

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

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

Applicant

- AND -

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

Respondents

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

**MOTION RECORD
(Disclaimer of Agreement
of Purchase and Sale)**

January 11, 2025

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Lawyers for the Receiver

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TAB 1

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

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

B E T W E E N:

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

**NOTICE OF MOTION RE DISCLAIMER OF
AGREEMENT OF PURCHASE AND SALE**

The Receiver (as defined below) will make a Motion to a Judge presiding over the Commercial List at a date to be fixed by this Honourable Court.

PROPOSED METHOD OF HEARING: The motion is to be heard

In writing under subrule 37.12.1(1) because it is
[insert on consent, unopposed or made without notice];

In writing as an opposed motion under subrule 37.12.1(4);

In person;

By telephone conference;

By video conference.

at the following location

330 University Avenue, Toronto ON M5G 1R7

THE MOTION IS FOR

- (a) an order authorizing the Receiver to disclaim the Agreement of Purchase and Sale dated August 16, 2019 between David Berry and Mizrahi (128 Hazelton) Inc. (**Hazelton**) in respect of Unit 901 of the condominium project located at 126 Hazelton Avenue and 128 Hazelton Avenue, Toronto, Ontario (the **Unit 901 APS**) and all related agreements; and
- (b) such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

The Parties

- (a) by Order of Justice Cavanagh dated June 4, 2024, KSV Restructuring Inc. was appointed as the receiver and manager (the **Receiver**) of all of the assets, undertakings and properties of the Respondents, including real property consisting of certain condominium units located at the address municipally known as 126 and 128 Hazelton Avenue in Toronto;
- (b) the Respondents were involved in the development and construction of a nine-storey, 20-unit luxury condominium development project at the Hazelton Avenue addresses;
- (c) Hazelton is owned equally by Mizrahi Developments Inc. (**MDI**) and the applicant, Constantine Enterprises Inc. (**CEI**);
- (d) both MDI and Mizrahi Inc. are ultimately controlled by Sam Mizrahi;

The Unit 901 & 802 APS

- (e) on April 21, 2016, Mr. Berry and Hazelton entered into an agreement of purchase and sale for Units 901 and 802 (the **Unit 901 and 802 APS**) for a total purchase price of \$13,250,000;
- (f) Mr. Berry paid a deposit of \$2,650,000 toward the purchase price for Units 901 and 802;

The Supplementary Agreement

- (g) on June 6, 2016, through a Term Sheet, Mr. Berry agreed to loan a total of \$10 million to Mizrahi Inc. by way of two loans of \$4 million and \$6 million;
- (h) Mr. Mizrahi guaranteed the \$6 million loan;
- (i) on June 28, 2016, Mr. Berry, Mr. Mizrahi and Hazelton signed a Supplementary Agreement (the **Supplementary Agreement**) in which:
 - (i) if at the time of closing of the sale of Unit 901 to Mr. Berry, any of the \$6 million loan remained outstanding, Mr. Mizrahi agreed to pay any amount due by Mr. Berry on closing of the purchase of Unit 901, to a maximum of the amount then outstanding on the \$6 million loan; and
 - (ii) Hazelton agreed that if closing of Unit 901 occurred prior to repayment of the \$6 million loan, it would seek payment of any amounts due on closing solely from Mr. Mizrahi, and close on the sale to Mr. Berry even if Mr. Mizrahi failed to pay the amounts due on closing;
- (j) CEI has advised the Receiver that it was unaware of the Supplementary Agreement until Mr. Berry provided it in the course of this receivership (the **Receivership**);

The Yappn Shares

- (k) on May 15, 2017, Mr. Berry and Hazelton signed an amendment to the Unit 901 and 802 APS;
- (l) pursuant to that amendment, Mr. Berry issued Hazelton shares in Yappn Corp. (**Yappn**) equal in value to approximately \$2,000,000, which Mr. Berry and Hazelton agreed to treat as a \$2,000,000 advance on the purchase price payable by Mr. Berry under the Unit 901 and 802 APS;

The Unit 901 APS

- (m) on August 16, 2019, Mr. Berry and Hazelton agreed to terminate the Unit 901 and 802 APS and replace it with two separate agreements of purchase and sale, the Unit 901 APS and an agreement for Unit 802;
- (n) the purchase price for Unit 901 was agreed to be \$6,250,000;
- (o) \$1,250,000 from Mr. Berry's original deposit of \$2,650,000 and the entire \$2,000,000 advance related to the Yappn share amendment were applied to the Unit 901 APS;
- (p) on April 13, 2020, Mr. Berry and Hazelton agreed to increase the purchase price under the Unit 901 APS to \$7,142,244;
- (q) on October 2, 2022, Mr. Berry and Hazelton agreed to certain extras and finishes to be added to the specifications for Unit 901, at an additional cost of \$800,000, which amount Mr. Berry subsequently paid;
- (r) the Unit 901 APS had not closed by the time of the Receivership and construction of Unit 901 has not been completed;

Current Status and Value of Unit 901

- (s) the balance of the purchase price owing under the Unit 901 APS is \$3,892,244;
- (t) it is estimated that it will cost approximately \$3,215,500 (excluding HST, bonding, insurance, permits and certain other costs as set out in the Third Report of the Receiver dated January 10, 2025, the **Third Report**) to complete construction of Unit 901 pursuant to Mr. Berry's specifications;
- (u) Unit 901 is estimated to be worth at least \$12,165,000 if completed according to Mr. Berry's specifications;
- (v) CEI, the senior secured creditor, is not prepared to fund the Receiver to complete construction of Unit 901 for the purposes of completing the Unit 901 APS;
- (w) the "as is" value of Unit 901 is estimated to be \$7,685,000;
- (x) the estate and its creditors will be materially better off if the Unit 901 APS is disclaimed and Unit 901 sold on the open market;

Mr. Berry is Not Entitled to Specific Performance

- (y) the Receiver has significant concerns about the Supplementary Agreement;
- (z) the Supplementary Agreement benefited Mr. Mizrahi but did not provide any benefit to Hazelton, and purported to impose upon Hazelton the risk of having to transfer Unit 901 to Mr. Berry without receiving the full purchase price;
- (aa) in addition, it appears that Mr. Mizrahi actively tried to conceal the existence of the Supplementary Agreement from CEI, as set out in the Third Report;
- (bb) accordingly, if the Supplementary Agreement is a valid and binding agreement, it is appropriate for Hazelton to disclaim the Supplementary Agreement as well, as

the Receiver does not view the Supplementary Agreement as providing Mr. Berry with a valid claim for specific performance of the Unit 901 APS;

Disclaimer is Appropriate

- (cc) Mr. Berry is an unsecured creditor of Hazelton;
- (dd) Unit 901 has significant monetary value which can be used to satisfy the amounts owing to Hazelton's creditors;
- (ee) if the Unit 901 APS was performed, Unit 901's value will be allocated toward Mr. Berry's unsecured claim, rather than the secured creditors; and
- (ff) such further and other grounds as the lawyers may advise.

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

- (gg) the Third Report; and
- (hh) such further and other evidence as the lawyers may advise and this Honourable Court may permit.

January 11, 2025

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Lawyers for the Receiver

CONSTANTINE ENTERPRISES INC. -and-

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

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

Applicant

Respondents

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Disclaimer of Agreement of Purchase
and Sale)**

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Lawyers for the Receiver

TAB 2

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

January 10, 2025

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COURT FILE NUMBERS: CV-24-00715321-00CL

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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

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

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

JANUARY 10, 2025

1.0 Introduction

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

2. Hazelton is the registered owner of the Real Property, which is a nearly complete nine-storey, 20-unit luxury condominium development project located in Toronto's Yorkville neighbourhood and has approximately 1,993 square feet of ground floor commercial retail space (the "**Level 1 Unit**"), and three levels of underground parking.
3. At the commencement of these proceedings, Hazelton was the registered owner of seven condominium units (201, 204, 403, 404, 801, 802 and 901), the Level 1 Unit, and several parking spaces and lockers allocated to the respective units and the retail space. Units 201, 204, 403, the Level 1 Unit and certain parking spaces and lockers have been sold during these proceedings.
4. At the commencement of these proceedings, construction had not been completed for units 801, 802 and 901 (the "**Unfinished Units**"). Gillam Communities Inc. ("**Gillam**") was retained by the Receiver as the construction manager. Construction on units 801 and 802 is nearing completion. As of the date of this Report, and as discussed below, the Receiver has determined not to move forward with the completion of unit 901 at this time. Unit 901 is the subject of an Agreement of Purchase and Sale between Hazelton and David Berry.
5. This report (the "**Report**") is filed by KSV in its capacity as Receiver.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) summarize the agreements between Hazelton and Mr. Berry concerning unit 901, as well as the related history;
 - b) summarize the status of unit 901; and
 - c) recommend that this Court issue an order authorizing the Receiver to disclaim all contracts between Hazelton and Mr. Berry concerning unit 901.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon (i) discussions and information provided by representatives of Constantine Enterprises Inc. ("**CEI**"); (ii) documentation provided by Mr. Berry's legal counsel and discussions with Mr. Berry's legal counsel; (iii) contracts and other documents obtained from CEI and/or Hazelton; and (iv) the receivership application materials filed by CEI (collectively, the "**Information**").
2. To the extent applicable, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.

3. Additional background information regarding the Debtors and the reasons for the appointment of the Receiver is provided in the affidavits of Robert Hiscox sworn February 23, 2024 and April 16, 2024, as well as in the Receiver's First Report to Court dated June 14, 2024 (the "**First Report**"). Copies of the Court materials filed in these proceedings are available on the Receiver's case website at: <https://www.ksvadvisory.com/experience/case/128Hazelton>.

1.3 Currency

1. All currency references in this Report are in Canadian dollars.

2.0 Background

1. The shares in the capital of Hazelton are owned 50% by Mizrahi Developments Inc. ("**MDI**") and 50% by CEI. MDI is controlled by Sam Mizrahi.
2. Mr. Mizrahi was the President of Hazelton and one of two directors of Hazelton until he resigned on May 13, 2024. Mr. Hiscox, a nominee of CEI, is the other director. Mr. Mizrahi is also the principal of the Mizrahi development group of companies, a condominium development group (the "**Mizrahi Group**"). The Mizrahi Group was CEI's operating and development counterpart in connection with the development of the Hazelton project (the "**Hazelton Project**"). Prior to these proceedings, the development and construction management of the Hazelton Project was performed by Mizrahi Inc.
3. Hazelton is the borrower under the DUCA Commitment, the 2015 Credit Agreement, the 2020 Grid Note and the 2021 Grid Note (each as defined in Section 3 of the First Report), each of which is owed to CEI. A copy of the First Report is provided in **Appendix "C"**, without attachments. Prior to these proceedings, CEI took an assignment of the DUCA Commitment.

2.1 Unit 901 APS and Related Agreements

1. On April 21, 2016, Mr. Berry and Hazelton entered into an agreement of purchase and sale for units 901 and 802. The total purchase price was \$13,250,000. Mr. Berry was required to pay, and did pay, a deposit of \$2,650,000. A copy of this APS is provided in **Appendix "D"**.
2. On May 15, 2017, Mr. Berry and Hazelton signed an amendment to the APS. Pursuant to that amendment, Mr. Berry issued Hazelton shares in Yappn Corp. ("**Yappn**") with an agreed value of \$2,000,000 as of the date of issuance. That \$2,000,000 value was treated as an advance against the purchase price. The shares were to vest on or before October 31, 2018, at which time Hazelton would become the owner of record of the shares and they would be held in escrow pending closing or termination of the APS. Depending on the value of the Yappn shares as of the vesting date, the purchase price of the APS could be increased by up to \$1,000,000 or decreased by up to \$2,000,000. A copy of the amendment is provided in **Appendix "E"**.

3. On August 16, 2019, Mr. Berry and Hazelton agreed to terminate the original APS and replace it with two separate agreements of purchase and sale, one for unit 901 (the "**901 APS**") and the second for unit 802 (the "**802 APS**"). Mr. Berry assigned the 802 APS to the purchaser of unit 801 but remained the purchaser under the 901 APS. The purchase price for unit 901 was agreed to be \$6,250,000. \$1,250,000 from Mr. Berry's original deposit of \$2,650,000 was credited towards that price. The Yappn share amendment continued to apply to the 901 APS, but not to the 802 APS. A copy of the Mutual Release and Termination Agreement for the original APS is provided in **Appendix "F"**, a copy of the unit 901 APS is provided in **Appendix "G"** and a copy of the further Amendment dealing with the Yappn shares is provided in **Appendix "H"**.
4. On April 13, 2020, Mr. Berry and Hazelton agreed to increase the purchase price of Unit 901 to \$7,142,244. A copy of the amending agreement that effected this increase is provided at **Appendix "I"**.
5. On October 2, 2022, Hazelton issued an invoice to Mr. Berry in the amount of \$707,964.60 plus HST (for a total of \$800,000) for extras and finishes to be installed in accordance with revised and final plans dated September 21, 2022. Mr. Berry signed this invoice. A copy of the signed invoice is provided at **Appendix "J"**. The Receiver understands that Mr. Berry subsequently paid this \$800,000 in two installments of \$450,000 and \$350,000.
6. On November 7, 2022, Hazelton and Mr. Berry signed a new Statement of Critical Dates and Tarion Addendum, which changed the Outside Occupancy Date for unit 901 to December 29, 2023. A copy of this document is provided at **Appendix "K"**.

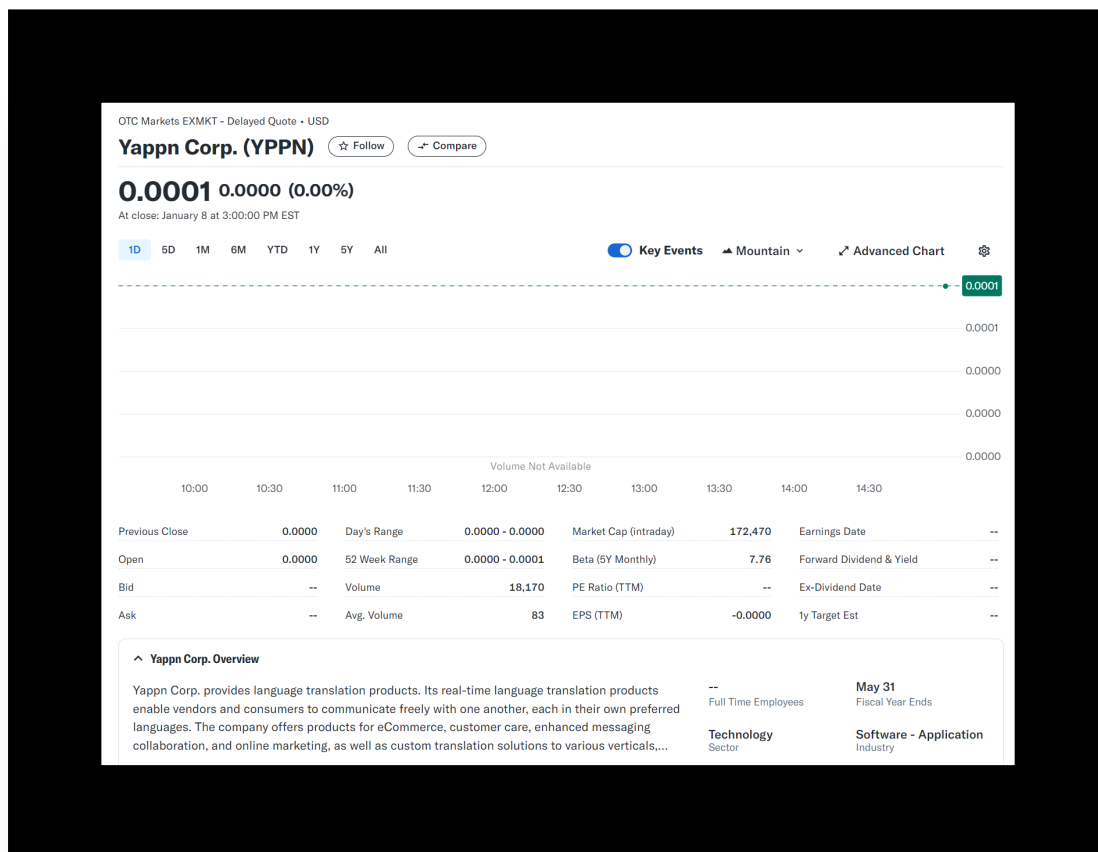
2.2 Side Agreements

1. On September 19, 2024, counsel for Mr. Berry provided the Receiver with additional documents that were not in the possession of the Receiver or CEI. The pertinent documents from that production are described below.
2. On June 6, 2016, through a Term Sheet, Mr. Berry agreed to loan a total of \$10 million to Mizrahi Inc. by way of two loans of \$4 million and \$6 million. Mizrahi Inc. is a company controlled by Mr. Mizrahi. Mizrahi Development Group (1451 Wellington) Inc. (**Wellington**) guaranteed both loans and Mr. Mizrahi guaranteed the \$6 million loan. A copy of the Term Sheet is provided at **Appendix "L"**.
3. The Term Sheet provided that Mizrahi Inc. would use the loan proceeds for purposes related to the construction of a condominium development at 1451 Wellington Street in Ottawa, another Mizrahi group development. The Wellington project is also now the subject of restructuring proceedings.
4. Section 19 of the Term Sheet references the Hazelton Project. It provided that if the closing date for Unit 901 occurred prior to Mizrahi Inc. repaying the \$6 million loan under the Term Sheet, then Mr. Mizrahi would personally be responsible for paying all amounts payable by Mr. Berry on the closing of Unit 901, to a maximum of the amount owing under the \$6 million loan. Such a payment by Mr. Mizrahi was defined as the "**Mizrahi Bridge Payment**". Mr. Berry was required to repay the Mizrahi Bridge Payment after the \$6 million loan was repaid in full.

5. The Term Sheet was followed later that month by a Supplementary Agreement dated June 28, 2016 (the “**Supplementary Agreement**”), a copy of which is provided at **Appendix “M”**. The parties to the Supplementary Agreement were Mr. Berry, Mr. Mizrahi and Hazelton. For the purposes of this Report, its relevant terms were:
 - a) Mr. Mizrahi agreed to pay the Mizrahi Bridge Payment to Hazelton, on the same terms and conditions as contained in the Term Sheet;
 - b) Hazelton agreed that if closing of Unit 901 occurred prior to repayment of the \$6 million loan, it would seek payment of amounts due at closing solely from Mr. Mizrahi, and would close on the sale to Mr. Berry “*notwithstanding that funds for said closing may not have been provided by Sam*”; and
 - c) Mr. Mizrahi agreed, “*as a director and officer of*” Hazelton, that Mr. Berry would not be required to pay any further amounts in relation to Unit 901 if any amounts remained owing to him under either the \$4 million or \$6 million loan, and that closing of Unit 901 would occur notwithstanding any amounts remaining owing.
6. On the signing page of the Supplementary Agreement, someone has handwritten, “*As representative of Mizrahi developments I acknowledge this is the only copy of supplementary agreement.*” This appears to have been written by Josh Lax, VP Development of Mizrahi Developments.
7. Also on June 28, 2016, Mr. Mizrahi and Mr. Berry signed a Confidentiality Agreement which provided that Mr. Berry would forfeit his right to repayment of any amounts outstanding on the \$6 million and \$4 million loans if he disclosed the existence of the Supplementary Agreement to anybody, save for certain limited exceptions set out in the Confidentiality Agreement. A copy of the Confidentiality Agreement is provided at **Appendix “N”**.
8. On June 29, 2016, Mizrahi Developments Inc., Mr. Berry, Wellington and Mr. Mizrahi signed a comprehensive loan agreement, detailing the terms of Mr. Berry’s \$6 million and \$4 million loans. The borrower was now Mizrahi Developments Inc., rather than Mizrahi Inc. The provisions regarding the Mizrahi Bridge Payment and Unit 901 closing remained the same. In addition, Mr. Mizrahi now personally agreed to give Mr. Berry an additional parking spot at the Hazelton project, bringing the total parking spots provided to Mr. Berry to four. A copy of the Loan Agreement is provided at **Appendix “O”**.
9. On April 16, 2020, Mr. Mizrahi, Mizrahi Developments, Hazelton and Wellington provided Mr. Berry with a letter confirming that he would receive four parking spaces at the Hazelton project, rather than the three provided for in the Hazelton APS. A copy of this letter is provided at **Appendix “P”**.
10. On October 12, 2021, Mr. Mizrahi, Mr. Berry, Mizrahi Developments and Wellington signed an amending agreement to the Loan Agreement. The amendments did not modify the provisions relating to the Hazelton project. A copy of this amending agreement is provided at **Appendix “Q”**.
11. CEI has confirmed that none of the agreements described in this section 2.2 were disclosed to it prior to September 19, 2024, even though Hazelton is a signatory to the Supplementary Agreement. It appears that Mr. Mizrahi concealed these agreements from CEI, its 50% partner in Hazelton.

2.3 Current Status of Unit 901

1. Construction on Unit 901 had not been completed when the Receivership commenced.
2. The Receiver retained Gillam to provide an estimate of the cost to complete construction of Unit 901 based on the specifications under Mr. Berry's agreement. Gillam delivered a formal estimate on November 20, 2024. A copy of this estimate is provided at **Appendix "R"**.
3. As set out in the estimate, Gillam's opinion is that it will cost approximately \$3,215,500 excluding HST, bonding, insurance, permits and certain other costs as set out in the estimate (the **"Excluded Costs"**) to complete construction pursuant to Mr. Berry's specifications. As set out above, the final purchase price that Mr. Berry agreed to pay for Unit 901 is \$7,142,244. Mr. Berry paid a deposit of \$1,250,000 toward Unit 901, and also contributed the Yappn shares in a deemed amount of \$2,000,000. This leaves a balance of \$3,892,244 that would be payable on closing. As described above, the Receiver understands that Mr. Berry's position is that he is not required to pay any of this amount under the terms of the Supplementary Agreement.
4. The Receiver understands that it is Mr. Berry's position that the full \$2 million for the Yappn shares should be deducted from the balance owing. However, based on the screen shot below taken on January 9, 2025, it appears that Yappn shares currently have nominal value.



5. Based on Mr. Berry's agreements and the Gillam estimate, it appears that completing Unit 901 might result in cash proceeds of up to \$676,744 (the difference between the balance owing and Gillam's estimate). This amount is before the Excluded Costs, closing costs and professional fees. Alternatively, if Mr. Berry was not required to pay any further amounts due to the Supplementary Agreement, Hazelton would not generate any returns on the cost to complete Unit 901.

2.4 Appraised Value of Unit 901

1. The Receiver retained Heather Markoff of Simon & Associates to provide an appraisal of Unit 901 on three bases: (i) as finished, pursuant to the specifications in the Berry APS and accompanying documents; (ii) per specifications provided by Gillam (high end finishes consistent with a luxury condominium but not to the level in the Berry APS)¹ and (iii) in its current, unfinished state.
2. Ms. Markoff provided her appraisal on December 2, 2024. Based on a comparison of Unit 901 to comparable sales, Ms. Markoff appraised the value of Unit 901 if completed to Mr. Berry's specifications at \$12,165,000. She determined the "as is" value of Unit 901 to be \$7,685,000. A copy of this appraisal is provided at **Appendix "S"**.
3. It is important to note that, per Ms. Markoff, there have only been a few sales of luxury condominium units in downtown Toronto such as Unit 901 (which is a two-floor penthouse unit) in the past two years. As set out in Ms. Markoff's report, current asking prices for luxury condominium units in the Yorkville area range from \$1,776 per square foot ("**PSF**") to \$4,437 PSF. Ms. Markoff appraised Unit 901 at approximately \$2,400 PSF. Given the range of asking prices for luxury condominiums in the downtown Toronto market, the Receiver views it as quite possible that Unit 901 could attract a significantly higher sale price than the appraised value that Ms. Markoff has identified.

3.0 Recommendation re Disclaimer of Unit 901 APS

1. The Receiver recommends that the 901 APS be disclaimed, as well as all related agreements concerning Unit 901.
2. As noted above, Gillam's estimated cost to complete Unit 901 is \$3,215,500. CEI has advised the Receiver that it is not willing to fund completion of Unit 901 as per the specifications set out in the Unit 901 APS and accompanying documents. CEI has further advised that it is not willing to fund completion if the Receiver's intention is to transfer Unit 901 to Mr. Berry pursuant to the terms of the 901 APS, as there is effectively no benefit to the estate.
3. Even if the Receiver had the necessary funds to complete Unit 901, doing so would not be beneficial to the estate. Based on the records reviewed by the Receiver, Mr. Berry would owe approximately \$3,892,244 at closing to purchase Unit 901. On that basis, the cash on closing would be approximately \$676,744 (before the Excluded Costs, closing costs and professional fees).

¹ This appraisal is not relevant to this Report and therefore the Receiver has not commented on it herein.

4. The estate would be worse off if the Supplementary Agreement was enforceable against Hazelton and entitled Mr. Berry to acquire Unit 901 at no further cost. In that case, completing the Unit 901 APS would cost the estate \$3,215,500 plus the Excluded Costs and professional fees.
5. By contrast, based on Ms. Markoff's appraisal, if Unit 901 is marketed and sold as-is, the estate would generate proceeds of approximately \$7,685,000. Alternatively, if the Receiver obtained funding to complete Unit 901, and sold it on the market, the estate would generate gross proceeds of approximately \$12,165,000. After accounting for the estimated construction costs, the net gain to the estate would be approximately \$8,950,000.
6. Given the above, completing the 901 APS and selling the unit to Mr. Berry would have the effect of preferring Mr. Berry's unsecured claim against Hazelton over the claims of other creditors, including secured creditors.
7. The Receiver also has significant concerns about the Supplementary Agreement, which appears to have been agreed between Mr. Berry and Mr. Mizrahi without the knowledge of CEI. The Supplementary Agreement did not provide any benefit to Hazelton, but purported to impose upon it the risk that it would have to transfer Unit 901 to Mr. Berry without receiving the full purchase price.
8. It appears that Mr. Mizrahi actively tried to conceal the existence of the Supplementary Agreement from CEI. First, the unusual handwritten note that there was only a single copy of the Supplementary Agreement. Second, the punitive consequences imposed on Mr. Berry if he disclosed the existence of the Supplementary Agreement. Third, when the Supplementary Agreement was signed, the original APS for both Units 801 and 901 was still in place. That agreement was subsequently terminated, and Mr. Berry signed the new Unit 901 APS. The Unit 901 APS does not contain any reference to the Supplementary Agreement, and contains an "entire agreement" clause in which Mr. Berry and Hazelton agreed that there was no "representation, warranty, collateral agreement or condition affecting this Agreement or the Property". The Supplementary Agreement benefited Mr. Mizrahi and is prejudicial to Hazelton.
9. In light of the above, the Receiver's view is that if the Supplementary Agreement is a valid and binding agreement, it is appropriate for Hazelton to disclaim that agreement as well. The Receiver does not view the Supplementary Agreement as providing Mr. Berry with a valid claim for specific performance of the Unit 901 APS.

4.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make orders granting the relief requested in this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Appendix “A”

Schedule "A"

DESCRIPTION OF REAL PROPERTY

PIN 21196-0353(LT)

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

PIN 76967-0001(LT)

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

PIN 76967-0004(LT)

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

PIN 76967-0011(LT)

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

PIN 76967-0012(LT)

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

PIN 76967-0018(LT)

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

PIN 76967-0019(LT)

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

PIN 76967-0020(LT)

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

PIN 76967-0024(LT)

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

PIN 76967-0025(LT)

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

PIN 76967-0026(LT)

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

PIN 76967-0027(LT)

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

PIN 76967-0034(LT)

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

PIN 76967-0035(LT)

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

PIN 76967-0036(LT)

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

PIN 76967-0037(LT)

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

PIN 76967-0038(LT)

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

PIN 76967-0041(LT)

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

PIN 76967-0042(LT)

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

PIN 76967-0043(LT)

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

PIN 76967-0045(LT)

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

PIN 76967-0046(LT)

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

PIN 76967-0047(LT)

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

PIN 76967-0048(LT)

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

PIN 76967-0057(LT)

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

PIN 76967-0058(LT)

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

PIN 76967-0059(LT)

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

PIN 76967-0060(LT)

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

PIN 76967-0062(LT)

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

PIN 76967-0065(LT)

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

PIN 76967-0067(LT)

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

PIN 76967-0073(LT)

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

PIN 76967-0074(LT)

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

PIN 76967-0076(LT)

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

Appendix “B”



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

CONSTANTINE ENTERPRISES INC.

Applicant

- and -

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

Respondents

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

**ORDER
(Appointing Receiver)**

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

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

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

SERVICE

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

APPOINTMENT

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

RECEIVER’S POWERS

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

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

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

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

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

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

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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

RECEIVER TO HOLD FUNDS

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

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

EMPLOYEES

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

PIPEDA

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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

16. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

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

RECEIVER'S ACCOUNTS

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

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

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

FUNDING OF THE RECEIVERSHIP

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

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

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

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

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

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

SERVICE AND NOTICE

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

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documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL <https://www.ksvadvisory.com/experience/case/128Hazelton>.

27. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors', or either of their creditors or other interested parties at their respective addresses as last shown on the records of the Debtors, or either of them, and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

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

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

30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

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

A handwritten signature in blue ink, appearing to read 'Cavanagh', is written over a light-colored rectangular background. A red scribble is visible below the signature.

Mr. Justice
Cavanagh

Schedule "A"

DESCRIPTION OF REAL PROPERTY

PIN 21196-0353(LT)

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

PIN 76967-0001(LT)

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

PIN 76967-0004(LT)

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

PIN 76967-0011(LT)

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

PIN 76967-0012(LT)

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

PIN 76967-0018(LT)

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

PIN 76967-0019(LT)

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

PIN 76967-0020(LT)

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

PIN 76967-0024(LT)

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

PIN 76967-0025(LT)

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

PIN 76967-0026(LT)

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

PIN 76967-0027(LT)

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

PIN 76967-0034(LT)

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

PIN 76967-0035(LT)

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

PIN 76967-0036(LT)

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

PIN 76967-0037(LT)

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

PIN 76967-0038(LT)

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

PIN 76967-0041(LT)

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

PIN 76967-0042(LT)

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

PIN 76967-0043(LT)

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

PIN 76967-0045(LT)

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

PIN 76967-0046(LT)

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

PIN 76967-0047(LT)

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

PIN 76967-0048(LT)

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

PIN 76967-0057(LT)

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

PIN 76967-0058(LT)

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

PIN 76967-0059(LT)

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

PIN 76967-0060(LT)

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

PIN 76967-0062(LT)

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

PIN 76967-0065(LT)

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

PIN 76967-0067(LT)

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

PIN 76967-0073(LT)

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

PIN 76967-0074(LT)

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

PIN 76967-0076(LT)

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

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. ●

AMOUNT \$ ●

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

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

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

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

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

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

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

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

DATED the ____, day of _____, 2024.

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

Per: _____

Name: Bobby Kofman

Title: Managing Director

CONSTANTINE ENTERPRISES INC.

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

- and -

Applicant

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(APPOINTING RECEIVER)**

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Lawyers for the Applicant

Appendix “C”



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

June 14, 2024

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COURT FILE NUMBERS: CV-24-00715321-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CONSTANTINE ENTERPRISES INC.

APPLICANT

- AND -

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

RESPONDENTS

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

FIRST REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER

JUNE 14, 2024

1.0 Introduction

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

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

1.1 Purposes of this Report

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

1.2 Restrictions

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

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

2.0 Background

2.1 Hazelton

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

2.2 Retail

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

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

3.0 Creditors

3.1 Secured Creditors

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

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

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

Hazelton Priority Indebtedness

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

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

² Aviva’s registration is discussed below.

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

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

Hazelton Subordinate Indebtedness

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

Retail Note

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

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

Additional Secured Creditors

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

Hazelton

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

Retail

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

3.2 Other Known Creditors

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

4.0 Hazelton’s Ongoing Operations

4.1 Funding for these Proceedings

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

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

4.2 Project Management

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

5.0 Retail APS Sale Process

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

5.1 Sale Process

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

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

⁴ This amount was determined based on discussions with CBRE.

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

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

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

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

5.2 The Stalking Horse APA

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

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

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

5.3 Retail APS Sale Process Recommendation

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

6.0 Conclusion

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

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Appendix “D”

AGREEMENT OF PURCHASE AND SALE

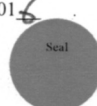
The undersigned, DAVID BERRY (collectively, the "Purchaser"), hereby agrees with **MIZRAHI (128 HAZELTON) INC.** (the "Vendor") to purchase the above-noted unit, as outlined for identification purposes only on the sketch attached hereto as Schedule "A", together with THREE (3) Parking Unit(s), and ONE (1) Locker Unit(s), which shall be allocated by the Vendor in its sole discretion being (a) proposed unit(s) in the Condominium, to be registered against those lands and premises situate in the City of Toronto and which are currently municipally known as 126 and 128 Hazleton Avenue (hereinafter called the "Property"), together with an undivided interest in the common elements appurtenant to such unit(s) and the exclusive use of those parts of the common elements attaching to such unit(s), as set out in the proposed Declaration (collectively, the "Unit") on the following terms and conditions:

1. The purchase price of the Unit (the "Purchase Price") is **Thirteen Million and Two-Hundred and Fifty Thousand Dollars (\$13,250,000.00)** DOLLARS in lawful money of Canada, payable as follows:
 - (a) to Harris, Sheaffer LLP, in Trust, (the "Vendor's Solicitors" or "Escrow Agent" or "Trustee") in the following amounts at the following times, by cheque or bank draft, as deposits pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on the Occupancy Date:
 - (i) The sum of **TWO MILLION SIX HUNDRED THOUSAND AND FIFTY THOUSAND (\$2,650,000.00)** Dollars submitted with this Agreement;
 - (b) the balance of the Purchase Price by certified cheque on the Title Transfer Date to the Vendor or as the Vendor may direct, subject to the adjustments hereinafter set forth.
2.
 - (a) The Purchaser shall occupy the Unit on the First Tentative Occupancy Date [as defined in the Statement of Critical Dates being part of the Tarion Addendum as hereinafter defined], or such extended or accelerated date that the Unit is substantially completed by the Vendor for occupancy by the Purchaser in accordance with the terms of this Agreement including, without limitation, the Tarion Addendum (the "Occupancy Date").
 - (b) The transfer of title to the Unit shall be completed on the later of the Occupancy Date or a date established by the Vendor in accordance with Paragraph 14 hereof (the "Title Transfer Date").
 - (c) The Purchaser's address for delivery of any notices pursuant to this Agreement or the Act is the address set out in the Tarion Addendum.
 - (d) Notwithstanding anything contained in this Agreement (or in any schedules annexed hereto) to the contrary, it is expressly understood and agreed that if the Purchaser has not executed and delivered to the Vendor or its sales representative an acknowledgement of receipt of both the Vendor's disclosure statement and a copy of this Agreement duly executed by both parties hereto, within fifteen (15) days from the date of the Purchaser's execution of this Agreement as set out below, then the Purchaser shall be deemed to be in default hereunder and the Vendor shall have the unilateral right to terminate the Agreement at any time thereafter upon delivering written notice confirming such termination to the Purchaser, whereupon the Purchaser's initial deposit cheque shall be forthwith returned to the Purchaser by or on behalf of the Vendor.

The following Schedules of this Agreement, if attached hereto, shall form a part of this Agreement. The Purchaser acknowledges that he has read all Sections and Schedules of this Agreement and the form of Acknowledgement, if any:

- Schedule "A" - Unit Plan/sketch
- Schedule "B" - Features & Finishes
- Schedule "C" - Occupancy Licence
- Schedule "D" - Warning Provisions
- Schedule "E" - Receipt Confirmation
- Schedule "F" - Purchaser Provision
- Schedule being the Tarion Warranty Corporation Statement of Critical Dates and Addendum to Agreement of Purchase and Sale (collectively the "Tarion Addendum") and such other Schedules annexed thereto.

DATED, signed, sealed and delivered this 21 day of Apr. 1, 2016

SIGNED, SEALED AND DELIVERED in the presence of)
) [Signature]
) PURCHASER: **DAVID BERRY** D.O.B. July 19, 1965) 
)
) WITNESS:)
) (as to all Purchaser's)
) signatures, if more than)
) one purchaser)
)
) PURCHASER'S SOLICITOR: _____)
)
) Address: _____)
)
) Telephone: _____ Facsimile: _____)

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

DATED, signed, sealed and delivered, this 21 day of April, 2016

Vendor's Solicitors: **MIZRAHI (128 HAZELTON) INC.**

HARRIS, SHEAFFER LLP
 Suite 610 - 4100 Yonge Street
 Toronto, Ontario, M2P 3B5
 Attn: Jeffrey P. Silver
 Telephone: (416) 250-5800 Fax: (416) 250-5300

Per: [Signature] 
 Authorized Signing Officer
 I have the authority to bind the Corporation.

3. The meaning of words and phrases used in this Agreement and its Schedules shall have the meaning ascribed to them in the *Condominium Act, 1998*, S.O. 1998, C.19, the regulations thereunder and any amendments thereto (the "Act") and other terms used herein shall have ascribed to them the definitions in the Condominium Documents unless otherwise provided for as follows:
- (a) "Agreement" means this Agreement of Purchase and Sale including all Schedules attached hereto and made a part hereof;
 - (b) "Condominium" means the condominium which will be registered against the Property pursuant to the provisions of the Act;
 - (c) "Condominium Documents" means the Creating Documents, the by-laws and rules of the Condominium, the disclosure statement and budget statement together with all other documents and agreements which are entered into by the Vendor on behalf of the Condominium or by the Condominium directly prior to the turnover of the condominium, as may be amended from time to time;
 - (d) "CRA" means the Canada Revenue Agency or its successors;
 - (e) "Creating Documents" means the declaration and description which are intended to be registered against title to the Property and which will serve to create the Condominium, as may be amended from time to time;
 - (f) "Interim Occupancy" shall mean the period of time from the Occupancy Date to the Title Transfer Date;
 - (g) "Occupancy Licence" shall mean the terms and conditions by which the Purchaser shall occupy the Unit during Interim Occupancy as set forth in Schedule "C" hereof;
 - (h) "Occupancy Fee" shall mean the sum of money payable monthly in advance by the Purchaser to the Vendor and calculated in accordance with Schedule "C" hereof;
 - (i) "Property" shall mean the lands and premises upon which the Condominium is constructed or shall be constructed and legally described in the Condominium Documents; and
 - (j) "TWC" means Tarion Warranty Corporation or its successors.

Finishes

4. The Purchase Price shall include those items listed on Schedule "B" attached hereto. The Purchaser acknowledges that only the items set out in Schedule "B" are included in the Purchase Price and that model suite/vingnette furnishings and appliances, decor, upgrades, artist's renderings, scale model(s), improvements, mirrors, drapes, tracks and wall coverings are for display purposes only and are not included in the Purchase Price unless specified in Schedule "B". The Purchaser agrees to attend and notify the Vendor of his/her choice of finishes within fifteen (15) days of being requested to do so by the Vendor. In the event colours and/or finishes subsequently become unavailable, the Purchaser agrees to re-attend at such time or times as requested by the Vendor or its agents, to choose from substitute colours and/or finishes. If the Purchaser fails to choose colours or finishes within the time periods requested, the Vendor may irrevocably choose the colours and finishes for the Purchaser and the Purchaser agrees to accept the Vendor's selections.

