to this Section 4.01 shall be in full force and effect.

4.02 Waiver

The conditions set forth in Section 4.01 are inserted for the sole benefit of the Lender and may be waived by the Lender, in whole or in part (with or without terms or conditions).

Article 5 **GENERAL PROVISIONS**

5.01 Further Assurances

Each party, upon receipt of Notice by another party, shall sign (or cause to be signed) all further documents, do (or cause to be done) all further acts, and provide all reasonable assurances as may reasonably be necessary or desirable to give effect to the terms of this Agreement.

5.02 Assignment

This Agreement may only be assigned in accordance with the assignment provisions in the Credit Agreement.

5.03 Binding Effect

This Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns.

5.04 Governing Law


The laws of Ontario and the laws of Canada applicable in Ontario, excluding any rule or principle of conflicts of law that may provide otherwise, govern this Agreement.

5.05 Counterparts

This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. Counterparts may be transmitted by fax or in electronically scanned form. Parties transmitting by fax or electronically shall also deliver the original counterpart to each other party, but failure to do so does not invalidate this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

MIZRAHI (128 HAZELTON) INC.

By: 
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation

CONSTANTINE ENTERPRISES INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the Corporation

MIZRAHI DEVELOPMENTS INC.

By: 
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation


IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

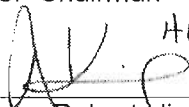
MIZRAHI (128 HAZELTON) INC.

By: _____
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation

CONSTANTINE ENTERPRISES INC.

By:  _____
Name: Edward S. Rogers
Title: Chairman

By:  _____
Name: Robert Hiscox
Title: President

I/We have authority to bind the Corporation

MIZRAHI DEVELOPMENTS INC.

By: _____
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation

the 1990s, the number of people in the world who are illiterate has increased from 1.2 billion to 1.5 billion.

It is not only illiterates who are excluded from the benefits of modernization. The vast majority of the world's population lives in rural areas, where the benefits of modernization are also limited.

As a result, the vast majority of the world's population is excluded from the benefits of modernization. This is a serious problem that needs to be addressed.

One way to address this problem is to improve the quality of education. This will help to reduce the number of illiterates and to improve the skills of the workforce.

Another way to address this problem is to improve the infrastructure of rural areas. This will help to improve the quality of life and to attract investment.

Finally, it is important to ensure that the benefits of modernization are shared by all. This will help to reduce inequality and to improve the quality of life for all.

These are some of the ways in which the benefits of modernization can be shared by all. It is important to take action now to address these problems.

By taking action now, we can ensure that the benefits of modernization are shared by all and that the quality of life is improved for all.

This is the only way to ensure a bright future for all. We must act now to address these problems.

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This is the only way to ensure a bright future for all. We must act now to address these problems.

SECOND AMENDMENT TO CREDIT AGREEMENT

THIS AGREEMENT is made as of May 9, 2017,

BETWEEN:

Mizrahi (128 Hazelton) Inc., a corporation incorporated under the laws of Ontario (the "**Borrower**")

- and -

Mizrahi Developments Inc., a corporation incorporated under the laws of Ontario (the "**Mizrahi**")

- and -

Constantine Enterprises Inc., a corporation incorporated under the laws of Ontario (the "**Lender**").

- A. The Borrower, the Lender and Mizrahi are parties to a credit agreement dated as of June 19, 2015, as amended by an amended dated August 13, 2015 (as further amended, restated, modified or supplemented from time to time, the "**Credit Agreement**") pursuant to which the Lender agreed to establish certain credit facilities in favour of the Borrower.
- B. The Parties have agreed to enter into this Second Amendment to Credit Agreement pursuant to the terms hereof.

The Parties agree as follows:

Article 1 INTERPRETATION

1.01 Definitions

In this Agreement, all capitalized terms used but not otherwise defined herein shall have the meanings respectively ascribed thereto in the Credit Agreement.

Article 2 AMENDMENTS TO THE CREDIT AGREEMENT

2.01 Interest Reserve Account

The Borrower and Lender will direct Cassels Brock & Blackwell LLP, in its capacity as escrow agent, to release the balance of the funds held in the Interest Reserve Account to the Lender on May 8, 2017, and such funds shall be a prepayment of interest owing by the Borrower to the Lender pursuant to Section 4.01(c).

2.02 Interest

Notwithstanding Sections 4.01(a), (b) and (c) of the Credit Agreement, from and after November 14, 2017 (or a replacement date to be agreed upon by Borrower and Lender once the full Tranche 2 amount has been received by the Lender), the Borrower shall pay interest on all Tranche 1 Advances at a rate per annum equal to 14.5% and such interest shall be calculated in arrears on each Interest Payment Date, "capitalized" and added to the principal amount owing hereunder.

Article 3 CONFIRMATION OF SECURITY

3.01 Confirmation of Security

The Borrower hereby confirms that the Security given by it to the Lender and registered in the appropriate security registry remains in full force and effect as against it and continues to secure payment and performance of the Obligations under the Credit Documents, including the Credit Agreement, as amended by this Agreement, in accordance with the terms of the documents executed and delivered by it to the Lender that evidence the Security granted by it.

3.02 Supplemental Nature of Agreement

This Agreement is supplemental to and amends the Credit Agreement and the Credit Agreement shall henceforth be read in conjunction with, as amended by, this Agreement, and the Credit Agreement and this Agreement shall henceforth be read, interpreted, construed and have effect so far as it is practicable and all required re-numbering adjustments to Section references shall be deemed to have been made as if all of the provisions of the Credit Agreement and this Agreement were contained in one instrument.

3.03 Ratification and Confirmation of Credit Agreement

The Credit Agreement, as amended by this Agreement, is and shall continue to be in full force and effect and is hereby in all respects ratified and confirmed.

Article 4 GENERAL PROVISIONS

4.01 Further Assurances

Each party, upon receipt of Notice by another party, shall sign (or cause to be signed) all further documents, do (or cause to be done) all further acts, and provide all reasonable assurances as may reasonably be necessary or desirable to give effect to the terms of this Agreement.

4.02 Assignment

This Agreement may only be assigned in accordance with the assignment provisions in the Credit Agreement.

4.03 Binding Effect

This Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns.

4.04 Governing Law

The laws of Ontario and the laws of Canada applicable in Ontario, excluding any rule or principle of conflicts of law that may provide otherwise, govern this Agreement.

4.05 Counterparts

This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. Counterparts may be transmitted by fax or in electronically scanned form. Parties transmitting by fax or electronically shall also deliver the original counterpart to each other party, but failure to do so does not invalidate this Agreement.


IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

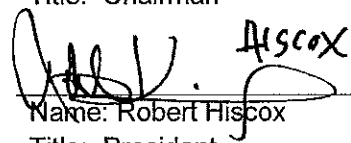
MIZRAHI (128 HAZELTON) INC.

By: 
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation

CONSTANTINE ENTERPRISES INC.

By: 
Name: Edward S. Rogers
Title: Chairman

By: 
Name: Robert Hiscox
Title: President

I/We have authority to bind the Corporation

MIZRAHI DEVELOPMENTS INC.

By: 
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation

[Signature Page to Amendment to Credit Agreement]

DIRECTION

TO: Cassels Brock & Blackwell LLP, as Escrow Agent ("**Escrow Agent**")
RE: Escrow Agreement dated June 19, 2015 between Mizrahi (128 Hazelton) Inc.,
Constantine Enterprises Inc. (the "**Lender**") and Cassels Brock & Blackwell LLP

Each of the undersigned hereby irrevocably direct the Escrow Agent to release the balance of funds in the escrow account, being \$310,258.98 as of May 3, 2017 plus any interest that accrues thereafter, to the Lender by way of a wire transfer to the account detailed in Schedule "A" on Monday, May 8, 2017.

Dated this 8th day of May, 2017.

MIZRAHI (128 HAZELTON) INC.

By: 

Name: Sam Mizrahi
Title: President

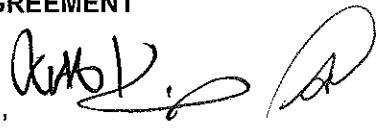
CONSTANTINE ENTERPRISES INC.

By: _____

Name: Robert Hiscox
Title: President

THIRD AMENDMENT TO CREDIT AGREEMENT

THIS AGREEMENT is made as of October 31st, 2018,



BETWEEN:

Mizrahi (128 Hazelton) Inc., a corporation incorporated under the laws of Ontario (the "**Borrower**")

- and -

Mizrahi Developments Inc., a corporation incorporated under the laws of Ontario (the "**Mizrahi**")

- and -

Constantine Enterprises Inc., a corporation incorporated under the laws of Ontario (the "**Lender**").