Deposits

5. (a) The Vendor shall credit the Purchaser with interest at the prescribed rate on either the Occupancy Date or Title Transfer Date at the Vendor's sole discretion on all money received by the Vendor on account of the Purchase Price from the date of deposit of the money received from time to time by the Vendor's Solicitors or the Trustee until the Occupancy Date. The Purchaser acknowledges and agrees that, for the purposes of subsection 81(6) of the Act, compliance with the requirement to provide written evidence, in the form prescribed by the Act, of payment of monies by or on behalf of the Purchaser on account of the Purchase Price of the Unit shall be deemed to have been sufficiently made by delivery of such written evidence to the address of the Purchaser noted in the Tarion Addendum. The Purchaser further acknowledges and agrees that any cheques provided to the Vendor on account of the Purchase Price will not be deposited and accordingly interest as prescribed by the Act will not accrue thereon, until after the expiry of the ten (10) day rescission period as provided for in section 73 of the Act (or any extension thereof as may be agreed to in writing by the Vendor). The Purchaser represents and warrants that the Purchaser is not a non-resident of Canada within the meaning of the Income Tax Act of Canada (the "ITA"). If the Purchaser is not a resident of Canada for the purposes of the ITA the Vendor shall be entitled to withhold and remit to CRA the appropriate amount of interest payable to the Purchaser on account of the deposits paid hereunder, under the ITA.
- (b) All deposits paid by the Purchaser shall be held by the Escrow Agent in a designated trust account, and shall be released only in accordance with the provisions of subsection 81(7) of the Act and the regulations thereto, as amended. Without limiting the generality of the foregoing, and for greater clarity, it is understood and agreed that with respect to any deposit monies received from the Purchaser the Escrow Agent shall be entitled to withdraw such deposit monies from said designated trust account prior to the Title Transfer Date if and only when the Vendor obtains a Certificate of Deposit from TWC for deposit monies up to Twenty Thousand (\$20,000.00) Dollars and with respect to deposit monies in excess of Twenty Thousand (\$20,000.00) Dollars, one or more excess condominium deposit insurance policies (issued by any insurer as may be selected by the Vendor, authorized to provide excess condominium deposit insurance in Ontario) insuring the deposit monies so withdrawn (or intended to be withdrawn), and delivers the said excess condominium deposit insurance policies (duly executed by or on behalf of the insurer and the Vendor) to the Escrow Agent holding the deposit monies for which said policies have been provided as security, in accordance with the provisions of section 21 of O. Reg. 48/01. Furthermore and without limiting the generality of the foregoing, the Vendor's Solicitors, Escrow Agent or the Trustee shall be permitted, upon written instructions from the Vendor, to transfer any and all deposits in its possession to another solicitor

representing the Vendor or replacement escrow agent, provided that such solicitor or replacement escrow agent undertakes to the Vendor's Solicitors, Escrow Agent or the Trustee to comply with the provisions of section 81 of the Act and to notify the Purchaser within 15 days of the transfer of such funds that it is now holding the deposits as escrow agent pursuant to the terms of the Act and this Agreement. Upon the transfer of the deposits in accordance with this paragraph, the Vendor's Solicitors, Escrow Agent or the Trustee shall have no further obligations to the Purchaser in its capacity as the escrow agent of the deposits and shall automatically be released from further liability as escrow agent of such deposits.

Adjustments

6. (a) Commencing as of the Occupancy Date, the Purchaser shall be responsible and be obligated to pay the following costs and/or charges in respect to the Unit:
- (i) all utility costs including electricity, gas and water (unless included as part of the common expenses); and
 - (ii) the Occupancy Fee owing by the Purchaser for Interim Occupancy prior to the Title Transfer Date (if applicable).
- (b) The Purchase Price shall be adjusted to reflect the following items, which shall be apportioned and allowed from the Title Transfer Date, with that day itself apportioned to the Purchaser:
- (i) realty taxes (including local improvement charges pursuant to the *Local Improvement Charges Act*, if any) which may be estimated as if the Unit has been assessed as fully completed by the taxing authority for the calendar year in which the transaction is completed as well as for the following calendar year, notwithstanding the same may not have been levied or paid on the Title Transfer Date. The Vendor shall be entitled in its sole discretion to collect from the Purchaser a reasonable estimate of the taxes as part of the Occupancy Fee and/or such further amounts on the Title Transfer Date, provided all amounts so collected shall either be remitted to the relevant taxing authority on account of the Unit or held by the Vendor pending receipt of final tax bills for the Unit, following which said realty taxes shall be readjusted in accordance with subsections 80(8) and (9) of the Act; and
 - (ii) common expense contributions attributable to the Unit, with the Purchaser being obliged to provide the Vendor on or before the Title Transfer Date with a series of post-dated cheques payable to the condominium corporation for the common expense contributions attributable to the Unit, for such period of time after the Title Transfer Date as determined by the Vendor (but in no event for more than one year).
- (c) Interest on all money paid by the Purchaser on account of the Purchase Price, shall be adjusted and credited to the Purchaser in accordance with paragraph 5 of this Agreement.
- (d) The Purchaser shall, in addition to the Purchase Price, pay the following amounts to the Vendor on the Title Transfer Date:
- (i) Any new taxes imposed on the Unit by the federal, provincial, or municipal government or any increases to existing taxes currently imposed on the Unit by such government.
 - (ii) Any amounts which remain unpaid and owing to the Vendor on account of upgrades and/or extras and/or changes ordered by the Purchaser.
 - (iii) The amount of any increase in development charge(s) and/or education development charge(s) (the "Levies") assessed against or attributable to the Unit (or assessed against the Property or any portion thereof, and attributable to the Unit by either pro-rating same in accordance with the proportion or percentage of common interests attributable thereto or by dividing same by the number of residential units in the Condominium), pursuant to the *Development Charges Act 1997*, S.O. 1997, as amended from time to time, and the *Education Act*, S.O. 1997, as amended from time to time, over the amount of such charges that would be exigible as of November 11, 2015 and the amount of any new Levies that were not exigible as of November 11, 2015 with respect to the Property and were subsequently assessed against the Property or attributable to the Unit.
 - (iv) The cost of the TWC enrolment fee for the Unit (together with any provincial or federal taxes exigible with respect thereto).
 - (v) The cost of utility meters, water meter installations, hydro and gas meter or check meter installations, water and sewer service connection charges and hydro and gas installation and connection or energization charges for the Condominium and/or the Unit, the Purchaser's portion of such installation and/or connection or energization charges and costs to be calculated by dividing the total amount of such charges and costs by the number of residential dwelling units in the Condominium and by charging the Purchaser in the statement of adjustments with that portion of the charges and costs, provided that such amounts shall not exceed One Thousand Dollars (\$1,000.00).
 - (vi) The charge imposed upon the Vendor or its solicitors by the Law Society of Upper Canada upon registration of a Transfer/Deed of Land or Charge/Mortgage of Land or any other instrument.
 - (vii) A sum of Fifty (\$50.00) for each cheque tendered pursuant to paragraphs 1(a) of this Agreement representing a reasonable reimbursement to the Vendor of the costs incurred or to be incurred by the Vendor in fulfillment of the requirements of subsection 81(6) of the Act.

- (viii) Any other additional or further adjustments agreed to in writing between the Vendor and Purchaser subsequent to the execution of this Agreement.
- (e) In the event that the Purchaser desires to increase the amount to be paid to the Vendor's solicitors on the Occupancy Date at any time after the expiry of the initial ten (10) day statutory rescission period, or wishes to vary the manner in which the Purchaser has previously requested to take title to the Property, or wishes to add or change any unit(s) being acquired from the Vendor, then the Purchaser hereby covenants and agrees to pay to the Vendor's Solicitors' the legal fees and ancillary disbursements which may be incurred by the Vendor or charged by the Vendor's Solicitors in order to implement any of the foregoing changes so requested by the Purchaser (with the Vendor's Solicitors' legal fees for implementing any such changes to any of the interim closing and/or final closing documents so requested by the Purchaser and agreed to by the Vendor being \$350.00 plus HST), but without there being any obligation whatsoever on the part of the Vendor to approve of, or to implement, any of the foregoing changes so requested.
- (f) It is further understood and agreed that the Unit may include a rental or leased hot water tank and associated components which would remain the property of the appropriate company or other supplier of such item, and in such event, the Purchaser shall pay the monthly rental/lease charges assessed with respect thereto from and after the Occupancy Date, and shall execute all requisite rental documents in connection therewith.
- (g) The Purchaser acknowledges that it may be required to enter into an agreement with the supplier of hydro other utility services to the Condominium (the "**Utility Supplier**") on or before the Occupancy Date. Furthermore, the Purchaser acknowledges that such agreement may require the Purchaser to deliver a security deposit to the Utility Supplier prior to the Occupancy Date and the Purchaser agrees to deliver such security deposit to the Vendor on the Occupancy Date.
- (h) It is acknowledged and agreed by the parties hereto that the Purchase Price already includes a component equivalent to both the federal portion and the provincial portion of the harmonized goods and services tax or single sales tax exigible with respect to this purchase and sale transaction less the Rebate as defined below (hereinafter referred to as the "**HST**"), and that the Vendor shall remit the HST to CRA on behalf of the Purchaser forthwith following the completion of this transaction. The Purchaser hereby warrants and represents to the Vendor that with respect to this transaction, the Purchaser qualifies for the federal (if applicable), and the provincial new housing rebates pursuant to the *Excise Tax Act* (Canada), as may be amended (collectively, the "**Rebate**"), and further warrants and confirms that the Purchaser is a natural person who is acquiring the Property with the intention of being the sole beneficial owner thereof on the Title Transfer Date (and not as the agent or trustee for or on behalf of any other party or parties), and covenants that upon the Occupancy Date the Purchaser or one or more of the Purchaser's relations (as such term is defined in the *Excise Tax Act*) shall personally occupy the Unit as his, her or their primary place of residence, for such period of time as shall be required by the *Excise Tax Act*, and any other applicable legislation, in order to entitle the Purchaser to the Rebate (and the ultimate assignment thereof to and in favour of the Vendor) in respect of the Purchaser's acquisition of the Unit. The Purchaser hereby irrevocably assigns to the Vendor all of the Purchaser's rights, interests and entitlements to the Rebate (and concomitantly releases all of the Purchaser's claims or interests in and to the Rebate, to and in favour of the Vendor), and hereby irrevocably authorizes and directs CRA to pay or credit the Rebate directly to the Vendor. In addition, the Purchaser shall execute and deliver to the Vendor, forthwith upon the Vendor's or Vendor's Solicitors request for same (and in any event on or before the Title Transfer Date), all requisite documents and assurances that the Vendor or the Vendor's Solicitors may reasonably require in order to confirm the Purchaser's entitlement to the Rebate and/or to enable the Vendor to obtain the benefit of the Rebate (by way of assignment or otherwise), including without limitation, the GST/HST New Housing Rebate Application for Houses Purchased from a Builder or other similar form as prescribed from time to time (the "**Rebate Form**"). The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against any loss, cost, damage and/or liability (including an amount equivalent to the Rebate, plus penalties and interest thereon) which the Vendor may suffer, incur or be charged with, as a result of the Purchaser's failure to qualify for the Rebate, or as a result of the Purchaser having qualified initially but being subsequently disentitled to the Rebate, or as a result of the inability to assign the benefit of the Rebate to the Vendor (or the ineffectiveness of the documents purporting to assign the benefit of the Rebate to the Vendor). As security for the payment of such amount, the Purchaser does hereby charge and pledge his/her interest in the Unit with the intention of creating a lien or charge against same. It is further understood and agreed by the parties hereto that:
- (i) if the Purchaser does not qualify for the Rebate, or fails to deliver to the Vendor or the Vendor's solicitors forthwith upon the Vendor's or the Vendor's Solicitors request for same (and in any event on or before the Title Transfer Date) the Rebate Form duly executed by the Purchaser, together with all other requisite documents and assurances that the Vendor or the Vendor's Solicitors may reasonably require from the Purchaser or the Purchaser's solicitor in order to confirm the Purchaser's eligibility for the Rebate and/or to ensure that the Vendor ultimately acquires (or is otherwise assigned) the benefit of the Rebate; or
- (ii) if the Vendor believes, for whatever reason, that the Purchaser does not qualify for the Rebate, regardless of any documentation provided by or on behalf of the Purchaser (including any statutory declaration sworn by the Purchaser) to the contrary, and the Vendor's belief or position on this matter is communicated to the Purchaser or the Purchaser's solicitor on or before the Title Transfer Date;

then notwithstanding anything hereinbefore or hereinafter provided to the contrary, the Purchaser shall be obliged to pay to the Vendor (or to whomsoever the Vendor may in writing direct), by certified cheque delivered on the Title Transfer Date, an amount equivalent to the Rebate, in addition to the Purchase Price and in those circumstances where the Purchaser maintains that he is eligible for the Rebate despite the Vendor's belief to the contrary, the Purchaser shall (after payment of the amount equivalent to the Rebate as aforesaid) be fully entitled to pursue the procurement of the Rebate directly from CRA. It is further understood and agreed that in the event that the Purchaser intends to rent out the Unit before or after the Title Transfer Date, the Purchaser shall not be entitled to the Rebate, but may nevertheless be entitled to pursue, on

his or her own after the Title Transfer Date, the federal and provincial new rental housing rebates directly with CRA, pursuant to section 256.2 of the *Excise Tax Act*, as may be amended, and other applicable legislation to be enacted relating to the provincial new rental housing rebate.

- (i) Notwithstanding any other provision herein contained in this Agreement, the Purchaser acknowledges and agrees that the Purchase Price does not include any HST exigible with respect to any of the adjustments payable by the Purchaser pursuant to this Agreement, or any extras or upgrades or changes purchased, ordered or chosen by the Purchaser from the Vendor which are not specifically set forth in this Agreement, and the Purchaser covenants and agrees to pay such HST to the Vendor in accordance with the *Excise Tax Act*.
- (j) An administration fee of TWO HUNDRED AND FIFTY (\$250.00) DOLLARS shall be charged to the Purchaser for any cheque payable hereunder delivered to the Vendor or to the Vendor's Solicitors and not accepted by the Vendor's or the Vendor's Solicitor's bank for any reason. At the Vendor's option, this administration fee can be collected as an adjustment on the Title Transfer Date or together with the replacement cheque delivered by the Purchaser.

Title

7. The Vendor or its Solicitor shall notify the Purchaser or his/her Solicitor following registration of the Creating Documents so as to permit the Purchaser or his/her Solicitor to examine title to the Unit (the "**Notification Date**"). The Purchaser shall be allowed twenty (20) days from the Notification Date (the "**Examination Period**") to examine title to the Unit at the Purchaser's own expense and shall not call for the production of any surveys, title deeds, abstracts of title, grading certificates, occupancy permits or certificates, nor any other proof or evidence of the title or occupiability of the Unit, except such copies thereof as are in the Vendor's possession. If within the Examination Period, any valid objection to title or to any outstanding work order is made in writing to the Vendor which the Vendor shall be unable or unwilling to remove and which the Purchaser will not waive, this Agreement shall, notwithstanding any intervening acts or negotiations in respect of such objections, be null and void and the deposit monies together with the interest required by the Act to be paid after deducting any payments due to the Vendor by the Purchaser as provided for in this Agreement shall be returned to the Purchaser and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages. Save as to any valid objections so made within the Examination Period, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Unit. The Purchaser acknowledges and agrees that the Vendor shall be entitled to respond to some or all of the requisitions submitted by or on behalf of the Purchaser through the use of a standard title memorandum or title advice statement prepared by the Vendor's Solicitors, and that same shall constitute a satisfactory manner of responding to the Purchaser's requisitions, thereby relieving the Vendor and the Vendor's Solicitors of the requirement to respond directly or specifically to the Purchaser's requisitions.

Direction Re: Title

8. The Purchaser hereby agrees to submit to the Vendor or the Vendor's Solicitors on the earlier of the Occupancy Date and twenty (20) days prior to the Title Transfer Date, a written direction as to how the Purchaser intends to take title to the Unit, including, the date(s) of birth and marital status and the Purchaser shall be required to close the transaction in the manner so advised unless the Vendor otherwise consents in writing, which consent may be arbitrarily withheld. If the Purchaser does not submit such confirmation within the required time as aforesaid the Vendor shall be entitled to tender a Transfer/Deed on the Title Transfer Date engrossed in the name of the Purchaser as shown on the face of this Agreement.

Permitted Encumbrances

- 9. (a) The Purchaser agrees to accept title subject to the following:
 - (i) the Condominium Documents, notwithstanding that they may be amended and varied from the proposed Condominium Documents in the general form attached to the Disclosure Statement delivered to the Purchaser as set out in Schedule "E";
 - (ii) registered restrictions or covenants that run with the Property, including any encroachment agreement(s) with any governmental authorities or adjacent land owner(s), provided that same are complied with as at the Title Transfer Date;
 - (iii) easements, rights-of-way and/or licences now registered (or to be registered hereafter) for the supply and installation of utility services, drainage, telephone services, electricity, gas, storm and/or sanitary sewers, water, cable television/internet, recreational and shared facilities, and/or any other service(s) to or for the benefit of the Condominium (or to any adjacent or neighbouring properties), including any easement(s) which may be required by the Vendor (or by the owner of the Property, if not one and the same as the Vendor), or by any owner(s) of adjacent or neighbouring properties, for servicing and/or access to (or entry from) such properties, together with any easement and cost-sharing agreement(s) or reciprocal agreement(s) confirming (or pertaining to) any easement or right-of-way for access, egress, support and/or servicing purposes, and/or pertaining to the sharing of any services, facilities and/or amenities or for limiting distance purposes with adjacent or neighbouring property owners, provided that any such easement and cost-sharing agreements or reciprocal agreements or other agreements are (insofar as the obligations thereunder pertaining to the Property, or any portion thereof, are concerned) complied with as at the Title Transfer Date;
 - (iv) registered municipal agreements and registered agreements with publicly regulated utilities and/or with local ratepayer associations, including without limitation, any development, site plan, condominium, subdivision, Section 37, collateral, limiting distance, engineering and/or other municipal agreement (or similar agreements entered into with any governmental authorities including any amendments or addenda related thereto), (with all of such agreements being hereinafter collectively referred to as the "**Development Agreements**"), provided that same are complied with as at the Title Transfer Date, or security has been posted in such amounts and on such terms as may be required by the governmental authorities to ensure compliance therewith and/or the completion of any outstanding obligations thereunder; and



- (v) unregistered or inchoate liens for unpaid utilities in respect of which no formal bill, account or invoice has been issued by the relevant utility authority (or if issued, the time for payment of same has not yet expired), without any claim or request by the Purchaser for any utility holdback(s) or reduction/abatement in the Purchase Price, provided that the Vendor delivers to the Purchaser the Vendor's written undertaking to pay all outstanding utility accounts owing with respect to the Property (including any amounts owing in connection with any final meter reading(s) taken on or immediately prior to the Title Transfer Date, if applicable), as soon as reasonably possible after the completion of this transaction.
- (b) It is understood and agreed that the Vendor shall not be obliged to obtain or register on title to the Property a release of (or an amendment to) any of the aforementioned easements, Development Agreements, reciprocal agreements or restrictive covenants or any of the other aforementioned agreements or notices, nor shall the Vendor be obliged to have any of same deleted from the title to the Property, and the Purchaser hereby expressly acknowledges and agrees that the Purchaser shall satisfy himself or herself as to compliance therewith. The Purchaser agrees to observe and comply with the terms and provisions of the Development Agreements, and all restrictive covenants and other agreements registered on title. The Purchaser further acknowledges and agrees that the retention by the local municipality within which the Property is situate (the "Municipality"), or by any of the other governmental authorities, of security (e.g. in the form of cash, letters of credit, a performance bond, etc., satisfactory to the Municipality and/or any of the other governmental authorities) intended to guarantee the fulfilment of any outstanding obligations under the Development Agreements shall, for the purposes of the purchase and sale transaction contemplated hereunder, be deemed to be satisfactory compliance with the terms and provisions of the Development Agreements. The Purchaser also acknowledges that the wires, cables and fittings comprising the cable television system serving the Condominium are (or may be) owned by the local cable television supplier, or by a company associated, affiliated with or related to the Vendor.
- (c) The Purchaser covenants and agrees to consent to the matters referred to in subparagraph 9(a) hereof and to execute all documents and do all things requisite for this purpose, either before or after the Title Transfer Date.
- (d) In the event that the Vendor is not the registered owner of the Property, the Purchaser agrees to accept a conveyance of title from the registered owner together with the owner's title covenants in lieu of the Vendor's.
- (e) The Vendor shall be entitled to insert in the Transfer/Deed of Land, specific covenants by the Purchaser pertaining to any or all of the restrictions, easements, covenants and agreements referred to herein and in the Condominium Documents, and in such case, the Purchaser may be required to deliver separate written covenants on closing. If so requested by the Vendor, the Purchaser covenants to execute all documents and instruments required to convey or confirm any of the easements, licences, covenants, agreements, and/or rights, required pursuant to this Agreement and shall observe and comply with all of the terms and provisions therewith. The Purchaser may be required to obtain a similar covenant (enforceable by and in favour of the Vendor), in any agreement entered into between the Purchaser and any subsequent transferee of the Unit.

Vendor's Lien

- 10. The Purchaser agrees that the Vendor shall have a Vendor's Lien for unpaid purchase monies on the Title Transfer Date and shall be entitled to register a Notice of Vendor's Lien against the Unit any time after the Title Transfer Date.

Partial Discharges

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

Construction Lien Act

- 12. The Purchaser covenants and agrees that he/she is a "home buyer" within the meaning of the *Construction Lien Act*, R.S.O. 1990, c.C.30. and will not claim any lien holdback on the Occupancy Date or Title Transfer Date. The Vendor shall complete the remainder of the Condominium according to its schedule of completion and neither the Occupancy Date nor the Title Transfer Date shall be delayed on that account.

The Planning Act

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

Title Transfer Date

- 14. (a) The provisions of the Tarion Addendum reflect the TWC's policies, regulations and/or guidelines on extensions of the First Tentative Occupancy Date, but it is expressly understood and agreed by the parties hereto that any failure to provide notice(s) of the extension(s) of the First Tentative Occupancy Date, Subsequent Tentative Occupancy Dates or Firm Occupancy Date, in accordance with the provisions of the Tarion Addendum shall only give rise to a damage claim by the Purchaser against the Vendor up to a maximum of \$7,500.00, as more particularly set forth in the Regulations to the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, as amended (the "ONHWPA"), and under no circumstances shall the Purchaser be entitled to terminate this transaction or otherwise rescind this Agreement as a result thereof, other than in accordance with the Tarion Addendum.
- (b) The Vendor's Solicitors shall designate a date not less than twenty (20) days after written notice is given to the Purchaser or his or her solicitor of the registration of the Creating Documents as the Title Transfer Date. The Title Transfer Date once designated may be extended from time to time by the Vendor's Solicitors provided that it shall not be more than twenty-four (24) months following the Occupancy Date.

Purchaser's Covenants, Representations and Warranties

- 15. The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time, and to any easement, license or other agreement concerning the Condominium and the Condominium Documents. The Purchaser further agrees to consent to and execute all documentation as may be required by the Vendor in this regard and the Purchaser hereby irrevocably appoints the Vendor as the Purchaser's attorney to execute any consents or other documents required by the Vendor to give effect to this paragraph. The Purchaser hereby consents to the Vendor obtaining a consumer's report containing credit and/or personal information for the purposes of this transaction. The Purchaser further agrees to deliver to the Vendor, from time to time, within ten (10) days of written demand from the Vendor, all necessary financial and personal information required by the Vendor in order to evidence the Purchaser's ability to pay the balance of the Purchase Price on the Title Transfer Date, including without limitation, written confirmation of the Purchaser's income and evidence of the source of the payments required to be made by the Purchaser in accordance with this Agreement. Without limiting the generality of the foregoing and notwithstanding any other provision in this Agreement to the contrary, within ten (10) days of written demand from the Vendor, the Purchaser agrees to produce evidence of a satisfactory mortgage approval signed by a lending institution or other mortgagee acceptable to the Vendor confirming that the said lending institution or acceptable mortgagee will be advancing funds to the Purchaser sufficient to pay the balance due on the Title Transfer Date. If the Purchaser fails to provide the mortgage approval as aforesaid, then the Purchaser shall be deemed to be in default under this Agreement. The Vendor may, in its sole discretion, elect to accept in the place of such mortgage commitment, other evidence satisfactory to the Vendor that the Purchaser will have sufficient funds to pay the balance due on the Title Transfer Date.
- 16. The Purchaser acknowledges that notwithstanding any rule of law to the contrary, that by executing this Agreement, it has not acquired any equitable or legal interest in the Unit or the Property. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, Purchaser's Lien, or any other document providing evidence of this Agreement against title to the Property, Unit or the Condominium and further agrees not to give, register, or permit to be registered any encumbrance against the Property, Unit or the Condominium. Should the Purchaser be in default of his or her obligations hereunder, the Vendor may, as agent and attorney of the Purchaser, cause the removal of notice of this Agreement, caution or other document providing evidence of this Agreement or any assignment thereof, from the title to the Property, Unit or the Condominium. In addition, the Vendor, at its option, shall have the right to declare this Agreement null and void in accordance with the provisions of paragraph 25 hereof. The Purchaser hereby irrevocably consents to a court order removing such notice of this Agreement, any caution, or any other document or instrument whatsoever from title to the Property, Unit or the Condominium and the Purchaser agrees to pay all of the Vendor's costs and expenses in obtaining such order (including the Vendor's Solicitor's fees on a full indemnity basis).
- 17. The Purchaser covenants not to list for sale or lease, advertise for sale or lease, sell or lease, nor in any way assign his or her interest under this Agreement, or the Purchaser's rights and interests hereunder or in the Unit, nor directly or indirectly permit any third party to list or advertise the Unit for sale or lease, at any time until after the Title Transfer Date, without the prior written consent of the Vendor, which consent may be arbitrarily withheld. The Purchaser acknowledges and agrees that once a breach of the preceding covenant occurs, such breach is or shall be incapable of rectification, and accordingly the Purchaser acknowledges, and agrees that in the event of such breach, the Vendor shall have the unilateral right and option of terminating this Agreement and the Occupancy License, effective upon delivery of notice of termination to the Purchaser or the Purchaser's solicitor, whereupon the provisions of this Agreement dealing with the consequence of termination by reason of the Purchaser's default, shall apply. The Purchaser shall be entitled to direct that title to the Unit be taken in the name of his or her spouse, or a member of his or her immediate family only, and shall not be permitted to direct title to any other third parties.
- 18. The Purchaser acknowledges that the Vendor is (or may in the future be) processing and/or completing one or more rezoning or minor variance applications with respect to the Property (and/or the lands adjacent thereto or in the neighbouring vicinity thereof), as a well as a site plan approval/development application/draft plan of condominium approval with respect to the Property, in order to permit the development and construction of the Condominium thereon. The Purchaser acknowledges that during the rezoning, minor variance, site plan and/or draft plan of condominium approval process, the footprint or siting of the condominium building may shift from that originally proposed or intended, the overall height of the condominium building (and the number of levels/floors, and/or the number of dwelling units comprising the Condominium) may vary, and the location of the Condominium's proposed amenities may likewise be altered, without materially affecting the floor plan layout, design and size of the interior of the Unit, and the Purchaser hereby expressly agrees to complete this transaction notwithstanding the foregoing, without any abatement in the Purchase Price, and without any entitlement to a claim for damages or other compensation whatsoever. The Purchaser further covenants and agrees that it shall not oppose the aforementioned zoning, minor variance and site plan/development applications, nor any other applications ancillary thereto, including without

limitation, any application submitted or pursued by or on behalf of the Vendor to lawfully permit the development and registration of the Condominium, or to obtain an increase in the density coverage or the dwelling unit count (or yield) thereof, or for any other lawful purpose whatsoever, and the Purchaser expressly acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto.

19. The Purchaser covenants and agrees that he/she shall not interfere with the completion of other units and the common elements by the Vendor. Until the Condominium is completed and all units sold and transferred the Vendor may make such use of the Condominium as may facilitate the completion of the Condominium and sale of all the units, including, but not limited to the maintenance of a sales/rental/administration/construction office(s) and model units, and the display of signs located on the Property.

Termination without Default

20. In the event this Agreement is terminated through no fault of the Purchaser, all deposit monies paid by the Purchaser towards the Purchase Price, together with any interest required by law to be paid, shall be returned to the Purchaser; provided however, that the Vendor shall not be obligated to return any monies paid by the Purchaser as an Occupancy Fee. The Vendor shall be entitled to require the Purchaser to execute a release of any surety, lender or any other third party requested by the Vendor in its discretion prior to the return of such monies. In no event shall the Vendor or its agents be liable for any damages or costs whatsoever and without limiting the generality of the foregoing, for any loss of bargain, for any relocating costs, or for any professional or other fees paid in relation to this transaction. This provision may be pleaded by the Vendor as a complete defence to any such claim.

Tarion Warranty Corporation

21. The Vendor represents and warrants to the Purchaser that the Vendor is a registered vendor/builder with the TWC. The Purchaser acknowledges and agrees that any warranties of workmanship or materials, in respect of any aspect of the construction of the Condominium including the Unit, whether implied by this Agreement or at law or in equity or by any statute or otherwise, shall be limited to only those warranties deemed to be given by the Vendor under the ONHWPA and shall extend only for the time period and in respect of those items as stated in the ONHWPA, it being understood and agreed that there is no representation, warranty, guarantee, collateral agreement, or condition precedent to, concurrent with or in any way affecting this Agreement, the Condominium or the Unit, other than as expressed herein. The Purchaser hereby irrevocably appoints the Vendor his/her agent to complete and execute the TWC Certificate of Deposit and any excess condominium deposit insurance documentation in this regard, as required, both on its own behalf and on behalf of the Purchaser.

Right of Entry

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

Occupancy

23. (a) Except where the Purchaser and the Vendor have agreed that the Purchaser shall be responsible for certain conditions of occupancy and subject to paragraph 9 of the Tarion Addendum, the Unit shall be deemed to be substantially completed when the interior work has been finished to the minimum standards allowed by the Municipality so that the Unit may be lawfully occupied notwithstanding that there remains other work within the Unit and/or the common elements to be completed. Except where the Purchaser is responsible for certain conditions of occupancy, the Purchaser shall not occupy the Unit until the Municipality has permitted same or consented thereto, if such consent is required and the Occupancy Date shall be postponed until such required consent is given. The Purchaser shall not require the Vendor to provide or produce an occupancy permit, certificate or authorization from the Municipality other than the documentation required by paragraph 9 of the Tarion Addendum. Provided that the Vendor complies with paragraph 9 of the Tarion Addendum, the Purchaser acknowledges that the failure to complete the common elements before the Occupancy Date shall not be deemed to be failure to complete the Unit, and the Purchaser agrees to complete this transaction notwithstanding any claim submitted to the Vendor and/or to the TWC in respect of apparent deficiencies or incomplete work provided, always, that such incomplete work does not prevent occupancy of the Unit as, otherwise, permitted by the Municipality.
- (b) If the Unit is substantially complete and fit for occupancy on the Occupancy Date, as provided for in subparagraph (a) above, but the Creating Documents have not been registered, (or in the event the Condominium is registered prior to the Occupancy Date and closing documentation has yet to be prepared), the Purchaser shall pay to the Vendor a further amount on account of the Purchase Price specified in paragraph 1(a) hereof without adjustment save for any pro-rated portion of the Occupancy Fee described and calculated in Schedule "C", and the Purchaser shall occupy the Unit on the Occupancy Date pursuant to the Occupancy Licence attached hereto as Schedule "C".

Inspection

24. (a) The Purchaser or the Purchaser's designate as hereinafter provided agrees to meet the Vendor's representative at the date and time designated by the Vendor, prior to the Occupancy Date, to conduct a pre-delivery inspection of the Unit (the "PDI") and to list all items remaining incomplete at the time of such inspection together with all mutually agreed deficiencies with respect to the Unit, on the TWC Certificate of Completion and Possession (the "CCP") and the PDI Form, in the forms prescribed from time to time by, and required to be completed pursuant to the provisions of the ONHWPA. The said CCP and PDI Forms shall be executed by both the Purchaser or the Purchaser's designate and the Vendor's representative at the PDI and shall constitute the Vendor's only undertaking with respect to incomplete or deficient work and the Purchaser shall not require any further undertaking of the Vendor to complete any outstanding items. In the

event that the Vendor performs any additional work to the Unit in its discretion, the Vendor shall not be deemed to have waived the provision of this paragraph or otherwise enlarged its obligations hereunder.

- (b) The Purchaser acknowledges that the Homeowner Information Package as defined in TWC Bulletin 42 (the "HIP") is available from TWC and that the Vendor further agrees to provide the HIP to the Purchaser or the Purchaser's designate, at or before the PDI. The Purchaser or the Purchaser's designate agrees to execute and provide to the Vendor the Confirmation of Receipt of the HIP forthwith upon receipt of the HIP.
- (c) The Purchaser shall be entitled to send a designate to conduct the PDI in the Purchaser's place or attend with their designate, provided the Purchaser first provides to the Vendor a written authority appointing such designate for PDI prior to the PDI. If the Purchaser appoints a designate, the Purchaser acknowledges and agrees that the Purchaser shall be bound by all of the documentation executed by the designate to the same degree and with the force and effect as if executed by the Purchaser directly.
- (d) In the event the Purchaser and/or the Purchaser's designate fails to attend the PDI or fails to execute the CCP and PDI Forms at the conclusion of the PDI, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law. Alternatively, the Vendor may, at its option, complete the within transaction but not provide the keys to the Unit to the Purchaser until the CCP and PDI Forms have been executed by the Purchaser and/or its designate or complete the within transaction and complete the CCP and PDI Forms on behalf of the Purchaser and/or the Purchaser's designate and the Purchaser hereby irrevocably appoints the Vendor the Purchaser's attorney and/or agent and/or designate to complete the CCP and PDI Forms on the Purchaser's behalf and the Purchaser shall be bound as if the Purchaser or the Purchaser's designate had executed the CCP and PDI Forms.
- (e) In the event the Purchaser and/or the Purchaser's designate fails to execute the Confirmation of Receipt of the HIP forthwith upon receipt thereof, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law.

Purchaser's Default

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

Common Elements

- 26. The Purchaser acknowledges that the Condominium will be constructed to Ontario Building Code requirements at the time of issuance of the building permit. The Purchaser covenants and agrees the Purchaser shall have no claims against the Vendor for any equal, higher or better standards of workmanship or materials. The Purchaser agrees that the



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

Executions

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

Risk

28. The Unit shall be and remain at the risk of the Vendor until the Title Transfer Date, subject to the terms of the Occupancy Licence attached hereto as Schedule "C". If any part of the Condominium is damaged before the Creating Documents are registered, the Vendor may in its sole discretion either:

- (a) make such repairs as are necessary to complete this transaction and, if necessary, delay the Occupancy Date in the manner permitted under the Tarion Addendum;
- (b) terminate this Agreement and return to the Purchaser all deposit monies paid by the Purchaser to the Vendor, with interest payable under law if the damage to the Condominium has frustrated this Agreement at law; or
- (c) apply to a court of competent jurisdiction for an order terminating the Agreement in accordance with the provisions of subsection 79(3) of the Act,

it being understood and agreed that all insurance policies and the proceeds thereof are to be for the benefit of the Vendor alone.

Tender/Teranet

29. (a) The parties waive personal tender and agree that tender, in the absence of any other mutually acceptable arrangement and subject to the provisions of paragraph 30 of this Agreement shall be validly made by the Vendor upon the Purchaser, by a representative of the Vendor attending at the offices of Harris, Sheaffer, LLP at 12:00 noon on the Title Transfer Date or the Occupancy Date as the case may be and remaining there until 5:00 p.m. and is ready, willing and able to complete the transaction. The Purchaser agrees that keys may be released to the Purchaser as the construction site or sales office on the Occupancy Date or the Title Transfer Date, as applicable. The Vendor's advice that the keys are available shall be valid tender of possession of the Property to the Purchaser. In the event the Purchaser or his or her solicitor fails to appear or appears and fails to close, such attendance by the Vendor's representative (which includes the Vendor's Solicitors) shall be deemed satisfactory evidence that the Vendor is ready, willing and able to complete the sale at such time. Payment shall be tendered by certified cheque drawn on any Canadian chartered bank; and

(b) It is further provided that, notwithstanding subparagraph 29 (a) hereof, in the event the Purchaser or his or her solicitor advise the Vendor or its Solicitors, on or before the Occupancy Date or Title Transfer Date, as applicable, that the Purchaser is unable or unwilling to complete the purchase or take occupancy, the Vendor is relieved of any obligation to make any formal tender upon the Purchaser or his or her solicitor and may exercise forthwith any and all of its right and remedies provided for in this Agreement and at law.

30. As the electronic registration system (hereinafter referred to as the "Teraview Electronic Registration System" or "TERS") is operative in the applicable Land Titles Office in which the Property is registered, then at the option of the Vendor's solicitor, the following provisions shall prevail:

(a) The Purchaser shall be obliged to retain a solicitor, who is both an authorized TERS user and in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of the transaction. The Purchaser shall authorize such solicitor to, at the option of the Vendor's Solicitors, either execute an escrow closing agreement with the Vendor's Solicitor on the standard form recommended by the Law Society of Upper Canada (hereinafter referred to as the "Escrow Document Registration Agreement") establishing the procedures and timing for completing this transaction or to otherwise agree to be bound by the procedures set forth in the Escrow Document Registration Agreement.

(b) The delivery and exchange of documents, monies and keys to the Unit and the release thereof to the Vendor and the Purchaser, as the case may be:

(i) shall not occur contemporaneously with the registration of the Transfer/Deed (and other registerable documentation); and

(ii) shall be governed by the Escrow Document Registration Agreement, pursuant to which the solicitor receiving the documents, keys and/or certified funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the Escrow Document Registration Agreement.

- (c) If the Purchaser's solicitor is unwilling or unable to complete this transaction via TERS, in accordance with the provisions contemplated under the Escrow Document Registration Agreement, then said solicitor (or the authorized agent thereof) shall be obliged to personally attend at the office of the Vendor's Solicitors, at such time on the Title Transfer Date as may be directed by the Vendor's solicitor or as mutually agreed upon, in order to complete this transaction via TERS utilizing the computer facilities in the Vendor's Solicitors' office, and shall pay a fee as determined by the Vendor's Solicitors, acting reasonably for the use of the Vendor's computer facilities.
- (d) The Purchaser expressly acknowledges and agrees that he or she will not be entitled to receive the Transfer/Deed to the Unit for registration until the balance of funds due on closing, in accordance with the statement of adjustments, are either remitted by certified cheque via personal delivery or by electronic funds transfer to the vendor's solicitor (or in such other manner as the latter may direct) prior to the release of the Transfer/Deed for registration.
- (e) Each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Unit may be delivered to the other party hereto by telefax transmission (or by a similar system reproducing the original or by electronic transmission of electronically signed documents through the Internet), provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto which may be by electronic signature. The party transmitting any such document shall also deliver the original of same (unless the document is an electronically signed document pursuant to the *Electronic Commerce Act*) to the recipient party by overnight courier sent the day of closing or within 7 business days of closing, if same has been so requested by the recipient party.
- (f) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by the Vendor upon the Purchaser when the Vendor's solicitor has:
 - (i) delivered all closing documents and/or funds to the Purchaser's solicitor in accordance with the provisions of the Escrow Document Registration Agreement and keys are made available for the Purchaser to pick up at the Vendor's sales of customer service office;
 - (ii) advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
 - (iii) has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Vendor's Solicitors without the cooperation or participation of the Purchaser's solicitor, and specifically when the "completeness signatory" for the transfer/deed has been electronically "signed" by the Vendor's Solicitors;

without the necessity of personally attending upon the Purchaser or the Purchaser's solicitor with the aforementioned documents, keys and/or funds, and without any requirement to have an independent witness evidencing the foregoing.

General

- 31. The Vendor shall provide a statutory declaration on the Title Transfer Date that it is not a non-resident of Canada within the meaning of the ITA.
- 32. The Vendor and Purchaser agree to pay the costs of registration of their own documents and any tax in connection therewith.
- 33. The Vendor and the Purchaser agree that there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property or supported hereby other than as expressed herein in writing.
- 34. This Offer and its acceptance is to be read with all changes of gender or number required by the context and the terms, provisions and conditions hereof shall be for the benefit of and be binding upon the Vendor and the Purchaser, and as the context of this Agreement permits, their respective heirs, estate trustees, successors and permitted assigns.
- 35. The Purchaser acknowledges that the suite area of the Unit, as may be represented or referred to by the Vendor or any sales agent, or which appear in any sales material is approximate only, and is generally measured to the outside of all exterior, corridor and stairwell walls, and to the centre line of all party walls separating one unit from another. NOTE: For more information on the method of calculating the floor area of any unit, reference should be made to Builder Bulletin No. 22 published by the TWC. Actual useable floor space may (therefore) vary from any stated or represented floor area or gross floor area, and the extent of the actual or useable living space within the confines of the Unit may vary from any represented square footage or floor area measurement(s) made by or on behalf of the Vendor. In addition, the Purchaser is advised that the floor area measurements are generally calculated based on the middle floor of the Condominium building for each suite type, such that units on lower floors may have less floor space due to thicker structural members, mechanical rooms, etc., while units on higher floors may have more floor space. Accordingly, the Purchaser hereby confirms and agrees that all details and dimensions of the Unit purchased hereunder are approximate only, and that the Purchase Price shall not be subject to any adjustment or claim for compensation whatsoever, whether based upon the ultimate square footage of the Unit, or the actual or useable living space within the confines of the Unit or otherwise. The Purchaser further acknowledges that the ceiling height of the Unit is measured from the upper surface of the concrete floor slab (or subfloor) to the underside surface of the concrete ceiling slab (or joists). However, where ceiling bulkheads are installed within the Unit, and/or where dropped ceilings are required, then the ceiling height of the Unit will be less than that represented, and the Purchaser shall correspondingly be obliged to accept the same without any abatement or claim for compensation whatsoever.
- 36. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- 37. The headings of this Agreement form no part hereof and are inserted for convenience of reference only.
- 38. Each of the provisions of this Agreement shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in

any manner the validity, enforceability or effect of the remainder of this Agreement, and in such event all the other provisions of this Agreement shall continue in full force and effect as if such invalid provision had never been included herein. The Purchaser and the Vendor acknowledge and agree that this Agreement and all amendments and addenda thereto shall constitute an agreement made under seal.

- 39. (a) If any documents required to be executed and delivered by the Purchaser to the Vendor are, in fact, executed by a third party appointed as the attorney for the Purchaser, then the power of attorney appointing such person must be registered in the Land Titles office where the Lands are registered, and a duplicate registered copy thereof (together with a statutory declaration sworn by the Purchaser's solicitor unequivocally confirming, without any qualification whatsoever, that said power of attorney has not been revoked) shall be delivered to the Vendor along with such documents.
- (b) Where the Purchaser is a corporation, or where the Purchaser is buying in trust for another person or corporation for a disclosed or undisclosed beneficiary or principal (including, without limitation, a corporation to be incorporated), the execution of this Agreement by the principal or principals of such corporation, or by the person named as the Purchaser in trust as the case may be, shall be deemed and construed to constitute the personal indemnity of such person or persons so signing with respect to the obligations of the Purchaser herein and shall be fully liable to the Vendor for the Purchaser's obligations under this Agreement and may not plead such agency, trust relationship or any other relationships as a defence to such liability.

Notice

- 40. (a) Any notice required to be delivered under the provisions of the Tarion Addendum shall be delivered in the manner required by the Tarion Addendum.
- (b) Any other notice given pursuant to the terms of this Agreement shall be deemed to have been properly given if it is in writing and is delivered by hand, ordinary prepaid post, facsimile transmission or electronic mail to the attention of the Purchaser or to the Purchaser's solicitor to their respective addresses indicated herein or to the address of the Unit after the Occupancy Date and to the Vendor at 126 Hazelton Avenue, Toronto, Ontario, M5R 2E5 or to the Vendor's Solicitors at the address indicated in this Agreement or such other address as may from time to time be given by notice in accordance with the foregoing. Such notice shall be deemed to have been received on the day it was delivered by hand, by electronic mail or by facsimile transmission and upon the third day following posting, excluding Saturdays, Sundays and statutory holidays. This agreement or any amendment or addendum thereto may, at the Vendor's option, be properly delivered if it delivered by facsimile transmission or if a copy of same is computer scanned and forwarded by electronic mail to the other party.

Material Change

- 41. The Purchaser acknowledges and agrees that the Vendor may, from time to time in its sole discretion, due to site conditions or constraints, or for marketing considerations, or for any other legitimate reason, including without limitation any request or requirement of any of the governmental authorities or any request or requirement of the Vendor's architect or other design consultants:
 - (a) change the Property's municipal address or numbering of the Unit (in terms of the unit number, suite number and/or level number ascribed to any one or more of the units comprising the Unit);
 - (b) change, vary or modify the plans and specifications pertaining to the Unit or the Condominium, or any portion thereof (including architectural, structural, engineering, landscaping, grading, mechanical, site servicing and/or other plans and specifications) from the plans and specifications existing at the inception of the project, or existing at the time that the Purchaser has entered into this Agreement, or as same may be illustrated in any sales brochure(s), model(s) in the sales office or otherwise, including without limitation, making any change to the total number of dwelling, parking, locker and/or other ancillary units intended to be created within the Condominium, and/or any change to the total number of levels or floors within the Condominium, as well as any changes or alterations to the design, style, size and/or configuration of any dwelling or other ancillary units within the Condominium;
 - (c) change, vary, or modify the number, size and location of any windows, column(s) and/or bulkhead(s) within or adjacent to (or comprising part of) the Unit, from the number, size and/or location of same as displayed or illustrated in any sales brochure(s), model(s) or floor plan(s) previously delivered or shown to the Purchaser, including the insertion or placement of any window(s), column(s) and/or bulkhead(s) in one or more locations within the Unit which have not been shown or illustrated in any sales brochure(s), model(s) or floor plan(s) previously delivered or shown to the Purchaser (regardless of the extent or impact thereof), as well as the removal of any window(s), column(s) and/or bulkhead(s) from any location(s) previously shown or illustrated in any sales brochure(s), model(s) in the sales office or otherwise;
 - (d) change the layout of the Unit such that same is a mirror image of the layout shown to the Purchaser (or a mirror image of the layout illustrated in any sales brochure or other marketing material(s) delivered to the Purchaser); and/or
 - (e) change the proposed boundaries of the Condominium by increasing, decreasing or changing the number of proposed units to be located thereon as more particularly set out in the Condominium Documents.

and that the Purchaser shall have absolutely no claim or cause of action whatsoever against the Vendor or its sales representatives (whether based or founded in contract, tort or in equity) for any such changes, deletions, alterations or modifications, nor shall the Purchaser be entitled to any abatement or reduction in the Purchase Price whatsoever as a consequence thereof, nor any notice thereof (unless any such change, deletion, alteration or modification to the said plans and specifications is material in nature (as defined by the Act) and significantly affects the fundamental character, use or value of the Unit and/or the Condominium, in which case the Vendor shall be obliged to notify the Purchaser in writing of such change, deletion, alteration or modification as soon as reasonably possible after the Vendor proposes to implement same, or otherwise becomes aware of same), and where any such change, deletion, alteration or

modification to the said plans and specifications is material in nature, then the Purchaser's only recourse and remedy shall be the termination of this Agreement prior to the Title Transfer Date (and specifically within 10 days after the Purchaser is notified or otherwise becomes aware of such material change), and the return of the Purchaser's deposit monies, together with interest accrued thereon at the rate prescribed by the Act.

Cause of Action/Assignment

42. (a) The Purchaser acknowledges and agrees that notwithstanding any rights which he or she might otherwise have at law or in equity arising out of this Agreement, the Purchaser shall not assert any of such rights, nor have any claim or cause of action whatsoever as a result of any matter or thing arising under or in connection with this Agreement (whether based or founded in contract law, tort law or in equity, and whether for innocent misrepresentation, negligent misrepresentation, breach of contract, breach of fiduciary duty, breach of constructive trust or otherwise), against any person, firm, corporation or other legal entity, other than the person, firm, corporation or legal entity specifically named or defined as the Vendor herein, even though the Vendor may be (or may ultimately be found or adjudged to be) a nominee or agent of another person, firm, corporation or other legal entity, or a trustee for and on behalf of another person, firm, corporation or other legal entity, and this acknowledgment and agreement may be pleaded as an estoppel and bar against the Purchaser in any action, suit, application or proceeding brought by or on behalf of the Purchaser to assert any of such rights, claims or causes of action against any such third parties. Furthermore, the Purchaser and the Vendor acknowledge that this Agreement shall be deemed to be a contract under seal.
- (b) At any time prior to the Title Transfer Date, the Vendor shall be permitted to assign this Agreement (and its rights, benefits and interests hereunder) to any person, firm, partnership or corporation registered as a vendor pursuant to the ONHWPA and upon any such assignee assuming all obligations under this Agreement and notifying the Purchaser or the Purchaser's solicitor of such assignment, the Vendor named herein shall be automatically released from all obligations and liabilities to the Purchaser arising from this Agreement, and said assignee shall be deemed for all purposes to be the vendor herein as if it had been an original party to this Agreement, in the place and stead of the Vendor.

Non-Merger

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

Notice/Warning Provisions

44. The Purchaser acknowledges that it is anticipated by the Vendor that in connection with the Vendor's application to the appropriate governmental authorities for draft plan of condominium approval certain requirements may be imposed upon the Vendor by various governmental authorities. These requirements (the "**Requirements**") usually relate to warning provisions to be given to Purchasers in connection with environmental or other concerns (such as warnings relating to noise levels, the proximity of the Condominium to major street, garbage storage and pickup, school transportation, and similar matters). Accordingly, the Purchaser covenants and agrees that (1) on either the Occupancy Date or Title Transfer Date, as determined by the Vendor, the Purchaser shall execute any and all documents required by the Vendor acknowledging, inter alia, that the Purchaser is aware of the Requirements, and (2) if the Vendor is required to incorporate the Requirements into the final Condominium Documents the Purchaser shall accept the same, without in any way affecting this transaction. Notwithstanding the generality of the foregoing, the Purchaser agrees to be bound by the warnings set forth in Schedule "D" hereto.

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

45. The Purchaser hereby consents to the Vendor's collection, use and disclosure of the Purchaser's personal information for the purpose of enabling the Vendor to proceed with the Purchaser's purchase of the Unit, completion of this transaction, and for post-closing and after-sales customer care purposes. Such personal information includes the Purchaser's name, home address, e-mail address, telefax/telephone number, age, date of birth, marital and residency status, social insurance number (only with respect to subparagraph (b) below), financial information, desired suite design(s), and colour/finish selections. In particular, but without limiting the foregoing, the Vendor may disclose such personal information to:
- (a) any relevant governmental authorities or agencies, including without limitation, the Land Titles Office (in which the Condominium is registered), the Ministry of Finance for the Province of Ontario (i.e. with respect to Land Transfer Tax), and the Canada Revenue Agency (i.e. with respect to HST);
- (b) Canada Revenue Agency, to whose attention the T-5 interest income tax information return and/or the NR4 non-resident withholding tax information return is submitted (where applicable), which will contain or refer to the Purchaser's social insurance number or business registration number (as the case may be), as required by Regulation 201(1)(b)(ii) of the ITA, as amended;
- (c) the Condominium for the purposes of facilitating the completion of the Condominium's voting, leasing and/or other relevant records and to the Condominium's property manager for the purposes of facilitating the issuance of notices, the collection of common expenses and/or implementing other condominium management/administration functions;
- (d) any companies or legal entities that are associated with, related to or affiliated with the Vendor, other future condominium declarants that are likewise associated with, related to or affiliated with the Vendor (or with the Vendor's parent/holding company) and are developing one or more other condominium projects or communities that may be of interest to the Purchaser or members of the Purchaser's family, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Purchaser and/or members of the Purchaser's family;

- (e) any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Purchaser and/or members of the Purchaser's family, with respect to the Unit, including without limitation, the Vendor's construction lender(s), the quantity surveyor monitoring the Project and its costs, the Vendor's designated construction lender(s), the Tarion Warranty Corporation and/or any warranty bond provider and/or excess condominium deposit insurer, required in connection with the development and/or construction financing of the Condominium and/or the financing of the Purchaser's acquisition of the Property from the Vendor;
- (f) any insurance companies of the Vendor providing (or wishing to provide) insurance coverage with respect to the Property (or any portion thereof) and/or the common elements of the Condominium, and any title insurance companies providing (or wishing to provide) title insurance to the Purchaser or the Purchaser's mortgage lender(s) in connection with the completion of this transaction;
- (g) any trades/suppliers or sub-trades/suppliers, who have been retained by or on behalf of the Vendor (or who are otherwise dealing with the Vendor) to facilitate the completion and finishing of the Unit and the installation of any extras or upgrades ordered or requested by the Purchaser;
- (h) one or more providers of cable television, telephone, telecommunication, security alarm systems, hydro-electricity, chilled water/hot water, gas and/or other similar or related services to the Property (or any portion thereof) and/or the Condominium (collectively, the "Utilities"), unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to one or more of the Utilities;
- (i) one or more third party data processing companies which handle or process marketing campaigns on behalf of the Vendor or other companies that are associated with, related to or affiliated with the Vendor, and who may send (by e-mail or other means) promotional literature/brochures about new condominiums and/or related services to the Purchaser and/or members of the Purchaser's family, unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to said third party data processing companies;
- (j) the Vendor's solicitors, to facilitate the interim occupancy and/or final closing of this transaction, including the closing by electronic means via the Teraview Electronic Registration System, and which may (in turn) involve the disclosure of such personal information to an internet application service provider for distribution of documentation;
- (k) any person, where the Purchaser further consents to such disclosure or disclosures required by law.

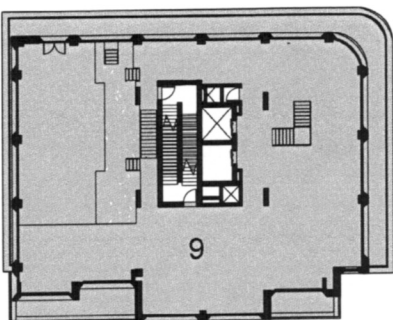
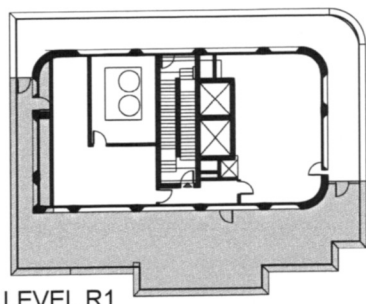
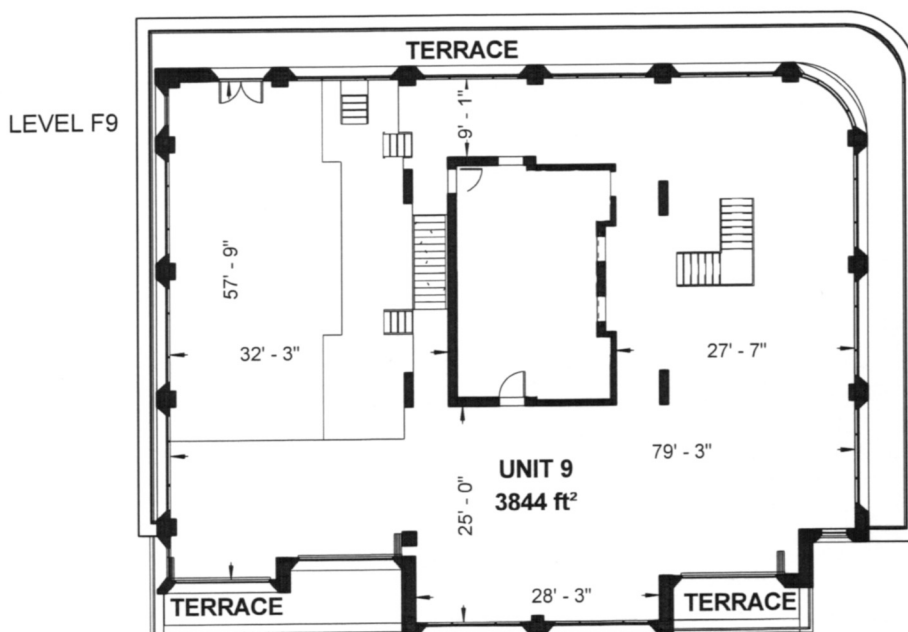
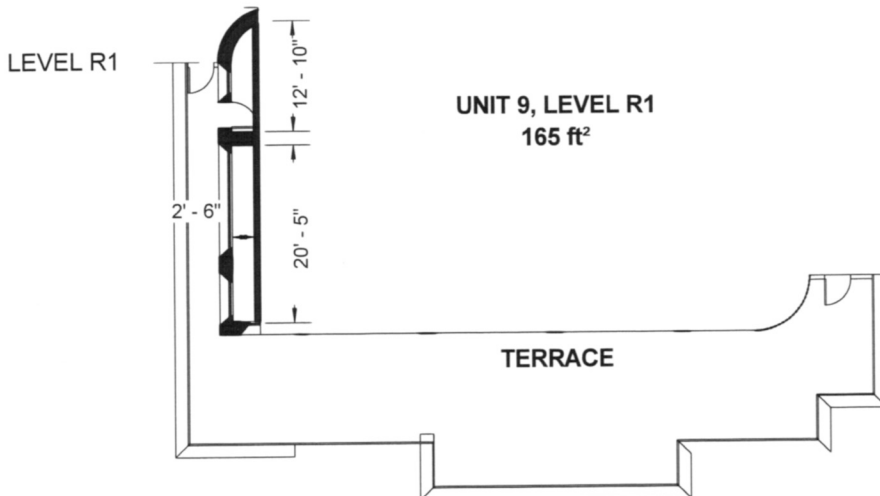
Any questions or concerns of the Purchaser with respect to the collection, use or disclosure of his or her personal information may be delivered to the Vendor at the address set out in the Tarion Addendum, Attention: Privacy Officer.



SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE

SKETCH

Level 9 , Legal Unit No UNIT 1



SUITE AREA: 6947 ft²

*AREAS PROVIDED BY KRCMAR SURVEYORS LTD.

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



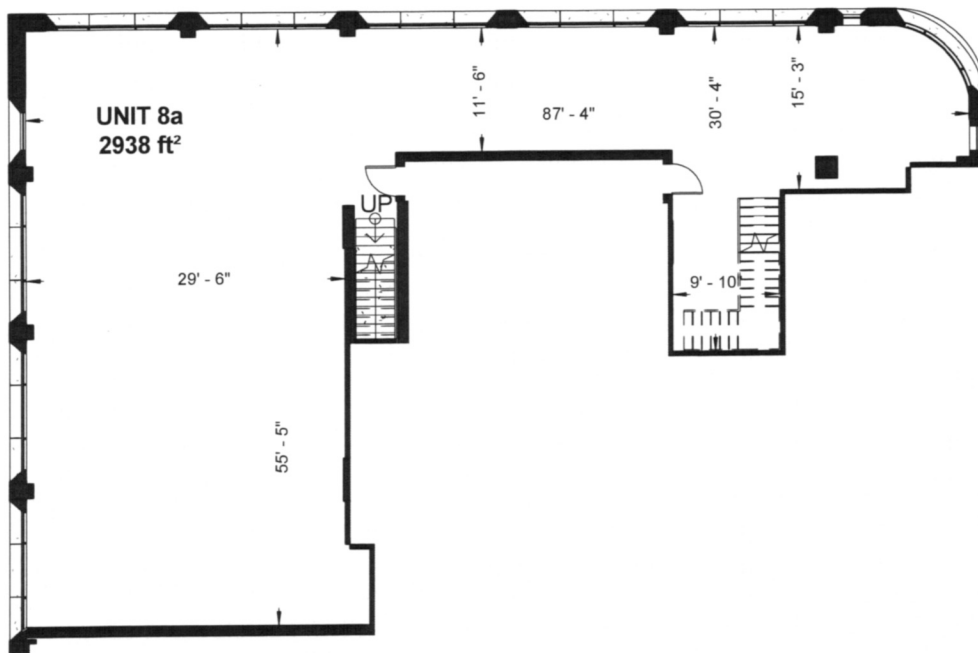
[Signature]
 Purchaser Acknowledgement

[Signature]
 Date

SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE

SKETCH

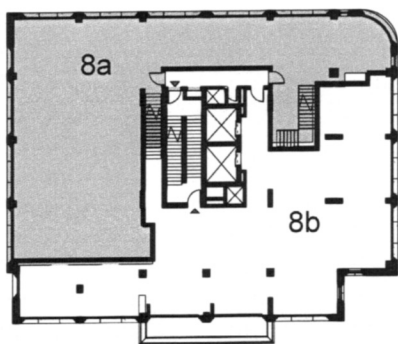
Level 8 , Legal Unit No UNIT 1



SUITE AREA: 6947 ft²

*AREAS PROVIDED BY KRCMAR SURVEYORS LTD.

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



LEVEL 8



[Handwritten Signature]
 Purchaser Acknowledgement

[Handwritten Signature]
 Date Apr 21/16

SCHEDULE "B" TO THE AGREEMENT OF PURCHASE AND SALE

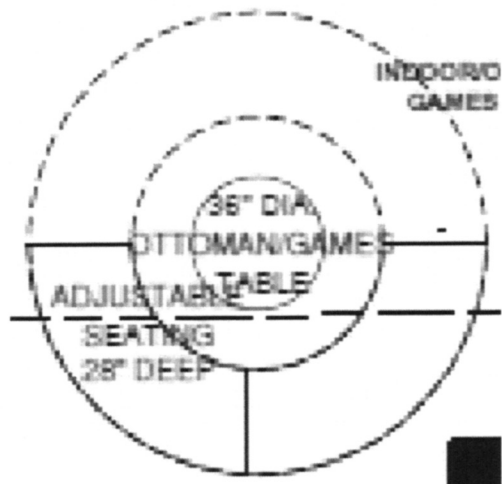
INCLUSIONS, FEATURES AND FINISHES

The general overriding principle of the agreement is that everything other than furniture was to be included, however, the purchaser would use the vendors selections

Summary below – please refer to binder for **CONCEPTUAL** specifics.

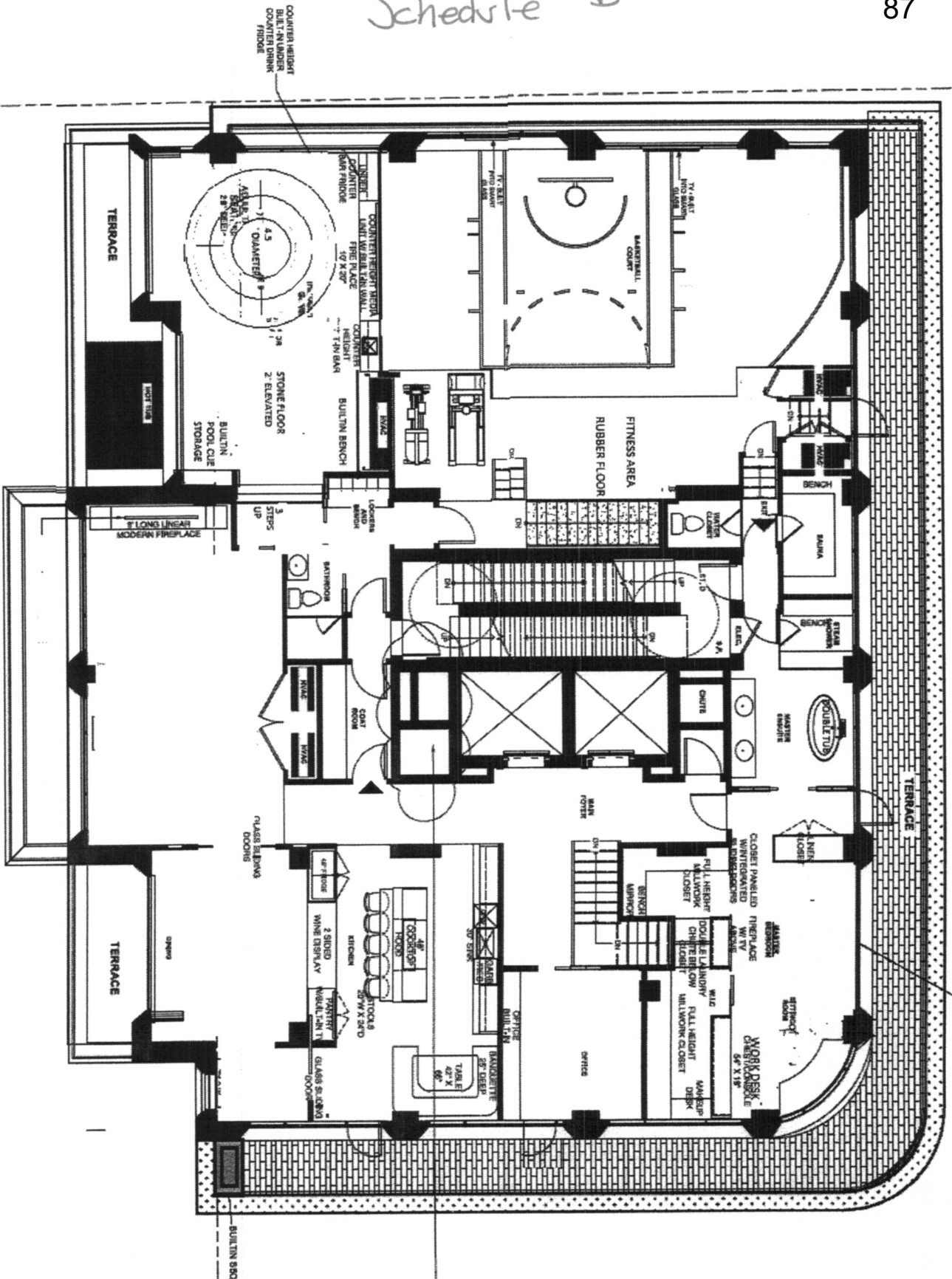
- Laundry Room
 - Porcelain floors selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
 - (2) High efficiency top loading Washers and frontend loading Dryers selected from Vendor's standard selections
 - **BUILT IN CABINERTY ALONG SOUTH AND EAST WALLS FROM THE VENDORS STANDARD SELECTIONS**
 - **BUILT IN DESK FROM THE VENDORS STANDARD SELECTIONS**
 - **BUILT IN LANUDRY CHUTE CONNECTING MASTER CLOSET TO WASHERS FROM THE VENDORS STANDARD SELECTIONS**
 - **Ceasar stone counter top from vendors selections**
- Living Room & Dining Room
 - Pre-finished engineered Hardwood floors selected from Vendor's standard selections
 - L.E.D. recessed ceiling lights
 - **(1) FIREPLACE SELECTED FROM THE VENDORS STANDARD SELECTIONS IN LIVING ROOM**
- Foyer
 - Pre-finished engineered Hardwood floor in entranceway selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
- Games room
 - Stone floor throught from vendors selections
 - Built in bench on north wall for pool table seating (in front of mechanical)
- Locker room
 - Built in lockers and bench with cabinetry from vendors selection
 - Stone floor throughout as per vendors selections
- Cloakroom
 - Bench and coat cupboard from cabinetry from vendors selections
 - Hardwood floors throughout
- Kitchen & Breakfast
 - Kitchen cabinetry selected from Vendor's standard selections
 - Stone countertops with coordinated backsplash selected from Vendor's standard selections
 - Stainless steel sink with coordinated fixture selected from Vendor's standard selections
 - Pre-finished engineered Hardwood floors selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
 - Valence lighting under cabinets
 - Gas or Electric Cooktop, Oven, Dishwasher, Refrigerator, Microwave and Hood fan selected from Vendor's standard selections
 - **DUAL SIDED WINE DISPLAY FACING KITCHEN AND DINING ROOM FROM THE VENDORS STANDARD SELECTIONS**
 - **BANQUET SEATING IN KITCHEN FROM THE VENDORS STANDARD SELECTIONS**
- Powder Room
 - Vanity with stone countertop selected from Vendor's standard selections
 - Under-mounted sink and fixtures selected from Vendor's standard selections
 - Privacy lock
 - Stone tile floor selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
- Terraces/Balconies
 - In selected suites as per plan
 - Railing as per architectural building design
 - Exterior lighting as per architectural building design
 - **(2) BUILT IN BARBECUES ON 9TH AND R1**
- Library/Den
 - Pre-finished engineered Hardwood floor or carpet selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
 - **BUILT IN BOOK CASE ON SOUTH WALL OF OFFICE FROM THE VENDORS STANDARD SELECTIONS**
- Master Bedroom Suite
 - Pre-finished engineered Hardwood floor or carpet selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
 - **BUILT IN LINEN CLOSET BETWEEN BEDROOM AND ENSUITE FROM VENDORS SELECTIONS**
 - **BUILT IN BOOKCASE/DESK FROM THE VENDORS STANDARD SELECTIONS**
 - **(1) FIREPLACE SELECTED FROM THE VENDORS STANDARD SELECTIONS**
 - **FINISHED CUSTOM CLOSET TO VENDOR'S STANDARD SPECIFICATIONS**
 - **BENCH SEATING TO BE INCLUDED IN SOUTH WEST CORNER FROM THE VENDORS STANDARD SELECTIONS**
 - **BUILT IN MAKEUP DESK TO BE INCLUDED IN NORTH EAST CORNER**
- Master Ensuite
 - Stone tiles selected from Vendor's standard selections
 - Heated floor with thermostatic control
 - Vanity with stone countertop, under-mounted sink, and fixtures selected from Vendor's standard selections
 - Jet Bathtub and coordinated fixtures as per plan
 - Frameless glass STEAM shower enclosure as per plan

- L.E.D. recessed ceiling light
- Privacy lock
- **SUANA AND STEAM ROOMS TO VENDOR STANDARD SPECIFICATIONS**
- **BATHTUB TO ACCOMMODATE (2) PERSONS TO VENDOR STANDARD SPECIFICATIONS**
- Guest Bathroom
 - Stone tiles selected from Vendor's standard selections
 - Vanity with stone countertop, under-mounted sink, and fixtures selected from Vendor's standard selections
 - SHOWER and coordinated fixtures as per plan
 - Frameless glass shower enclosure as per plan
 - L.E.D. recessed ceiling light
 - Privacy lock
- Bedroom
 - Pre-finished engineered Hardwood floors or carpet selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
 - **BEDROOM 1/2 AND MEDIA ROOM CLOSETS TO BE BUILT OUT TO INCLUDE CUSTOM CABINETRY FROM THE VENDORS STANDARD SELECTIONS**
 - **BEDROOM 1 TO BE FIT OUT WITH A COMBINATION BUILT IN BENCH SEAT AND BUILT IN DESK FROM THE VENDOR'S STANDARD SELECTIONS**
 - **MEDIA ROOM TO BE FIT OUT WITH WALL UNIT/DESK ON SOUTH WALL**
- Ceilings, Walls & Doors
 - Minimum of 10' high ceilings (dropped ceilings at Kitchen, Bathrooms, Closets, Foyer, Laundry Room and Mechanical Room)
 - Smooth ceilings, walls and bulkheads throughout
 - 7" Baseboards
 - 3 1/2" Door casing with backband
 - Solid doors throughout
 - Door hardware selected from Vendor's standard selections
 - All ceilings, walls, baseboards, mouldings and doors to be painted.
 - Paint selected from Vendors standard selections
 - Energy Star custom windows with low E coating and argon gas
- Mechanical
 - Heat Pump with Humidifier and programmable thermostat
- Lighting & Electrical
 - White decorative switches and receptacles throughout
 - L.E.D. recessed ceiling light; 1 per 50 sq. feet
 - Ceiling light provision in Kitchen, Dining Room, Living Room and all Bedrooms
 - Valence lighting under kitchen cabinets
 - Rough-in for sconces and/or surface mounted fixtures in Master Ensuite and Powder Room
- Technology
 - Rough-in for cable, telephone, **AUDIO**, internet in Living Room, Kitchen, Library/Den and all Bedrooms
 - **INTEGRATED HOME AUDIO SYSTEM WITH CENTRALIZED KEYPAD CONTROLLING BLINDS AND SOUND FROM THE VENDORS STANDARD SELECTIONS**
- Penthouse Specific Extras (All items to Vendor standard specifications)
 - **Basketball Court**
 - **Gymnasium grade maple wood flooring FROM THE VENDORS STANDARD SELECTIONS**
 - **(1) MANUALLY ADJUSTABLE BASKETBALL NET FROM THE VENDORS STANDARD SELECTIONS**
 - **Built in storage on North and South walls FROM THE VENDORS STANDARD SELECTIONS**
 - **(2) BUILT IN ADJUSTABLE 3 STAGE FUTSOL SIZED NET**
 - **'PUCKBOARD' MATERIAL (PVC) ALONG NORTH, EAST, AND SOUTH WALL (UP TO 6') FROM THE VENDORS STANDARD SELECTIONS**
 - **GAMES ROOM**
 - **BUILT IN 'WET BAR' ALONG NORTH WALL WITH BUILT IN WINE FRIDGE (AS PER VENDOR STANDARD)**
 - (1) SINK WITH SINGLE LEVER FAUCET
 - CABINET AND COUNTER TOP (CEASARSTONE) FROM THE VENDORS STANDARD SELECTIONS
 - Heated floor with thermostatic control
 - (1) FIREPLACE SELECTED FROM THE VENDORS STANDARD SELECTIONS
 - **CUSTOM 4 CIRCLULAR LOVE SEATS ON RAILS THAT ADJUST AUTOMATICALLY IN DIFFERENT POSITIONS ALONG THE OUTSIDE RAIL AND THE INSIDE RAIL ALONG WITH LEATHER ODOMAN THAT AUTOMATICALLY RISES AND TURNS OVER TO BE FELT POKER TABLE (WITH AUTOMATIC SHUFFLER) AS PER E.G. 1 WITH VENDORS STANDARD SELECTION OF MATERIAL (36" DIAMETER CENTRE OTTOMAN WITH 28" DEEP SEMI-CIRCLE SURROUND SEATING**
 - E.G. 1



- 9th FLOOR WEST TERRACE
 - BUILT IN HOT TUB TO VENDORS SPECIFICATIONS WITH CUSTOM AUTOMATIC COVER
- R1
 - BUILT IN LAP POOL TO VENDORS SPECIFICATIONS
- WINDOW TREATMENTS – VENDOR TO INCLUDE EITHER AUTOMATIC SHADES OR SELF TINTING WINDOWS PER THE VENDORS STANDARD SPECIFICATION THROUGHOUT FLOORS 8 & 9
- VENDOR TO MAKE ITS BEST EFFORT TO INCLUDE A SKYLIGHT ABOVE GAMES ROOM AT PURCHASERS EXPENSE
- VENDOR TO INCLUDE A 2 JET + 1 SHOWER HEAD WASHING STATION ON ROOF IF POSSIBLE

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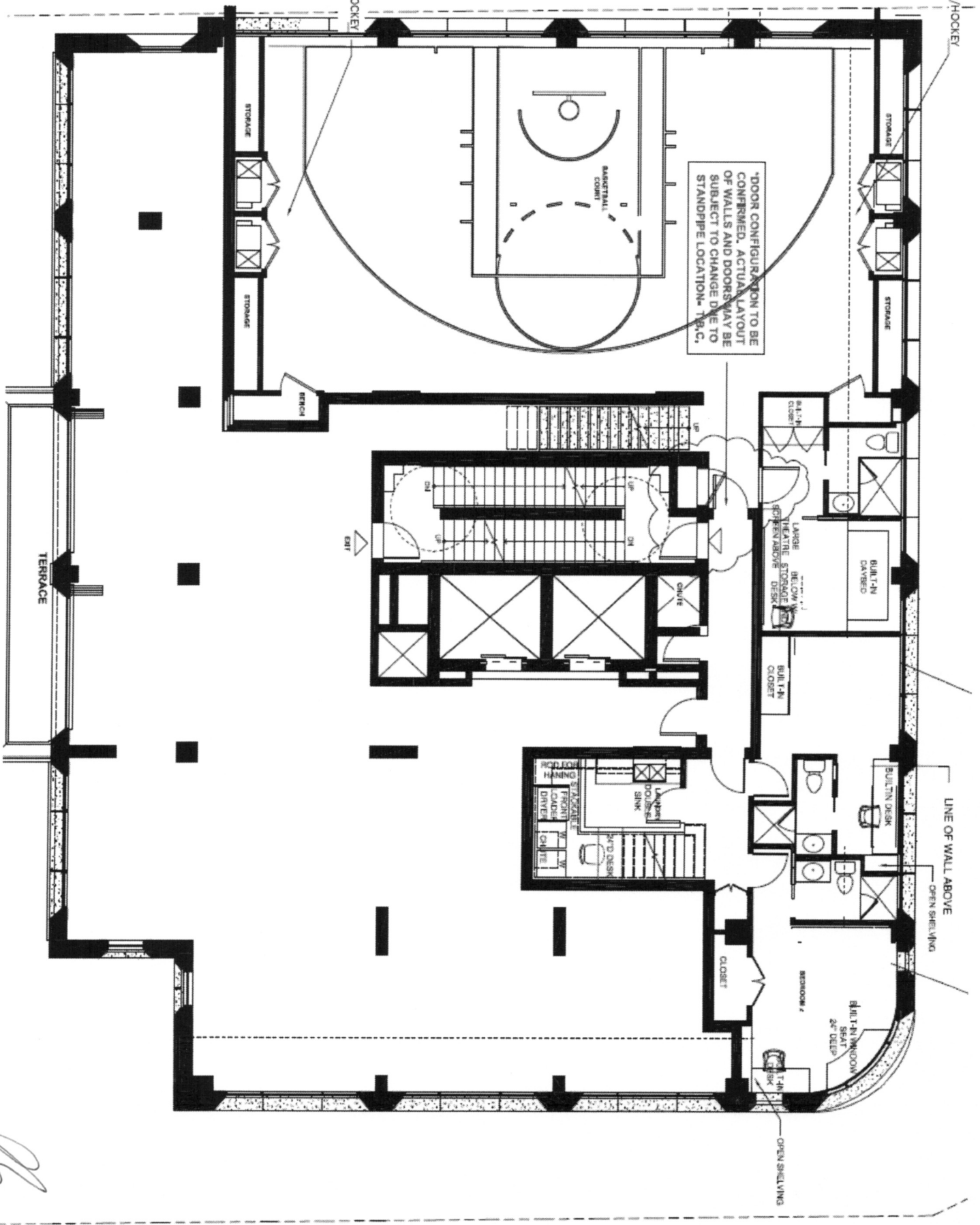


POSSIBLE LOCATION FOR
 POWER ROOM, PENDING
 CONSULTATION WITH
 MECHANICAL ENG. - I.A.C.