- A. The Borrower, the Lender and Mizrahi are parties to a credit agreement dated as of June 19, 2015, as amended by an amendment dated August 13, 2015, and as further amended by an amendment dated May 9, 2017 (as further amended, restated, modified or supplemented from time to time, the "**Credit Agreement**") pursuant to which the Lender agreed to establish certain credit facilities in favour of the Borrower.
- B. The Parties have agreed to enter into this Third Amendment to Credit Agreement pursuant to the terms hereof.

The Parties agree as follows:

Article 1
INTERPRETATION

1.01 Definitions

In this Agreement, all capitalized terms used but not otherwise defined herein shall have the meanings respectively ascribed thereto in the Credit Agreement.

Article 2
AMENDMENTS TO THE CREDIT AGREEMENT

2.01 Amendments

The Credit Agreement is hereby amended as follows:

- (a) Section 1.01 of the Credit Agreement is amended by deleting the definition of "Maturity Date" in its entirety and replacing same with the following:



“**Maturity Date**” means June 30, 2020 or as such date may be extended to pursuant to the terms hereof;”

- (b) Section 4.01 of the Credit Agreement is amended by deleting sections 4.01(a), (b) and (c) in their entirety and replacing same with the following, and re-numbering section 4.01(d) of the Credit Agreement to be section 4.01(c):

“(a) Until June 30, 2019, the Borrower shall pay interest on the Obligations at a rate per annum equal to 14.5%, calculated in arrears on each Interest Payment Date, “capitalized” and added to the principal amount owing hereunder. All such “capitalized” interest shall be paid in full on the Maturity Date or at such earlier time as required hereunder.

(b) From and after June 30, 2019, the Borrower shall pay interest on the Obligations at a rate per annum equal to 9% simple interest. All such interest shall be paid in full on the Maturity Date or at such earlier time as required hereunder.”

- (c) Section 5.01 of the Credit Agreement is amended by deleting the words “all Obligations on the Maturity Date.” and replacing same with the following:

“the Obligations on the Maturity Date, unless such date is extended to the 90th day following the Maturity Date by the Borrower delivering notice of such extension to the Lender no later than 60 days prior to the original Maturity Date. The foregoing right to extend the Maturity Date for 90 days may only be exercised once.”

- ~~(d) A new Section 5.07 shall be inserted immediately following Section 5.06 of the Credit Agreement as follows:~~

~~“At any time following March 31, 2020, the Borrower may repay, without penalty, to the Lender the whole of the Obligations owing by it, together with accrued interest thereon to the date of prepayment by providing the Lender with 30 days prior written notice of the contemplated repayment.”~~

Article 3 CONFIRMATION OF SECURITY

3.01 Confirmation of Security

The Borrower hereby confirms that the Security given by it to the Lender and registered in the appropriate security registry remains in full force and effect as against it and continues to secure payment and performance of the Obligations under the Credit Documents, including the Credit Agreement, as amended by this Agreement, in accordance with the terms of the documents executed and delivered by it to the Lender that evidence the Security granted by it.

3.02 Supplemental Nature of Agreement

This Agreement is supplemental to and amends the Credit Agreement and the Credit Agreement shall henceforth be read in conjunction with, as amended by, this Agreement, and the Credit Agreement and this Agreement shall henceforth be read, interpreted, construed and have effect so far as it is practicable and all required re-numbering adjustments to Section references shall be deemed to have been made as if all of the provisions of the Credit Agreement and this Agreement were contained in one instrument.

3.03 Ratification and Confirmation of Credit Agreement

The Credit Agreement, as amended by this Agreement, is and shall continue to be in full force and effect and is hereby in all respects ratified and confirmed.

Article 4 GENERAL PROVISIONS

4.01 Further Assurances

Each party, upon receipt of Notice by another party, shall sign (or cause to be signed) all further documents, do (or cause to be done) all further acts, and provide all reasonable assurances as may reasonably be necessary or desirable to give effect to the terms of this Agreement.

4.02 Assignment

This Agreement may only be assigned in accordance with the assignment provisions in the Credit Agreement.

4.03 Binding Effect

This Agreement enures to the benefit of and binds the Parties and their respective successors and permitted assigns.

4.04 Governing Law

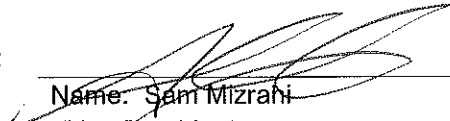
The laws of Ontario and the laws of Canada applicable in Ontario, excluding any rule or principle of conflicts of law that may provide otherwise, govern this Agreement.

4.05 Counterparts

This Agreement may be signed in any number of counterparts, each of which is an original, and all of which taken together constitute one single document. Counterparts may be transmitted by fax or in electronically scanned form. Parties transmitting by fax or electronically shall also deliver the original counterpart to each other party, but failure to do so does not invalidate this Agreement.

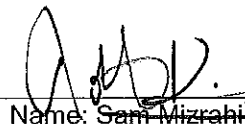
IN WITNESS WHEREOF the Parties hereto have executed this Agreement.

MIZRAHI (128 HAZELTON) INC.

By: 
Name: Sam Mizrahi
Title: President


I/We have authority to bind the Corporation

CONSTANTINE ENTERPRISES INC.

By:  HISCOV
Name: Sam Mizrahi Robert HISCOV
Title: President & CEO

I/We have authority to bind the Corporation

MIZRAHI DEVELOPMENTS INC.

By: 
Name: Sam Mizrahi
Title: President

I/We have authority to bind the Corporation

[Signature Page to Amendment to Credit Agreement]

This is Exhibit "C" referred to in the Affidavit of Robert Hiscox of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 16, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'Laura Cloutier', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

LAURA CLOUTIER

A Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires May 29, 2025

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 3

Properties

PIN 21196 - 0059 LT *Interest/Estate* Fee Simple
Description LT 1-2 PL 687E TORONTO; CITY OF TORONTO
Address 128 HAZELTON AVE
 TORONTO

PIN 21196 - 0060 LT *Interest/Estate* Fee Simple
Description PT BLK A PL 411 TORONTO AS IN CT976610; CITY OF TORONTO
Address 126 HAZELTON AVE
 TORONTO

Chargor(s)

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

Name MIZRAHI (128 HAZELTON) INC.
Address for Service 189 Forest Hill Road
 Toronto, ON M5P 2N3

I, Sam Mizrahi, President, have the authority to bind the corporation.

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

Chargee(s)*Capacity**Share*

Name CONSTANTINE ENTERPRISES INC.
Address for Service 333 Bloor Street East, 10th Floor
 Toronto, ON M4W 1G9

Statements

Schedule: See Schedules

Provisions

Principal \$ 21,000,000.00 *Currency* CDN
Calculation Period
Balance Due Date
Interest Rate 14.5%
Payments
Interest Adjustment Date
Payment Date
First Payment Date
Last Payment Date
Standard Charge Terms 200033
Insurance Amount full insurable value
Guarantor

Additional Provisions

See Schedule attached for Additional Provisions.

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd

Page 2 of 3

Signed By

Jeffrey Alan Halman

Suite 900, Victoria Bldg., 25 Adelaide Street E.
Toronto
M5C 3A1 acting for
Chargor(s)

Signed

2015 06 19

Tel 416-601-1040

Fax 416-601-0655

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

Submitted By

BALDWIN SENNECKE HALMAN LLP

Suite 900, Victoria Bldg., 25 Adelaide Street E.
Toronto
M5C 3A1

2015 06 19

Tel 416-601-1040

Fax 416-601-0655

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

File Number

Chargee Client File Number : 47491-2

SCHEDULE "A"
TO CHARGE/MORTGAGE OF LAND
LAND REGISTRATION REFORM ACT, 1990

This Schedule forms part of a Charge under the Land Registration Reform Act, R.S.O., 1990, C.L.4, as amended, made by Mizrahi (128 Hazelton) Inc. as Chargor in favour of Constantine Enterprises Inc. as Chargee in respect of the Property identified in the "Properties" section of this Charge.

Additional Provisions

1. Notwithstanding the registration of the Charge and the advance of any moneys, the terms and conditions of the Credit Agreement dated June 19, 2015, as may be amended from time to time between the parties hereto (the "**Credit Agreement**") shall remain binding and effective on the parties hereto and thereto and shall not merge in this Charge nor in any document executed and/or delivered on closing of this transaction and the terms thereof are incorporated herein by reference. A breach of the Credit Agreement or any other document giving contractual relationship as between the Chargor and the Chargee shall constitute a breach and event of default hereunder, and in the event of a conflict or inconsistency between the terms of this Charge and the Credit Agreement, the Credit Agreement shall prevail.
2. Standard Charge Terms No. 200033 are incorporated herein and the Chargor and the Chargee agree that in the event of a conflict between any of the provisions of this Schedule and any clause contained in Standard Charge Terms No. 200033, the provisions of this Schedule shall prevail.