83

ADJUSTABLE SOCCER/HOCKEY NETS

ADJUSTABLE SOCCER/HOCKEY NETS



BS

SCHEDULE "C" TO AGREEMENT OF PURCHASE AND SALE

TERMS OF OCCUPANCY LICENCE

- C.1 The transfer of title to the Unit shall take place on the Title Transfer Date upon which date, unless otherwise expressly provided for hereunder, the term of this Occupancy Licence shall be terminated.
- C.2 The Purchaser shall pay or have paid to the Vendor, on or before the Occupancy Date, by certified cheque drawn on a Canadian chartered bank the amount set forth in paragraph 1(a) of this Agreement without adjustment. Upon payment of such amount on the Occupancy Date, the Vendor grants to the Purchaser a licence to occupy the Unit from the Occupancy Date.

The Purchaser shall pay to the Vendor the Occupancy Fee calculated as follows:

- (a) the amount of interest payable in respect of the unpaid balance of the Purchase Price at the prescribed rate;
- (b) an amount reasonably estimated by the Vendor on a monthly basis for municipal realty taxes attributable by the Vendor to the Unit; and
- (c) the projected monthly common expense contribution for the Unit;

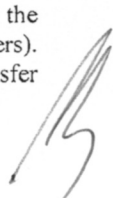
as an occupancy charge on the first day of each month in advance during Interim Occupancy, no part of which shall be credited as payments on account of the Purchase Price, but which payments shall be a charge for occupancy only. If the Occupancy Date is not the first day of the month, the Purchaser shall pay on the Occupancy Date a pro rata amount for the balance of the month by certified funds. The Purchaser shall deliver to the Vendor on or before the Occupancy Date a series of post-dated cheques as required by the Vendor for payment of the estimated monthly Occupancy Fee. The Occupancy Fee may be recalculated by the Vendor, from time to time based on revised estimates of the items which may be lawfully taken into account in the calculation thereof and the Purchaser shall pay to the Vendor such revised Occupancy Fee following notice from the Vendor. With respect to taxes, the Purchaser agrees that the amount estimated by the Vendor on account of municipal realty taxes attributed to the Unit shall be subject to recalculation based upon the real property tax assessment or reassessment of the Units and/or Condominium, issued by the municipality after the Title Transfer Date and the municipal tax mill rate in effect as at the date such assessment or reassessment is issued. The Occupancy Fee shall thereupon be recalculated by the Vendor and any amount owing by one party to the other shall be paid upon demand.

- C.3 The Purchaser shall be allowed to remain in occupancy of the Unit during Interim Occupancy provided the terms of this Occupancy Licence and the Agreement have been observed and performed by the Purchaser. In the event the Purchaser breaches the terms of occupancy the Vendor in its sole discretion and without limitation of any other rights or remedies provided for in this Agreement or at law may terminate this Agreement and revoke the Occupancy Licence whereupon the Purchaser shall be deemed a trespasser and shall give up vacant possession forthwith. The Vendor may take whatever steps it deems necessary to obtain vacant possession and the Purchaser shall reimburse the Vendor for all costs it may incur.
- C.4 At or prior to the time that the Purchaser takes possession of the Unit, the Purchaser shall execute and deliver to the Vendor any documents, directions, acknowledgments, assumption agreements or any and all other documents required by the Vendor pursuant to this Agreement, in the same manner as if the closing of the transaction was taking place at that time.
- C.5 The Purchaser shall pay the monthly Occupancy Fee during Interim Occupancy and the Vendor shall destroy all unused post-dated Occupancy Fee cheques on or shortly after the Title Transfer Date.
- C.6 The Purchaser agrees to maintain the Unit in a clean and sanitary condition and not to make any alterations, improvements or additions thereto without the prior written approval of the Vendor which may be unreasonably withheld. The Purchaser shall be responsible for all utility, telephone expenses, cable television service, or other charges and expenses billed directly to the occupant of the Unit by the supplier of such services and not the responsibility of the Condominium under the Condominium Documents.
- C.7 The Purchaser's occupancy of the Unit shall be governed by the provisions of the Condominium Documents and the provisions of this Agreement. The Unit may only be occupied and used in accordance with the Condominium Documents and for no other purpose.
- C.8 The Vendor covenants to proceed with all due diligence and dispatch to register the Creating Documents. If the Vendor for any reason whatsoever is unable to register the Creating Documents and therefore is unable to deliver a registrable Transfer/Deed to the Purchaser within twenty-four (24) months after the Occupancy Date, the Purchaser or Vendor shall have the right after such twenty-four (24) month period to give sixty (60) days written notice to the other, of an intention to terminate the Occupancy Licence and this Agreement. If the Vendor and Purchaser consent to termination, the Purchaser shall give up vacant possession and pay the Occupancy Fee to such date, after which this Agreement and Occupancy Licence shall be terminated and all moneys paid to the Vendor on account of the Purchase Price shall be returned to the Purchaser together with interest required by the Act, subject however, to any repair and redecorating expenses of the Vendor necessary to restore the Unit to its original state of occupancy, reasonable wear and tear excepted. The Purchaser and Vendor each agree to provide a release of this Agreement in the Vendor's standard form. If the Vendor and Purchaser do not consent to termination, the provisions of subsection 79(3) of the Act may be invoked by the Vendor.
- C.9 The Vendor and the Purchaser covenant and agree, notwithstanding the taking of possession, that all terms hereunder continue to be binding upon them and that the Vendor may enforce the provisions of the Occupancy Licence separate and apart from the purchase and sale provisions of this Agreement.

- C.10 The Purchaser acknowledges that the Vendor holds a fire insurance policy on the Condominium including all aspects of a standard unit only and not on any improvements or betterments made by or on behalf of the Purchaser. It is the responsibility of the Purchaser, after the Occupancy Date to insure the improvements or betterments to the Unit and to replace and/or repair same if they are removed, injured or destroyed. The Vendor is not liable for the Purchaser's loss occasioned by fire, theft or other casualty, unless caused by the Vendor's willful conduct.
- C.11 The Purchaser agrees to indemnify the Vendor for all losses, costs and expenses incurred as a result of the Purchaser's neglect, damage or use of the Unit or the Condominium, or by reason of injury to any person or property in or upon the Unit or the Condominium resulting from the negligence of the Purchaser, members of his immediate family, servants, agents, invitees, tenants, contractors and licensees. The Purchaser agrees that should the Vendor elect to repair or redecorate all or any part of the Unit or the Condominium as a result of the Purchaser's neglect, damage or use of the Unit or Condominium, he will immediately reimburse the Vendor for the cost of doing same, the determination of need for such repairs or redecoration shall be at the discretion of the Vendor, and such costs may be added to the Purchase Price.
- C.12 In accordance with subsections 80(6)(d) and (e) of the Act, subject to strict compliance by the Purchaser with the requirements of occupancy set forth in this Agreement, the Purchaser shall not have the right to assign, sublet or in any other manner dispose of the Occupancy Licence during Interim Occupancy without the prior written consent of the Vendor which consent may be arbitrarily withheld. The Purchaser acknowledges that an administrative fee will be payable to the Vendor each time the Purchaser wishes to assign, sublet or dispose of the Occupancy License during Interim Occupancy.
- C.13 The provisions set forth in this Agreement, unless otherwise expressly modified by the terms of the Occupancy Licence, shall be deemed to form an integral part of the Occupancy Licence. In the event the Vendor elects to terminate the Occupancy Licence pursuant to this Agreement following substantial damage to the Unit and/or the Condominium, the Occupancy Licence shall terminate forthwith upon notice from the Vendor to the Purchaser. If the Unit and/or the Condominium can be repaired within a reasonable time following damages as determined by the Vendor (but not, in any event, to exceed one hundred and eighty (180) days) and the Unit is, during such period of repairs uninhabitable, the Vendor shall proceed to carry out the necessary repairs to the Unit and/or the Condominium with all due dispatch and the Occupancy Fee shall abate during the period when the Unit remains uninhabitable; otherwise, the Purchaser shall vacate the Unit and deliver up vacant possession to the Vendor and all moneys, to the extent provided for in paragraph 20 hereof (excluding the Occupancy Fee paid to the Vendor) shall be returned to the Purchaser. It is understood and agreed that the proceeds of all insurance policies held by the Vendor are for the benefit of the Vendor alone.

SCHEDULE "D" TO AGREEMENT OF PURCHASE AND SALE

WARNING CLAUSES

- (a) The Purchaser is hereby advised that the Vendor's builder's risk and/or comprehensive liability insurance (effective prior to the registration of the Condominium), and the Condominium's master insurance policy (effective from and after the registration of the Condominium) will only cover the common elements and the standard unit and will not cover any betterments or improvements made to the standard unit, nor any furnishings or personal belongings of the Purchaser or other residents of the Unit, and accordingly the Purchaser should arrange for his or her own insurance coverage with respect to same, effective from and after the Occupancy Date, all at the Purchaser's sole cost and expense.
- (b) The Purchaser acknowledges and agrees that the Vendor (and any of its authorized agents, representatives and/or contractors), as well as one or more authorized representatives of the Condominium, shall be permitted to enter the Unit after the Occupancy Date, from time to time, in order to enable the Vendor to correct outstanding deficiencies or incomplete work for which the Vendor is responsible, and to enable the Condominium to inspect the condition or state of repair of the Unit and undertake or complete any requisite repairs thereto (which the owner of the Unit has failed to do) in accordance with the Act.
- (c) The Vendor shall have the right to substitute any level in the Condominium with an alternative floor plate containing a modified design of units and/or number of units on the level. In the event that such modification becomes necessary, there shall be a reallocation of each owner's proportionate percentage and the Budget shall be modified accordingly. The Purchaser acknowledges that none of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction.
- (d) The Purchaser acknowledges being advised of the following notices:
- (i) Despite the best efforts of the Toronto District School Board, sufficient accommodation may not be locally available for all students anticipated from the development area and that students may be accommodated in facilities outside the area, and further, the students may later be transferred.
- (ii) Purchasers agree for the purpose of transportation to school if bussing is provided by the Public District School Board in accordance with the Board's policy, that students will not be bussed from home to school, but will meet the bus at designated locations in or outside the area"
- (e) The Vendor reserves the right to increase or decrease the final number of residential, parking, and/or other ancillary units intended to be created within the Condominium, as well as the right to alter the design, style, size and/or configuration of the residential units ultimately comprised within the Condominium which have not yet been sold by the Vendor to any unit purchaser(s), all in the Vendor's sole discretion, and the Purchaser expressly acknowledges and agrees to the foregoing, provided that the final budget for the first year following registration of the Condominium is prepared in such a manner so that any such variance in the residential/parking and/or other ancillary unit count will not affect, in any material or substantial way, the percentages of common expenses and common interests allocated and attributable to the residential, parking and/or locker units sold by the Vendor to the Purchaser. Without limiting the generality of the foregoing, the Purchaser further acknowledges and agrees that one or more residential units or portions thereof situate adjacent to one another may be combined or amalgamated prior to the registration of the Condominium, in which case the common expenses and common interests attributable to such proposed former units will be incorporated into one figure or percentage in respect of the final combined unit, and the overall residential unit count of the Condominium will be varied and adjusted accordingly. None of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction.
- (f) Various commercial businesses are located within the vicinity of this residential development. Occasional off-site impacts, including odour, emissions and noise from these businesses may be expected.
- (g) Purchasers are advised that the Vendor's marketing material and site drawings and renderings ("**Marketing Material**") which they may have reviewed prior to the execution of this Agreement remains conceptual and that final building plans are subject to the final review and approval of any applicable governmental authority and the Vendor's design consultants and engineers, and accordingly such Marketing Material does not form part of this Agreement or the Vendor's obligations hereunder.
- (h) The Purchaser acknowledges and agrees that the Vendor reserves the right to add or relocate certain mechanical equipment within the Unit, including but not limited to, a heat pump system and ancillary equipment, to be located and placed along either the interior of an outside wall or an interior demising wall, in accordance with engineering and/or architectural requirements.
- (i) The Purchaser acknowledges that it is anticipated by the Vendor that in connection with the Vendor's application to the appropriate governmental authorities for draft plan of condominium approval certain requirements may be imposed upon the Vendor by various governmental authorities. These requirements (the "**Requirements**") usually relate to warning provisions to be given to Purchasers in connection with environmental or other concerns (such as warnings relating to noise levels, the proximity of the Condominium to major street, garbage storage and pickup, school transportation, and similar matters). Accordingly, the Purchaser covenants and agrees that (1) on either the Occupancy Date or the Title Transfer
- 

Date, the Purchaser shall execute any and all documents required by the Vendor acknowledging, *inter alia*, that the Purchaser is aware of the Requirements, and (2) if the Vendor is required to incorporate the Requirements into the final Condominium Documents the Purchaser shall accept the same, without in any way affecting this transaction.

- (j) It is further acknowledged that one or more of the Development Agreements may require the Vendor to provide the Purchaser with certain notices, including without limitation, notices regarding such matters as land use, the maintenance of retaining walls, landscaping features and/or fencing, noise abatement features, garbage storage and pick-up, school transportation, and noise/vibration levels from adjacent roadways and/or nearby railway lines. The Purchaser agrees to be bound by the contents of any such notice(s), whether given to the Purchaser at the time that this Agreement has been entered into, or at any time thereafter up to the Title Transfer Date, and the Purchaser further covenants and agrees to execute, forthwith upon the Vendor's request, an express acknowledgment confirming the Purchaser's receipt of such notice(s) in accordance with (and in full compliance of) such provisions of the Development Agreement(s), if and when required to do so by the Vendor.
- (k) The Purchaser acknowledges and agrees that the Vendor (and any of its authorized agents, representatives and/or contractors), as well as one or more authorized representatives of the Condominium, shall be permitted to enter the Unit after the Occupancy Date, from time to time, in order to enable the Vendor to correct outstanding deficiencies or incomplete work for which the Vendor is responsible, and to enable the Condominium to inspect the condition or state of repair of the Unit and undertake or complete any requisite repairs thereto (which the owner of the Unit has failed to do) in accordance with the Act.



THE UNDERSIGNED being the Purchaser of the Unit hereby acknowledges having received from the Vendor with respect to the purchase of the Unit the following document on the date noted below:

1. A Disclosure Statement dated December 11, 2015 and accompanying documents in accordance with Section 72 of the Act.
2. A copy of the Agreement of Purchase and Sale (to which this acknowledgment is attached as a Schedule) executed by the Vendor and the Purchaser.

The Purchaser hereby acknowledges that receipt of the Disclosure Statement and accompanying documents referred to in paragraph 1 above may have been in an electronic format and that such delivery satisfies the Vendor's obligation to deliver a Disclosure Statement under the Act.

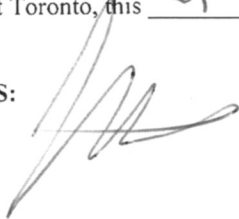
The Purchaser hereby acknowledges that the Condominium Documents required by the Act have not been registered by the Vendor, and agrees that the Vendor may, from time to time, make any modification to the Condominium Documents in accordance with its own requirements and the requirements of any mortgagee, governmental authority, examiner of Legal Surveys, the Land Registry Office or any other competent authority having jurisdiction to permit registration thereof.

The Purchaser further acknowledges and agrees that in the event there is a material change to the Disclosure Statement as defined in subsection 74(2) of the Act, the Purchaser's only remedy shall be as set forth in subsection 74(6) of the Act, notwithstanding any rule of law or equity to the contrary.

The Purchaser further acknowledges having been advised that the Purchaser shall be entitled to rescind or terminate the Agreement to which this Schedule is attached and obtain a refund of all deposit monies paid thereunder (together with all interest accrued thereon at the rate prescribed by the Act, if applicable), provided written notice of the Purchaser's desire to so rescind or terminate the Agreement is delivered to the Vendor or the Vendor's Solicitors within 10 days after the date set out below.

DATED at Toronto, this 21 day of April, 2016.

WITNESS:



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)
)
)
)
)

Purchaser



Purchaser



Residential Unit No.: 1, Level: 9
& Residential Unit No.: 1, Level: 8
Suite No.: 901 and 801 to be known as
Suite 901

SCHEDULE "F" TO THE AGREEMENT OF PURCHASE AND SALE

The Agreement of Purchase and Sale (the "Agreement") between David Berry (the "Purchaser") and Mizrahi (128 Hazelton) Inc. (the "Vendor") for the purchase of the above-noted unit together with three (3) parking units and one (1) locker unit being proposed units in the Condominium to be registered against property currently municipally known as 126 & 128 Hazelton Avenue, is amended as follows:

1. The Purchase Price of THIRTEEN MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$13,250,000.00) is the net purchase price and is not to be adjusted at closing. Accordingly, sections 6 (d) and (e) are deleted.
2. For greater certainty, Suite 901 includes the exclusive use of that portion of the common elements to which Suite 901 provides sole and direct access and is designated as (a) a Balcony/Juliet Balcony and/or Terrace, and (b) Roof Top Terrace.
3. The parties agree that Residential Unit 1, Level 9 (Suite 901) and part of Residential Unit 1, Level 8 (Suite 801) as presently described in the Condominium Documents shall, at the time of registration of the Condominium, be reconfigured and combined to create the Residential Unit being purchased as described on Schedule "A" annexed to the Purchase Agreement which shall together be re-designated as Unit 1, Level 9, Suite 901 in the Condominium (the "**Combined Unit**"). The Purchaser further acknowledges and agrees that subject to any subsequent change in the Condominium Documents the Condominium Documents shall be supplemented by the following revised Schedules annexed hereto based on the particulars of the Combined Unit: (i) Schedule "C" to the Declaration-Boundaries of Units; (ii) Schedule "D" to the Declaration-Percentage Interests of Units in Common Expenses and Common Interests; (iii) Schedule "F" to the Declaration-Exclusive Use Common Elements; and (iv) Schedule of Monthly Fees to the Budget.

SCHEDULE 'C'**UNIT BOUNDARIES**

Each Residential Unit, Parking Unit, Locker Unit, Service Unit and Sign Unit shall comprise the area within the heavy lines shown on Part 1, Sheets 1 to 5 inclusive of the Description with respect to the unit numbers indicated thereon. The monuments controlling the extent of the Units are the physical surfaces and planes referred to below, are illustrated on Part 1, Sheets 1 to 5 inclusive of the Description and all dimensions shall have reference to them.

Without limiting the generalities of the foregoing, the boundaries of each Unit are as follows:

1. **BOUNDARIES OF THE RESIDENTIAL UNITS** (Approx. 20 Units)
(Being Units 1 to 5 inclusive on Level 2; Units 1 to 4 inclusive on Levels 3 and 4; Units 1 and 2 on Levels 5 and 6; Unit 1 on Levels 7, 8 and 9)
 - a) Each Residential Unit shall be bounded vertically by:
 - i) The upper surface and plane of the concrete floor slab and/or the production thereof.
 - ii) The unfinished unit side surface and plane of the exterior windows (said windows being in a closed position), window frames and the unit side surface of all glass or acrylic panel located therein.
 - iii) The lower surface and plane of the concrete ceiling slab and/or the production thereof.
 - iv) The lower surface and plane of the metal damper located within the fireplaces, where applicable.
 - b) Each Residential Unit shall be bounded horizontally by:
 - i) The back side face of the drywall sheathing and production thereof on exterior walls or walls separating a unit from the common elements.
 - ii) The unfinished unit side surface and plane of the exterior doors and windows (said doors and windows being in a closed position), door and window frames and the unit side surface of any glass or acrylic panels located therein.
 - iii) In the vicinity of suspended ceilings, bulkheads, ducts, pipe spaces and concrete columns, the unit boundaries are the back side faces of the drywall sheathing and production thereof enclosing said suspended ceilings, bulkheads, ducts, pipe spaces and masonry structural columns and walls.
 - iv) The vertical plane established by measurements.
2. **BOUNDARIES OF THE PARKING UNITS**
(Being 40 Units on Levels A, B and C)
 - a) Each Parking Unit shall be bounded vertically by:
 - i) The upper surface and plane of the concrete floor slab and/or the production thereof.
 - ii) The plane established 2.10 metres perpendicularly distant above and parallel to the upper finished surface of the concrete floor.
 - b) Each Parking Unit shall be bounded horizontally by one or a combination of:
 - i) The vertical plane established by measurements.
 - ii) The surface and plane of the masonry wall or column and/or the production thereof.

SCHEDULE 'C'**UNIT BOUNDARIES**

- iii) The vertical plane established by the line and face of the columns and/or the production thereof.
- iv) The vertical plane established by the centreline of columns and/or the production thereof.
- v) The vertical plane established by measurements and perpendicular to the masonry wall.
- vi) The vertical plane established perpendicular to the masonry wall and passing through the centreline of the column and/or the production thereof.

3. BOUNDARIES OF THE LOCKER UNITS

(Being 21 Units on Levels A, B and C)

- a) Each Locker Unit shall be bounded vertically by:
 - i) The upper surface and plane of the concrete floor slab and or the production thereof.
 - ii) The interior surface and plane of the steel wire mesh and frame.
- b) Each Locker Unit shall be bounded horizontally by one or a combination of:
 - i) The surface and plane of the masonry wall or column and/or the production thereof.
 - ii) The interior surface and plane of the steel wire mesh and frame.
 - iii) The back side face of the drywall sheathing and production thereof.

4. BOUNDARIES OF THE SERVICE UNITS

(Being _ Units on Levels _)

- a) Each Service Unit shall be bounded vertically by:
 - i) The upper surface and plane of the concrete floor slab and/or the production thereof.
 - ii) The lower surface and plane of the concrete ceiling slab and/or the production thereof.
- b) Each Service Unit shall be bounded horizontally by one or a combination of:
 - i) The vertical plane established by measurements.
 - ii) The surface and plane of the masonry wall or column and/or the production thereof.
 - iii) The unfinished unit side surface and plane of all exterior doors, door and window frames, the said doors and windows being in a closed position and the unit side surface of the glass or acrylic panels contained therein.
 - iv) The vertical plane established by measurements and perpendicular to the masonry wall or column.

SCHEDULE 'C'

UNIT BOUNDARIES

5. BOUNDARIES OF THE SIGN UNITS

(Being _ Units on Level _)

- a) Each Sign Unit shall be bounded vertically by one or a combination of:
- i) The horizontal plane defined by the upper surface of the metal frame and/or production thereof.
 - ii) The horizontal plane established perpendicular to the adjacent exterior masonry wall and defined by measurements.
 - iii) The horizontal plane established perpendicular to the adjacent exterior glass window and defined by measurements.
 - iv) The horizontal plane defined by the bottom surface of the metal frame and production thereof.
 - v) The horizontal plane established by measurement.
- b) Each Sign Unit shall be bounded horizontally by one or a combination of:
- i) The vertical plane established perpendicular to the adjacent exterior masonry wall and defined by measurements.
 - ii) The vertical plane established parallel to the adjacent exterior masonry wall and defined by measurements.
 - iii) The vertical plane established abutting the exterior masonry wall and defined by measurements.
 - iv) The vertical plane established parallel to the adjacent exterior glass window and defined by measurements.
 - v) The unfinished surface and plane of the masonry wall or column and/or the production thereof.
 - vi) The vertical plane established by measurement.

I hereby certify that the written description of the monuments and boundaries of the Units contained herein accurately corresponds with the diagrams of the Units shown on Part 1, Sheets 1 to 5 inclusive of the Description.

Dated

J. EDUARDO LINHARES
Ontario Land Surveyor

NOTE: The Declarant, at its sole, absolute and unfettered discretion, reserves the right to: (a) increase, decrease, eliminate or vary the number and types of all units on all levels; (b) increase or decrease the number of levels within the building which forms part of the Condominium; (c) re-number all unit and level numbers; (d) revise unit boundaries to reflect "as-built" conditions at the time of condominium registration.

SCHEDULE D

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	PERCENTAGE CONTRIBUTION TO COMMON EXPENSES	PERCENTAGE INTEREST IN COMMON ELEMENTS
PARKING UNITS	A, B and C	40 units	6.21275	6.21275
LOCKER UNITS	A, B and C	21 units	0.97737	0.97737
SIGN UNITS		3 units	0.00003	0.00003
SERVICE UNITS		5 units	0.00005	0.00005
201	2	1	2.78887	2.78887
202	2	2	2.61861	2.61861
203	2	3	2.24109	2.24109
204	2	4	2.83328	2.83328
205	2	5	2.92766	2.92766
301	3	1	2.79072	2.79072
302	3	2	2.59455	2.59455
303	3	3	3.97510	3.97510
304	3	4	3.69751	3.69751
401	4	1	2.79072	2.79072
402	4	2	2.58900	2.58900
403	4	3	3.64570	3.64570
404	4	4	3.69381	3.69381
501	5	1	5.83496	5.83496
502	5	2	6.36609	6.36609
601	6	1	5.55922	5.55922
602	6	2	5.27238	5.27238
701	7	1	8.98100	8.98100
801	8	1	7.19331	7.19331
901	9	1	14.41623	14.41623
TOTALS			100.00000	100.00000



SCHEDULE 'F'**EXCLUSIVE USE PORTIONS OF THE COMMON ELEMENTS**

Subject to the provisions of the Declaration, the By-laws and the Rules of the Corporation as well as the right of entry in favour of the Corporation for the purposes of facilitating any requisite maintenance and/or repair work or to give access to the utility and service areas appurtenant thereto:

- a) The owner(s) of certain Residential Units on Levels 2 to 9 inclusive shall have exclusive use of that portion of the common elements to which their Unit provides sole and direct access and is designated as a **Balcony/Juliet Balcony** and/or **Terrace**.
- b) The owner(s) of the Residential Unit 1 on Level 9 shall have exclusive use of that portion of the common elements to which their Unit provides sole and direct access and is designated as **Roof Top Terrace**.

Notwithstanding the foregoing, any fixture, outlet, sign, apparatus or structure located within the limits of the Exclusive Use Portions of the Common Elements shall not form part thereof.

NOTE: The Declarant reserves the right, at its sole, absolute and unfettered discretion, to create and assign exclusive use portions of the common elements at the time of condominium registration.



MONTHLY COMMON ELEMENT FEES

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	MONTHLY COMMON ELEMENT FEES BY UNIT
PARKING UNITS	A, B and C	40 units	\$99.95 each
LOCKER UNITS	A, B and C	21 units	\$29.95 each
SIGN UNITS		3 units	\$0.00 each
SERVICE UNITS		5 unit	\$0.00 each
201	2	1	\$1,794.68
202	2	2	\$1,685.12
203	2	3	\$1,442.17
204	2	4	\$1,823.26
205	2	5	\$1,884.00
301	3	1	\$1,795.87
302	3	2	\$1,669.63
303	3	3	\$2,558.04
304	3	4	\$2,379.41
401	4	1	\$1,795.87
402	4	2	\$1,666.06
403	4	3	\$2,346.06
404	4	4	\$2,377.03
501	5	1	\$3,754.89
502	5	2	\$4,096.68
601	6	1	\$3,577.45
602	6	2	\$3,392.86
701	7	1	\$5,779.41
801	8	1	\$4,629.01
901	9	1	\$9,277.07
TOTALS			\$64,351.57

Statement of Critical Dates
Delayed Occupancy Warranty

This Statement of Critical Dates forms part of the Addendum to which it is attached, which in turn forms part of the agreement of purchase and sale between the Vendor and the Purchaser relating to the Property. **The Vendor must complete all blanks set out below. Both the Vendor and Purchaser must sign this page.**

NOTE TO HOME BUYERS: Please visit Tarion's website: www.tarion.com for important information about all of Tarion's warranties including the Delayed Occupancy Warranty, the Pre-Delivery Inspection and other matters of interest to new home buyers. You can also obtain a copy of the Homeowner Information Package which is strongly recommended as essential reading for all home buyers. The website features a calculator which will assist you in confirming the various Critical Dates related to the occupancy of your home.

VENDOR Mizrahi (128 Hazelton) Inc.
Full Name(s)

PURCHASER David Berry
Full Name(s)

1. Critical Dates

The **First Tentative Occupancy Date**, which is the date that the Vendor anticipates the home will be completed and ready to move in, is: the 29th day of June, 2018.

The Vendor can delay Occupancy on one or more occasions by setting a subsequent **Tentative Occupancy Date**, in accordance with section 1 of the Addendum by giving proper written notice as set out in section 1.

By no later than 30 days after the Roof Assembly Date (as defined in section 12), with at least 90 days prior written notice, the Vendor shall set either (i) a **Final Tentative Occupancy Date**; or (ii) a **Firm Occupancy Date**.

For purchase agreements signed after the Roof Assembly Date, the First Tentative Occupancy Date is inapplicable and the Vendor shall instead elect and set either a Final Tentative Occupancy Date or Firm Occupancy Date. the ___ day of _____, 20__.
Final Tentative Occupancy Date

or

If the Vendor sets a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date, then the Vendor shall set a **Firm Occupancy Date** that is no later than 120 days after the Final Tentative Occupancy Date, with proper written notice as set out in section 1 below. the ___ day of _____, 20__.
Firm Occupancy Date

If the Vendor cannot provide Occupancy by the Firm Occupancy Date, then the Purchaser is entitled to delayed occupancy compensation (see section 7 of the Addendum) and the Vendor must set a Delayed Occupancy Date which cannot be later than the Outside Occupancy Date.

The **Outside Occupancy Date**, which is the latest date by which the Vendor agrees to provide Occupancy, is: the 28th day of June, 2019.

2. Notice Period for an Occupancy Delay

Changing an Occupancy date requires proper written notice. The Vendor, without the Purchaser's consent, may delay Occupancy one or more times in accordance with section 1 of the Addendum and no later than the Outside Occupancy Date. Notice of a delay beyond the First Tentative Occupancy Date must be given no later than: the 29th day of March, 2018.
(i.e., at least **90 days** before the First Tentative Occupancy Date), or else the First Tentative Occupancy Date automatically becomes the Firm Occupancy Date.

3. Purchaser's Termination Period

If the home is not complete by the Outside Occupancy Date, then the Purchaser can terminate the transaction during a period of **30 days** thereafter (the "**Purchaser's Termination Period**"), which period, unless extended by mutual agreement, will end on: the 29th day of July, 2019.

If the Purchaser terminates the transaction during the Purchaser's Termination Period, then the Purchaser is entitled to delayed occupancy compensation and to a full refund of all monies paid plus interest (see sections 7, 10 and 11 of the Addendum).

Note: Any time a Critical Date is set or changed as permitted in the Addendum, other Critical Dates may change as well. At any given time the parties must refer to: the most recent revised Statement of Critical Dates; or agreement or written notice that sets a Critical Date, and calculate revised Critical Dates using the formulas contained in the Addendum. Critical Dates can also change if there are unavoidable delays (see section 5 of the Addendum).

Acknowledged this 21 day of April, 2016.

VENDOR: _____

PURCHASER: _____

Addendum to Agreement of Purchase and Sale
Delayed Occupancy Warranty

This addendum, including the accompanying Statement of Critical Dates (the "Addendum"), forms part of the agreement of purchase and sale (the "Purchase Agreement") between the Vendor and the Purchaser relating to the Property. This Addendum is to be used for a transaction where the home is a condominium unit (that is not a vacant land condominium unit). This Addendum contains important provisions that are part of the delayed occupancy warranty provided by the Vendor in accordance with the *Ontario New Home Warranties Plan Act* (the "ONHWP Act"). If there are any differences between the provisions in the Addendum and the Purchase Agreement, then the Addendum provisions shall prevail. **PRIOR TO SIGNING THE PURCHASE AGREEMENT OR ANY AMENDMENT TO IT, THE PURCHASER SHOULD SEEK ADVICE FROM A LAWYER WITH RESPECT TO THE PURCHASE AGREEMENT OR AMENDING AGREEMENT, THE ADDENDUM AND THE DELAYED OCCUPANCY WARRANTY.**

Tarion recommends that Purchasers register on Tarion's **MyHome** on-line portal and visit Tarion's website - **tarion.com**, to better understand their rights and obligations under the statutory warranties.

The Vendor shall complete all blanks set out below.

VENDOR Mizrahi (128 Hazelton) Inc.

Full Name(s) 44647	126 Hazelton Avenue
Tarion Registration Number 416-922-4200	Address Toronto Ontario M5R 2E5
Phone 1-866-300-0219	City Province Postal Code Reception@MizrahiDevelopments.ca
Fax	Email*

PURCHASER David Berry

Full Name(s) 514 Silvertip Road	Canmore	Alberta	T1W 3H3
Address 416-500-9080	City	Province	Postal Code
Phone	davidmmberry@rogers.com		
Fax	Email*		

PROPERTY DESCRIPTION

126 and 128 Hazelton Avenue
Municipal Address Toronto Ontario
City Province Postal Code Part of Lots 1 and 2, Registered Plan 687-E and Part of Block A, Registered Plan 411, York, City of Toronto
Short Legal Description

INFORMATION REGARDING THE PROPERTY

The Vendor confirms that:

- (a) The Vendor has obtained Formal Zoning Approval for the Building. Yes No
If no, the Vendor shall give written notice to the Purchaser within 10 days after the date that Formal Zoning Approval for the Building is obtained.
- (b) Commencement of Construction: has occurred; or is expected to occur by the 1st day of April, 2016.

The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.

***Note:** Since important notices will be sent to this address, it is essential that you ensure that a reliable email address is provided and that your computer settings permit receipt of notices from the other party.

(b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend any of the Critical Dates. Any amendment which accelerates or extends any of the Critical Dates must include the following provisions:

- (i) the Purchaser and Vendor agree that the amendment is entirely voluntary – the Purchaser has no obligation to sign the amendment and each understands that this purchase transaction will still be valid if the Purchaser does not sign this amendment;
- (ii) the amendment includes a revised Statement of Critical Dates which replaces the previous Statement of Critical Dates;
- (iii) the Purchaser acknowledges that the amendment may affect delayed occupancy compensation payable; and
- (iv) if the change involves extending either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement shall:
 - i. disclose to the Purchaser that the signing of the amendment may result in the loss of delayed occupancy compensation as described in section 7;
 - ii. unless there is an express waiver of compensation, describe in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation; and
 - iii. contain a statement by the Purchaser that the Purchaser waives compensation or accepts the compensation referred to in clause ii above, in either case, in full satisfaction of any delayed occupancy compensation payable by the Vendor for the period up to the new Firm Occupancy Date or Delayed Occupancy Date.

If the Purchaser for his or her own purposes requests a change of the Firm Occupancy Date or the Delayed Occupancy Date, then subparagraphs (b)(i), (iii) and (iv) above shall not apply.

- (c) A Vendor is permitted to include a provision in the Purchase Agreement allowing the Vendor a one-time unilateral right to extend a Firm Occupancy Date or Delayed Occupancy Date, as the case may be, for one (1) Business Day to avoid the necessity of tender where a Purchaser is not ready to complete the transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be. Delayed occupancy compensation will not be payable for such period and the Vendor may not impose any penalty or interest charge upon the Purchaser with respect to such extension.
- (d) The Vendor and Purchaser may agree in the Purchase Agreement to any unilateral extension or acceleration rights that are for the benefit of the Purchaser.

5. Extending Dates – Due to Unavoidable Delay

- (a) If Unavoidable Delay occurs, the Vendor may extend Critical Dates by no more than the length of the Unavoidable Delay Period, without the approval of the Purchaser and without the requirement to pay delayed occupancy compensation in connection with the Unavoidable Delay, provided the requirements of this section are met.
- (b) If the Vendor wishes to extend Critical Dates on account of Unavoidable Delay, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, and an estimate of the duration of the delay. Once the Vendor knows or ought reasonably to know that an Unavoidable Delay has commenced, the Vendor shall provide written notice to the Purchaser by the earlier of: 20 days thereafter; and the next Critical Date.
- (c) As soon as reasonably possible, and no later than 20 days after the Vendor knows or ought reasonably to know that an Unavoidable Delay has concluded, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, identifying the date of its conclusion, and setting new Critical Dates. The new Critical Dates are calculated by adding to the then next Critical Date the number of days of the Unavoidable Delay Period (the other Critical Dates changing accordingly), provided that the Firm Occupancy Date or Delayed Occupancy Date, as the case may be, must be at least 10 days after the day of giving notice unless the parties agree otherwise. Either the Vendor or the Purchaser may request in writing an earlier Firm Occupancy Date or Delayed Occupancy Date, and the other party's consent to the earlier date shall not be unreasonably withheld.
- (d) If the Vendor fails to give written notice of the conclusion of the Unavoidable Delay in the manner required by paragraph (c) above, then the notice is ineffective, the existing Critical Dates are unchanged, and any delayed occupancy compensation payable under section 7 is payable from the existing Firm Occupancy Date.
- (e) Any notice setting new Critical Dates given by the Vendor under this section shall include an updated revised Statement of Critical Dates.

EARLY TERMINATION CONDITIONS

6. Early Termination Conditions

- (a) The Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section.
- (b) The Vendor is not permitted to include any conditions in the Purchase Agreement other than: the types of Early Termination Conditions listed in Schedule A; and/or the conditions referred to in paragraphs (i), (j) and (k) below. Any other condition included in a Purchase Agreement for the benefit of the Vendor that is not expressly permitted under Schedule A or paragraphs (i), (j) and (k) below is deemed null and void and is not enforceable by the Vendor, but does not affect the validity of the balance of the Purchase Agreement.



- (c) The Vendor confirms that this Purchase Agreement is subject to Early Termination Conditions that, if not satisfied (or waived, if applicable), may result in the termination of the Purchase Agreement. Yes No
- (d) If the answer in (c) above is "Yes", then the Early Termination Conditions are as follows. The obligation of each of the Purchaser and Vendor to complete this purchase and sale transaction is subject to satisfaction (or waiver, if applicable) of the following conditions and any such conditions set out in an appendix headed "Early Termination Conditions":

Condition #1 (if applicable)

Description of the Early Termination Condition:

SEE APPENDIX

The Approving Authority (as that term is defined in Schedule A) is: _____

The date by which Condition #1 is to be satisfied is the _____ day of _____, 20 _____.

Condition #2 (if applicable)

Description of the Early Termination Condition:

The Approving Authority (as that term is defined in Schedule A) is: _____

The date by which Condition #2 is to be satisfied is the _____ day of _____, 20 _____.

The date for satisfaction of any Early Termination Condition may be changed by mutual agreement provided in all cases it is set at least 90 days before the First Tentative Occupancy Date, and will be deemed to be 90 days before the First Tentative Occupancy Date if no date is specified or if the date specified is later than 90 days before the First Tentative Occupancy Date. This time limitation does not apply to the condition in subparagraph 1(b)(iv) of Schedule A which must be satisfied or waived by the Vendor within 60 days following the later of: (A) the signing of the Purchase Agreement; and (B) the satisfaction or waiver by the Purchaser of a Purchaser financing condition permitted under paragraph (k) below.

Note: The parties must add additional pages as an appendix to this Addendum if there are additional Early Termination Conditions.

- (e) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph (d) above and any appendix listing additional Early Termination Conditions.
- (f) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions identified in subparagraph (d) above.
- (g) For conditions under paragraph 1(a) of Schedule A the following applies:
- (i) conditions in paragraph 1(a) of Schedule A may not be waived by either party;
 - (ii) the Vendor shall provide written notice not later than five (5) Business Days after the date specified for satisfaction of a condition that: (A) the condition has been satisfied; or (B) the condition has not been satisfied (together with reasonable details and backup materials) and that as a result the Purchase Agreement is terminated; and
 - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed not satisfied and the Purchase Agreement is terminated.
- (h) For conditions under paragraph 1(b) of Schedule A the following applies:
- (i) conditions in paragraph 1(b) of Schedule A may be waived by the Vendor;
 - (ii) the Vendor shall provide written notice on or before the date specified for satisfaction of the condition that: (A) the condition has been satisfied or waived; or (B) the condition has not been satisfied nor waived, and that as a result the Purchase Agreement is terminated; and
 - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties.
- (i) The Purchase Agreement may be conditional until Closing (transfer to the Purchaser of title to the home), upon compliance with the subdivision control provisions (section 50) of the *Planning Act* and, if applicable, registration of the declaration and description for the Building under the *Condominium Act, 1998*, which compliance shall be obtained by the Vendor at its sole expense, on or before Closing.
- (j) The Purchaser is cautioned that there may be other conditions in the Purchase Agreement that allow the Vendor to terminate the Purchase Agreement due to the fault of the Purchaser.
- (k) The Purchase Agreement may include any condition that is for the sole benefit of the Purchaser and that is agreed to by the Vendor (e.g., the sale of an existing dwelling, Purchaser financing or a basement walkout). The Purchase Agreement may specify that the Purchaser has a right to terminate the Purchase Agreement if any such condition is not met, and may set out the terms on which termination by the Purchaser may be effected.

MAKING A COMPENSATION CLAIM
7. Delayed Occupancy Compensation

- (a) The Vendor warrants to the Purchaser that, if Occupancy is delayed beyond the Firm Occupancy Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 4 and 5), then the Vendor shall compensate the Purchaser up to a total amount of \$7,500, which amount includes: (i) payment to the Purchaser of a set amount of \$150 a day for living expenses for each day of delay until the Occupancy Date or the date of termination of the Purchase Agreement, as applicable under paragraph (b) below; and (ii) any other expenses (supported by receipts) incurred by the Purchaser due to the delay.
- (b) Delayed occupancy compensation is payable only if: (i) Occupancy and Closing occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraph 10(b) of this Addendum. Delayed occupancy compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Occupancy, or after termination of the Purchase Agreement, as the case may be, and otherwise in accordance with this Addendum. Compensation claims are subject to any further conditions set out in the ONHWP Act.
- (c) If the Vendor gives written notice of a Delayed Occupancy Date to the Purchaser less than 10 days before the Firm Occupancy Date, contrary to the requirements of paragraph 3(c), then delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date.
- (d) Living expenses are direct living costs such as for accommodation and meals. Receipts are not required in support of a claim for living expenses, as a set daily amount of \$150 per day is payable. The Purchaser must provide receipts in support of any claim for other delayed occupancy compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed occupancy compensation in connection with a claim.
- (e) If delayed occupancy compensation is payable, the Purchaser may make a claim to the Vendor for that compensation after Occupancy or after termination of the Purchase Agreement, as the case may be, and shall include all receipts (apart from living expenses) which evidence any part of the Purchaser's claim. The Vendor shall assess the Purchaser's claim by determining the amount of delayed occupancy compensation payable based on the rules set out in section 7 and the receipts provided by the Purchaser, and the Vendor shall promptly provide that assessment information to the Purchaser. The Purchaser and the Vendor shall use reasonable efforts to settle the claim and when the claim is settled, the Vendor shall prepare an acknowledgement signed by both parties which:
- (i) includes the Vendor's assessment of the delayed occupancy compensation payable;
 - (ii) describes in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation (the "Compensation"), if any; and
 - (iii) contains a statement by the Purchaser that the Purchaser accepts the Compensation in full satisfaction of any delayed occupancy compensation payable by the Vendor.
- (f) If the Vendor and Purchaser cannot agree as contemplated in paragraph 7(e), then to make a claim to Tarion the Purchaser must file a claim with Tarion in writing within one (1) year after Occupancy. A claim may also be made and the same rules apply if the sale transaction is terminated under paragraph 10(b), in which case, the deadline for a claim is one (1) year after termination.
- (g) If delayed occupancy compensation is payable, the Vendor shall either pay the compensation as soon as the proper amount is determined; or pay such amount with interest (at the prescribed rate as specified in subsection 19(1) of O.Reg. 48/01 of the *Condominium Act, 1998*), from the Occupancy Date to the date of Closing, such amount to be an adjustment to the balance due on the day of Closing.

8. Adjustments to Purchase Price

Only the items set out in Schedule B (or an amendment to Schedule B), shall be the subject of adjustment or change to the purchase price or the balance due on Closing. The Vendor agrees that it shall not charge as an adjustment or readjustment to the purchase price of the home, any reimbursement for a sum paid or payable by the Vendor to a third party unless the sum is ultimately paid to the third party either before or after Closing. If the Vendor charges an amount in contravention of the preceding sentence, the Vendor shall forthwith readjust with the Purchaser. This section shall not: restrict or prohibit payments for items disclosed in Part I of Schedule B which have a fixed fee; nor shall it restrict or prohibit the parties from agreeing on how to allocate as between them, any rebates, refunds or incentives provided by the federal government, a provincial or municipal government or an agency of any such government, before or after Closing.

MISCELLANEOUS
9. Ontario Building Code – Conditions of Occupancy

- (a) On or before the Occupancy Date, the Vendor shall deliver to the Purchaser:
- (i) an Occupancy Permit (as defined in paragraph (d)) for the home; or
 - (ii) if an Occupancy Permit is not required under the Building Code, a signed written confirmation by the Vendor that all conditions of occupancy under the Building Code have been fulfilled and Occupancy is permitted under the Building Code.



- (b) Notwithstanding the requirements of paragraph (a), to the extent that the Purchaser and the Vendor agree that the Purchaser shall be responsible for one or more prerequisites to obtaining permission for Occupancy under the Building Code, (the "Purchaser Occupancy Obligations"):
- (i) the Purchaser shall not be entitled to delayed occupancy compensation if the reason for the delay is that the Purchaser Occupancy Obligations have not been completed;
 - (ii) the Vendor shall deliver to the Purchaser, upon fulfilling all prerequisites to obtaining permission for Occupancy under the Building Code (other than the Purchaser Occupancy Obligations), a signed written confirmation that the Vendor has fulfilled such prerequisites; and
 - (iii) if the Purchaser and Vendor have agreed that such prerequisites (other than the Purchaser Occupancy Obligations) are to be fulfilled prior to Occupancy, then the Vendor shall provide the signed written confirmation required by subparagraph (ii) on or before the Occupancy Date.
- (c) If the Vendor cannot satisfy the requirements of paragraph (a) or subparagraph (b)(ii), the Vendor shall set a Delayed Occupancy Date (or new Delayed Occupancy Date) on a date that the Vendor reasonably expects to have satisfied the requirements of paragraph (a) or subparagraph (b)(ii), as the case may be. In setting the Delayed Occupancy Date (or new Delayed Occupancy Date), the Vendor shall comply with the requirements of section 3, and delayed occupancy compensation shall be payable in accordance with section 7. Despite the foregoing, delayed occupancy compensation shall not be payable for a delay under this paragraph (c) if the inability to satisfy the requirements of subparagraph (b)(ii) is because the Purchaser has failed to satisfy the Purchaser Occupancy Obligations.
- (d) For the purposes of this section, an "Occupancy Permit" means any written or electronic document, however styled, whether final, provisional or temporary, provided by the chief building official (as defined in the *Building Code Act*) or a person designated by the chief building official, that evidences that permission to occupy the home under the Building Code has been granted.

10. Termination of the Purchase Agreement

- (a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written agreement. Such written mutual agreement may specify how monies paid by the Purchaser, including deposit(s) and monies for upgrades and extras are to be allocated if not repaid in full.
- (b) If for any reason (other than breach of contract by the Purchaser) Occupancy has not been given to the Purchaser by the Outside Occupancy Date, then the Purchaser has 30 days to terminate the Purchase Agreement by written notice to the Vendor. If the Purchaser does not provide written notice of termination within such 30-day period, then the Purchase Agreement shall continue to be binding on both parties and the Delayed Occupancy Date shall be the date set under paragraph 3(c), regardless of whether such date is beyond the Outside Occupancy Date.
- (c) If: calendar dates for the applicable Critical Dates are not inserted in the Statement of Critical Dates; or if any date for Occupancy is expressed in the Purchase Agreement or in any other document to be subject to change depending upon the happening of an event (other than as permitted in this Addendum), then the Purchaser may terminate the Purchase Agreement by written notice to the Vendor.
- (d) The Purchase Agreement may be terminated in accordance with the provisions of section 6.
- (e) Nothing in this Addendum derogates from any right of termination that either the Purchaser or the Vendor may have at law or in equity on the basis of, for example, frustration of contract or fundamental breach of contract.
- (f) Except as permitted in this section, the Purchase Agreement may not be terminated by reason of the Vendor's delay in providing Occupancy alone.

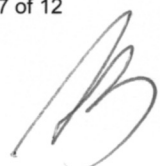
11. Refund of Monies Paid on Termination

- (a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), then unless there is agreement to the contrary under paragraph 10(a), the Vendor shall refund all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, within 10 days of such termination, with interest from the date each amount was paid to the Vendor to the date of refund to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor as a prerequisite to obtaining the refund of monies payable as a result of termination of the Purchase Agreement under this paragraph, although the Purchaser may be required to sign a written acknowledgement confirming the amount of monies refunded and termination of the purchase transaction. Nothing in this Addendum prevents the Vendor and Purchaser from entering into such other termination agreement and/or release as may be agreed to by the parties.
- (b) The rate of interest payable on the Purchaser's monies shall be calculated in accordance with the *Condominium Act, 1998*.
- (c) Notwithstanding paragraphs (a) and (b) above, if either party initiates legal proceedings to contest termination of the Purchase Agreement or the refund of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

12. Definitions

"Building" means the condominium building or buildings contemplated by the Purchase Agreement, in which the Property is located or is proposed to be located.

"Business Day" means any day other than: Saturday; Sunday; New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day; and any special holiday proclaimed by the Governor General or the Lieutenant Governor; and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is



not a Business Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are not Business Days; and where Christmas Day falls on a Friday, the following Monday is not a Business Day.

“**Closing**” means completion of the sale of the home, including transfer of title to the home to the Purchaser.

“**Commencement of Construction**” means the commencement of construction of foundation components or elements (such as footings, rafts or piles) for the Building.

“**Critical Dates**” means the First Tentative Occupancy Date, any subsequent Tentative Occupancy Date, the Final Tentative Occupancy Date, the Firm Occupancy Date, the Delayed Occupancy Date, the Outside Occupancy Date and the last day of the Purchaser’s Termination Period.

“**Delayed Occupancy Date**” means the date, set in accordance with section 3, on which the Vendor agrees to provide Occupancy, in the event the Vendor cannot provide Occupancy on the Firm Occupancy Date.

“**Early Termination Conditions**” means the types of conditions listed in Schedule A.

“**Final Tentative Occupancy Date**” means the last Tentative Occupancy Date that may be set in accordance with paragraph 1(d).

“**Firm Occupancy Date**” means the firm date on which the Vendor agrees to provide Occupancy as set in accordance with this Addendum.

“**First Tentative Occupancy Date**” means the date on which the Vendor, at the time of signing the Purchase Agreement, anticipates that the home will be complete and ready for Occupancy, as set out in the Statement of Critical Dates.

“**Formal Zoning Approval**” occurs when the zoning by-law required for the Building has been approved by all relevant governmental authorities having jurisdiction, and the period for appealing the approvals has elapsed and/or any appeals have been dismissed or the approval affirmed.

“**Occupancy**” means the right to use or occupy the home in accordance with the Purchase Agreement.

“**Occupancy Date**” means the date the Purchaser is given Occupancy.

“**Outside Occupancy Date**” means the latest date that the Vendor agrees to provide Occupancy to the Purchaser, as confirmed in the Statement of Critical Dates.

“**Property**” or “**home**” means the home being acquired by the Purchaser from the Vendor, and its interest in the related common elements.

“**Purchaser’s Termination Period**” means the 30-day period during which the Purchaser may terminate the Purchase Agreement for delay, in accordance with paragraph 10(b).

“**Roof Assembly Date**” means the date upon which the roof slab, or roof trusses and sheathing, as the case may be, are completed. For single units in a multi-unit block, whether or not vertically stacked, (e.g., townhouses or row houses), the roof refers to the roof of the block of homes unless the unit in question has a roof which is in all respects functionally independent from and not physically connected to any portion of the roof of any other unit(s), in which case the roof refers to the roof of the applicable unit. For multi-story, vertically stacked units, (e.g. typical high rise) roof refers to the roof of the Building.

“**Statement of Critical Dates**” means the Statement of Critical Dates attached to and forming part of this Addendum (in form to be determined by Tarion from time to time), and, if applicable, as amended in accordance with this Addendum.

“**The ONHWP Act**” means the *Ontario New Home Warranties Plan Act* including regulations, as amended from time to time.

“**Unavoidable Delay**” means an event which delays Occupancy which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor and are not caused or contributed to by the fault of the Vendor.

“**Unavoidable Delay Period**” means the number of days between the Purchaser’s receipt of written notice of the commencement of the Unavoidable Delay, as required by paragraph 5(b), and the date on which the Unavoidable Delay concludes.

13. Addendum Prevails

The Addendum forms part of the Purchase Agreement. The Vendor and Purchaser agree that they shall not include any provision in the Purchase Agreement or any amendment to the Purchase Agreement or any other document (or indirectly do so through replacement of the Purchase Agreement) that derogates from, conflicts with or is inconsistent with the provisions of this Addendum, except where this Addendum expressly permits the parties to agree or consent to an alternative arrangement. The provisions of this Addendum prevail over any such provision.

14. Time Periods, and How Notice Must Be Sent

- (a) Any written notice required under this Addendum may be given personally or sent by email, fax, courier or registered mail to the Purchaser or the Vendor at the address/contact numbers identified on page 2 or replacement address/contact numbers as provided in paragraph (c) below. Notices may also be sent to the solicitor for each party if necessary contact information is provided, but notices in all events must be sent to the Purchaser and Vendor, as applicable. If email addresses are set out on page 2 of this Addendum, then the parties agree that notices may be sent by email to such addresses, subject to paragraph (c) below.
- (b) Written notice given by one of the means identified in paragraph (a) is deemed to be given and received: on the date of delivery or transmission, if given personally or sent by email or fax (or the next Business Day if the date of delivery or transmission is not a Business Day); on the second Business Day following the date of sending by courier; or on the fifth Business Day following the date of sending, if sent by registered mail. If a postal stoppage or interruption occurs, notices shall not be sent by registered mail, and any notice sent by registered mail within 5



Business Days prior to the commencement of the postal stoppage or interruption must be re-sent by another means in order to be effective. For purposes of this section 14, Business Day includes Remembrance Day, if it falls on a day other than Saturday or Sunday, and Easter Monday.

- (c) If either party wishes to receive written notice under this Addendum at an address/contact number other than those identified on page 2 of this Addendum, then the party shall send written notice of the change of address, fax number, or email address to the other party in accordance with paragraph (b) above.
- (d) Time periods within which or following which any act is to be done shall be calculated by excluding the day of delivery or transmission and including the day on which the period ends.
- (e) Time periods shall be calculated using calendar days including Business Days but subject to paragraphs (f), (g) and (h) below.
- (f) Where the time for making a claim under this Addendum expires on a day that is not a Business Day, the claim may be made on the next Business Day.
- (g) Prior notice periods that begin on a day that is not a Business Day shall begin on the next earlier Business Day, except that notices may be sent and/or received on Remembrance Day, if it falls on a day other than Saturday or Sunday, or Easter Monday.
- (h) Every Critical Date must occur on a Business Day. If the Vendor sets a Critical Date that occurs on a date other than a Business Day, the Critical Date is deemed to be the next Business Day.
- (i) Words in the singular include the plural and words in the plural include the singular.
- (j) Gender-specific terms include both sexes and include corporations.

15. Disputes Regarding Termination

- (a) The Vendor and Purchaser agree that disputes arising between them relating to termination of the Purchase Agreement under section 11 shall be submitted to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and subsection 17(4) of the ONHWP Act.
- (b) The parties agree that the arbitrator shall have the power and discretion on motion by the Vendor or Purchaser or any other interested party, or of the arbitrator's own motion, to consolidate multiple arbitration proceedings on the basis that they raise one or more common issues of fact or law that can more efficiently be addressed in a single proceeding. The arbitrator has the power and discretion to prescribe whatever procedures are useful or necessary to adjudicate the common issues in the consolidated proceedings in the most just and expeditious manner possible. The *Arbitration Act, 1991* (Ontario) applies to any consolidation of multiple arbitration proceedings.
- (c) The Vendor shall pay the costs of the arbitration proceedings and the Purchaser's reasonable legal expenses in connection with the proceedings unless the arbitrator for just cause orders otherwise.
- (d) The parties agree to cooperate so that the arbitration proceedings are conducted as expeditiously as possible, and agree that the arbitrator may impose such time limits or other procedural requirements, consistent with the requirements of the *Arbitration Act, 1991* (Ontario), as may be required to complete the proceedings as quickly as reasonably possible.
- (e) The arbitrator may grant any form of relief permitted by the *Arbitration Act, 1991* (Ontario), whether or not the arbitrator concludes that the Purchase Agreement may properly be terminated.

For more information please visit www.tarion.com



SCHEDULE A

Types of Permitted Early Termination Conditions

1. The Vendor of a condominium home is permitted to make the Purchase Agreement conditional as follows:

- (a) upon receipt of Approval from an Approving Authority for:
- (i) a change to the official plan, other governmental development plan or zoning by-law (including a minor variance);
 - (ii) a consent to creation of a lot(s) or part-lot(s);
 - (iii) a certificate of water potability or other measure relating to domestic water supply to the home;
 - (iv) a certificate of approval of septic system or other measure relating to waste disposal from the home;
 - (v) completion of hard services for the property or surrounding area (i.e., roads, rail crossings, water lines, sewage lines, other utilities);
 - (vi) allocation of domestic water or storm or sanitary sewage capacity;
 - (vii) easements or similar rights serving the property or surrounding area;
 - (viii) site plan agreements, density agreements, shared facilities agreements or other development agreements with Approving Authorities or nearby landowners, and/or any development Approvals required from an Approving Authority; and/or
 - (ix) site plans, plans, elevations and/or specifications under architectural controls imposed by an Approving Authority.

The above-noted conditions are for the benefit of both the Vendor and the Purchaser and cannot be waived by either party.

(b) upon:

- (i) receipt by the Vendor of confirmation that sales of condominium dwelling units have exceeded a specified threshold by a specified date;
- (ii) receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by a specified date;
- (iii) receipt of Approval from an Approving Authority for a basement walkout; and/or
- (iv) confirmation by the Vendor that it is satisfied the Purchaser has the financial resources to complete the transaction.

The above-noted conditions are for the benefit of the Vendor and may be waived by the Vendor in its sole discretion.

2. The following definitions apply in this Schedule:

"Approval" means an approval, consent or permission (in final form not subject to appeal) from an Approving Authority and may include completion of necessary agreements (i.e., site plan agreement) to allow lawful access to and use and occupancy of the property for its intended residential purpose.

"Approving Authority" means a government (federal, provincial or municipal), governmental agency, Crown corporation, or quasi-governmental authority (a privately operated organization exercising authority delegated by legislation or a government).

3. Each condition must:

- (a) be set out separately;
- (b) be reasonably specific as to the type of Approval which is needed for the transaction; and
- (c) identify the Approving Authority by reference to the level of government and/or the identity of the governmental agency, Crown corporation or quasi-governmental authority.

4. For greater certainty, the Vendor is not permitted to make the Purchase Agreement conditional upon:

- (a) receipt of a building permit;
- (b) receipt of an occupancy permit; and/or
- (c) completion of the home.

SCHEDULE B

Adjustments to Purchase Price or Balance Due on Closing

PART I Stipulated Amounts/Adjustments

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing, the dollar value of which is stipulated in the Purchase Agreement and set out below.

[Draft Note: List items with any necessary cross-references to text in the Purchase Agreement.]

1. SEE ATTACHED

2.

3.



**PART II All Other Adjustments – to be determined in accordance with the terms of the
Purchase Agreement**

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing which will be determined after signing the Purchase Agreement, all in accordance with the terms of the Purchase Agreement.

[Draft Note: List items with any necessary cross-references to text in the Purchase Agreement.]

1. SEE ATTACHED
- 2.
- 3.



**SCHEDULE B TO ADDENDUM
ADJUSTMENT TO PURCHASE PRICE OR BALANCE DUE ON CLOSING**

PART I – Stipulated Amounts/Adjustments

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing, the dollar value of which is stipulated in the Purchase Agreement and set out below.

	DESCRIPTION	SECTION	AMOUNT
1	Cheque administration fee (subsection 81(6) of the Condominium Act)	6(d)(vii)	\$50.00 per cheque, plus HST
2	Certain Amendments	6(e)	\$350.00, plus HST
3	Unaccepted cheque	6(j)	\$250.000, per cheque

PART II – All Other Adjustments – to be determined in accordance with the terms of the Purchase Agreement

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing which will be determined after signing the Purchase Agreement, all in accordance with the terms of the Purchase Agreement.

	DESCRIPTION	SECTION
1	Utility costs	6(a)(i)
2	Occupancy Fees and other amounts	6(a)(ii); 23(b); Schedule C to Purchase Agreement
3	Realty taxes	6(b)(i)
	Common expense contributions	6(b)(ii)
4	Any new taxes or increases to existing taxes	6(d)(i)
5	Upgrades and/or extras and/or charges	6(d)(ii)
6	Increase of Levies or new Levies	6(d)(iii)
7	TWC enrolment fee	6(d)(iv)
8	Utility meters, connection, installation, energization, etc., charges	6(d)(v)
9	Law Society of Upper Canada charge imposed on Vendor or its solicitors	6(d)(vi)
10	Any other additional or further adjustments agreed to in writing between the Vendor and Purchaser subsequent to the execution of this Agreement	6(d)(vii)
11	Leased hot water tank	6(f)
12	Utility Supplier(s) deposit(s)	6(g)
13	HST Rebate where Purchaser does not qualify for the Rebate	6(h)
14	HST on Adjustments	6(i)
15	Removing unauthorized title registrations	16
16	Interest and liquidated damages	25(b)
17	Use of Vendor's solicitor's computer facilities	30(c)

**APPENDIX TO ADDENDUM
TO AGREEMENT OF PURCHASE AND SALE
EARLY TERMINATION CONDITIONS**

The following Early Termination Conditions shall form an integral part of the Agreement of Purchase and Sale and Tarion Addendum, as contemplated therein:

Early Termination Condition No. 1:

This Agreement is conditional upon the Vendor obtaining financing for the construction of the project on terms satisfactory to it in its discretion.

The date by which this Condition is to be satisfied is the 30th day of December, 2016.



Residential Unit No.: 1, Level: 9
& Residential Unit No.: 1, Level: 8
Suite No.: 901 and 801 to be known as
Suite 901

SCHEDULE "F" TO THE AGREEMENT OF PURCHASE AND SALE

The Agreement of Purchase and Sale (the "Agreement") between David Berry (the "Purchaser") and Mizrahi (128 Hazelton) Inc. (the "Vendor") for the purchase of the above-noted unit together with three (3) parking units and one (1) locker unit being proposed units in the Condominium to be registered against property currently municipally known as 126 & 128 Hazelton Avenue, is amended as follows:

1. The Purchase Price of THIRTEEN MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$13,250,000.00) is the net purchase price and is not to be adjusted at closing. Accordingly, sections 6 (d) and (e) are deleted.
2. For greater certainty, Suite 901 includes the exclusive use of that portion of the common elements to which Suite 901 provides sole and direct access and is designated as (a) a Balcony/Juliet Balcony and/or Terrace, and (b) Roof Top Terrace.



Appendix “E”

AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

THIS AMENDING AGREEMENT (the "Amending Agreement") is made as of May 15, 2017 (the "Effective Date")

BETWEEN

DAVID BERRY, an individual residing in the Province of Ontario (the "Purchaser"),

- and -

MIZRAHI (128 HAZELTON) INC., a corporation incorporated under the laws of the Province of Ontario (the "Vendor"),

WHEREAS the Purchaser and Vendor have entered into an agreement of purchase and sale dated April 21, 2016 (the "Agreement of Purchase and Sale") for the purchase by the Purchaser of a residential condominium Unit, namely Suites 901 and 802 (to be known as Suite 901) in the condominium to be located on lands and premises municipally known as 126 and 128 Hazelton Avenue in Toronto, as such Unit is further defined in the Agreement of Purchase and Sale;

AND WHEREAS the Vendor and Purchaser wish to enter into this amending agreement regarding the payment of the Purchase Price for the condominium Unit;

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties agree as follows:

ARTICLE 1
INTERPRETATION

1.1 **Definitions**

- (1) In this Amending Agreement, unless something in the subject matter or context is inconsistent therewith:
- (a) "Agreement of Purchase and Sale" has the meaning set out in the recitals above.
 - (b) "Business Day" means any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.
 - (c) "Collateral" has the meaning set out in Section 5.1 of this Amending Agreement.



- (d) "Dividend Equivalents" has the meaning set out in Section 4.3 of this Amending Agreement.
- (e) "Effective Date" means the date first set out above.
- (f) "Escrow Agent" and "Escrow Agreement" have the meanings set out in Section 5.3 of this Amending Agreement.
- (g) "Issued Share Units" means the share units issued to the Vendor by the Purchaser as further set out in Section 2.2 of this Amending Agreement.
- (h) "Purchase Price Adjustment Date" has the meaning set out in Section 4.1 of this Amending Agreement.
- (i) "Share Unit Closing Price" has the meaning set out in Section 3.1(a).
- (j) "Share Unit Purchase Price" means the average VWAP per Yappn Share for the period covering the ten (10) trading days immediately preceding April 18, 2016, being USD \$0.164.
- (k) "Vendor's Account" has the meaning set out in Section 2.4 of this Amending Agreement.
- (l) "Vested Units" means Issued Share Units that have vested.
- (m) "VWAP" means, for any date, the price determined by the first of the following clauses that applies:
 - (i) the dollar volume-weighted average price of the Yappn Shares in the U.S. over-the-counter market on the electronic bulletin board for such shares during the Trading Period as reported by Bloomberg, L.P.;
 - (ii) the dollar volume-weighted average price for the Yappn Shares on any other trading market during the Trading Period as reported by Bloomberg, L.P.;
 - (iii) if no dollar volume-weighted average price is reported for the Yappn Shares by Bloomberg, L.P. for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for the Yappn Shares as reported by OTC Markets Group in the OTC Pink marketplace; and
 - (iv) if the VWAP cannot be calculated for the Yappn Shares on a particular date on any of the foregoing bases, the VWAP of the Yappn Shares shall be the fair market value of the Yappn Shares on such date as determined by an independent appraiser selected in

good faith by the Vendor and reasonably acceptable to the Purchaser.

(n) "Yappn Shares" means the common shares of Yappn Corp., a corporation existing under the laws of Delaware.

(2) All capitalized terms used in this Amending Agreement and not otherwise defined in this Amending Agreement shall have the respective meanings ascribed to them in the Agreement of Purchase and Sale.

1.2 Conflicting Provisions

To the extent that there are any inconsistencies between the provisions of the Agreement of Purchase and Sale and this Amending Agreement, the provisions of this Amending Agreement shall prevail, but only to the extent of the inconsistency.

1.3 Currency

Unless otherwise specified, all dollar amounts referred to in this Amending Agreement are in lawful money of Canada.

ARTICLE 2 GRANT OF SHARE UNITS

2.1 Agreement of Purchase and Sale Amendment

Section 1 of the Agreement of Purchase and Sale is hereby amended by adding the following after Section 1(a) and by renumbering the former Section 1(b) to Section 1(c):

(b) the transfer from the Purchaser to the Vendor of the Vested Units (as that term is defined in the Amendment to Agreement of Purchase and Sale entered into by and between the Purchaser and Vendor on May 15, 2017), representing TWO MILLION (\$2,000,000) of the Purchase Price

2.2 Grant of Share Units

(1) The Purchaser hereby issues to the Vendor on the Effective Date such number of share units (the "Issued Share Units"), in the aggregate and rounded to the next whole number, as is equal to the quotient of \$2,000,000 divided by the Share Unit Purchase Price.

(2) For purposes of the calculation set out in subsection (1), if the VWAP and corresponding Share Unit Purchase Price has been determined in a currency other than Canadian dollars, then the Share Unit Purchase Price shall be converted to Canadian

dollars at the spot exchange rate quoted by the Royal Bank of Canada at 4 p.m. EST on the date that the number of Issued Share Units is determined.

2.3 Share Units as Advance Against Purchase Price

The grant of the Issued Share Units shall be deemed to be an interest free advance by the Purchaser to the Vendor of \$2,000,000 against the Purchase Price.

2.4 Vendor Account

The Issued Share Units shall be credited to a separate account maintained for the Vendor on the books and records of the Purchaser (the "Vendor's Account") and shall continue for all purposes to be part of the general assets of the Purchaser, subject to the restrictions set out in this Agreement.

**ARTICLE 3
PURCHASE PRICE ADJUSTMENT**

3.1 Unit Purchase Price Adjustment

On the Purchase Price Adjustment Date:

- (a) if the average VWAP per Yappn Share for the period covering the ten (10) trading days immediately preceding the Purchase Price Adjustment Date (the "Share Unit Closing Price") is less than twenty-five percent (25%) of the Share Unit Purchase Price, the Purchase Price shall be deemed to be increased by \$1,000,000, subject to such additional adjustments as may be set out in the Agreement of Purchase and Sale and as may be agreed to by the parties from time to time in writing;
- (b) if the Share Unit Closing Price is equal to or greater than twenty-five percent of the Share Unit Purchase Price but less than fifty percent (50%) of the Share Unit Purchase Price, the Purchase Price shall be deemed to be increased by \$500,000, subject to such additional adjustments as may be set out in the Agreement of Purchase and Sale and as may be agreed to by the parties from time to time in writing;
- (c) if the Share Unit Closing Price is equal to or greater than two (2) times the Share Unit Purchase Price but less than three (3) times the Share Unit Purchase Price, the Purchase Price shall be deemed to be decreased by \$1,000,000, subject to such additional adjustments as may be set out in the Agreement of Purchase and Sale and as may be agreed to by the parties from time to time in writing;
- (d) if the Share Unit Closing Price is equal to or greater than three (3) times the Share Unit Purchase Price but less than four (4) times the Share Unit Purchase Price, the Purchase Price shall be deemed to be decreased by \$1,500,000, subject to such additional adjustments as may be set out in the

Agreement of Purchase and Sale and as may be agreed to by the parties from time to time in writing;

- (e) if the Share Unit Closing Price is equal to or greater than three (4) times the Share Unit Purchase Price, the Purchase Price shall be deemed to be decreased by \$2,000,000, subject to such additional adjustments as may be set out in the Agreement of Purchase and Sale and as may be agreed to by the parties from time to time in writing; and
- (f) if none of the provisions of subsections (a) to (e) above apply, the Purchase Price shall not be adjusted pursuant to the provisions of this Amending Agreement and shall remain at \$13,000,000, subject to such additional adjustments as may be set out in the Agreement of Purchase and Sale and as may be agreed to by the parties from time to time in writing.

ARTICLE 4 **VESTING OF ISSUED SHARE UNITS**

4.1 Vesting

All of the Issued Share Units shall vest and become Vested Units upon written notice from the Purchaser to the Vendor (the "Purchase Price Adjustment Date"), such Purchase Price Adjustment Date not to be exercised any later than October 31, 2018, and the Vendor shall then be the record owner of the Yappn Shares underlying the Issued Share Units unless and until such shares are sold or otherwise disposed of, and as record owner shall be entitled to all rights of a shareholder of Yappn Corp., including voting rights.

4.2 No Shareholder Rights Until Vesting

The Vendor shall not have any rights of a shareholder with respect to the Yappn Shares underlying the Issued Share Units unless and until the Issued Share Units vest and are settled by the issuance of Yappn Shares.

4.3 Dividends on Issued Share Units

(1) Until such time as the Issued Share Units vest, the Vendor's Account shall be credited with an amount equal to all cash dividends (the "Dividend Equivalents") that would have been paid to the Vendor if one Yappn Share had been issued on the Effective Date for each Issued Share Unit granted to the Vendor. Dividend Equivalents credited to the Vendor's Account shall be distributed in cash on the Title Transfer Date or, at the discretion of the Purchaser or Yappn Corp., in such number of Yappn Shares as have a value equal to the amount of the Dividend Equivalents based on the average VWAP per Yappn Share for the period covering the ten (10) trading days immediately preceding the date on which the Dividend Equivalents are to be paid.

(2) For purposes of the calculation set out in subsection (1), if the Dividend Equivalents are to be paid in Yappn Shares, and if the VWAP has been determined in a

currency other than Canadian dollars, then for the purposes of determining the number of Yappn Shares to be paid, the Dividend Equivalents shall be converted to Canadian dollars at the spot exchange rate quoted by the Royal Bank of Canada at 4 p.m. EST on the date that the Dividend Equivalents are to be paid.

4.4 Issuance of Yappn Shares

Promptly following the vesting date, the Purchaser shall transfer to the Escrow Agent, or shall cause Yappn Corp. to issue and deliver to the Escrow Agent, the number of Yappn Shares equal to the number of Vested Units; and cause the Vendor's name to be entered on the books of Yappn Corp. as a shareholder of record with respect to the Yappn Shares delivered to the Escrow Agent.

4.5 No Dealing in Issued Share Units

Until such time as the Issued Share Units are settled in accordance with the provisions of this Amending Agreement, the Issued Share Units or the rights relating thereto may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by the Vendor. Any attempt to assign, alienate, pledge, attach, sell or otherwise transfer or encumber the Issued Share Units or the rights relating thereto shall be wholly ineffective and, if any such attempt is made, the Issued Share Units will be forfeited by the Vendor and all of the Vendor's rights to such units shall immediately terminate without any payment or consideration by the Purchaser or Yappn Corp.

4.6 Termination of Agreement of Purchase and Sale

If the Agreement of Purchase and Sale is terminated for any reason the Issued Share Units will be deemed to be forfeited by the Vendor and all of the Vendor's rights to such units and any Yappn Shares under this Amending Agreement shall immediately terminate.

4.7 Share Splits or Subdivisions

The terms "Issued Share Units", "Share Unit Purchase Price" and "Share Unit Closing Price", and any amount set out in this Amending Agreement, shall be adjusted appropriately to account for the occurrence of any share split or subdivision affecting the Yappn Shares (or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly Yappn Shares), combination or other similar recapitalization or event occurring after the Effective Date and prior to the determination of the Purchase Price under Section 3.1 or the settling of the Issued Share Units under Article 4.

ARTICLE 5
SECURITY IN YAPPN SHARES

5.1 Grant of Security Interest

As a general and continuing security for the performance by the Vendor of its obligations under the Agreement of Purchase and Sale until closing of the sale of the Unit to the Purchaser on the Title Transfer Date, the Vendor hereby mortgages and charges to the Purchaser as and by way of a fixed and specific mortgage and charge, and hereby grants to the Purchaser a security interest in, all right, title and interest which the Vendor now has or may hereafter have in the following (collectively, the "Collateral"):

- (a) the vested Yappn Shares;
- (b) all substitutions and replacements of the vested Yappn Shares; and
- (c) all proceeds from the sale or otherwise resulting from the Yappn Shares including personal property in any form derived directly or indirectly from any dealing with such property or proceeds and any insurance or other payment as indemnity or compensation for loss of or damage to such property or any right to such payment.

5.2 Attachment

The security interest created by this Amending Agreement will attach whenever Yappn Shares vest and will attach to all other Collateral immediately upon the Vendor acquiring any rights therein and the parties do not intend to postpone the attachment of any security interest granted under this Amending Agreement.

5.3 Escrow

When the Yappn Shares vest, all share certificates evidencing the Yappn Shares will immediately be delivered to a third party escrow agent (the "Escrow Agent") pursuant to the terms of an escrow agreement (the "Escrow Agreement"), both of which are to be agreed upon and settled in good faith and reasonably by the parties forthwith following the Effective Date of this Amending Agreement.

5.4 Escrow Release Conditions

The release conditions for the Collateral pursuant to the terms of the Escrow Agreement will be as follows:

- (a) The Vendor may deliver signed instructions to the Escrow Agent instructing the Escrow Agent to release the Collateral to the Vendor on the Title Transfer Date upon closing of the purchase of the Unit by the Purchaser.

- (b) The Purchaser may deliver signed instructions to the Escrow Agent instructing the Escrow Agent to release the Collateral to the Purchaser upon termination of the Agreement of Purchase and Sale for any reason and where the sale of the Unit to the Purchaser has not been completed.
- (c) The party delivering the instructions to the Escrow Agent regarding release of the Collateral (the "Requesting Party") shall deliver to the other party (the "Non-Requesting Party") a copy of the instructions concurrently with its delivery to the Escrow Agent and provide the Escrow Agent with evidence of such delivery to the Non-Requesting Party.
- (d) If the Non-Requesting Party objects to the release of Collateral as set forth in the Instructions, it shall deliver written notice (a "Notice of Dispute") to the Requesting Party and the Escrow Agent within a period of ten (10) Business Days after receipt of the Instructions setting forth in reasonable detail the reasons why the Non-Requesting Party is disputing the Instructions.
- (e) The Non-Requesting Party shall deliver to the Requesting Party a copy of the Notice of Dispute concurrently with its delivery to the Escrow Agent.
- (f) If the Non-Requesting Party fails to deliver a Notice of Dispute to the Requesting Party and the Escrow Agent within the period of ten (10) Business Days, then the Escrow Agent shall immediately release the Collateral as set out in the Instructions.
- (g) If the Escrow Agent receives a Notice of Dispute, the Escrow Agent shall not release the Collateral unless, until and only to the extent that the Escrow Agent: (i) receives joint written instructions signed by the Vendor and Purchaser regarding the release of the Collateral, or (ii) is directed to make such payment by a court or arbitrator adjudicating such dispute.