This is Exhibit "D" referred to in the Affidavit of Robert Hiscox of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 16, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

LAURA CLOUTIER

A Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires May 29, 2025

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 7

Properties

PIN 21196 - 0059 LT
Description LT 1-2 PL 687E TORONTO; CITY OF TORONTO
Address 128 HAZELTON AVE
 TORONTO

PIN 21196 - 0060 LT
Description PT BLK A PL 411 TORONTO AS IN CT976610; CITY OF TORONTO
Address 126 HAZELTON AVE
 TORONTO

Applicant(s)

The assignor(s) hereby assigns their interest in the rents of the above described land. The notice is based on or affects a valid and existing estate, right, interest or equity in land.

Name MIZRAHI (128 HAZELTON) INC.
Address for Service 189 Forest Hill Road
 Toronto, ON M5P 2N3

I, Sam Mizrahi, President, have the authority to bind the corporation.

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

<i>Party To(s)</i>	<i>Capacity</i>	<i>Share</i>
--------------------	-----------------	--------------

<i>Name</i>	CONSTANTINE ENTERPRISES INC.
<i>Address for Service</i>	333 Bloor Street East, 10th Floor Toronto, ON M4W 1G9

Statements

The applicant applies for the entry of a notice of general assignment of rents.

This notice may be deleted by the Land Registrar when the registered instrument, AT3921042 registered on 2015/06/19 to which this notice relates is deleted

Schedule: See Schedules

Signed By

Jeffrey Alan Halman	Suite 900, Victoria Bldg., 25 Adelaide Street E. Toronto M5C 3A1	acting for Applicant(s)	Signed	2015 06 19
Tel	416-601-1040			
Fax	416-601-0655			

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

Andrew Emile Salem	40 King Street West, Suite 2100 Toronto M5H 3C2	acting for Party To(s)	Signed	2015 06 19
Tel	416-869-5300			
Fax	416-360-8877			

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

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd

Page 2 of 7

Submitted By

CASELS BROCK & BLACKWELL LLP

40 King Street West, Suite 2100
Toronto
M5H 3C2

2015 06 19

Tel 416-869-5300

Fax 416-360-8877

Fees/Taxes/Payment

Statutory Registration Fee \$60.00

Total Paid \$60.00

File Number

Party To Client File Number : 47491-2

GENERAL ASSIGNMENT OF RENTS AND LEASES

BETWEEN:

MIZRAHI (128 HAZELTON) INC.
(hereinafter called the "Assignor")

OF THE FIRST PART

AND:

CONSTANTINE ENTERPRISES INC.
(hereinafter called the "Assignee")

OF THE SECOND PART

WHEREAS the Assignor is the owner of the Property, subject to the Charge, and has agreed to enter into this Agreement with the Assignee as collateral security for the due payment of the Charge.

NOW THEREFORE it is hereby covenanted, agreed and declared by the Assignor as follows:

1. In this Agreement, unless there is something in the subject matter or context inconsistent therewith:
 - (a) "Agreement" shall mean this agreement.
 - (b) "Property" shall mean the lands and premises described as:

Firstly: Part of Block A, Plan 411, as in Instrument No. CT976610, City of Toronto, being the whole of PIN 21196-0060(LT), municipally known as 128 Hazelton Avenue, Toronto, together with any buildings or structures now or hereafter erected.

Secondly: Lots 1 and 2, Plan 678E, City of Toronto, being the whole of PIN 21196-0059(LT) municipally known as 128 Hazelton Avenue, Toronto, together with any buildings or structures now or hereafter erected.
 - (c) "Charge" shall mean the Charge/Mortgage of Land given by the Assignor to the Assignee affecting the Assignor's interest in the Property securing the principal sum of \$21,000,000.00, which charge was registered in the Toronto Land Registry Office (No. 80) as the Instrument Number set out in statements on the Notice of Assignment of Rents-General, to which this Agreement is attached and any renewals, extensions or amendments thereof;
2. "Leases" shall mean:
 - (a) each and every existing and future lease of and agreement to lease of the whole or any portion of the Property;
 - (b) each and every existing and future tenancy agreement as to use or occupation and licence in respect of the whole or any portion of the Property, whether or not pursuant to any written lease, agreement or licence, and including any such lease, agreement or licence granting or permitting occupancy to any of the members of the Assignor;
 - (c) each and every existing and future guarantee of all or any of the obligations of any existing or future tenant, user, occupier or licensee of the whole or any portion of the Property; and
 - (d) each and every existing and future assignment and agreement to assume the obligations of tenants of the whole or any portion of the Property.
3. "Rents" shall mean all rents, charges and other moneys (including, without limitation, any subsidies payable by any governmental bodies or agencies) now due and payable or hereafter to become due and payable and the benefit of all covenants of tenants, users, occupiers, licensees and guarantors under or in respect of the Leases.
4. (a) The Assignor hereby assigns, transfers and sets over unto the Assignee, its successors and assigns (as security for payment of the principal, interest and

other moneys secured by the Charge and for performance of the obligations of the Assignor thereunder and until the moneys due under and by virtue of the Charge have been fully paid and satisfied) the Rents, with full power and authority to demand, collect, sue for, recover, receive and give receipts for the Rents and to enforce payment thereof in the name of the Assignor or the owner from time to time of the Property, and their respective heirs, executors, administrators, successors or assigns.

- (b) Subject to Section 6 hereof, the Assignor does hereby assign, transfer and set over unto the Assignee, its successors and assigns as and by way of a first, fixed and specific assignment, all of the Assignor's right, title and interest in and to the Leases and the full benefit and advantage thereof and of all covenants and agreements contained in the Leases on the part of the lessees therein or any guarantor or indemnitor thereof to be observed, performed or kept and all rents and monies thereby reserved or payable thereunder and thereafter to become due, payable or owing.
5. The Assignor hereby represents, warrants, covenants and agrees that:
- (a) except in accordance with good management practice, as determined by the Assignee, in its sole discretion, the Assignor has not and will not, without the prior written consent of the Assignee, do or omit to do any act having the effect of terminating, cancelling or accepting surrender of any of the Leases or of waiving, releasing, reducing or abating any rights or remedies of the Assignor or obligations of any other party thereunder or in connection therewith;
 - (b) except in accordance with good management practice, none of the Leases or the Assignor's rights thereunder, including the right to receive the Rents, have been nor, without the prior written consent of the Assignee, will be altered, varied, amended, assigned, encumbered, discounted, or anticipated in priority to this assignment;
 - (c) except in accordance with good management practice, the Assignor has not and will not consent to any assignments of the lessees' interests in the Leases which will in any way relieve or reduce the liability of the lessees in connection therewith;
 - (d) none of the Rents under any of the Leases has been nor will be paid prior to the due date for payment thereof, except rent for the ensuing month and except rent for the last month of the term of any Lease;
 - (e) the Assignor will from time to time and at all times hereafter observe, perform and keep all of its obligations, covenants and agreements under each of the Leases;
 - (f) there has been no default of a material nature which has not been remedied under any of the existing Leases by any of the parties thereto;
 - (g) there has been no decrease in services or facilities relating to the rental operation on the Property in the year preceding the date hereof. The Assignor will not reduce such services or facilities relating to the residential operation on the Property without first obtaining the prior approval of the Assignee, acting reasonably.
 - (h) the Assignor will not do any act which would destroy or impair the benefits to the Assignee of this Agreement;
 - (i) the Leases are good, valid and subsisting leases and the Assignor now has in its good and rightful power absolute authority to assign the Leases according to the true intent and meaning of this Agreement.
6. The Assignor shall be permitted to collect and receive the Rents as and when they shall become due and payable according to the terms of each of the Leases, unless and until the Assignor is in default under any of the provisions of the Charge. Thereafter, if the Assignee gives notice to the tenant, user, occupier, licensee or guarantor thereunder requiring the same to pay the Rents to the Assignee, such notice shall be binding upon the Assignor and may not be contested by it. It is further agreed that a statement of default purporting to be made by or on behalf of the Assignee shall be deemed to be, for

all purposes, sufficient evidence of default having been made in the payment of principal moneys and interest or some part thereof secured by the Charge or in the observance, performance or keeping of any of the terms, covenants or agreements therein contained on the part of the Assignor to be observed, performed or kept and the continuance of such default, and notice of such default shall be deemed to be well and sufficiently given to the lessees named in the Leases if such notice is sent by mail addressed to the lessees.

7. Provided further and it is hereby expressly agreed that nothing herein contained shall have the effect of making the Assignee, its successors or assigns, responsible for the collection of Rents or any of them or for the performance of any of the covenants, obligations, provisions or conditions under or in respect of the Leases or any of them to be observed or performed by the Assignor, and the Assignee shall not, by virtue of this Agreement, its receipt of the Rents or the taking of possession of the Property become or be deemed a chargee in possession of the Property and the Assignee shall not be under any obligation to take any action or exercise any remedy in the collection or recovery of the Rents or any of them or to see to or enforce the performance of the obligations and liabilities of any person under or in respect of the Leases or any of them, and the Assignee shall be liable to account only for such moneys as shall actually come into its hands, less all costs and expenses, collection charges and other proper deductions and that such moneys may be applied on account of any indebtedness of the Assignor to the Assignee.
8. In the event, however, that the Assignor shall reinstate the Charge completely in good standing, having complied with all the terms, covenants and conditions of the Charge, then the Assignee shall after demand re-deliver possession of the Property to the Assignor and the Assignor shall remain in possession unless and until another default occurs, at which time the Assignee may, at the Assignee's sole option, again take possession of the Property under authority of this Agreement.
9. If the Assignee shall have exercised its rights under Section 6 and shall have received any of the Rents and if the Assignor shall cure the default under the Charge which gave rise to such exercise and shall have resumed collection of the Rents, the Assignee will provide the Assignor with details of all Rents received by it prior to such resumption.
10. The Assignee shall not be responsible or accountable for any failure to collect, realize, sell or obtain payment of the Rents or any part thereof and shall not be bound to institute proceedings for the purpose of collecting, realizing or obtaining payment of same or for the purpose of preserving any rights of the Assignee, the Assignor or any other person, firm or corporation in respect of the Rents or any part thereof.
11. The Assignee may grant extensions, take and give up securities, accept compositions, grant releases and discharges and, generally, deal with the Rents in its absolute discretion without the consent of or notice to the Assignor, but otherwise in accordance with the provisions hereof.
12. In furtherance of the foregoing assignment, the Assignor hereby authorizes the Assignee, by its employees or agents, at its option, after the occurrence of a default hereunder or under the Charge, and provided such default is not rectified within ten (10) days following notice from the Assignee to the Assignor (or such longer period as is reasonable in the circumstances), to enter upon the Property and to collect in the name of the Assignor as its agent or in its own name as Assignee the Rents accrued but unpaid and in arrears at the date of such default, as well as the Rents thereafter accruing and becoming payable during the period of the continuance of the said default or any other default and, to this end, the Assignor further agrees that it will facilitate in all reasonable ways the Assignee's collection of said Rents and will, upon request by the Assignee, execute a written notice to each tenant under any of the Leases directing the tenant to pay rent to the said Assignee.
13. (a) The Assignor also hereby authorizes the Assignee upon such entry, at its option, to take over and assume the management, operation and maintenance of the Property and, for such purpose, to retain such agents or employees as it may deem advisable and to perform all acts necessary and proper and to expend such sums out of the income of the Property, the Leases and the Rents as may be needful in connection therewith in the same manner and to the same extent as the Assignor theretofore might do, including the right to effect new Leases, to cancel or surrender existing Leases, to alter or amend the terms of existing Leases, to renew existing Leases or to make concessions to tenants. The

Assignor hereby releases all claims against the Assignee arising out of such management, operation and maintenance.

- (b) No such entry herein or pursuant to its rights under the Charge by the Assignee, shall be deemed to be an exercise by the Assignee of any priority over any of the Leases under the Charge or this General Assignment of Rents and Leases, unless the Assignee specifically advises by delivery of written notice (the "Notice") to the applicable tenant under its lease, that the Assignee is exercising its rights to seek priority of its Charge over such lease.
 - (c) Upon possession of the Property being taken by the Assignee pursuant to its rights herein or under the Charge, the Assignee shall be deemed to have agreed to honour the terms of the Leases and the Assignor's obligations therein during the term of such possession unless and until the Notice is given under Section 13(b).
14. The Assignee shall, after payment of all proper charges and expenses, including reasonable compensation to any agent or employee as it shall select and employ and after the accumulation of a reserve, to meet taxes, assessments, water rates and other public utility charges and fire and liability insurance in the requisite amounts, credit the net amount of income received by it from the Property by virtue of this Agreement and to any amounts due and owing to it by the Assignor under the terms of the Charge, but the manner of the application of such net income and what items shall be credited shall be determined in the sole discretion of the Assignee.
 15. The Assignor shall from time to time forthwith upon request furnish to the Assignee in writing all information requested relating to the Rents and the Leases and the Assignee shall be entitled from time to time to inspect such documentation and records, including all securities, bills, notes, books, papers, files, correspondence and other documents constituting or connected with the Rents and the Leases or take temporary custody thereof and, for such purposes, the Assignee shall have access to all premises occupied by the Assignor.
 16. The Assignor shall from time to time forthwith upon the request of the Assignee do, make and execute all such financing statements, further assignments, documents, acts, matters and things as may be required by the Assignee of or with respect to the Rents and the Leases or any part thereof or as may be required to give effect or further effect hereto, and the Assignor hereby constitutes and appoints the Assignee the true and lawful attorney of the Assignor irrevocably, with full power of substitution to do, make and execute all such assignments, documents, acts, matters or things, with the right to use the name of the Assignor as required and, without limitation, for the purpose of demanding, suing for, collecting, comprising, compounding and giving releases for any and all sums owing or which now or hereinafter may become due upon the Rents and the Leases, provided that the Assignee shall be under no obligation or duty to exercise such powers or authority or to collect or realize upon the Rents.
 17. The Assignor further agrees that the Assignor will not lease or agree to lease any part of the Property, except in accordance with good management practice.
 18. The Assignor hereby covenants and warrants to the Assignee that neither the Assignor nor any previous owner of the Property has executed any prior assignment or pledge of the Rents of the Property nor any prior assignment or pledge of the Assignor's interest as landlord in the Leases which to this date have not been executed, satisfied and released, save to the Assignee, and that the Assignor has provided to the Assignee full written details of all prepayments on account of the Rents received by the Assignor in respect of the Leases, save for rent inducements of up to 4 weeks, offered to new tenants from time to time.
 19. It is understood and agreed that this Agreement is being taken as collateral security for the due payment of any sum due under the Charge and that none of the rights or remedies of the Assignee under the Charge or under the Credit Agreement dated June 19, 2015 between the Assignor and the Assignee shall be delayed or in any way prejudiced by these presents and that following registration of a discharge of the whole of the Charge, this Agreement shall be of no further force or effect and, if requested by the Assignor, the Assignee will execute and deliver a separate reconveyance of this Agreement and the Land Registrar is hereby authorized to delete reference to this Agreement from the title to the Property. Following registration of a discharge of the Charge, this Agreement shall be of no further force or effect only in respect of that part

or parts of the Property in respect of which the Charge has been discharged.

20. Any notice or communication to be given hereunder shall be validly given if sent by personal delivery, mail or facsimile transmission addressed:

(a) in case of the Assignor, to it at:

Mizrahi (128 Hazelton) Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

(b) in case of the Assignee, to it at:

Constantine Enterprises Inc.
333 Bloor Street East, 10th Floor
Toronto, Ontario
M4W 1G9


All such notices and communications sent by mail as aforesaid shall be deemed to have been given and received on the third business day following the date of mailing, and if delivered or faxed, on the date of receipt if such date is a business day; or if not, on the next business day. Either party hereto may, by notice given as aforesaid to the other party, change the address to which future notices are to be sent to it.

21. The provisions of this Agreement shall be construed according to the laws of the Province of Ontario.

22. This Agreement and everything herein contained shall extend to, bind and enure to the benefit of the successors and assigns of each of the parties hereto.

IN WITNESS WHEREOF the Assignor has executed this Agreement as of the 19th day of June, 2015.

MIZRAHI (128 HAZELTON) INC.

Per: 
Name: Sam Mizrahi
Title: President

I have authority to bind the corporation.

This is Exhibit "E" referred to in the Affidavit of Robert Hiscox of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 16, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

LAURA CLOUTIER

A Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires May 29, 2025

GENERAL SECURITY AGREEMENT

Dated June 19, 2015

BETWEEN:

MIZRAHI (128 HAZELTON) INC. (the “Debtor”)

and

CONSTANTINE ENTERPRISES INC. (the “Secured Party”).

RECITALS:

A. The Debtor is or may become indebted or otherwise obligated to the Secured Party, including under a credit agreement dated June 16, 2015 (as may be amended, supplemented, restated, replaced, or otherwise modified from time to time, the “**Credit Agreement**”).

B. The Debtor has agreed as a condition of the Credit Agreement to enter into this agreement and grant security to the Secured Party.