5.5

Covenants

Until the vested Yappn Shares are released by the Escrow Agent, the Vendor will:

- (a) keep the Collateral free and clear of all encumbrances and adverse claims, whether ranking in priority to, *pari passu* with or subsequent to the mortgage, charge and security interest granted by this Amending Agreement;
- (b) immediately notify the Purchaser of:
 - (i) the details of any claim or litigation affecting the Collateral, including the right of any person to collect or seize possession of the Collateral by means of any legal process; and

(ii) any loss of Collateral,

and the Vendor will, at its own expense, defend the vested Yappn Shares against any and all such claims, including any adverse claim as defined in the *Securities Transfer Act*, 2006, S.O. 2006, c. 8; and

(c) do, or cause to be done, all acts and execute all documents necessary to ensure that the Buyer has a valid and perfected security interest in the Collateral.

5.6 Investment Property

(1) Unless and until the Purchaser provides the Escrow Agent notice in accordance with the provisions of Section 5.4(b), the Vendor is entitled to exercise, either directly or by power of attorney or proxy, the rights and powers of a holder of Yappn Shares to vote and to receive cash dividends and interest or other cash distributions, provided that all such dividends, interest and distributions shall form a part of the Collateral and shall be deposited directly with the Escrow Agent during the term of the security interest.

(2) Nothing in this Amending Agreement or the Escrow Agreement shall be deemed to prevent the Vendor from instructing the Escrow Agent to sell any of the vested Yappn Shares during the term of the escrow, but prior to the receipt of any instructions from either the Vendor or the Purchaser pursuant to the provisions of subsections 5.4(a) or 5.4(b) above, provided that the proceeds from such sale form a part of the Collateral and are immediately and directly transferred from the purchaser of such shares to the Escrow Agent.

5.7 Appointment as Attorney

(1) The Vendor hereby irrevocably constitutes and appoints the Purchaser and each of its officers holding office from time to time as the true and lawful attorney of the Vendor, with power of substitution in the name of the Vendor, such appointment to become effective upon the occurrence of the release of the Collateral to the Purchaser pursuant to the provisions of Section 5.4, to perform all acts and execute all documents as may be necessary or desirable to transfer the vested Yappn Shares to the Purchaser and to otherwise effect the purpose of this Amending Agreement.

(2) The Vendor hereby acknowledges that the power of attorney granted pursuant to this section is irrevocable (until discharge of the security interest hereunder) and constitutes a power coupled with an interest. The Vendor hereby ratifies and agrees to ratify all acts of any such attorney done in accordance with this section.

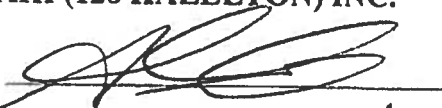
5.8 Entire Agreement

This Agreement constitutes the entire agreement between the parties to this Agreement with respect to its subject matter and cancels and supersedes in its entirety any prior agreement entered into by the parties regarding the subject matter of

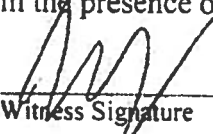
this Agreement. Without limiting the generality of the foregoing, the parties hereby confirm their mutual agreement to rescind in its entirety the Amending Agreement entered into by the parties on April 28, 2017.

IN WITNESS WHEREOF the parties have executed this Amending Agreement.

MIZRAHI (128 HAZELTON) INC.

Per: 
Name: _____
Title: *Sam Mizrahi - President*

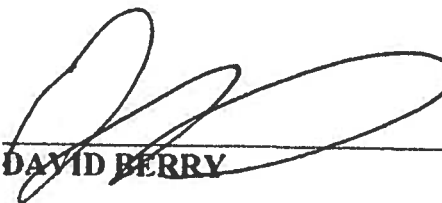
SIGNED, SEALED AND DELIVERED
in the presence of:



Witness Signature

Joshua Cox

Print Witness Name

)
)
)
)
)
)
)
)


DAVID BERRY



Appendix “F”

PROJECT NAME: 128 HAZELTON (the "Project")

MUTUAL RELEASE AND TERMINATION AGREEMENT

BETWEEN:

MIZRAHI (128 HAZELTON) INC.

(hereinafter called the "Vendor")

-and-

DAVID BERRY

(hereinafter called the "Purchaser")

WHEREAS the Purchaser and the Vendor entered into an agreement of purchase and sale which was effective on 21st day of April, 2016 (the "**Combined Suite 802/901 Purchase Agreement**"), pertaining to the Purchaser's acquisition from the Vendor of the combined Residential Unit 1, Level 9 (Suite 901) and Residential Unit 2, Level 8 (Suite 802) to be re-designated as Residential Unit 1, Level 9 (Suite 901) in the Project, together with 3 parking units and 1 locker unit and together with an undivided interest in the common elements appurtenant thereto;

AND WHEREAS the Combined Suite 802/901 Purchase Agreement provides, inter alia, for the Purchaser's deposit monies to be payable to the firm of **Harris Sheaffer, LLP in Trust** (the "**Escrow Agent**");

AND WHEREAS the Purchaser desires to terminate the Combined Suite 802/901 Purchase Agreement save and except for the Amendment to Agreement of Purchase and Sale dated as of May 15, 2017, a copy of which is annexed hereto which shall form part of the Suite 901 Agreement as herein described (the "**Yappn Share Amendment**"), as an agreement to purchase the combined units as described as aforesaid, and upon and in connection with such termination to enter into further separate agreements to purchase Residential Unit 2, Level 8 (Suite 802) under the Combined Suite 802/901 Purchase Agreement (the "**Suite 802 Agreement**") and Residential Unit 1, Level 9 (Suite 901), together with 3 of the parking units and the 1 locker unit purchased under the Combined Suite 802/901 Purchase Agreement (the "**Suite 901 Agreement**") in the Project and in connection therewith desires to have all of the deposits paid under the Combined Suite 802/901 Purchase Agreement transferred and held as deposits on behalf of the Purchaser under the Suite 802 Agreement and the Suite 901 Agreement in the Project;

AND WHEREAS the parties hereto, subject to the terms of this Mutual Release and Termination Agreement, now desire to terminate the Combined Suite 802/901 Purchase Agreement, other than the Yappn Share Amendment, and wish to release each other from any and all claims that they may have arising under (or in connection with) the Combined Suite 802/901 Purchase Agreement, other than the Yappn Share Amendment, and have accordingly entered into these presents in order to evidence same;

AND WHEREAS the Vendor and Purchaser acknowledge that in conjunction with the herein Mutual Release and Termination Agreement, that with the Vendor's consent, the Purchaser desires to assign the Suite 802 Agreement to the existing purchaser of Suite 801 (the "**Suite 801 Agreement**") in the Project and that pursuant to such assignment, the Vendor and the purchaser of the Suite 801 Agreement propose to enter into an amendment to in turn combine suite 801 with suite 802 (the "**Combined Suite 801/802 Amendment/Agreement**");

NOW THEREFORE THESE PRESENTS WITNESSETH that in consideration of the mutual release hereinafter set forth, and the sum of TEN (\$10.00) DOLLARS of lawful money of Canada now paid by each of the parties hereto to the other (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby covenant and agree to the following;

1. Subject to the terms herein, the Combined Suite 802/901 Purchase Agreement, together with any and all addenda thereto or amendments thereof, other than the Yappn Share Amendment, is hereby terminated and of no further force or effect.
2. Forthwith upon the execution of these presents by both parties hereto the Purchaser hereby irrevocably authorizes and directs the Vendor and the Escrow Agent to transfer the deposits in the sum of Two Million, Six Hundred and Fifty Thousand Dollars (\$2,650,000.00) representing the aggregate of all deposit monies heretofore paid by the Purchaser to the Vendor under the Combined Suite 802/901 Purchase Agreement (the "**Suite 802/901 Deposits**") to be held as deposit monies, together with any interest accruing thereon that the Purchaser is entitled to receive pursuant to the terms and provisions of the Combined Suite 802/901 Purchase Agreement and/or the *Condominium Act, 1998*, S.O. 1998, as amended (the "**Act**") as deposit monies under the Suite 802 Agreement and the Suite 901 Agreement in accordance with the terms thereunder with the Suite 802/901 Deposits being allocated thereunder as follows:

Suite 802 Agreement: \$1,400,000.00; and


Suite 901 Agreement: \$1,250,000.00.

3. The parties hereto hereby mutually release each other and each of their respective heirs, executors, administrators, successors and assigns, from and against any and all costs, damages, actions, proceedings, demands and/or claims whatsoever which either of the parties hereto now has, or may hereafter have, against the other party hereto, by reason of, or in connection with, the Combined Suite 802/901 Purchase Agreement and any and all addenda thereto or amendments thereof, other than the Yappn Share Amendment, and/or termination thereof pursuant to the foregoing provisions hereof. Notwithstanding anything contained herein, the terms of this Mutual Release and Termination Agreement are conditional until **AUGUST 29, 2019**, upon the Purchaser; (i) entering into the Suite 802 Agreement and the Suite 901 Agreement, with the Yappn Share Amendment forming a part of the Suite 901 Agreement thereof, and such agreements becoming firm and binding and there being no rescission thereof under the Act; (ii) the Purchaser assigning the Suite 802 Agreement to the purchaser under the Suite 801 Agreement (the "**Suite 801 Purchaser**"), including the amendments contained therein between the Vendor and the Suite 801 Purchaser relating to the combining of the Suite 802 Agreement and the Suite 801 Agreement between the Vendor and the Suite 801 Purchaser (the "**Assignment/Amendment**").
4. Without restricting the generality of the foregoing, it is expressly understood and agreed that the Purchaser shall not make or pursue any claim(s) or proceeding(s) with respect to the Combined Suite 802/901 Purchase Agreement and/or the Suite 802/901 Deposits against the Tarion Warranty Corporation, Aviva Insurance Company of Canada and any other issuer of Tarion Warranty Corporation bonds and any party acting as Escrow Agent nor against any other person or corporation which might claim contribution or indemnity from the Vendor in connection with the Combined Suite 802/901 Purchase Agreement or the termination thereof in connection with the Project.
5. Upon the execution of these presents by both parties hereto, all of the estate, right, title and interest of the Purchaser in and to the Combined Suite 802/901 Purchase Agreement (both at law and in equity, and whether in possession, expectancy or otherwise) shall be automatically released and quit-claimed to and in favour of the Vendor and its successors and assigns forever.
6. This Mutual Release and Termination Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective heirs, executors, administrators, successors and assigns.
7. This Mutual Release and Termination Agreement shall be read and construed with all changes of gender and/or number as may be required by the context, and if more than one individual comprises the Purchaser, then all of the foregoing covenants and agreements of the Purchaser shall be deemed and construed to be joint and several covenants and agreements thereof.


IN WITNESS WHEREOF, the parties hereto have hereunto affixed their hands and seals, or corporate seals, as the case may be, this

Dated this 16 day of August, 2019.

SIGNED, SEALED AND DELIVERED in the presence of:




 Witness



DAVID BERRY

MIZRAHI (128 HAZELTON) INC.

Per: 

 Name: **Sam Mizrahi**
 Title: **Authorized Signing Officer**
 I have authority to bind the corporation.

Appendix “G”

AGREEMENT OF PURCHASE AND SALE

The undersigned, **DAVID BERRY** (collectively, the "Purchaser"), hereby agrees with **MIZRAHI (128 HAZELTON) INC.** (the "Vendor") to purchase the above-noted unit, as outlined for identification purposes only on the sketch attached hereto as Schedule "A", together with **THREE (3)** Parking Unit(s), and **ONE (1)** Locker Unit(s), which shall be allocated by the Vendor in its sole discretion being (a) proposed unit(s) in the Condominium, to be registered against those lands and premises situate in the City of Toronto and which are currently municipally known as 126 and 128 Hazelton Avenue (hereinafter called the "Property"), together with an undivided interest in the common elements appurtenant to such unit(s) and the exclusive use of those parts of the common elements attaching to such unit(s), as set out in the proposed Declaration (collectively, the "Unit") on the following terms and conditions.

1. The purchase price of the Unit is **SIX MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$6,250,000.00)** (the "Purchase Price") in lawful money of Canada, payable as follows:

- (a) to Harris, Sheaffer LLP, in Trust, (the "Vendor's Solicitors" or "Escrow Agent" or "Trustee") in the following amounts at the following times, by cheque or bank draft, as deposits pending completion or other termination of this Agreement and to be credited on account of the Purchase Price on the Occupancy Date:
 - (i) The sum of **ONE MILLION TWO HUNDRED AND FIFTY THOUSAND (\$1,250,000.00)** Dollars submitted with this Agreement.
- (b) the balance of the Purchase Price by certified cheque on the Title Transfer Date to the Vendor or as the Vendor may direct, subject to the adjustments hereinafter set forth.

- 2. (a) The Purchaser shall occupy the Unit on the First Tentative Occupancy Date [as defined in the Statement of Critical Dates being part of the Tarion Addendum as hereinafter defined], or such extended or accelerated date that the Unit is substantially completed by the Vendor for occupancy by the Purchaser in accordance with the terms of this Agreement including, without limitation, the Tarion Addendum (the "Occupancy Date").
- (b) The transfer of title to the Unit shall be completed on the later of the Occupancy Date or a date established by the Vendor in accordance with Paragraph 14 hereof (the "Title Transfer Date").
- (c) The Purchaser's address for delivery of any notices pursuant to this Agreement or the Act is the address set out in the Tarion Addendum.
- (d) Notwithstanding anything contained in this Agreement (or in any schedules annexed hereto) to the contrary, it is expressly understood and agreed that if the Purchaser has not executed and delivered to the Vendor or its sales representative an acknowledgement of receipt of both the Vendor's disclosure statement and a copy of this Agreement duly executed by both parties hereto, within fifteen (15) days from the date of the Purchaser's execution of this Agreement as set out below, then the Purchaser shall be deemed to be in default hereunder and the Vendor shall have the unilateral right to terminate the Agreement at any time thereafter upon delivering written notice confirming such termination to the Purchaser, whereupon the Purchaser's initial deposit cheque shall be forthwith returned to the Purchaser by or on behalf of the Vendor.

The following Schedules of this Agreement, if attached hereto, shall form a part of this Agreement. The Purchaser acknowledges that he has read all Sections and Schedules of this Agreement and the form of Acknowledgement, if any:

- Schedule "A" - Unit Plan/sketch
- Schedule "B" - Features & Finishes
- Schedule "C" - Occupancy Licence
- Schedule "D" - Warning Provisions
- Schedule "E" - Receipt Confirmation
- Schedule "F" - Purchaser Provisions
- Schedule being the Tarion Warranty Corporation Statement of Critical Dates and Addendum to Agreement of Purchase and Sale (collectively the "Tarion Addendum") and such other Schedules annexed thereto.

DATED, signed, sealed and delivered this 16 day of AUGUST, 2019.

SIGNED, SEALED AND DELIVERED in the presence of

PURCHASER: **DAVID BERRY**



WITNESS (as to all Purchaser's signatures, if more than

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

DATED, signed, sealed and delivered, this 16 day of AUGUST, 2019.

Vendor's Solicitors:

MIZRAHI (128 HAZELTON) INC.

HARRIS, SHEAFFER LLP
Suite 610 - 4100 Yonge Street
Toronto, Ontario, M2P 3B5
Attn: Jeffrey P. Silver
Telephone: (416) 250-5800 Fax: (416) 250-5300

Per.
Authorized Signing Officer
I have the authority to bind the Corporation



3. The meaning of words and phrases used in this Agreement and its Schedules shall have the meaning ascribed to them in the *Condominium Act, 1998*, S.O. 1998, C.19, the regulations thereunder and any amendments thereto (the "Act") and other terms used herein shall have ascribed to them the definitions in the Condominium Documents unless otherwise provided for as follows:
- (a) "Agreement" means this Agreement of Purchase and Sale including all Schedules attached hereto and made a part hereof;
 - (b) "Condominium" means the condominium which will be registered against the Property pursuant to the provisions of the Act;
 - (c) "Condominium Documents" means the Creating Documents, the by-laws and rules of the Condominium, the disclosure statement and budget statement together with all other documents and agreements which are entered into by the Vendor on behalf of the Condominium or by the Condominium directly prior to the turnover of the condominium, as may be amended from time to time;
 - (d) "CRA" means the Canada Revenue Agency or its successors;
 - (e) "Creating Documents" means the declaration and description which are intended to be registered against title to the Property and which will serve to create the Condominium, as may be amended from time to time;
 - (f) "Interim Occupancy" shall mean the period of time from the Occupancy Date to the Title Transfer Date;
 - (g) "Occupancy Licence" shall mean the terms and conditions by which the Purchaser shall occupy the Unit during Interim Occupancy as set forth in Schedule "C" hereof;
 - (h) "Occupancy Fee" shall mean the sum of money payable monthly in advance by the Purchaser to the Vendor and calculated in accordance with Schedule "C" hereof;
 - (i) "Property" shall mean the lands and premises upon which the Condominium is constructed or shall be constructed and legally described in the Condominium Documents; and
 - (j) "TWC" means Tarion Warranty Corporation or its successors.

Finishes

4. The Purchase Price shall include those items listed on Schedule "B" attached hereto. The Purchaser acknowledges that only the items set out in Schedule "B" are included in the Purchase Price and that model suite/vingnette furnishings and appliances, decor, upgrades, artist's renderings, scale model(s), improvements, mirrors, drapes, tracks and wall coverings are for display purposes only and are not included in the Purchase Price unless specified in Schedule "B". The Purchaser agrees to attend and notify the Vendor of his/her choice of finishes within fifteen (15) days of being requested to do so by the Vendor. In the event colours and/or finishes subsequently become unavailable, the Purchaser agrees to re-attend at such time or times as requested by the Vendor or its agents, to choose from substitute colours and/or finishes. If the Purchaser fails to choose colours or finishes within the time periods requested, the Vendor may irrevocably choose the colours and finishes for the Purchaser and the Purchaser agrees to accept the Vendor's selections.

Deposits

5. (a) The Vendor shall credit the Purchaser with interest at the prescribed rate on either the Occupancy Date or Title Transfer Date at the Vendor's sole discretion on all money received by the Vendor on account of the Purchase Price from the date of deposit of the money received from time to time by the Vendor's Solicitors or the Trustee until the Occupancy Date. The Purchaser acknowledges and agrees that, for the purposes of subsection 81(6) of the Act, compliance with the requirement to provide written evidence, in the form prescribed by the Act, of payment of monies by or on behalf of the Purchaser on account of the Purchase Price of the Unit shall be deemed to have been sufficiently made by delivery of such written evidence to the address of the Purchaser noted in the Tarion Addendum. The Purchaser further acknowledges and agrees that any cheques provided to the Vendor on account of the Purchase Price will not be deposited and accordingly interest as prescribed by the Act will not accrue thereon, until after the expiry of the ten (10) day rescission period as provided for in section 73 of the Act (or any extension thereof as may be agreed to in writing by the Vendor). The Purchaser represents and warrants that the Purchaser is not a non-resident of Canada within the meaning of the Income Tax Act of Canada (the "ITA"). If the Purchaser is not a resident of Canada for the purposes of the ITA the Vendor shall be entitled to withhold and remit to CRA the appropriate amount of interest payable to the Purchaser on account of the deposits paid hereunder, under the ITA.
- (b) All deposits paid by the Purchaser shall be held by the Escrow Agent in a designated trust account, and shall be released only in accordance with the provisions of subsection 81(7) of the Act and the regulations thereto, as amended. Without limiting the generality of the foregoing, and for greater clarity, it is understood and agreed that with respect to any deposit monies received from the Purchaser the Escrow Agent shall be entitled to withdraw such deposit monies from said designated trust account prior to the Title Transfer Date if and only when the Vendor obtains a Certificate of Deposit from TWC for deposit monies up to Twenty Thousand (\$20,000.00) Dollars and with respect to deposit monies in excess of Twenty Thousand (\$20,000.00) Dollars, one or more excess condominium deposit insurance policies (issued by any insurer as may be selected by the Vendor, authorized to provide excess condominium deposit insurance in Ontario) insuring the deposit monies so withdrawn (or intended to be withdrawn), and delivers the said excess condominium deposit insurance policies (duly executed by or on behalf of the insurer and the Vendor) to the Escrow Agent holding the deposit monies for which said policies have been provided as security, in accordance with the provisions of section 21 of O. Reg. 48/01. Furthermore and without limiting the generality of the foregoing, the Vendor's Solicitors, Escrow Agent or the Trustee shall be permitted, upon written instructions from the Vendor, to transfer any and all deposits in its possession to another solicitor

representing the Vendor or replacement escrow agent, provided that such solicitor or replacement escrow agent undertakes to the Vendor's Solicitors, Escrow Agent or the Trustee to comply with the provisions of section 81 of the Act and to notify the Purchaser within 15 days of the transfer of such funds that it is now holding the deposits as escrow agent pursuant to the terms of the Act and this Agreement. Upon the transfer of the deposits in accordance with this paragraph, the Vendor's Solicitors, Escrow Agent or the Trustee shall have no further obligations to the Purchaser in its capacity as the escrow agent of the deposits and shall automatically be released from further liability as escrow agent of such deposits.

Adjustments

6. (a) Commencing as of the Occupancy Date, the Purchaser shall be responsible and be obligated to pay the following costs and/or charges in respect to the Unit:
- (i) all utility costs including electricity, gas and water (unless included as part of the common expenses); and
 - (ii) the Occupancy Fee owing by the Purchaser for Interim Occupancy prior to the Title Transfer Date (if applicable).
- (b) The Purchase Price shall be adjusted to reflect the following items, which shall be apportioned and allowed from the Title Transfer Date, with that day itself apportioned to the Purchaser:
- (i) realty taxes (including local improvement charges pursuant to the *Local Improvement Charges Act*, if any) which may be estimated as if the Unit has been assessed as fully completed by the taxing authority for the calendar year in which the transaction is completed as well as for the following calendar year, notwithstanding the same may not have been levied or paid on the Title Transfer Date. The Vendor shall be entitled in its sole discretion to collect from the Purchaser a reasonable estimate of the taxes as part of the Occupancy Fee and/or such further amounts on the Title Transfer Date, provided all amounts so collected shall either be remitted to the relevant taxing authority on account of the Unit or held by the Vendor pending receipt of final tax bills for the Unit, following which said realty taxes shall be readjusted in accordance with subsections 80(8) and (9) of the Act; and
 - (ii) common expense contributions attributable to the Unit, with the Purchaser being obliged to provide the Vendor on or before the Title Transfer Date with a series of post-dated cheques payable to the condominium corporation for the common expense contributions attributable to the Unit, for such period of time after the Title Transfer Date as determined by the Vendor (but in no event for more than one year).
- (c) Interest on all money paid by the Purchaser on account of the Purchase Price, shall be adjusted and credited to the Purchaser in accordance with paragraph 5 of this Agreement.
- (d) The Purchaser shall, in addition to the Purchase Price, pay the following amounts to the Vendor on the Title Transfer Date:
- (i) Any new taxes imposed on the Unit by the federal, provincial, or municipal government or any increases to existing taxes currently imposed on the Unit by such government.
 - (ii) Any amounts which remain unpaid and owing to the Vendor on account of upgrades and/or extras and/or changes ordered by the Purchaser.
 - (iii) The amount of any increase in development charge(s) and/or education development charge(s) (the "Levies") assessed against or attributable to the Unit (or assessed against the Property or any portion thereof, and attributable to the Unit by either pro-rating same in accordance with the proportion or percentage of common interests attributable thereto or by dividing same by the number of residential units in the Condominium), pursuant to the *Development Charges Act 1997*, S.O. 1997, as amended from time to time, and the *Education Act*, S.O. 1997, as amended from time to time, over the amount of such charges that would be exigible as of November 11, 2015 and the amount of any new Levies that were not exigible as of November 11, 2015 with respect to the Property and were subsequently assessed against the Property or attributable to the Unit.
 - (iv) The cost of the TWC enrolment fee for the Unit (together with any provincial or federal taxes exigible with respect thereto).
 - (v) The cost of utility meters, water meter installations, hydro and gas meter or check meter installations, water and sewer service connection charges and hydro and gas installation and connection or energization charges for the Condominium and/or the Unit, the Purchaser's portion of such installation and/or connection or energization charges and costs to be calculated by dividing the total amount of such charges and costs by the number of residential dwelling units in the Condominium and by charging the Purchaser in the statement of adjustments with that portion of the charges and costs, provided that such amounts shall not exceed One Thousand Dollars (\$1,000.00).
 - (vi) The charge imposed upon the Vendor or its solicitors by the Law Society of Upper Canada upon registration of a Transfer/Deed of Land or Charge/Mortgage of Land or any other instrument.
 - (vii) A sum of Fifty (\$50.00) for each cheque tendered pursuant to paragraphs 1(a) of this Agreement representing a reasonable reimbursement to the Vendor of the costs incurred or to be incurred by the Vendor in fulfillment of the requirements of subsection 81(6) of the Act.

- (viii) Any other additional or further adjustments agreed to in writing between the Vendor and Purchaser subsequent to the execution of this Agreement.
- (e) In the event that the Purchaser desires to increase the amount to be paid to the Vendor's solicitors on the Occupancy Date at any time after the expiry of the initial ten (10) day statutory rescission period, or wishes to vary the manner in which the Purchaser has previously requested to take title to the Property, or wishes to add or change any unit(s) being acquired from the Vendor, then the Purchaser hereby covenants and agrees to pay to the Vendor's Solicitors the legal fees and ancillary disbursements which may be incurred by the Vendor or charged by the Vendor's Solicitors in order to implement any of the foregoing changes so requested by the Purchaser (with the Vendor's Solicitors' legal fees for implementing any such changes to any of the interim closing and/or final closing documents so requested by the Purchaser and agreed to by the Vendor being \$350.00 plus HST), but without there being any obligation whatsoever on the part of the Vendor to approve of, or to implement, any of the foregoing changes so requested.
- (f) It is further understood and agreed that the Unit may include a rental or leased hot water tank and associated components which would remain the property of the appropriate company or other supplier of such item, and in such event, the Purchaser shall pay the monthly rental/lease charges assessed with respect thereto from and after the Occupancy Date, and shall execute all requisite rental documents in connection therewith.
- (g) The Purchaser acknowledges that it may be required to enter into an agreement with the supplier of hydro utility services to the Condominium (the "Utility Supplier") on or before the Occupancy Date. Furthermore, the Purchaser acknowledges that such agreement may require the Purchaser to deliver a security deposit to the Utility Supplier prior to the Occupancy Date and the Purchaser agrees to deliver such security deposit to the Vendor on the Occupancy Date.
- (h) It is acknowledged and agreed by the parties hereto that the Purchase Price already includes a component equivalent to both the federal portion and the provincial portion of the harmonized goods and services tax or single sales tax exigible with respect to this purchase and sale transaction less the Rebate as defined below (hereinafter referred to as the "HST"), and that the Vendor shall remit the HST to CRA on behalf of the Purchaser forthwith following the completion of this transaction. The Purchaser hereby warrants and represents to the Vendor that with respect to this transaction, the Purchaser qualifies for the federal (if applicable), and the provincial new housing rebates pursuant to the *Excise Tax Act* (Canada), as may be amended (collectively, the "Rebate"), and further warrants and confirms that the Purchaser is a natural person who is acquiring the Property with the intention of being the sole beneficial owner thereof on the Title Transfer Date (and not as the agent or trustee for or on behalf of any other party or parties), and covenants that upon the Occupancy Date the Purchaser or one or more of the Purchaser's relations (as such term is defined in the *Excise Tax Act*) shall personally occupy the Unit as his, her or their primary place of residence, for such period of time as shall be required by the *Excise Tax Act*, and any other applicable legislation, in order to entitle the Purchaser to the Rebate (and the ultimate assignment thereof to and in favour of the Vendor) in respect of the Purchaser's acquisition of the Unit. The Purchaser hereby irrevocably assigns to the Vendor all of the Purchaser's rights, interests and entitlements to the Rebate (and concomitantly releases all of the Purchaser's claims or interests in and to the Rebate, to and in favour of the Vendor), and hereby irrevocably authorizes and directs CRA to pay or credit the Rebate directly to the Vendor. In addition, the Purchaser shall execute and deliver to the Vendor, forthwith upon the Vendor's or Vendor's Solicitors request for same (and in any event on or before the Title Transfer Date), all requisite documents and assurances that the Vendor or the Vendor's Solicitors may reasonably require in order to confirm the Purchaser's entitlement to the Rebate and/or to enable the Vendor to obtain the benefit of the Rebate (by way of assignment or otherwise), including without limitation, the GST/HST New Housing Rebate Application for Houses Purchased from a Builder or other similar form as prescribed from time to time (the "Rebate Form"). The Purchaser covenants and agrees to indemnify and save the Vendor harmless from and against any loss, cost, damage and/or liability (including an amount equivalent to the Rebate, plus penalties and interest thereon) which the Vendor may suffer, incur or be charged with, as a result of the Purchaser's failure to qualify for the Rebate, or as a result of the Purchaser having qualified initially but being subsequently disentitled to the Rebate, or as a result of the inability to assign the benefit of the Rebate to the Vendor (or the ineffectiveness of the documents purporting to assign the benefit of the Rebate to the Vendor). As security for the payment of such amount, the Purchaser does hereby charge and pledge his/her interest in the Unit with the intention of creating a lien or charge against same. It is further understood and agreed by the parties hereto that:
- (i) if the Purchaser does not qualify for the Rebate, or fails to deliver to the Vendor or the Vendor's solicitors forthwith upon the Vendor's or the Vendor's Solicitors request for same (and in any event on or before the Title Transfer Date) the Rebate Form duly executed by the Purchaser, together with all other requisite documents and assurances that the Vendor or the Vendor's Solicitors may reasonably require from the Purchaser or the Purchaser's solicitor in order to confirm the Purchaser's eligibility for the Rebate and/or to ensure that the Vendor ultimately acquires (or is otherwise assigned) the benefit of the Rebate; or
- (ii) if the Vendor believes, for whatever reason, that the Purchaser does not qualify for the Rebate, regardless of any documentation provided by or on behalf of the Purchaser (including any statutory declaration sworn by the Purchaser) to the contrary, and the Vendor's belief or position on this matter is communicated to the Purchaser or the Purchaser's solicitor on or before the Title Transfer Date;

then notwithstanding anything hereinbefore or hereinafter provided to the contrary, the Purchaser shall be obliged to pay to the Vendor (or to whomsoever the Vendor may in writing direct), by certified cheque delivered on the Title Transfer Date, an amount equivalent to the Rebate, in addition to the Purchase Price and in those circumstances where the Purchaser maintains that he is eligible for the Rebate despite the Vendor's belief to the contrary, the Purchaser shall (after payment of the amount equivalent to the Rebate as aforesaid) be fully entitled to pursue the procurement of the Rebate directly from CRA. It is further understood and agreed that in the event that the Purchaser intends to rent out the Unit before or after the Title Transfer Date, the Purchaser shall not be entitled to the Rebate, but may nevertheless be entitled to pursue, on

his or her own after the Title Transfer Date, the federal and provincial new rental housing rebates directly with CRA, pursuant to section 256.2 of the *Excise Tax Act*, as may be amended, and other applicable legislation to be enacted relating to the provincial new rental housing rebate.

- (i) Notwithstanding any other provision herein contained in this Agreement, the Purchaser acknowledges and agrees that the Purchase Price does not include any HST exigible with respect to any of the adjustments payable by the Purchaser pursuant to this Agreement, or any extras or upgrades or changes purchased, ordered or chosen by the Purchaser from the Vendor which are not specifically set forth in this Agreement, and the Purchaser covenants and agrees to pay such HST to the Vendor in accordance with the *Excise Tax Act*.
- (j) An administration fee of TWO HUNDRED AND FIFTY (\$250.00) DOLLARS shall be charged to the Purchaser for any cheque payable hereunder delivered to the Vendor or to the Vendor's Solicitors and not accepted by the Vendor's or the Vendor's Solicitor's bank for any reason. At the Vendor's option, this administration fee can be collected as an adjustment on the Title Transfer Date or together with the replacement cheque delivered by the Purchaser.

Title

- 7. The Vendor or its Solicitor shall notify the Purchaser or his/her Solicitor following registration of the Creating Documents so as to permit the Purchaser or his/her Solicitor to examine title to the Unit (the "Notification Date"). The Purchaser shall be allowed twenty (20) days from the Notification Date (the "Examination Period") to examine title to the Unit at the Purchaser's own expense and shall not call for the production of any surveys, title deeds, abstracts of title, grading certificates, occupancy permits or certificates, nor any other proof or evidence of the title or occupiability of the Unit, except such copies thereof as are in the Vendor's possession. If within the Examination Period, any valid objection to title or to any outstanding work order is made in writing to the Vendor which the Vendor shall be unable or unwilling to remove and which the Purchaser will not waive, this Agreement shall, notwithstanding any intervening acts or negotiations in respect of such objections, be null and void and the deposit monies together with the interest required by the Act to be paid after deducting any payments due to the Vendor by the Purchaser as provided for in this Agreement shall be returned to the Purchaser and the Vendor shall have no further liability or obligation hereunder and shall not be liable for any costs or damages. Save as to any valid objections so made within the Examination Period, the Purchaser shall be conclusively deemed to have accepted the title of the Vendor to the Unit. The Purchaser acknowledges and agrees that the Vendor shall be entitled to respond to some or all of the requisitions submitted by or on behalf of the Purchaser through the use of a standard title memorandum or title advice statement prepared by the Vendor's Solicitors, and that same shall constitute a satisfactory manner of responding to the Purchaser's requisitions, thereby relieving the Vendor and the Vendor's Solicitors of the requirement to respond directly or specifically to the Purchaser's requisitions.

Direction Re: Title

- 8. The Purchaser hereby agrees to submit to the Vendor or the Vendor's Solicitors on the earlier of the Occupancy Date and twenty (20) days prior to the Title Transfer Date, a written direction as to how the Purchaser intends to take title to the Unit, including, the date(s) of birth and marital status and the Purchaser shall be required to close the transaction in the manner so advised unless the Vendor otherwise consents in writing, which consent may be arbitrarily withheld. If the Purchaser does not submit such confirmation within the required time as aforesaid the Vendor shall be entitled to tender a Transfer/Deed on the Title Transfer Date engrossed in the name of the Purchaser as shown on the face of this Agreement.

Permitted Encumbrances

- 9. (a) The Purchaser agrees to accept title subject to the following:
 - (i) the Condominium Documents, notwithstanding that they may be amended and varied from the proposed Condominium Documents in the general form attached to the Disclosure Statement delivered to the Purchaser as set out in Schedule "E";
 - (ii) registered restrictions or covenants that run with the Property, including any encroachment agreement(s) with any governmental authorities or adjacent land owner(s), provided that same are complied with as at the Title Transfer Date;
 - (iii) easements, rights-of-way and/or licences now registered (or to be registered hereafter) for the supply and installation of utility services, drainage, telephone services, electricity, gas, storm and/or sanitary sewers, water, cable television/internet, recreational and shared facilities, and/or any other service(s) to or for the benefit of the Condominium (or to any adjacent or neighbouring properties), including any easement(s) which may be required by the Vendor (or by the owner of the Property, if not one and the same as the Vendor), or by any owner(s) of adjacent or neighbouring properties, for servicing and/or access to (or entry from) such properties, together with any easement and cost-sharing agreement(s) or reciprocal agreement(s) confirming (or pertaining to) any easement or right-of-way for access, egress, support and/or servicing purposes, and/or pertaining to the sharing of any services, facilities and/or amenities or for limiting distance purposes with adjacent or neighbouring property owners, provided that any such easement and cost-sharing agreements or reciprocal agreements or other agreements are (insofar as the obligations thereunder pertaining to the Property, or any portion thereof, are concerned) complied with as at the Title Transfer Date;
 - (iv) registered municipal agreements and registered agreements with publicly regulated utilities and/or with local ratepayer associations, including without limitation, any development, site plan, condominium, subdivision, Section 37, collateral, limiting distance, engineering and/or other municipal agreement (or similar agreements entered into with any governmental authorities including any amendments or addenda related thereto), (with all of such agreements being hereinafter collectively referred to as the "Development Agreements"), provided that same are complied with as at the Title Transfer Date, or security has been posted in such amounts and on such terms as may be required by the governmental authorities to ensure compliance therewith and/or the completion of any outstanding obligations thereunder; and

- 5 -

- (v) unregistered or inchoate liens for unpaid utilities in respect of which no formal bill, account or invoice has been issued by the relevant utility authority (or if issued, the time for payment of same has not yet expired), without any claim or request by the Purchaser for any utility holdback(s) or reduction/abatement in the Purchase Price, provided that the Vendor delivers to the Purchaser the Vendor's written undertaking to pay all outstanding utility accounts owing with respect to the Property (including any amounts owing in connection with any final meter reading(s) taken on or immediately prior to the Title Transfer Date, if applicable), as soon as reasonably possible after the completion of this transaction.
- (b) It is understood and agreed that the Vendor shall not be obliged to obtain or register on title to the Property a release of (or an amendment to) any of the aforementioned easements, Development Agreements, reciprocal agreements or restrictive covenants or any of the other aforementioned agreements or notices, nor shall the Vendor be obliged to have any of same deleted from the title to the Property, and the Purchaser hereby expressly acknowledges and agrees that the Purchaser shall satisfy himself or herself as to compliance therewith. The Purchaser agrees to observe and comply with the terms and provisions of the Development Agreements, and all restrictive covenants and other agreements registered on title. The Purchaser further acknowledges and agrees that the retention by the local municipality within which the Property is situated (the "Municipality"), or by any of the other governmental authorities, of security (e.g. in the form of cash, letters of credit, a performance bond, etc., satisfactory to the Municipality and/or any of the other governmental authorities) intended to guarantee the fulfilment of any outstanding obligations under the Development Agreements shall, for the purposes of the purchase and sale transaction contemplated hereunder, be deemed to be satisfactory compliance with the terms and provisions of the Development Agreements. The Purchaser also acknowledges that the wires, cables and fittings comprising the cable television system serving the Condominium are (or may be) owned by the local cable television supplier, or by a company associated, affiliated with or related to the Vendor.
- (c) The Purchaser covenants and agrees to consent to the matters referred to in subparagraph 9(a) hereof and to execute all documents and do all things requisite for this purpose, either before or after the Title Transfer Date.
- (d) In the event that the Vendor is not the registered owner of the Property, the Purchaser agrees to accept a conveyance of title from the registered owner together with the owner's title covenants in lieu of the Vendor's.
- (e) The Vendor shall be entitled to insert in the Transfer/Deed of Land, specific covenants by the Purchaser pertaining to any or all of the restrictions, easements, covenants and agreements referred to herein and in the Condominium Documents, and in such case, the Purchaser may be required to deliver separate written covenants on closing. If so requested by the Vendor, the Purchaser covenants to execute all documents and instruments required to convey or confirm any of the easements, licences, covenants, agreements, and/or rights, required pursuant to this Agreement and shall observe and comply with all of the terms and provisions therewith. The Purchaser may be required to obtain a similar covenant (enforceable by and in favour of the Vendor), in any agreement entered into between the Purchaser and any subsequent transferee of the Unit.