The parties agree as follows:

**ARTICLE 1
INTERPRETATION**

1.01 Definitions

Words and expressions defined in the PPSA and the STA are used in this agreement (capitalized or not) with the defined meanings assigned to them in those statutes, unless the context otherwise requires. For greater certainty, in this agreement each of the words “accessions,” “account,” “chattel paper,” “consumer goods,” “document of title,” “equipment,” “goods,” “instruments,” “intangible,” “inventory,” “investment property,” “money,” and “proceeds” has the same meaning as its defined meaning in the PPSA and each of the terms “certificated security,” “entitlement holder,” “financial asset,” “securities account,” “securities intermediary,” “security,” “security entitlement,” and “uncertificated security” has the same meaning as its defined meaning in the STA. In this agreement, in addition to the terms defined above, the following definitions apply:

“**Account Debtor**” means a party obligated to pay under any account, chattel paper, or instrument constituting Collateral.

“**Business Day**” means a day other than a Saturday, a Sunday, or any other day on which the principal chartered banks located in Toronto, Ontario are not open for business.

“**Collateral**” means, collectively, all of the Debtor’s present and after-acquired personal property (including all accounts, chattel paper, Documents, documents of title, equipment, goods, instruments, intangibles, inventory, investment property, licences, money, securities, security entitlements, undertaking, proceeds together with the Debtor’s interest in any of them) but excludes consumer goods and any reference in this agreement to Collateral will, unless the context otherwise requires, be deemed a reference to “Collateral or any part thereof.”

“**Documents**” means all the Debtor’s books, accounts, invoices, letters, papers, security certificates, documents, and other records (including customer lists and records, subject, however, to privacy, confidentiality, and access rights of customers), in any form evidencing or relating to any part of the Collateral, together with all agreements, licences, and other rights and benefits relating to any of them.

“**Governmental Authority**” means (a) the government of Canada or any other nation, (b) any central bank, court, tribunal, arbitral body, regulatory body (including any stock exchange), commission (including any securities commission), board, bureau, agency, authority, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of, or pertaining to, any of the foregoing, and (c) any political or other subdivision of any of the foregoing.

“**Indemnified Party**” has the meaning given to that term in section 3.05.

“**Lien**” means (a) any interest in property created by way of mortgage, pledge, charge, lien, assignment by way of security, hypothecation, security interest, conditional sale agreement, sale/lease back transaction, deposit arrangement, title retention, capital lease, or discount, factoring, or securitization arrangement on recourse terms, (b) any statutory deemed trust or lien, (c) any preference, priority, adverse claim, levy, execution, seizure, attachment, garnishment, or other encumbrance that binds property, (d) any right of set-off intended to secure the payment or performance of an obligation, and (e) any agreement to grant any of the rights or interests described in any of the preceding clauses.

“**Obligations**” means all of the Debtor’s present and future liabilities, obligations, and indebtedness (including all principal, interest, fees, expenses, and other amounts) to the Secured Party, whether direct or indirect, contingent or absolute, joint or several, matured or unmatured, in any currency, and whether as principal debtor, guarantor, surety, or otherwise to the Secured Party including, without limitation, under the Credit Agreement.

“**Person**” includes any individual, corporation, company, partnership, Governmental Authority, joint venture, association, trust, or any other entity.

“**PPSA**” means the *Personal Property Security Act* (Ontario).

“**Receiver**” means any privately or court appointed receiver, manager, or receiver and manager for the Collateral or for any of the Debtor’s business, undertaking, or property appointed by the Secured Party under this agreement or by a court on application by the Secured Party.

“**Security Interest**” has the meaning given to that term in section 2.01.

“**STA**” means the *Securities Transfer Act, 2006* (Ontario).

“**Transaction Documents**” means this agreement and each other agreement from time to time in effect between the Debtor and the Secured Party.

“**undertaking**” means all of the Debtor’s present and future real and personal property, businesses, undertaking, and goodwill that are not accounts, chattel paper, Documents, documents of title, equipment, instruments, intangibles, inventory, money, or securities.

Capitalized terms used in this agreement and not otherwise defined have the meanings given to them in the Credit Agreement.

1.02 References to specific terms

- (a) *Currency.* Unless specified otherwise, all dollar amounts expressed in this agreement refer to Canadian currency.
- (b) *“Including.”* Where this agreement uses the word “including,” it means “including without limitation,” and where it uses the word “includes,” it means “includes without limitation.”
- (c) *“Knowledge.”* Where any representation, warranty, or other statement in this agreement, or in any other document delivered under this agreement, is expressed by a party to be “to its knowledge,” or is otherwise expressed to be limited in scope to facts or matters known to the party or of which the party is aware, it means (i) the current, actual knowledge of directors and officers of that party and (ii) the knowledge that would or should have come to the attention of any of them had they duly investigated the facts related to that statement and made reasonable inquiries of other individuals reasonably likely to have knowledge of facts related to that statement.
- (d) *Statutes, etc.* Unless specified otherwise, any reference in this agreement to a statute includes the regulations, rules, and policies made under that statute and any provision that amends, supplements, supersedes, or replaces that statute or those regulations, rules, or policies.

1.03 Headings

The headings used in this agreement and its division into articles, sections, schedules, exhibits, appendices, and other subdivisions do not affect its interpretation.

1.04 Internal references

References in this agreement to articles, sections, schedules, exhibits, appendices, and other subdivisions are to those parts of this agreement.

1.05 Number and gender

Unless the context requires otherwise, words importing the singular number include the plural and vice versa; words importing gender include all genders.

1.06 Calculation of time

In this agreement, a period of days begins on the first day after the event that began the period and ends at 5:00 p.m. Eastern Time on the last day of the period. If any period of time is to expire, or any action or event is to occur, on a day that is not a Business Day, the period

expires, or the action or event is considered to occur, at 5:00 p.m. Eastern Time on the next Business Day.

1.07 Construction of terms

The parties have each participated in settling the terms of this agreement. Any rule of legal interpretation to the effect that any ambiguity is to be resolved against the drafting party will not apply in interpreting this agreement.

ARTICLE 2 GRANT OF SECURITY

2.01 Creation of Security Interest

As general and continuing security for the due payment, observance, and performance by the Debtor of all Obligations, the Debtor hereby grants to the Secured Party a mortgage, charge, pledge, assignment and general security interest (collectively, the “**Security Interest**”) in the Collateral.

2.02 Attachment

The parties acknowledge that (a) the Debtor has rights in the Collateral, (b) the Secured Party has given value to the Debtor, (c) the parties have not agreed to postpone the time for attachment of the Security Interest, and (d) the Security Interest is intended to attach (i) as to Collateral in which the Debtor now has rights, when the Debtor executes this agreement and (ii) as to Collateral in which the Debtor subsequently acquires rights, when the Debtor first obtains those rights.

2.03 Release of Collateral

The Secured Party may, at its discretion and at any time, release from the Security Interest any of the Collateral or any other security or surety for the Obligations either with or without sufficient consideration for that Collateral without releasing any other part of the Collateral or any Person from this agreement or from any other obligation or agreement.

2.04 Account Debtor

The Secured Party may notify and direct any Account Debtor of the Debtor to make payment directly to the Secured Party. The Secured Party may, at its discretion, apply the amounts received from any Account Debtor of the Debtor and any proceeds in accordance with section 5.15 (Application of payments) or hold them as part of the Collateral.

2.05 Leasehold interests

- (a) The last day of the term of any lease, sublease, or agreement to lease or sublease now held or subsequently acquired by the Debtor is excluded from the Security Interest and does not form part of the Collateral. However, upon the Security Interest becoming enforceable, the Debtor will stand possessed of that last day and hold it in trust for the Security Party and shall assign it as the Secured Party directs.

- (b) If any lease, sublease, or agreement to lease or sublease contains a term that provides, in effect, that it may not be assigned, sub-leased, charged, or made the subject of any Lien without the consent of the lessor, the application of the Security Interest to that lease, sublease or agreement will be conditional upon obtaining that consent.

2.06 Contractual rights

To the extent that the creation of the Security Interest would constitute a breach, or cause the acceleration, of any agreement, right, licence, or permit to which the Debtor is a party, the Security Interest will not attach to it. However, the Debtor shall hold such contractual rights in trust for the Secured Party and shall assign that agreement, right, licence, or permit to the Secured Party immediately upon obtaining the consent of the other party. Upon the request of the Secured Party, the Debtor shall use reasonable efforts to obtain all required material approvals as soon as reasonably practicable.

2.07 Commingled goods

If the Collateral subsequently becomes part of a product or mass to which the security interest of another secured party attaches, the Security Interest will extend to all accounts, replacements, or proceeds arising from any dealing with such product or mass.