Vendor's Lien

- 10. The Purchaser agrees that the Vendor shall have a Vendor's Lien for unpaid purchase monies on the Title Transfer Date and shall be entitled to register a Notice of Vendor's Lien against the Unit any time after the Title Transfer Date.

Partial Discharges

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

Construction Lien Act

- 12. The Purchaser covenants and agrees that he/she is a "home buyer" within the meaning of the *Construction Lien Act*, R.S.O. 1990, c.C.30. and will not claim any lien holdback on the Occupancy Date or Title Transfer Date. The Vendor shall complete the remainder of the Condominium according to its schedule of completion and neither the Occupancy Date nor the Title Transfer Date shall be delayed on that account.

The Planning Act

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

Title Transfer Date

14. (a) The provisions of the Tarion Addendum reflect the TWC's policies, regulations and/or guidelines on extensions of the First Tentative Occupancy Date, but it is expressly understood and agreed by the parties hereto that any failure to provide notice(s) of the extension(s) of the First Tentative Occupancy Date, Subsequent Tentative Occupancy Dates or Firm Occupancy Date, in accordance with the provisions of the Tarion Addendum shall only give rise to a damage claim by the Purchaser against the Vendor up to a maximum of \$7,500.00, as more particularly set forth in the Regulations to the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, as amended (the "ONHWPA"), and under no circumstances shall the Purchaser be entitled to terminate this transaction or otherwise rescind this Agreement as a result thereof, other than in accordance with the Tarion Addendum.
- (b) The Vendor's Solicitors shall designate a date not less than twenty (20) days after written notice is given to the Purchaser or his or her solicitor of the registration of the Creating Documents as the Title Transfer Date. The Title Transfer Date once designated may be extended from time to time by the Vendor's Solicitors provided that it shall not be more than twenty-four (24) months following the Occupancy Date.

Purchaser's Covenants, Representations and Warranties

15. The Purchaser covenants and agrees that this Agreement is subordinate to and postponed to any mortgages arranged by the Vendor and any advances thereunder from time to time, and to any easement, license or other agreement concerning the Condominium and the Condominium Documents. The Purchaser further agrees to consent to and execute all documentation as may be required by the Vendor in this regard and the Purchaser hereby irrevocably appoints the Vendor as the Purchaser's attorney to execute any consents or other documents required by the Vendor to give effect to this paragraph. The Purchaser hereby consents to the Vendor obtaining a consumer's report containing credit and/or personal information for the purposes of this transaction. The Purchaser further agrees to deliver to the Vendor, from time to time, within ten (10) days of written demand from the Vendor, all necessary financial and personal information required by the Vendor in order to evidence the Purchaser's ability to pay the balance of the Purchase Price on the Title Transfer Date, including without limitation, written confirmation of the Purchaser's income and evidence of the source of the payments required to be made by the Purchaser in accordance with this Agreement. Without limiting the generality of the foregoing and notwithstanding any other provision in this Agreement to the contrary, within ten (10) days of written demand from the Vendor, the Purchaser agrees to produce evidence of a satisfactory mortgage approval signed by a lending institution or other mortgagee acceptable to the Vendor confirming that the said lending institution or acceptable mortgagee will be advancing funds to the Purchaser sufficient to pay the balance due on the Title Transfer Date. If the Purchaser fails to provide the mortgage approval as aforesaid, then the Purchaser shall be deemed to be in default under this Agreement. The Vendor may, in its sole discretion, elect to accept in the place of such mortgage commitment, other evidence satisfactory to the Vendor that the Purchaser will have sufficient funds to pay the balance due on the Title Transfer Date.
16. The Purchaser acknowledges that notwithstanding any rule of law to the contrary, that by executing this Agreement, it has not acquired any equitable or legal interest in the Unit or the Property. The Purchaser covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, Purchaser's Lien, or any other document providing evidence of this Agreement against title to the Property, Unit or the Condominium and further agrees not to give, register, or permit to be registered any encumbrance against the Property, Unit or the Condominium. Should the Purchaser be in default of his or her obligations hereunder, the Vendor may, as agent and attorney of the Purchaser, cause the removal of notice of this Agreement, caution or other document providing evidence of this Agreement or any assignment thereof, from the title to the Property, Unit or the Condominium. In addition, the Vendor, at its option, shall have the right to declare this Agreement null and void in accordance with the provisions of paragraph 25 hereof. The Purchaser hereby irrevocably consents to a court order removing such notice of this Agreement, any caution, or any other document or instrument whatsoever from title to the Property, Unit or the Condominium and the Purchaser agrees to pay all of the Vendor's costs and expenses in obtaining such order (including the Vendor's Solicitor's fees on a full indemnity basis).
17. The Purchaser covenants not to list for sale or lease, advertise for sale or lease, sell or lease, nor in any way assign his or her interest under this Agreement, or the Purchaser's rights and interests hereunder or in the Unit, nor directly or indirectly permit any third party to list or advertise the Unit for sale or lease, at any time until after the Title Transfer Date, without the prior written consent of the Vendor, which consent may be arbitrarily withheld. The Purchaser acknowledges and agrees that once a breach of the preceding covenant occurs, such breach is or shall be incapable of rectification, and accordingly the Purchaser acknowledges, and agrees that in the event of such breach, the Vendor shall have the unilateral right and option of terminating this Agreement and the Occupancy License, effective upon delivery of notice of termination to the Purchaser or the Purchaser's solicitor, whereupon the provisions of this Agreement dealing with the consequence of termination by reason of the Purchaser's default, shall apply. The Purchaser shall be entitled to direct that title to the Unit be taken in the name of his or her spouse, or a member of his or her immediate family only, and shall not be permitted to direct title to any other third parties.
18. The Purchaser acknowledges that the Vendor is (or may in the future be) processing and/or completing one or more rezoning or minor variance applications with respect to the Property (and/or the lands adjacent thereto or in the neighbouring vicinity thereof), as well as a site plan approval/development application/draft plan of condominium approval with respect to the Property, in order to permit the development and construction of the Condominium thereon. The Purchaser acknowledges that during the rezoning, minor variance, site plan and/or draft plan of condominium approval process, the footprint or siting of the condominium building may shift from that originally proposed or intended, the overall height of the condominium building (and the number of levels/floors, and/or the number of dwelling units comprising the Condominium) may vary, and the location of the Condominium's proposed amenities may likewise be altered, without materially affecting the floor plan layout, design and size of the interior of the Unit, and the Purchaser hereby expressly agrees to complete this transaction notwithstanding the foregoing, without any abatement in the Purchase Price, and without any entitlement to a claim for damages or other compensation whatsoever. The Purchaser further covenants and agrees that it shall not oppose the aforementioned zoning, minor variance and site plan/development applications, nor any other applications ancillary thereto, including without

limitation, any application submitted or pursued by or on behalf of the Vendor to lawfully permit the development and registration of the Condominium, or to obtain an increase in the density coverage or the dwelling unit count (or yield) thereof, or for any other lawful purpose whatsoever, and the Purchaser expressly acknowledges and agrees that this covenant may be pleaded as an estoppel or bar to any opposition or objection raised by the Purchaser thereto.

19. The Purchaser covenants and agrees that he/she shall not interfere with the completion of other units and the common elements by the Vendor. Until the Condominium is completed and all units sold and transferred the Vendor may make such use of the Condominium as may facilitate the completion of the Condominium and sale of all the units, including, but not limited to the maintenance of a sales/rental/administration/construction office(s) and model units, and the display of signs located on the Property.

Termination without Default

20. In the event this Agreement is terminated through no fault of the Purchaser, all deposit monies paid by the Purchaser towards the Purchase Price, together with any interest required by law to be paid, shall be returned to the Purchaser; provided however, that the Vendor shall not be obligated to return any monies paid by the Purchaser as an Occupancy Fee. The Vendor shall be entitled to require the Purchaser to execute a release of any surety, lender or any other third party requested by the Vendor in its discretion prior to the return of such monies. In no event shall the Vendor or its agents be liable for any damages or costs whatsoever and without limiting the generality of the foregoing, for any loss of bargain, for any relocating costs, or for any professional or other fees paid in relation to this transaction. This provision may be pleaded by the Vendor as a complete defence to any such claim.

Tarion Warranty Corporation

21. The Vendor represents and warrants to the Purchaser that the Vendor is a registered vendor/builder with the TWC. The Purchaser acknowledges and agrees that any warranties of workmanship or materials, in respect of any aspect of the construction of the Condominium including the Unit, whether implied by this Agreement or at law or in equity or by any statute or otherwise, shall be limited to only those warranties deemed to be given by the Vendor under the ONHWPA and shall extend only for the time period and in respect of those items as stated in the ONHWPA, it being understood and agreed that there is no representation, warranty, guarantee, collateral agreement, or condition precedent to, concurrent with or in any way affecting this Agreement, the Condominium or the Unit, other than as expressed herein. The Purchaser hereby irrevocably appoints the Vendor his/her agent to complete and execute the TWC Certificate of Deposit and any excess condominium deposit insurance documentation in this regard, as required, both on its own behalf and on behalf of the Purchaser.

Right of Entry

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

Occupancy

23. (a) Except where the Purchaser and the Vendor have agreed that the Purchaser shall be responsible for certain conditions of occupancy and subject to paragraph 9 of the Tarion Addendum, the Unit shall be deemed to be substantially completed when the interior work has been finished to the minimum standards allowed by the Municipality so that the Unit may be lawfully occupied notwithstanding that there remains other work within the Unit and/or the common elements to be completed. Except where the Purchaser is responsible for certain conditions of occupancy, the Purchaser shall not occupy the Unit until the Municipality has permitted same or consented thereto, if such consent is required and the Occupancy Date shall be postponed until such required consent is given. The Purchaser shall not require the Vendor to provide or produce an occupancy permit, certificate or authorization from the Municipality other than the documentation required by paragraph 9 of the Tarion Addendum. Provided that the Vendor complies with paragraph 9 of the Tarion Addendum, the Purchaser acknowledges that the failure to complete the common elements before the Occupancy Date shall not be deemed to be failure to complete the Unit, and the Purchaser agrees to complete this transaction notwithstanding any claim submitted to the Vendor and/or to the TWC in respect of apparent deficiencies or incomplete work provided, always, that such incomplete work does not prevent occupancy of the Unit as, otherwise, permitted by the Municipality.
- (b) If the Unit is substantially complete and fit for occupancy on the Occupancy Date, as provided for in subparagraph (a) above, but the Creating Documents have not been registered, (or in the event the Condominium is registered prior to the Occupancy Date and closing documentation has yet to be prepared), the Purchaser shall pay to the Vendor a further amount on account of the Purchase Price specified in paragraph 1(a) hereof without adjustment save for any pro-rated portion of the Occupancy Fee described and calculated in Schedule "C", and the Purchaser shall occupy the Unit on the Occupancy Date pursuant to the Occupancy Licence attached hereto as Schedule "C".

Inspection

24. (a) The Purchaser or the Purchaser's designate as hereinafter provided agrees to meet the Vendor's representative at the date and time designated by the Vendor, prior to the Occupancy Date, to conduct a pre-delivery inspection of the Unit (the "PDI") and to list all items remaining incomplete at the time of such inspection together with all mutually agreed deficiencies with respect to the Unit, on the TWC Certificate of Completion and Possession (the "CCP") and the PDI Form, in the forms prescribed from time to time by, and required to be completed pursuant to the provisions of the ONHWPA. The said CCP and PDI Forms shall be executed by both the Purchaser or the Purchaser's designate and the Vendor's representative at the PDI and shall constitute the Vendor's only undertaking with respect to incomplete or deficient work and the Purchaser shall not require any further undertaking of the Vendor to complete any outstanding items. In the

event that the Vendor performs any additional work to the Unit in its discretion, the Vendor shall not be deemed to have waived the provision of this paragraph or otherwise enlarged its obligations hereunder.

- (b) The Purchaser acknowledges that the Homeowner Information Package as defined in TWC Bulletin 42 (the "HIP") is available from TWC and that the Vendor further agrees to provide the HIP to the Purchaser or the Purchaser's designate, at or before the PDI. The Purchaser or the Purchaser's designate agrees to execute and provide to the Vendor the Confirmation of Receipt of the HIP forthwith upon receipt of the HIP.
- (c) The Purchaser shall be entitled to send a designate to conduct the PDI in the Purchaser's place or attend with their designate, provided the Purchaser first provides to the Vendor a written authority appointing such designate for PDI prior to the PDI. If the Purchaser appoints a designate, the Purchaser acknowledges and agrees that the Purchaser shall be bound by all of the documentation executed by the designate to the same degree and with the force and effect as if executed by the Purchaser directly.
- (d) In the event the Purchaser and/or the Purchaser's designate fails to attend the PDI or fails to execute the CCP and PDI Forms at the conclusion of the PDI, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law. Alternatively, the Vendor may, at its option, complete the within transaction but not provide the keys to the Unit to the Purchaser until the CCP and PDI Forms have been executed by the Purchaser and/or its designate or complete the within transaction and complete the CCP and PDI Forms on behalf of the Purchaser and/or the Purchaser's designate and the Purchaser hereby irrevocably appoints the Vendor the Purchaser's attorney and/or agent and/or designate to complete the CCP and PDI Forms on the Purchaser's behalf and the Purchaser shall be bound as if the Purchaser or the Purchaser's designate had executed the CCP and PDI Forms.
- (e) In the event the Purchaser and/or the Purchaser's designate fails to execute the Confirmation of Receipt of the HIP forthwith upon receipt thereof, the Vendor may declare the Purchaser to be in default under this Agreement and may exercise any or all of its remedies set forth in this Agreement of Purchase and Sale and/or at law.

Purchaser's Default

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

Common Elements

- 26. The Purchaser acknowledges that the Condominium will be constructed to Ontario Building Code requirements at the time of issuance of the building permit. The Purchaser covenants and agrees the Purchaser shall have no claims against the Vendor for any equal, higher or better standards of workmanship or materials. The Purchaser agrees that the

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

Executions

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

Risk

28. The Unit shall be and remain at the risk of the Vendor until the Title Transfer Date, subject to the terms of the Occupancy Licence attached hereto as Schedule "C". If any part of the Condominium is damaged before the Creating Documents are registered, the Vendor may in its sole discretion either:

- (a) make such repairs as are necessary to complete this transaction and, if necessary, delay the Occupancy Date in the manner permitted under the Tarion Addendum;
- (b) terminate this Agreement and return to the Purchaser all deposit monies paid by the Purchaser to the Vendor, with interest payable under law if the damage to the Condominium has frustrated this Agreement at law; or
- (c) apply to a court of competent jurisdiction for an order terminating the Agreement in accordance with the provisions of subsection 79(3) of the Act.

it being understood and agreed that all insurance policies and the proceeds thereof are to be for the benefit of the Vendor alone.

Tender/Termet

29. (a) The parties waive personal tender and agree that tender, in the absence of any other mutually acceptable arrangement and subject to the provisions of paragraph 30 of this Agreement shall be validly made by the Vendor upon the Purchaser, by a representative of the Vendor attending at the offices of Harris, Sheaffer, LLP at 12:00 noon on the Title Transfer Date or the Occupancy Date as the case may be and remaining there until 5:00 p.m. and is ready, willing and able to complete the transaction. The Purchaser agrees that keys may be released to the Purchaser as the construction site or sales office on the Occupancy Date or the Title Transfer Date, as applicable. The Vendor's advice that the keys are available shall be valid tender of possession of the Property to the Purchaser. In the event the Purchaser or his or her solicitor fails to appear or appears and fails to close, such attendance by the Vendor's representative (which includes the Vendor's Solicitors) shall be deemed satisfactory evidence that the Vendor is ready, willing and able to complete the sale at such time. Payment shall be tendered by certified cheque drawn on any Canadian chartered bank; and
- (b) It is further provided that, notwithstanding subparagraph 29 (a) hereof, in the event the Purchaser or his or her solicitor advise the Vendor or its Solicitors, on or before the Occupancy Date or Title Transfer Date, as applicable, that the Purchaser is unable or unwilling to complete the purchase or take occupancy, the Vendor is relieved of any obligation to make any formal tender upon the Purchaser or his or her solicitor and may exercise forthwith any and all of its right and remedies provided for in this Agreement and at law.
30. As the electronic registration system (hereinafter referred to as the "Teraview Electronic Registration System" or ("TERS") is operative in the applicable Land Titles Office in which the Property is registered, then at the option of the Vendor's solicitor, the following provisions shall prevail:
- (a) The Purchaser shall be obliged to retain a solicitor, who is both an authorized TERS user and in good standing with the Law Society of Upper Canada to represent the Purchaser in connection with the completion of the transaction. The Purchaser shall authorize such solicitor to, at the option of the Vendor's Solicitors, either execute an escrow closing agreement with the Vendor's Solicitor on the standard form recommended by the Law Society of Upper Canada (hereinafter referred to as the "Escrow Document Registration Agreement") establishing the procedures and timing for completing this transaction or to otherwise agree to be bound by the procedures set forth in the Escrow Document Registration Agreement.
 - (b) The delivery and exchange of documents, monies and keys to the Unit and the release thereof to the Vendor and the Purchaser, as the case may be:
 - (i) shall not occur contemporaneously with the registration of the Transfer/Deed (and other registerable documentation); and
 - (ii) shall be governed by the Escrow Document Registration Agreement, pursuant to which the solicitor receiving the documents, keys and/or certified funds will be required to hold same in escrow, and will not be entitled to release same except in strict accordance with the provisions of the Escrow Document Registration Agreement.

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- (c) If the Purchaser's solicitor is unwilling or unable to complete this transaction via TERS, in accordance with the provisions contemplated under the Escrow Document Registration Agreement, then said solicitor (or the authorized agent thereof) shall be obliged to personally attend at the office of the Vendor's Solicitors, at such time on the Title Transfer Date as may be directed by the Vendor's solicitor or as mutually agreed upon, in order to complete this transaction via TERS utilizing the computer facilities in the Vendor's Solicitors' office, and shall pay a fee as determined by the Vendor's Solicitors, acting reasonably for the use of the Vendor's computer facilities.
- (d) The Purchaser expressly acknowledges and agrees that he or she will not be entitled to receive the Transfer/Deed to the Unit for registration until the balance of funds due on closing, in accordance with the statement of adjustments, are either remitted by certified cheque via personal delivery or by electronic funds transfer to the vendor's solicitor (or in such other manner as the latter may direct) prior to the release of the Transfer/Deed for registration.
- (e) Each of the parties hereto agrees that the delivery of any documents not intended for registration on title to the Unit may be delivered to the other party hereto by telefax transmission (or by a similar system reproducing the original or by electronic transmission of electronically signed documents through the Internet), provided that all documents so transmitted have been duly and properly executed by the appropriate parties/signatories thereto which may be by electronic signature. The party transmitting any such document shall also deliver the original of same (unless the document is an electronically signed document pursuant to the *Electronic Commerce Act*) to the recipient party by overnight courier sent the day of closing or within 7 business days of closing, if same has been so requested by the recipient party.
- (f) Notwithstanding anything contained in this Agreement to the contrary, it is expressly understood and agreed by the parties hereto that an effective tender shall be deemed to have been validly made by the Vendor upon the Purchaser when the Vendor's solicitor has:
- (i) delivered all closing documents and/or funds to the Purchaser's solicitor in accordance with the provisions of the Escrow Document Registration Agreement and keys are made available for the Purchaser to pick up at the Vendor's sales or customer service office;
 - (ii) advised the Purchaser's solicitor, in writing, that the Vendor is ready, willing and able to complete the transaction in accordance with the terms and provisions of this Agreement; and
 - (iii) has completed all steps required by TERS in order to complete this transaction that can be performed or undertaken by the Vendor's Solicitors without the cooperation or participation of the Purchaser's solicitor, and specifically when the "completeness signatory" for the transfer/deed has been electronically "signed" by the Vendor's Solicitors;

without the necessity of personally attending upon the Purchaser or the Purchaser's solicitor with the aforementioned documents, keys and/or funds, and without any requirement to have an independent witness evidencing the foregoing.

General

31. The Vendor shall provide a statutory declaration on the Title Transfer Date that it is not a non-resident of Canada within the meaning of the ITA.
32. The Vendor and Purchaser agree to pay the costs of registration of their own documents and any tax in connection therewith.
33. The Vendor and the Purchaser agree that there is no representation, warranty, collateral agreement or condition affecting this Agreement or the Property or supported hereby other than as expressed herein in writing.
34. This Offer and its acceptance is to be read with all changes of gender or number required by the context and the terms, provisions and conditions hereof shall be for the benefit of and be binding upon the Vendor and the Purchaser, and as the context of this Agreement permits, their respective heirs, estate trustees, successors and permitted assigns.
35. The Purchaser acknowledges that the suite area of the Unit, as may be represented or referred to by the Vendor or any sales agent, or which appear in any sales material is approximate only, and is generally measured to the outside of all exterior, corridor and stairwell walls, and to the centre line of all party walls separating one unit from another. NOTE: For more information on the method of calculating the floor area of any unit, reference should be made to Builder Bulletin No. 22 published by the TWC. Actual useable floor space may (therefore) vary from any stated or represented floor area or gross floor area, and the extent of the actual or useable living space within the confines of the Unit may vary from any represented square footage or floor area measurement(s) made by or on behalf of the Vendor. In addition, the Purchaser is advised that the floor area measurements are generally calculated based on the middle floor of the Condominium building for each suite type, such that units on lower floors may have less floor space due to thicker structural members, mechanical rooms, etc., while units on higher floors may have more floor space. Accordingly, the Purchaser hereby confirms and agrees that all details and dimensions of the Unit purchased hereunder are approximate only, and that the Purchase Price shall not be subject to any adjustment or claim for compensation whatsoever, whether based upon the ultimate square footage of the Unit, or the actual or useable living space within the confines of the Unit or otherwise. The Purchaser further acknowledges that the ceiling height of the Unit is measured from the upper surface of the concrete floor slab (or subfloor) to the underside surface of the concrete ceiling slab (or joists). However, where ceiling bulkheads are installed within the Unit, and/or where dropped ceilings are required, then the ceiling height of the Unit will be less than that represented, and the Purchaser shall correspondingly be obliged to accept the same without any abatement or claim for compensation whatsoever.
36. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
37. The headings of this Agreement form no part hereof and are inserted for convenience of reference only.
38. Each of the provisions of this Agreement shall be deemed independent and severable and the invalidity or unenforceability in whole or in part of any one or more of such provisions shall not be deemed to impair or affect in

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any manner the validity, enforceability or effect of the remainder of this Agreement, and in such event all the other provisions of this Agreement shall continue in full force and effect as if such invalid provision had never been included herein. The Purchaser and the Vendor acknowledge and agree that this Agreement and all amendments and addenda thereto shall constitute an agreement made under seal.

39. (a) If any documents required to be executed and delivered by the Purchaser to the Vendor are, in fact, executed by a third party appointed as the attorney for the Purchaser, then the power of attorney appointing such person must be registered in the Land Titles office where the Lands are registered, and a duplicate registered copy thereof (together with a statutory declaration sworn by the Purchaser's solicitor unequivocally confirming, without any qualification whatsoever, that said power of attorney has not been revoked) shall be delivered to the Vendor along with such documents.
- (b) Where the Purchaser is a corporation, or where the Purchaser is buying in trust for another person or corporation for a disclosed or undisclosed beneficiary or principal (including, without limitation, a corporation to be incorporated), the execution of this Agreement by the principal or principals of such corporation, or by the person named as the Purchaser in trust as the case may be, shall be deemed and construed to constitute the personal indemnity of such person or persons so signing with respect to the obligations of the Purchaser herein and shall be fully liable to the Vendor for the Purchaser's obligations under this Agreement and may not plead such agency, trust relationship or any other relationships as a defence to such liability.

Notice

40. (a) Any notice required to be delivered under the provisions of the Tarion Addendum shall be delivered in the manner required by the Tarion Addendum.
- (b) Any other notice given pursuant to the terms of this Agreement shall be deemed to have been properly given if it is in writing and is delivered by hand, ordinary prepaid post, facsimile transmission or electronic mail to the attention of the Purchaser or to the Purchaser's solicitor to their respective addresses indicated herein or to the address of the Unit after the Occupancy Date and to the Vendor at 126 Hazelton Avenue, Toronto, Ontario, M5R 2E5 or to the Vendor's Solicitors at the address indicated in this Agreement or such other address as may from time to time be given by notice in accordance with the foregoing. Such notice shall be deemed to have been received on the day it was delivered by hand, by electronic mail or by facsimile transmission and upon the third day following posting, excluding Saturdays, Sundays and statutory holidays. This agreement or any amendment or addendum thereto may, at the Vendor's option, be properly delivered if it delivered by facsimile transmission or if a copy of same is computer scanned and forwarded by electronic mail to the other party.

Material Change

41. The Purchaser acknowledges and agrees that the Vendor may, from time to time in its sole discretion, due to site conditions or constraints, or for marketing considerations, or for any other legitimate reason, including without limitation any request or requirement of any of the governmental authorities or any request or requirement of the Vendor's architect or other design consultants:
- (a) change the Property's municipal address or numbering of the Unit (in terms of the unit number, suite number and/or level number ascribed to any one or more of the units comprising the Unit);
- (b) change, vary or modify the plans and specifications pertaining to the Unit or the Condominium, or any portion thereof (including architectural, structural, engineering, landscaping, grading, mechanical, site servicing and/or other plans and specifications) from the plans and specifications existing at the inception of the project, or existing at the time that the Purchaser has entered into this Agreement, or as same may be illustrated in any sales brochure(s), model(s) in the sales office or otherwise, including without limitation, making any change to the total number of dwelling, parking, locker and/or other ancillary units intended to be created within the Condominium, and/or any change to the total number of levels or floors within the Condominium, as well as any changes or alterations to the design, style, size and/or configuration of any dwelling or other ancillary units within the Condominium;
- (c) change, vary, or modify the number, size and location of any windows, column(s) and/or bulkhead(s) within or adjacent to (or comprising part of) the Unit, from the number, size and/or location of same as displayed or illustrated in any sales brochure(s), model(s) or floor plan(s) previously delivered or shown to the Purchaser, including the insertion or placement of any window(s), column(s) and/or bulkhead(s) in one or more locations within the Unit which have not been shown or illustrated in any sales brochure(s), model(s) or floor plan(s) previously delivered or shown to the Purchaser (regardless of the extent or impact thereof), as well as the removal of any window(s), column(s) and/or bulkhead(s) from any location(s) previously shown or illustrated in any sales brochure(s), model(s) in the sales office or otherwise;
- (d) change the layout of the Unit such that same is a mirror image of the layout shown to the Purchaser (or a mirror image of the layout illustrated in any sales brochure or other marketing material(s) delivered to the Purchaser); and/or
- (e) change the proposed boundaries of the Condominium by increasing, decreasing or changing the number of proposed units to be located thereon as more particularly set out in the Condominium Documents.

and that the Purchaser shall have absolutely no claim or cause of action whatsoever against the Vendor or its sales representatives (whether based or founded in contract, tort or in equity) for any such changes, deletions, alterations or modifications, nor shall the Purchaser be entitled to any abatement or reduction in the Purchase Price whatsoever as a consequence thereof, nor any notice thereof (unless any such change, deletion, alteration or modification to the said plans and specifications is material in nature (as defined by the Act) and significantly affects the fundamental character, use or value of the Unit and/or the Condominium, in which case the Vendor shall be obliged to notify the Purchaser in writing of such change, deletion, alteration or modification as soon as reasonably possible after the Vendor proposes to implement same, or otherwise becomes aware of same), and where any such change, deletion, alteration or

modification to the said plans and specifications is material in nature, then the Purchaser's only recourse and remedy shall be the termination of this Agreement prior to the Title Transfer Date (and specifically within 10 days after the Purchaser is notified or otherwise becomes aware of such material change), and the return of the Purchaser's deposit monies, together with interest accrued thereon at the rate prescribed by the Act.

Cause of Action/Assignment

42. (a) The Purchaser acknowledges and agrees that notwithstanding any rights which he or she might otherwise have at law or in equity arising out of this Agreement, the Purchaser shall not assert any of such rights, nor have any claim or cause of action whatsoever as a result of any matter or thing arising under or in connection with this Agreement (whether based or founded in contract law, tort law or in equity, and whether for innocent misrepresentation, negligent misrepresentation, breach of contract, breach of fiduciary duty, breach of constructive trust or otherwise), against any person, firm, corporation or other legal entity, other than the person, firm, corporation or legal entity specifically named or defined as the Vendor herein, even though the Vendor may be (or may ultimately be found or adjudged to be) a nominee or agent of another person, firm, corporation or other legal entity, or a trustee for and on behalf of another person, firm, corporation or other legal entity, and this acknowledgment and agreement may be pleaded as an estoppel and bar against the Purchaser in any action, suit, application or proceeding brought by or on behalf of the Purchaser to assert any of such rights, claims or causes of action against any such third parties. Furthermore, the Purchaser and the Vendor acknowledge that this Agreement shall be deemed to be a contract under seal.
- (b) At any time prior to the Title Transfer Date, the Vendor shall be permitted to assign this Agreement (and its rights, benefits and interests hereunder) to any person, firm, partnership or corporation registered as a vendor pursuant to the ONHWPA and upon any such assignee assuming all obligations under this Agreement and notifying the Purchaser or the Purchaser's solicitor of such assignment, the Vendor named herein shall be automatically released from all obligations and liabilities to the Purchaser arising from this Agreement, and said assignee shall be deemed for all purposes to be the vendor herein as if it had been an original party to this Agreement, in the place and stead of the Vendor.

Non-Merger

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

Notice/Warning Provisions

44. The Purchaser acknowledges that it is anticipated by the Vendor that in connection with the Vendor's application to the appropriate governmental authorities for draft plan of condominium approval certain requirements may be imposed upon the Vendor by various governmental authorities. These requirements (the "Requirements") usually relate to warning provisions to be given to Purchasers in connection with environmental or other concerns (such as warnings relating to noise levels, the proximity of the Condominium to major street, garbage storage and pickup, school transportation, and similar matters). Accordingly, the Purchaser covenants and agrees that (1) on either the Occupancy Date or Title Transfer Date, as determined by the Vendor, the Purchaser shall execute any and all documents required by the Vendor acknowledging, inter alia, that the Purchaser is aware of the Requirements, and (2) if the Vendor is required to incorporate the Requirements into the final Condominium Documents the Purchaser shall accept the same, without in any way affecting this transaction. Notwithstanding the generality of the foregoing, the Purchaser agrees to be bound by the warnings set forth in Schedule "D" hereto.

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

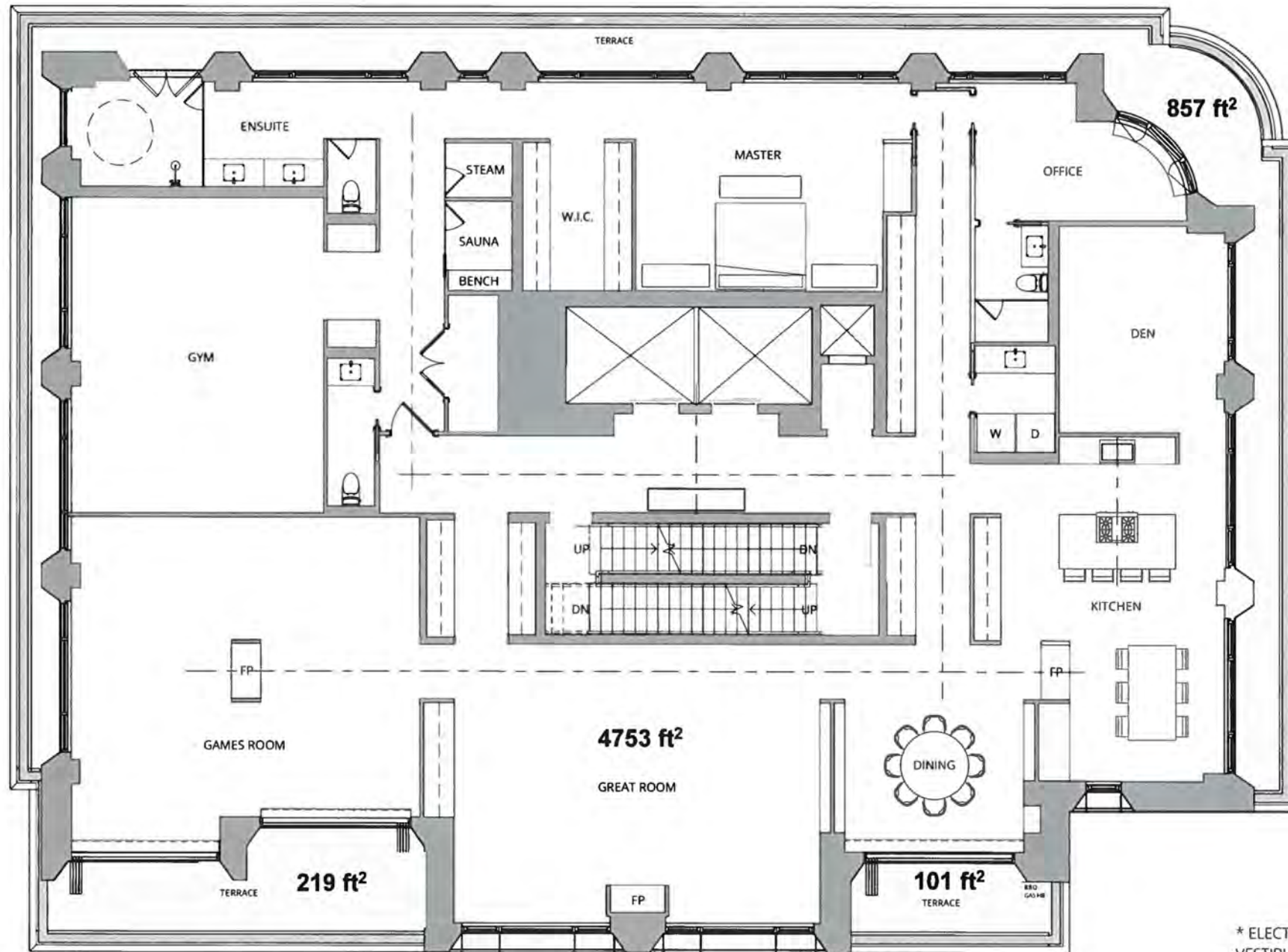
45. The Purchaser hereby consents to the Vendor's collection, use and disclosure of the Purchaser's personal information for the purpose of enabling the Vendor to proceed with the Purchaser's purchase of the Unit, completion of this transaction, and for post-closing and after-sales customer care purposes. Such personal information includes the Purchaser's name, home address, e-mail address, telefax/telephone number, age, date of birth, marital and residency status, social insurance number (only with respect to subparagraph (b) below), financial information, desired suite design(s), and colour/finish selections. In particular, but without limiting the foregoing, the Vendor may disclose such personal information to:
- (a) any relevant governmental authorities or agencies, including without limitation, the Land Titles Office (in which the Condominium is registered), the Ministry of Finance for the Province of Ontario (i.e. with respect to Land Transfer Tax), and the Canada Revenue Agency (i.e. with respect to HST);
- (b) Canada Revenue Agency, to whose attention the T-5 interest income tax information return and/or the NR4 non-resident withholding tax information return is submitted (where applicable), which will contain or refer to the Purchaser's social insurance number or business registration number (as the case may be), as required by Regulation 201(1)(b)(ii) of the ITA, as amended;
- (c) the Condominium for the purposes of facilitating the completion of the Condominium's voting, leasing and/or other relevant records and to the Condominium's property manager for the purposes of facilitating the issuance of notices, the collection of common expenses and/or implementing other condominium management/administration functions;
- (d) any companies or legal entities that are associated with, related to or affiliated with the Vendor, other future condominium declarants that are likewise associated with, related to or affiliated with the Vendor (or with the Vendor's parent/holding company) and are developing one or more other condominium projects or communities that may be of interest to the Purchaser or members of the Purchaser's family, for the limited purposes of marketing, advertising and/or selling various products and/or services to the Purchaser and/or members of the Purchaser's family;

- 14 -

- (e) any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Purchaser and/or members of the Purchaser's family, with respect to the Unit, including without limitation, the Vendor's construction lender(s), the quantity surveyor monitoring the Project and its costs, the Vendor's designated construction lender(s), the Tarion Warranty Corporation and/or any warranty bond provider and/or excess condominium deposit insurer, required in connection with the development and/or construction financing of the Condominium and/or the financing of the Purchaser's acquisition of the Property from the Vendor;
- (f) any insurance companies of the Vendor providing (or wishing to provide) insurance coverage with respect to the Property (or any portion thereof) and/or the common elements of the Condominium, and any title insurance companies providing (or wishing to provide) title insurance to the Purchaser or the Purchaser's mortgage lender(s) in connection with the completion of this transaction;
- (g) any trades/suppliers or sub-trades/suppliers, who have been retained by or on behalf of the Vendor (or who are otherwise dealing with the Vendor) to facilitate the completion and finishing of the Unit and the installation of any extras or upgrades ordered or requested by the Purchaser;
- (h) one or more providers of cable television, telephone, telecommunication, security alarm systems, hydro-electricity, chilled water/hot water, gas and/or other similar or related services to the Property (or any portion thereof) and/or the Condominium (collectively, the "Utilities"), unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to one or more of the Utilities;
- (i) one or more third party data processing companies which handle or process marketing campaigns on behalf of the Vendor or other companies that are associated with, related to or affiliated with the Vendor, and who may send (by e-mail or other means) promotional literature/brochures about new condominiums and/or related services to the Purchaser and/or members of the Purchaser's family, unless the Purchaser gives the Vendor prior notice in writing not to disclose the Purchaser's personal information to said third party data processing companies;
- (j) the Vendor's solicitors, to facilitate the interim occupancy and/or final closing of this transaction, including the closing by electronic means via the Teraview Electronic Registration System, and which may (in turn) involve the disclosure of such personal information to an internet application service provider for distribution of documentation;
- (k) any person, where the Purchaser further consents to such disclosure or disclosures required by law.

Any questions or concerns of the Purchaser with respect to the collection, use or disclosure of his or her personal information may be delivered to the Vendor at the address set out in the Tarion Addendum, Attention: Privacy Officer.

SCHEDULE 'A'



*NOTE:
 - Structural layout to be coordinated
 - Columns may be added as required

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

[Handwritten Signature]
 Mizrahi Developments
[Handwritten Signature]

August 14, 2019

Date

Date

* ELECTRICAL CLOSETS AND STAIR VESTIBULES HAVE BEEN REMOVED FROM PLAN. PLAN TO BE REVIEWED BY CODE CONSULTANT.