2.08 Release of Security Interest

Once the Debtor satisfies the Obligations in full, the Secured Party shall, within a reasonable time after it receives a written request from the Debtor, release the Security Interest and execute and deliver any releases and discharges that the Debtor may reasonably require. The Debtor shall pay all expenses incurred by the Secured Party in doing so.

ARTICLE 3 DEBTOR'S COVENANTS

3.01 Payment of Obligations

The Debtor shall satisfy the Obligations when due.

3.02 Liens

The Debtor shall keep the Collateral free of all Liens, except for Liens expressly permitted under the Credit Agreement. The Debtor shall defend the title of the Collateral against any Person. The Secured Party may, at any time, contest the validity, effect, perfection, or priority of any Lien. No Lien may rank in priority to or pari passu with the Security Interest. Nothing in this agreement is intended to create any rights (including subordination rights or any release of Security Interest) in favour of any Person other than the Secured Party, any Receiver, and the other Indemnified Parties.

3.03 Proceeds held in trust

From and after the first date on which the Secured Party exercises any remedies under Article 5 (Rights and Remedies), the Debtor shall hold any accounts, dividends, distributions, interest, proceeds, and other income that it collects in respect of the Collateral as agent and in

trust for the Secured Party separate and apart from all its other property. The Debtor shall pay any such amounts to the Secured Party immediately upon receipt.

3.04 Accessions and fixtures

The Debtor shall prevent the Collateral from becoming (a) an accession to any personal property not subject to this agreement or (b) affixed to any real property unless the Security Interest ranks prior to the interests of another Person in the realty.

3.05 General indemnity

- (a) The Debtor shall indemnify the Secured Party, any Receiver, and their respective representatives (each, an “**Indemnified Party**”) in connection with all claims, losses, and expenses that an Indemnified Party may suffer or incur in connection with
 - (i) the exercise by the Secured Party or any Receiver of any of its rights under this agreement,
 - (ii) any breach by the Debtor of the representations or warranties of the Debtor contained in this agreement, or
 - (iii) any breach by the Debtor of, or any failure by the Debtor to observe or perform, any of the Obligations,

except that the Debtor will not be obliged to indemnify any Indemnified Party to the extent those claims, losses, and expenses are determined by a final judgment to have directly resulted from the wilful misconduct or gross negligence of the Indemnified Party.

The Secured Party will be constituted as the trustee of each Indemnified Party, other than itself, and shall hold and enforce each of the rights of the other Indemnified Parties under this section for their respective benefits.

3.06 Business activities

The Debtor shall preserve its rights, powers, licences, privileges, franchises, and goodwill, shall comply with all applicable laws, rules, and regulations, and shall generally conduct its business in a proper and efficient manner so as to protect the Collateral, the Security Interest, and the businesses and the undertaking of the Debtor.

3.07 Information

The Debtor shall deliver to the Secured Party any information concerning the Collateral or the Debtor that the Secured Party may reasonably request (including aged lists of inventory and accounts and annual and monthly financial statements of the Debtor).

3.08 Inspection

The Debtor shall allow the Secured Party or its representatives (a) to have access to all premises of the Debtor at which Collateral or Documents may be located, (b) to inspect the Collateral and all Documents, (c) to have temporary custody of, make copies of, and take extracts from any Documents, and (d) to verify the existence and state of the Collateral in the

Secured Party may consider appropriate. The Secured Party shall keep confidential any information that the Secured Party obtains from that inspection, except as required by the Secured Party in exercising its rights under this agreement.

3.09 Set-off, combination of accounts, and crossclaims

The Debtor shall satisfy the Obligations without regard to any equities between the Debtor and the Secured Party or any assignee of the Secured Party or any right of set-off. However, the Secured Party or any assignee of the Secured Party may set off or apply against, or combine with, the Obligations any indebtedness owing by the Secured Party or any assignee of the Secured Party to the Debtor, direct or indirect, extended or renewed, actual or contingent, mutual or not, at any time before, upon, or after maturity, without demand upon or notice to anyone, and the terms of that indebtedness and Obligations will be changed to the extent necessary to permit and give effect to the set-off, application, and combination.

3.10 Limitations on Secured Party's rights and realization

To the fullest extent permitted by applicable law, the Debtor shall waive all of the rights, benefits, conditions, warranties, and protections given by the provisions of any existing or future statute that imposes limitations upon the rights of a secured party or upon the methods of realization of the Security Interest.

ARTICLE 4 DEBTOR'S REPRESENTATIONS AND WARRANTIES

The Debtor represents and warrants to the Secured Party as follows, acknowledging that the Secured Party is relying on these representations and warranties:

4.01 Existence

It is a corporation incorporated and existing under the laws of the jurisdiction of its incorporation.

4.02 Power and capacity

It has the corporate power and capacity to carry on business, to own properties and assets, to incur the Obligations and create the Security Interest, and to execute, deliver, and perform its obligations under this agreement.

4.03 Authorization

It has taken all necessary corporate action to authorize its execution and delivery of, and the performance of its obligations under, this agreement.

4.04 Execution and delivery

It has duly executed and delivered this agreement.

4.05 Enforceability

This agreement constitutes a legal, valid, and binding obligation, enforceable against it in accordance with its terms, subject to

- (a) bankruptcy, insolvency, reorganization, receivership, moratorium, arrangement, winding-up, and other laws of general application affecting the enforcement of creditors' rights generally, and
- (b) general equitable principles including the principle that the granting of equitable remedies, such as injunctive relief and specific performance, is at the court's discretion.

4.06 No breach

The execution, delivery, and performance of its obligations under this agreement (including the payment, observance, or performance of the Obligations and the granting of the Security Interest by the Debtor in favour of the Secured Party) do not and will not breach or result in a default under

- (a) its articles, by-laws, or any unanimous shareholders agreement,
- (b) any law, statute, rule, or regulation to which it is subject, or
- (c) any judgment, order, or decree of any court, agency, tribunal, arbitrator, or other authority to which it is subject.

4.07 No regulatory approvals required

It is not required to obtain any action, approval, authorization, consent, or order of, or make any filing, registration, qualification, or recording with, any Governmental Authority or any other Person in connection with the execution or delivery of, or the performance of its obligations under, this agreement.

4.08 Bankruptcy, etc.

No proceedings have been taken or authorized by it or, to its knowledge, by any other Person relating to its bankruptcy, insolvency, liquidation, dissolution, or winding up.

4.09 Collateral unencumbered

Except for Liens expressly permitted by the Credit Agreement, the Debtor owns the Collateral free from any other claim.

4.10 Location of Debtor

Schedule A (Location of Debtor and Collateral) lists the Debtor's full, complete name (including any French name), its registered office, chief executive office, places of business, location of records, and the jurisdiction in which it is incorporated.

4.11 Location of Collateral

Schedule A (Location of Debtor and Collateral) lists the locations of the Collateral, except for (a) Collateral that is in transit to and from those locations in the ordinary course of business, (b) equipment that is with repairers for repair and return to the Debtor, (c) Collateral having an aggregate value that is not material, and (d) Collateral that has been disposed of in accordance with the terms of the other Transaction Documents.

ARTICLE 5 RIGHTS AND REMEDIES

Upon the occurrence of an Event of Default, or if the Security Interest otherwise becomes enforceable, the Secured Party may exercise any of the following rights or remedies:

5.01 Acceleration and enforcement

The Obligations will be accelerated and become immediately due and payable in full and the Security Interest will become immediately enforceable without the Secured Party having to take any further action.

5.02 Power of entry

The Secured Party may enter any premises owned, leased, or otherwise occupied by the Debtor or where any Collateral may be located to take possession of, dispose of, disable, or remove any Collateral by any method permitted by law. The Debtor hereby grants to the Secured Party a licence to occupy any of the Debtor's premises for the purpose of storing any Collateral and shall, immediately upon demand, deliver to the Secured Party possession of any Collateral at the place specified by the Secured Party.

5.03 Power of sale

The Secured Party may sell, lease, consign, license, assign, or otherwise dispose of any Collateral by public auction, private tender, or private contract, with or without notice, advertising, or any other formality, all of which the Debtor hereby waives to the extent permitted by law. The Secured Party may establish the terms of disposition (including terms and conditions as to credit, upset, reserve bid, or price). The Secured Party will credit all payments made under those dispositions against the Obligations only as they are actually received. The Secured Party may buy in, rescind, or vary any contract for the disposition of Collateral and may dispose of any Collateral again without being answerable for any resulting loss. Any disposition may take place whether or not the Secured Party has taken possession of the Collateral. The exercise by the Secured Party of any power of sale does not preclude the Secured Party from any further exercise of its power of sale in accordance with this paragraph.

5.04 Carrying on business

The Secured Party may carry on, or concur in the carrying on of, all or any part of the businesses or undertaking of the Debtor and may, to the exclusion of all others (including the Debtor), enter upon, occupy, and use any of the premises, buildings, and plant of, occupied or used by the Debtor and may use all or any of those premises and the equipment and other Collateral located on those premises (including fixtures) for whatever time and purposes as the Secured Party sees fit, free of charge. The Secured Party will not be liable to the Debtor for any

act, omission, or negligence in doing so or in connection with any rent, charges, costs, depreciation, or damages in connection with that action.

5.05 Pay Liens

The Secured Party may pay any liability owed to any actual purported or threatened Lien holder against any Collateral, and borrow money to maintain, preserve, or protect any Collateral or to carry on of the businesses or undertaking of the Debtor, and may charge and grant further Liens in any Collateral in priority to the Liens as security for the money so borrowed. Immediately upon demand by the Secured Party, the Debtor shall reimburse the Secured Party for all those payments and borrowings.

5.06 Dealing with Collateral

- (a) As soon as the Secured Party takes possession of any Collateral or appoints a Receiver over any Collateral, all rights of the Debtor in and to that Collateral will cease unless the Secured Party or any Receiver agrees in writing to specifically continue those rights.
- (b) The Secured Party may have, enjoy, and exercise all of the rights of and enjoyed by the Debtor in and to the Collateral or incidental, ancillary, attaching, or deriving from the ownership by the Debtor of the Collateral (including the right to (i) enter into agreements and grant licences over or relating to Collateral, (ii) demand, commence, continue, or defend any judicial or administrative proceedings for the purpose of protecting, seizing, collecting, realizing, or obtaining possession or payment of the Collateral, (iii) grant or agree to Liens and grant or reserve profits à prendre, easements, rights of ways, rights in the nature of easements, and licences over or relating to any part of the Collateral, and (iv) give valid receipts and discharges, and to compromise or give time for the payment or performance of all or any part of the accounts or any other obligation of any third party to the Debtor).
- (c) The Secured Party may take any actions to maintain, preserve, and protect the Collateral or otherwise deal with any Collateral in the manner, upon the terms, and at the times it deems advisable in its discretion without notice to the Debtor, except as otherwise required by applicable law (including payments on account of other Liens affecting the Collateral); provided that the Secured Party will not be required to take any of those actions or make any of those expenditures. Any of the amounts that the Secured Party pays (including legal, Receiver's, accounting, or other professional fees and expenses) will be added to the Obligations and will be secured by this agreement.
- (d) The Secured Party may accept the Collateral in satisfaction of the Obligations.
- (e) The Secured Party or any Receiver has no obligation to keep Collateral identifiable or to preserve rights against prior secured creditors in connection with any Collateral.

5.07 Powers re leases

The Secured Party may upon any sale by the Secured Party of any leasehold interest under this agreement for the purpose of vesting the one day residue of the term or its renewal in any purchaser, by deed or writing appoint the purchaser or any other Person as a new trustee of the residue or renewal in place of the Debtor and may vest those rights in the new trustee so appointed free from any obligation in that Collateral.

5.08 Dealing with accounts

The Secured Party may collect, sell, or otherwise deal with accounts (including notifying any Person obligated to the Debtor in connection with an account, chattel paper, or an instrument to make payment to the Secured Party of all present and future amounts that are due).

5.09 Collect rents

The Secured Party may collect any rents, income, and profits received in connection with the business of the Debtor or the Collateral, without carrying on the business.

5.10 File claims

The Secured Party may file proofs of claim and other documents in order to have the claims of the Secured Party lodged in any bankruptcy, winding-up, or other judicial proceeding relating to the Debtor or the Collateral.

5.11 Power of attorney

The Debtor hereby appoints the Secured Party, acting by any officer, director, employee, agent, or representative for the time being of the Secured Party to be its attorney with full power of substitution to do on the Debtor's behalf anything that the Debtor can lawfully do by an attorney (including to do, make, and execute all agreements, deeds, acts, matters, or things, with the right to use the name of the Debtor) that the Secured Party deems necessary or expedient and to carry out the Debtor's obligations or the Secured Party's rights or powers under this agreement, to revise any schedules to this agreement and to complete any missing information in this agreement. This power of attorney, being granted by way of security and coupled with an interest, is irrevocable until the Obligations are paid in full.

5.12 Retain services

The Secured Party may retain the services of any lawyers, accountants, appraisers, and other agents, and consultants as the Secured Party deems necessary or desirable in connection with anything done or to be done by the Secured Party or with any of the rights of the Secured Party set out in this agreement and pay their commissions, fees, disbursements (which payments will constitute part of the Secured Party's disbursements reimbursable by the Debtor under this agreement). The Debtor shall immediately on demand reimburse the Secured Party for all those payments.

5.13 Appointment of a Receiver

- (a) The Secured Party may

- (i) appoint, by instrument in writing, a Receiver for the Debtor, the Collateral, or both the Debtor and the Collateral, and no such Receiver need be appointed, need its appointment ratified, or need its actions in any way supervised, by a court,
 - (ii) appoint an officer or employee of the Secured Party as Receiver,
 - (iii) remove any Receiver and appoint another Receiver, or
 - (iv) apply, at any time, to any court of competent jurisdiction for the appointment of a Receiver or other official, who may have powers the same as, greater or lesser than, or otherwise different from, those capable of being granted to a Receiver appointed by the Secured Party under this agreement.
- (b) If two or more Receivers are appointed to act concurrently, they will act severally and not jointly and severally.

5.14 Effect of appointment of Receiver

Any Receiver will have the rights set out in this Article 5 (Rights and Remedies). In exercising those rights, a Receiver will act as, and for all purposes will be deemed to be, the agent of the Debtor. The Secured Party will not be responsible for any act, omission, negligence, misconduct, or default of any Receiver.

5.15 Application of payments

The Secured Party, or any Receiver appointed by the Secured Party in the enforcement of the Security Interest, may hold all payments made in connection with the Obligations and all monies received as security for the Obligations, or may apply those payments or monies in whatever manner they determine at their discretion. The Secured Party may at any time apply or change any application of those payments, monies, or recoveries to any parts of the Obligations as the Secured Party may determine at its discretion. The Debtor will remain liable to the Secured Party for any deficiency. The Secured Party shall pay any surplus funds realized after the satisfaction of all Obligations in accordance with applicable law.

5.16 Deficiency

If the proceeds of the realization of any Collateral are insufficient to repay all Obligations, the Debtor shall immediately pay or cause to be paid the deficiency to the Secured Party.

5.17 Limitation of liability

Neither the Secured Party nor any Receiver will be liable for any negligence, any rent, charges, costs, depreciation, or damages in connection with any of its actions. Neither the Secured Party nor any Receiver will be liable or accountable to the Debtor for any failure to seize, collect, realize, dispose of, enforce, or otherwise deal with any Collateral, nor will any of them be bound to bring any action or proceeding for any of those purposes or to preserve any rights of any Person in any of the Collateral. Neither the Secured Party nor any Receiver will be liable or responsible for any claim, loss, and expense flowing from any failure resulting from any act, omission, negligence, misconduct, or default of the Secured Party, any Receiver, or any of their

respective representatives or otherwise. If any Receiver or the Secured Party takes possession of any Collateral, neither the Secured Party nor any Receiver will have any liability as a mortgagee in possession of the Collateral or be accountable for anything except actual receipts. Further, neither the Secured Party nor any Receiver will be deemed to have assumed, or be deemed to be liable for, any covenant, agreement, or other obligation of the Debtor under any agreement, right, licence, or permit to which the Debtor is a party.

5.18 Extensions of time

The Secured Party and any Receiver may grant renewals, extensions of time, and other indulgences, take and give up Liens, accept compositions, grant releases and discharges, perfect or fail to perfect any Liens, release any Collateral to third parties, and otherwise deal or fail to deal with the Collateral, other Liens, the Debtor, debtors of the Debtor, guarantors of the Debtor, sureties of the Debtor, and others as the Secured Party or any Receiver may see fit, all without prejudice to the Obligations and the rights of the Secured Party or any Receiver to hold and realize upon the Security Interest. However, no extension of time, forbearance, indulgence, or other accommodation will operate as a waiver, alteration, or amendment of the Secured Party's rights or otherwise preclude the Secured Party from enforcing those rights and nothing in this agreement obligates the Secured Party or any Receiver to extend the time for payment or satisfaction of any of the Obligations.

5.19 Secured Party or Receiver may perform

If the Debtor fails to perform any Obligations, the Secured Party or any Receiver may perform those Obligations as attorney for the Debtor in accordance with section 5.11 (Power of attorney). The rights conferred on the Secured Party and any Receiver under this agreement are for the purpose of protecting the Security Interest in the Collateral and do not impose any obligation upon the Secured Party or any Receiver to exercise any of those rights. The Debtor will remain liable under each agreement to which it is party or by which it or any of its businesses, undertaking, and properties is bound and shall perform all of its obligations under each of those agreements; the Debtor will not be released from any of its obligations under any agreement by the exercise of any rights by the Secured Party or any Receiver.

5.20 Validity of sale

No Person dealing with the Secured Party, any Receiver, or any representative of the Secured Party or any Receiver has any obligation to enquire whether the Security Interest has become enforceable, whether any right of the Secured Party or any Receiver has become exercisable, whether any Obligations remain outstanding, or otherwise as to the propriety or regularity of any dealing by the Secured Party or any Receiver with any Collateral or to see to the application of any money paid to the Secured Party or any Receiver. In the absence of fraud on the part of any Person, those dealings will be deemed to be within the rights conferred under this agreement and to be valid and effective accordingly.

5.21 No obligation to advance

Nothing in this agreement obligates the Secured Party to make any loan or accommodation to the Debtor or to extend the time for payment or satisfaction of any Obligation.

ARTICLE 6 GENERAL PROVISIONS

6.01 Entire agreement

This agreement together with any other transaction documents constitute the entire agreement between the parties relating to its subject matter. This agreement supersedes any previous agreements and discussions between the parties.

6.02 Further assurances

Each party, upon receipt of notice by another party, shall sign all further documents, do all further acts, and provide all reasonable assurances as may reasonably be necessary or desirable to give effect to the terms of this agreement.

6.03 Amendment

This agreement may only be amended by a written document signed by each of the parties.

6.04 Conflict of terms

If there is any inconsistency between the terms of this agreement or under any of the other Transaction Documents, the terms of the agreement that provides the Secured Party greater benefits, rights, or remedies will prevail. The parties shall take all necessary steps to conform the inconsistent terms to the terms of that agreement.

6.05 Binding effect

This agreement enures to the benefit of and binds the parties and their respective successors and permitted assigns.

6.06 Assignment

The Secured Party may assign this agreement in whole or in part to any Person without notice to or the consent of the Debtor. Without the prior written consent of the Secured Party, the Debtor may not assign this agreement.

6.07 Notice

Each of the parties agrees that any notice required to be delivered to the other party will be delivered in accordance with the notice provision in the Credit Agreement.

6.08 Remedies cumulative

The rights, remedies, and powers provided in this agreement to a party are cumulative and in addition to, and are not exclusive of or in substitution for, any rights, remedies, and powers otherwise available to that party.

6.09 Security in addition

This agreement and the Security Interest are in addition to and not in substitution for any other security now or later held by the Secured Party in connection with the Debtor, the Obligations, or the Collateral. The Security Interest does not replace or otherwise affect any existing or future

Lien held by the Secured Party. No taking of any suit, action, or proceeding, judicial or extra-judicial, no refraining from doing so, and no dealing with any other security for any Obligations will release or affect (a) the Security Interest or (b) any of the other Liens held by the Secured Party for the payment or performance of the Obligations.

6.10 Non-merger

- (a) This agreement will not operate by way of a merger of the Obligations or of any guarantee, agreement, or other document or instrument by which the Obligations now, or at any time subsequently, may be represented or evidenced. Neither the taking of any judgment nor the exercise of any power of seizure or disposition will extinguish the liability of the Debtor to pay and perform the Obligations nor shall the acceptance of any payment or alternate security constitute or create any novation.
- (b) The rights, obligations, and representations and warranties, and covenants under this agreement will not merge in any judgment.

6.11 Severability

The invalidity or unenforceability of any particular term of this agreement will not affect or limit the validity or enforceability of the remaining terms.

6.12 Waiver

No waiver of satisfaction of a condition or breach or non-performance of an obligation (including any Event of Default) under this agreement is effective unless it is in writing and signed by the party granting the waiver. No waiver under this section will be deemed to extend to a subsequent occurrence, whether or not that occurrence is the same or similar to the original occurrence that was waived nor will it affect the exercise of any other rights or remedies under this agreement. Any failure or delay in exercising any right or remedy will not constitute, or be deemed to constitute, a waiver of that right or remedy. No single or partial exercise of any right or remedy will preclude any other or further exercise of any right or remedy.

6.13 Payment of costs

The Debtor shall pay all costs (including legal fees and court costs, all on a full indemnity basis) that it and the Secured Party, or its agents on its behalf, incur in connection with the drafting and negotiation of the transactions contemplated by this agreement, and the execution and delivery of, and the perfection (including those incurred for registration costs of any financing statement registered in connection with the Security Interest) and enforcement of the Secured Party's interest under, this agreement, which will be paid immediately upon demand and form part of the Obligations.

6.14 Governing law

The laws of Ontario and the laws of Canada applicable in that province, excluding any rule or principle of conflicts of law that may provide otherwise, govern this agreement.

6.15 Submission to jurisdiction

The Debtor irrevocably attorns to the jurisdiction of the courts of Ontario, which will have non-exclusive jurisdiction over any matter arising out of this agreement.

[signature page follows]

This agreement has been executed by the Debtor.

MIZRAHI (128 HAZELTON) INC.

By:


Name: Sam Mizrahi

Title: President

**SCHEDULE A
LOCATION OF DEBTOR AND COLLATERAL**

Full Name:	Mizrahi (128 Hazelton) Inc.
Jurisdiction of Incorporation or Formation:	Ontario
Registered Office:	189 Forest Hill Road, Toronto, Ontario, M5P 2N3
Chief Executive Office:	189 Forest Hill Road, Toronto, Ontario, M5P 2N3
Places of Business:	189 Forest Hill Road, Toronto, Ontario, M5P 2N3
Locations of Records:	189 Forest Hill Road, Toronto, Ontario, M5P 2N3

This is Exhibit "F" referred to in the Affidavit of Robert Hiscox of the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on April 16, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink, appearing to read 'Laura Cloutier', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

LAURA CLOUTIER

A Commissioner, etc., Province of Ontario, while a Student-at-Law. Expires May 29, 2025

Fernandes, Stephanie

Subject: RE: 128 Hazelton condo fees

From: Chris Donlan <chris.donlan@constantineinc.com>

Sent: Wednesday, April 10, 2024 7:20:39 PM

To: Sam Mizrahi <sam@mizrahidevelopments.ca>; Mark Kilfoyle <mark@mizrahidevelopments.ca>

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

Subject: 128 Hazelton condo fees

CAUTION: External Email

To: Mizrahi (128 Hazelton) Inc., Sam Mizrahi, and Mizrahi Developments Inc.

Reference is made to the commitment letter dated January 27, 2017, as amended by letters dated May 4, 2017, June 19, 2017, December 4, 2018, June 30, 2020, January 20, 2021, June 30, 2021, February 28, 2022, June 30, 2022, October 31, 2022, January 31, 2023, and April 30, 2023 (as amended, modified, supplemented, extended, renewed, restated or replaced, the "Commitment Letter") initially between Duca Financial Services Credit Union Ltd., and assigned to Constantine Enterprises Inc. ("CEI") as lender, and Mizrahi (128 Hazelton) Inc. (the "Borrower") as borrower, as well as the other Loan Documents (as defined in the Commitment Letter).

Pursuant to the Loan Documents, CEI as Lender is entitled to pay expenses on behalf of the Borrower to preserve and protect its collateral. Accordingly, CEI has paid the following parties in the amounts set out below, all of which are due and owing by the Borrower. Such amounts have been added to the principal amount owing under the Commitment Letter pursuant to the terms thereof and the other Loan Documents.

- 1) March 11, 2024. \$31,765.17 paid to TSCC 2967 c/o ICC Property Management for condo fees owing by the Borrower.
- 2) April 5, 2024. \$38,142.89 paid to TSCC 2967 c/o ICC Property Management for condo fees owing by the Borrower.

Regards,

Chris Donlan

CONSTANTINE

CONSTANTINE ENTERPRISES INC.

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

chris.donlan@constantineinc.com | +1.416.543.9327

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

CONSTANTINE ENTERPRISES INC.

and

MIZRAHI (128 HAZELTON) INC. AND
MIZRAHI 128 HAZELTON RETAIL INC.
Respondents
Court File No. CV-24-00715321-00CL

Applicant

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

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF ROBERT HISCOX

Cassels Brock & Blackwell LLP

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Lawyers for the Applicant

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and

MIZRAHI (128 HAZELTON) INC. AND
MIZRAHI 128 HAZELTON RETAIL INC.
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Lawyers for the Applicant

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

**REPLY APPLICATION RECORD OF CONSTANTINE
ENTERPRISES INC.**

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