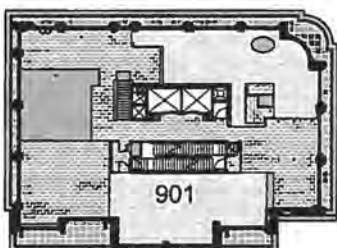
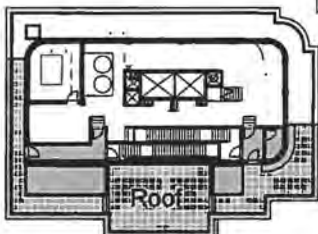
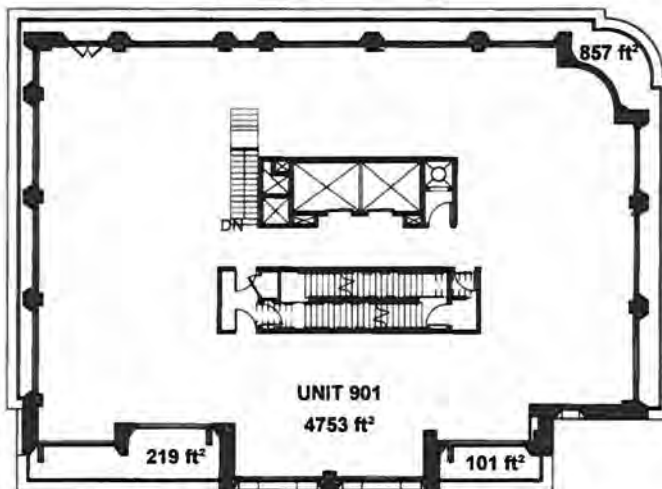
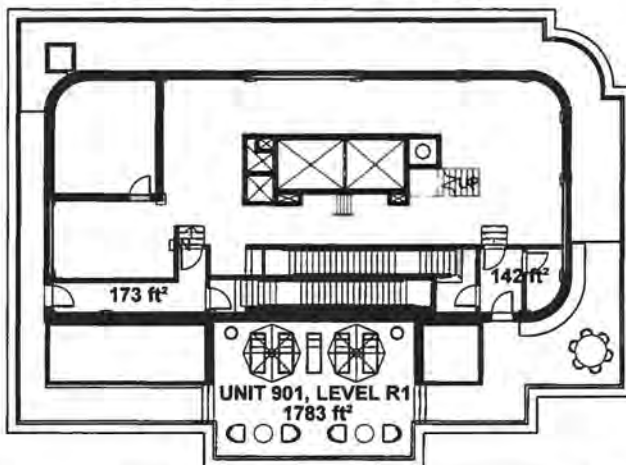
1/8" = 1'-0"

1 : 96

SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE

SKETCH

Level 9 , Legal Unit No UNIT 1



SUITE AREA INT (9th & R1): 5068 ft²
SUITE AREA EXT (9th & R1): 2960 ft²

*AREAS TO BE VERIFIED BY
KRCMAR SURVEYORS LTD.

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

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



Purchaser Acknowledgement

August 16, 2019
Date



128 HAZELTON AVENUE
TORONTO, ONTARIO

UNIT 901 UPPER LEVEL AND R1

SCHEDULE "B" TO THE AGREEMENT OF PURCHASE AND SALE

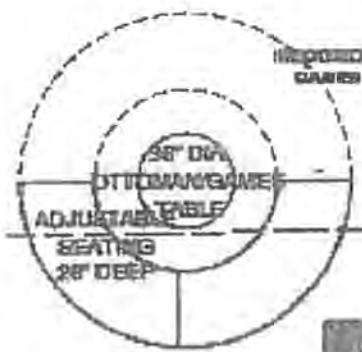
INCLUSIONS, FEATURES AND FINISHES

The general overriding principle of the agreement is that everything other than furniture was to be included, however, the purchaser would use the vendors selections

Summary below – please refer to binder for CONCEPTUAL specifics.

- Laundry Room
 - Porcelain floors selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
 - (2) High efficiency top loading Washers and frontload loading Dryers selected from Vendor's standard selections
 - **BUILT IN CABINERTY ALONG SOUTH AND EAST WALLS FROM THE VENDORS STANDARD SELECTIONS**
 - **BUILT IN DESK FROM THE VENDORS STANDARD SELECTIONS**
 - **BUILT IN LANUDRY CHUTE CONNECTING MASTER-CLOSET TO WASHERS FROM THE VENDORS STANDARD SELECTIONS**
 - Caesar stone counter top from vendors selections
- Living Room & Dining Room
 - Pre-finished engineered Hardwood floors selected from Vendor's standard selections
 - L.E.D. recessed ceiling lights
 - **(1) FIREPLACE SELECTED FROM THE VENDORS STANDARD SELECTIONS IN LIVING ROOM**
- Foyer
 - Pre-finished engineered Hardwood floor in entranceway selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
- Gamcs room
 - Stone floor throught from vendors selections
 - Built in bench on north wall for pool table seating (in front of mechanical)
- Locker room
 - Built in lockers and bench with cabinetry from vendors selection
 - Stone floor throughout as per vendors selections
- Cloakroom
 - Bench and coat cupboard from cabinetry from vendors selections
 - Hardwood floors throughout
- Kitchen & Breakfast
 - Kitchen cabinetry selected from Vendor's standard selections
 - Stone countertops with coordinated backplash selected from Vendor's standard selections
 - Stainless steel sink with coordinated fixture selected from Vendor's standard selections
 - Pre-finished engineered Hardwood floors selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
 - Valence lighting under cabinets
 - Gas or Electric Cooktop, Oven, Dishwasher, Refrigerator, Microwave and Hood fan selected from Vendor's standard selections
 - **DUAL SIDED WINE DISPLAY FACING KITCHEN AND DINING ROOM FROM THE VENDORS STANDARD SELECTIONS**
 - **BANQUET SEATING IN KITCHEN FROM THE VENDORS STANDARD SELECTIONS**
- Powder Room
 - Vanity with stone countertop selected from Vendor's standard selections
 - Under-mounted sink and fixtures selected from Vendor's standard selections
 - Privacy lock
 - Stone tile floor selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
- Terraces/Balconies
 - In selected suites as per plan
 - Railing as per architectural building design
 - Exterior lighting as per architectural building design
 - **(2) BUILT IN BARBEQUES ON 9TH AND R1**
- Library/Den
 - Pre-finished engineered Hardwood floor or carpet selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
 - **BUILT IN BOOK CASE ON SOUTH WALL OF OFFICE FROM THE VENDORS STANDARD SELECTIONS**
- Master Bedroom Suite
 - Pre-finished engineered Hardwood floor or carpet selected from Vendor's standard selections
 - L.E.D. recessed ceiling light
 - **BUILT IN LINEN CLOSET BETWEEN BEDROOM AND ENSUITE FROM VENDORS SELECTIONS**
 - **BUILT IN BOOKCASE/DESK FROM THE VENDORS STANDARD SELECTIONS**
 - **(1) FIREPLACE SELECTED FROM THE VENDORS STANDARD SELECTIONS**
 - **FINISHED CUSTOM CLOSET TO VENDOR'S STANDARD SPECIFICATIONS**
 - **BENCH SEATING TO BE INCLUDED IN SOUTH WEST CORNER FROM THE VENDORS STANDARD SELECTIONS**
 - **BUILT IN MAKEUP DESK TO BE INCLUDED IN NORTH EAST CORNER**
- Master Ensuite
 - Stone tiles selected from Vendor's standard selections
 - Heated floor with thermostatic control
 - Vanity with stone countertop, under-mounted sink, and fixtures selected from Vendor's standard selections
 - Jet Bathtub and coordinated fixtures as per plan
 - Frameless glass STEAM shower enclosure as per plan

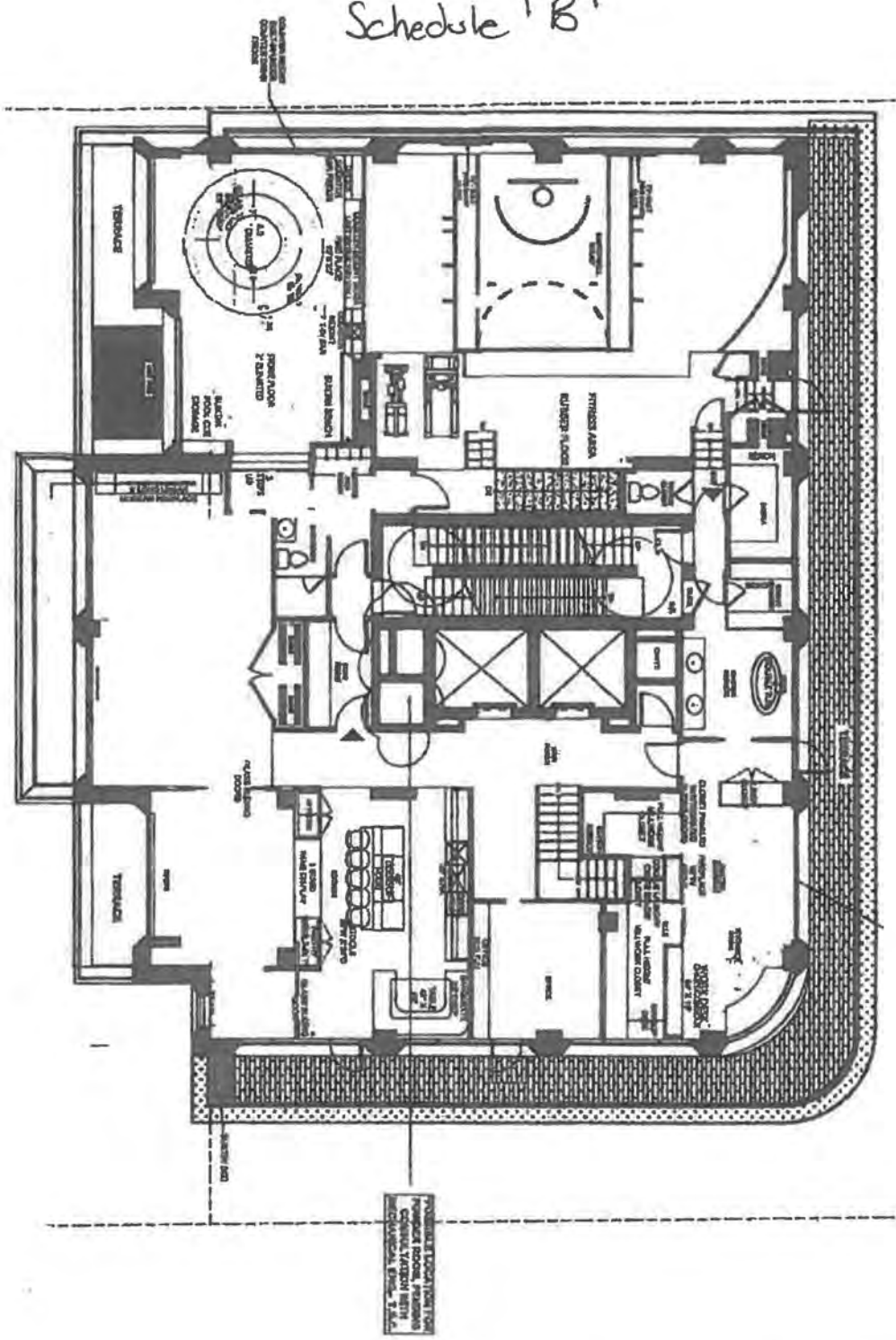
- o L.E.D. recessed ceiling light
- o Privacy lock
- o **SUANA AND STEAM ROOMS TO VENDOR STANDARD SPECIFICATIONS**
- o **BATHTUB TO ACCOMMODATE (2) PERSONS TO VENDOR STANDARD SPECIFICATIONS**
- * Guest Bathroom
 - o Stone tiles selected from Vendor's standard selections
 - o Vanity with stone countertop, under-mounted sink, and fixtures selected from Vendor's standard selections
 - o **SHOWER and coordinated fixtures as per plan**
 - o Frameless glass shower enclosure as per plan
 - o L.E.D. recessed ceiling light
 - o Privacy lock
- * Bedroom
 - o Pre-finished engineered Hardwood floors or carpet selected from Vendor's standard selections
 - o L.E.D. recessed ceiling light
 - o **BEDROOM 1/2 AND MEDIA ROOM CLOSETS TO BE BUILT OUT TO INCLUDE CUSTOM CABINETS FROM THE VENDORS STANDARD SELECTIONS**
 - o **BEDROOM 1 TO BE FIT OUT WITH A COMBINATION BUILT IN BENCH SEAT AND BUILT IN DESK FROM THE VENDOR'S STANDARD SELECTIONS**
 - o **MEDIA ROOM TO BE FIT OUT WITH WALL UNIT/DESK ON SOUTH WALL**
- * Ceilings, Walls & Doors
 - o Minimum of 10' high ceilings (dropped ceilings at Kitchen, Bathrooms, Closets, Foyer, Laundry Room and Mechanical Room)
 - o Smooth ceilings, walls and bulkheads throughout
 - o 7" Baseboards
 - o 3 1/2" Door casing with backband
 - o Solid doors throughout
 - o Door hardware selected from Vendor's standard selections
 - o All ceilings, walls, baseboards, mouldings and doors to be painted.
 - o Paint selected from Vendors standard selections
 - o Energy Star custom windows with low E coating and argon gas
- * Mechanical
 - o Heat Pump with Humidifier and programmable thermostat
- * Lighting & Electrical
 - o White decorative switches and receptacles throughout
 - o L.E.D. recessed ceiling light; 1 per 50 sq. feet
 - o Ceiling light provision in Kitchen, Dining Room, Living Room and all Bedrooms
 - o Accent lighting under kitchen cabinets
 - o Rough-in for scones and/or surface mounted fixtures in Master Ensuite and Powder Room
- * Technology
 - o Rough-in for cable, telephone, AUDIO, internet in Living Room, Kitchen, Library/Den and all Bedrooms
 - o **INTEGRATED HOME AUDIO SYSTEM WITH CENTRALIZED KEYPAD CONTROLLING BLINDS AND SOUND FROM THE VENDORS STANDARD SELECTIONS**
- * Penthouse Specific Extras (All Items to Vendor standard specifications)
 - o Basketball Court
 - * Gymnasium grade maple wood flooring FROM THE VENDORS STANDARD SELECTIONS
 - * (1) MANUALLY ADJUSTABLE BASKETBALL NET FROM THE VENDORS STANDARD SELECTIONS
 - * Built in storage on North and South walls FROM THE VENDORS STANDARD SELECTIONS
 - * (2) BUILT IN ADJUSTABLE 3 STAGE FUTSOL SIZED NET
 - * 'PUCKBOARD' MATERIAL (PVC) ALONG NORTH, EAST, AND SOUTH WALL (UP TO 6') FROM THE VENDORS STANDARD SELECTIONS
 - o GAMES ROOM
 - * BUILT IN 'WET BAR' ALONG NORTH WALL WITH BUILT IN WINE FRIDGE (AS PER VENDOR STANDARD)
 - (1) SINK WITH SINGLE LEVER FAUCET
 - CABINET AND COUNTER TOP (CEASARSTONE) FROM THE VENDORS STANDARD SELECTIONS
 - Heated floor with thermostatic control
 - (1) FIREPLACE SELECTED FROM THE VENDORS STANDARD SELECTIONS
 - * CUSTOM 4 CIRCULAR LOVE SEATS ON RAILS THAT ADJUST AUTOMATICALLY IN DIFFERENT POSITIONS ALONG THE OUTSIDE RAIL AND THE INSIDE RAIL ALONG WITH LEATHER OTTOMAN THAT AUTOMATICALLY RISES AND TURNS OVER TO BE FELT POKER TABLE (WITH AUTOMATIC SHUFFLER) AS PER E.G. 1 WITH VENDORS STANDARD SELECTION OF MATERIAL (36" DIAMETER CENTRE OTTOMAN WITH 28" DEEP SEMI-CIRCLE SURROUND SEATING)
 - E.G. 1



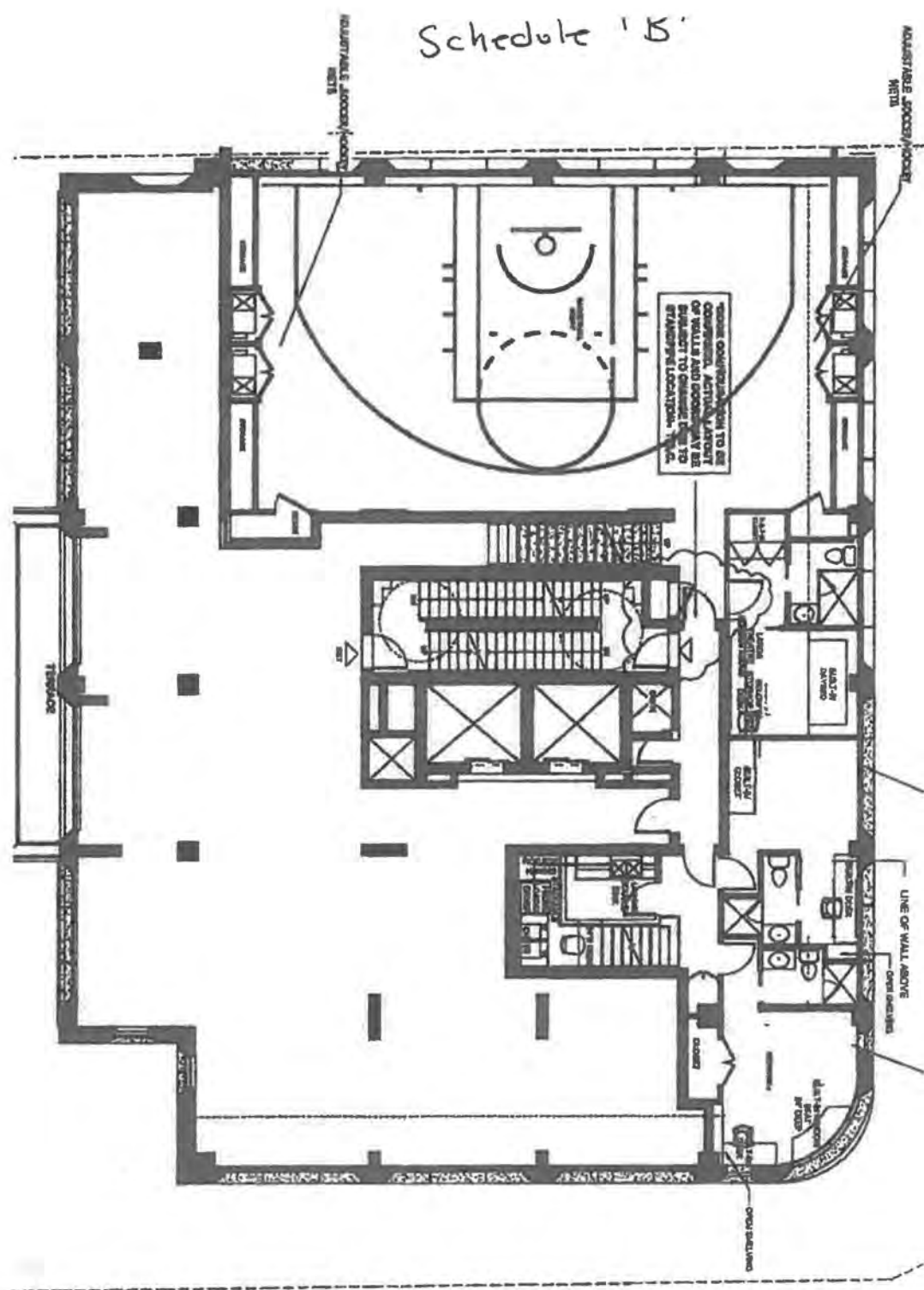
- o 9th FLOOR WEST TERRACE
 - BUILT IN HOT TUB TO VENDORS SPECIFICATIONS WITH CUSTOM AUTOMATIC COVER
- o R1
 - BUILT IN LAP POOL TO VENDORS SPECIFICATIONS
- o WINDOW TREATMENTS - VENDOR TO INCLUDE EITHER AUTOMATIC SHADES OR SELF TINTING WINDOWS PER THE VENDORS STANDARD SPECIFICATION THROUGHOUT FLOORS 8 & 9
- o VENDOR TO MAKE ITS BEST EFFORT TO INCLUDE A SKYLIGHT ABOVE GAMES ROOM AT PURCHASERS EXPENSE
- o VENDOR TO INCLUDE A 2 JET + 1 SHOWER HEAD WASHING STATION ON ROOF IF POSSIBLE

The Purchaser acknowledges that due to the evolution of this unit's design, some items included in this Schedule "B" will not be delivered, such as, but not limited to the basketball court and associated locker room. However, the Vendor hereby agrees that the value of the final deliveries shall be no less than the value of the inclusions, features and finishes currently included in this Schedule "B" save and except for those items reasonably attributed to Unit 802 (which for greater certainty is no longer part of this transaction), and the parties hereby agree to act in good faith to determine the value of the items listed herein and in the final deliveries and in determining the percentage or value of items attributed to Unit 802, failing which the parties agree to use a mutually acceptable independent valuator, at the cost of the Vendor, to determine same.

Schedule 'B'



Schedule 'B'



SCHEDULE "C" TO AGREEMENT OF PURCHASE AND SALE

TERMS OF OCCUPANCY LICENCE

- C.1 The transfer of title to the Unit shall take place on the Title Transfer Date upon which date, unless otherwise expressly provided for hereunder, the term of this Occupancy Licence shall be terminated.
- C.2 The Purchaser shall pay or have paid to the Vendor, on or before the Occupancy Date, by certified cheque drawn on a Canadian chartered bank the amount set forth in paragraph 1(a) of this Agreement without adjustment. Upon payment of such amount on the Occupancy Date, the Vendor grants to the Purchaser a licence to occupy the Unit from the Occupancy Date.

The Purchaser shall pay to the Vendor the Occupancy Fee calculated as follows:

- (a) the amount of interest payable in respect of the unpaid balance of the Purchase Price at the prescribed rate;
- (b) an amount reasonably estimated by the Vendor on a monthly basis for municipal realty taxes attributable by the Vendor to the Unit; and
- (c) the projected monthly common expense contribution for the Unit;

as an occupancy charge on the first day of each month in advance during Interim Occupancy, no part of which shall be credited as payments on account of the Purchase Price, but which payments shall be a charge for occupancy only. If the Occupancy Date is not the first day of the month, the Purchaser shall pay on the Occupancy Date a pro rata amount for the balance of the month by certified funds. The Purchaser shall deliver to the Vendor on or before the Occupancy Date a series of post-dated cheques as required by the Vendor for payment of the estimated monthly Occupancy Fee. The Occupancy Fee may be recalculated by the Vendor, from time to time based on revised estimates of the items which may be lawfully taken into account in the calculation thereof and the Purchaser shall pay to the Vendor such revised Occupancy Fee following notice from the Vendor. With respect to taxes, the Purchaser agrees that the amount estimated by the Vendor on account of municipal realty taxes attributed to the Unit shall be subject to recalculation based upon the real property tax assessment or reassessment of the Units and/or Condominium, issued by the municipality after the Title Transfer Date and the municipal tax mill rate in effect as at the date such assessment or reassessment is issued. The Occupancy Fee shall thereupon be recalculated by the Vendor and any amount owing by one party to the other shall be paid upon demand.

- C.3 The Purchaser shall be allowed to remain in occupancy of the Unit during Interim Occupancy provided the terms of this Occupancy Licence and the Agreement have been observed and performed by the Purchaser. In the event the Purchaser breaches the terms of occupancy the Vendor in its sole discretion and without limitation of any other rights or remedies provided for in this Agreement or at law may terminate this Agreement and revoke the Occupancy Licence whereupon the Purchaser shall be deemed a trespasser and shall give up vacant possession forthwith. The Vendor may take whatever steps it deems necessary to obtain vacant possession and the Purchaser shall reimburse the Vendor for all costs it may incur.
- C.4 At or prior to the time that the Purchaser takes possession of the Unit, the Purchaser shall execute and deliver to the Vendor any documents, directions, acknowledgments, assumption agreements or any and all other documents required by the Vendor pursuant to this Agreement, in the same manner as if the closing of the transaction was taking place at that time.
- C.5 The Purchaser shall pay the monthly Occupancy Fee during Interim Occupancy and the Vendor shall destroy all unused post-dated Occupancy Fee cheques on or shortly after the Title Transfer Date.
- C.6 The Purchaser agrees to maintain the Unit in a clean and sanitary condition and not to make any alterations, improvements or additions thereto without the prior written approval of the Vendor which may be unreasonably withheld. The Purchaser shall be responsible for all utility, telephone expenses, cable television service, or other charges and expenses billed directly to the occupant of the Unit by the supplier of such services and not the responsibility of the Condominium under the Condominium Documents.
- C.7 The Purchaser's occupancy of the Unit shall be governed by the provisions of the Condominium Documents and the provisions of this Agreement. The Unit may only be occupied and used in accordance with the Condominium Documents and for no other purpose.
- C.8 The Vendor covenants to proceed with all due diligence and dispatch to register the Creating Documents. If the Vendor for any reason whatsoever is unable to register the Creating Documents and therefore is unable to deliver a registrable Transfer/Deed to the Purchaser within twenty-four (24) months after the Occupancy Date, the Purchaser or Vendor shall have the right after such twenty-four (24) month period to give sixty (60) days written notice to the other, of an intention to terminate the Occupancy Licence and this Agreement. If the Vendor and Purchaser consent to termination, the Purchaser shall give up vacant possession and pay the Occupancy Fee to such date, after which this Agreement and Occupancy Licence shall be terminated and all moneys paid to the Vendor on account of the Purchase Price shall be returned to the Purchaser together with interest required by the Act, subject however, to any repair and redecorating expenses of the Vendor necessary to restore the Unit to its original state of occupancy, reasonable wear and tear excepted. The Purchaser and Vendor each agree to provide a release of this Agreement in the Vendor's standard form. If the Vendor and Purchaser do not consent to termination, the provisions of subsection 79(3) of the Act may be invoked by the Vendor.
- C.9 The Vendor and the Purchaser covenant and agree, notwithstanding the taking of possession, that all terms hereunder continue to be binding upon them and that the Vendor may enforce the provisions of the Occupancy Licence separate and apart from the purchase and sale provisions of this Agreement.

-2-

- C.10 The Purchaser acknowledges that the Vendor holds a fire insurance policy on the Condominium including all aspects of a standard unit only and not on any improvements or betterments made by or on behalf of the Purchaser. It is the responsibility of the Purchaser, after the Occupancy Date to insure the improvements or betterments to the Unit and to replace and/or repair same if they are removed, injured or destroyed. The Vendor is not liable for the Purchaser's loss occasioned by fire, theft or other casualty, unless caused by the Vendor's willful conduct.
- C.11 The Purchaser agrees to indemnify the Vendor for all losses, costs and expenses incurred as a result of the Purchaser's neglect, damage or use of the Unit or the Condominium, or by reason of injury to any person or property in or upon the Unit or the Condominium resulting from the negligence of the Purchaser, members of his immediate family, servants, agents, invitees, tenants, contractors and licensees. The Purchaser agrees that should the Vendor elect to repair or redecorate all or any part of the Unit or the Condominium as a result of the Purchaser's neglect, damage or use of the Unit or Condominium, he will immediately reimburse the Vendor for the cost of doing same, the determination of need for such repairs or redecoration shall be at the discretion of the Vendor, and such costs may be added to the Purchase Price.
- C.12 In accordance with subsections 80(6)(d) and (e) of the Act, subject to strict compliance by the Purchaser with the requirements of occupancy set forth in this Agreement, the Purchaser shall not have the right to assign, sublet or in any other manner dispose of the Occupancy Licence during Interim Occupancy without the prior written consent of the Vendor which consent may be arbitrarily withheld. The Purchaser acknowledges that an administrative fee will be payable to the Vendor each time the Purchaser wishes to assign, sublet or dispose of the Occupancy Licence during Interim Occupancy.
- C.13 The provisions set forth in this Agreement, unless otherwise expressly modified by the terms of the Occupancy Licence, shall be deemed to form an integral part of the Occupancy Licence. In the event the Vendor elects to terminate the Occupancy Licence pursuant to this Agreement following substantial damage to the Unit and/or the Condominium, the Occupancy Licence shall terminate forthwith upon notice from the Vendor to the Purchaser. If the Unit and/or the Condominium can be repaired within a reasonable time following damages as determined by the Vendor (but not, in any event, to exceed one hundred and eighty (180) days) and the Unit is, during such period of repairs uninhabitable, the Vendor shall proceed to carry out the necessary repairs to the Unit and/or the Condominium with all due dispatch and the Occupancy Fee shall abate during the period when the Unit remains uninhabitable; otherwise, the Purchaser shall vacate the Unit and deliver up vacant possession to the Vendor and all moneys, to the extent provided for in paragraph 20 hereof (excluding the Occupancy Fee paid to the Vendor) shall be returned to the Purchaser. It is understood and agreed that the proceeds of all insurance policies held by the Vendor are for the benefit of the Vendor alone.

SCHEDULE "D" TO AGREEMENT OF PURCHASE AND SALE

WARNING CLAUSES

- (a) The Purchaser is hereby advised that the Vendor's builder's risk and/or comprehensive liability insurance (effective prior to the registration of the Condominium), and the Condominium's master insurance policy (effective from and after the registration of the Condominium) will only cover the common elements and the standard unit and will not cover any betterments or improvements made to the standard unit, nor any furnishings or personal belongings of the Purchaser or other residents of the Unit, and accordingly the Purchaser should arrange for his or her own insurance coverage with respect to same, effective from and after the Occupancy Date, all at the Purchaser's sole cost and expense.
- (b) The Purchaser acknowledges and agrees that the Vendor (and any of its authorized agents, representatives and/or contractors), as well as one or more authorized representatives of the Condominium, shall be permitted to enter the Unit after the Occupancy Date, from time to time, in order to enable the Vendor to correct outstanding deficiencies or incomplete work for which the Vendor is responsible, and to enable the Condominium to inspect the condition or state of repair of the Unit and undertake or complete any requisite repairs thereto (which the owner of the Unit has failed to do) in accordance with the Act.
- (c) The Vendor shall have the right to substitute any level in the Condominium with an alternative floor plate containing a modified design of units and/or number of units on the level. In the event that such modification becomes necessary, there shall be a reallocation of each owner's proportionate percentage and the Budget shall be modified accordingly. The Purchaser acknowledges that none of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction.
- (d) The Purchaser acknowledges being advised of the following notices:
- (i) Despite the best efforts of the Toronto District School Board, sufficient accommodation may not be locally available for all students anticipated from the development area and that students may be accommodated in facilities outside the area, and further, the students may later be transferred.
- (ii) Purchasers agree for the purpose of transportation to school if bussing is provided by the Public District School Board in accordance with the Board's policy, that students will not be bussed from home to school, but will meet the bus at designated locations in or outside the area"
- (e) The Vendor reserves the right to increase or decrease the final number of residential, parking, and/or other ancillary units intended to be created within the Condominium, as well as the right to alter the design, style, size and/or configuration of the residential units ultimately comprised within the Condominium which have not yet been sold by the Vendor to any unit purchaser(s), all in the Vendor's sole discretion, and the Purchaser expressly acknowledges and agrees to the foregoing, provided that the final budget for the first year following registration of the Condominium is prepared in such a manner so that any such variance in the residential/parking and/or other ancillary unit count will not affect, in any material or substantial way, the percentages of common expenses and common interests allocated and attributable to the residential, parking and/or locker units sold by the Vendor to the Purchaser. Without limiting the generality of the foregoing, the Purchaser further acknowledges and agrees that one or more residential units or portions thereof situate adjacent to one another may be combined or amalgamated prior to the registration of the Condominium, in which case the common expenses and common interests attributable to such proposed former units will be incorporated into one figure or percentage in respect of the final combined unit, and the overall residential unit count of the Condominium will be varied and adjusted accordingly. None of the foregoing changes or revisions (if implemented) shall in any way be considered or construed as a material change to the disclosure statement prepared and delivered by the Vendor to the Purchaser in connection with this transaction.
- (f) Various commercial businesses are located within the vicinity of this residential development. Occasional off-site impacts, including odour, emissions and noise from these businesses may be expected.
- (g) Purchasers are advised that the Vendor's marketing material and site drawings and renderings ("Marketing Material") which they may have reviewed prior to the execution of this Agreement remains conceptual and that final building plans are subject to the final review and approval of any applicable governmental authority and the Vendor's design consultants and engineers, and accordingly such Marketing Material does not form part of this Agreement or the Vendor's obligations hereunder.
- (h) The Purchaser acknowledges and agrees that the Vendor reserves the right to add or relocate certain mechanical equipment within the Unit, including but not limited to, a heat pump system and ancillary equipment, to be located and placed along either the interior of an outside wall or an interior demising wall, in accordance with engineering and/or architectural requirements.
- (i) The Purchaser acknowledges that it is anticipated by the Vendor that in connection with the Vendor's application to the appropriate governmental authorities for draft plan of condominium approval certain requirements may be imposed upon the Vendor by various governmental authorities. These requirements (the "Requirements") usually relate to warning provisions to be given to Purchasers in connection with environmental or other concerns (such as warnings relating to noise levels, the proximity of the Condominium to major street, garbage storage and pickup, school transportation, and similar matters). Accordingly, the Purchaser covenants and agrees that (1) on either the Occupancy Date or the Title Transfer

Date, the Purchaser shall execute any and all documents required by the Vendor acknowledging, *inter alia*, that the Purchaser is aware of the Requirements, and (2) if the Vendor is required to incorporate the Requirements into the final Condominium Documents the Purchaser shall accept the same, without in any way affecting this transaction.

- (j) It is further acknowledged that one or more of the Development Agreements may require the Vendor to provide the Purchaser with certain notices, including without limitation, notices regarding such matters as land use, the maintenance of retaining walls, landscaping features and/or fencing, noise abatement features, garbage storage and pick-up, school transportation, and noise/vibration levels from adjacent roadways and/or nearby railway lines. The Purchaser agrees to be bound by the contents of any such notice(s), whether given to the Purchaser at the time that this Agreement has been entered into, or at any time thereafter up to the Title Transfer Date, and the Purchaser further covenants and agrees to execute, forthwith upon the Vendor's request, an express acknowledgment confirming the Purchaser's receipt of such notice(s) in accordance with (and in full compliance of) such provisions of the Development Agreement(s), if and when required to do so by the Vendor.
- (k) The Purchaser acknowledges and agrees that the Vendor (and any of its authorized agents, representatives and/or contractors), as well as one or more authorized representatives of the Condominium, shall be permitted to enter the Unit after the Occupancy Date, from time to time, in order to enable the Vendor to correct outstanding deficiencies or incomplete work for which the Vendor is responsible, and to enable the Condominium to inspect the condition or state of repair of the Unit and undertake or complete any requisite repairs thereto (which the owner of the Unit has failed to do) in accordance with the Act.

SCHEDULE "E" TO AGREEMENT OF PURCHASE AND SALE

THE UNDERSIGNED being the Purchaser of the Unit hereby acknowledges having received from the Vendor with respect to the purchase of the Unit the following document on the date noted below:

- 1. A Disclosure Statement dated December 11, 2015 and accompanying documents in accordance with Section 72 of the Act.
- 2. A copy of the Agreement of Purchase and Sale (to which this acknowledgment is attached as a Schedule) executed by the Vendor and the Purchaser.

The Purchaser hereby acknowledges that receipt of the Disclosure Statement and accompanying documents referred to in paragraph 1 above may have been in an electronic format and that such delivery satisfies the Vendor's obligation to deliver a Disclosure Statement under the Act.

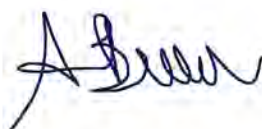
The Purchaser hereby acknowledges that the Condominium Documents required by the Act have not been registered by the Vendor, and agrees that the Vendor may, from time to time, make any modification to the Condominium Documents in accordance with its own requirements and the requirements of any mortgagee, governmental authority, examiner of Legal Surveys, the Land Registry Office or any other competent authority having jurisdiction to permit registration thereof.

The Purchaser further acknowledges and agrees that in the event there is a material change to the Disclosure Statement as defined in subsection 74(2) of the Act, the Purchaser's only remedy shall be as set forth in subsection 74(6) of the Act, notwithstanding any rule of law or equity to the contrary.

The Purchaser further acknowledges having been advised that the Purchaser shall be entitled to rescind or terminate the Agreement to which this Schedule is attached and obtain a refund of all deposit monies paid thereunder (together with all interest accrued thereon at the rate prescribed by the Act, if applicable), provided written notice of the Purchaser's desire to so rescind or terminate the Agreement is delivered to the Vendor or the Vendor's Solicitors within 10 days after the date set out below.

DATED at Toronto, this 16 day of August, 2019

WITNESS:



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)
)
)

Purchaser 

Purchaser

Residential Unit No: 01
Level: 9
Suite Number: 901

Schedule 'F' To The Agreement of Purchase and Sale

The Agreement of Purchase and Sale (the "Agreement") between David Berry (the "Purchaser") and Mizrahi (128 Hazelton) Inc. (the "Vendor") for the purchase of the above-noted unit together with three (3) parking units and one (1) locker unit being proposed units in the Condominium, to be registered against property currently municipally known as 126 & 128 Hazelton Avenue, is amended as follows:

1. The Purchase Price of SIX MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$6,250,000.00) is the net purchase price and is not to be adjusted at closing. Accordingly, sections 6(d) and (e) are deleted.
2. For greater certainty, Suite 901 includes the exclusive use of that portion of the common elements to which Suite 901 provides sole and direct access and is designated as (a) a Balcony/Juliet Balcony and/or Terrace, and (b) Roof Top Terrace.
3. The Purchaser further acknowledges and agrees that subject to any subsequent change in the Condominium Documents the Condominium Documents shall be supplemented by the following revised Schedules annexed hereto: (i) Schedule 'C' to the Declaration - Boundaries of Units; (ii) Schedule 'D' to the Declaration - Percentage Interests of Units in Common Expenses and Common Interests; (iii) Schedule 'F' to the Declaration - Exclusive Use Common Elements; and (iv) Schedule of Monthly Fees to the Budget.

SCHEDULE 'C'**UNIT BOUNDARIES**

Each Residential Unit, Parking Unit, Locker Unit, Service Unit and Sign Unit shall comprise the area within the heavy lines shown on Part 1, Sheets 1 to 5 inclusive of the Description with respect to the unit numbers indicated thereon. The monuments controlling the extent of the Units are the physical surfaces and planes referred to below, are illustrated on Part 1, Sheets 1 to 5 inclusive of the Description and all dimensions shall have reference to them.

Without limiting the generalities of the foregoing, the boundaries of each Unit are as follows:

1. **BOUNDARIES OF THE RESIDENTIAL UNITS** (Approx. 20 Units)
(Being Units 1 to 5 inclusive on Level 2; Units 1 to 4 inclusive on Levels 3 and 4; Units 1 and 2 on Levels 5 and 6, Unit 1 on Levels 7, 8 and 9)
 - a) Each Residential Unit shall be bounded vertically by:
 - i) The upper surface and plane of the concrete floor slab and/or the production thereof.
 - ii) The unfinished unit side surface and plane of the exterior windows (said windows being in a closed position), window frames and the unit side surface of all glass or acrylic panel located therein.
 - iii) The lower surface and plane of the concrete ceiling slab and/or the production thereof.
 - iv) The lower surface and plane of the metal damper located within the fireplaces, where applicable.
 - b) Each Residential Unit shall be bounded horizontally by:
 - i) The back side face of the drywall sheathing and production thereof on exterior walls or walls separating a unit from the common elements.
 - ii) The unfinished unit side surface and plane of the exterior doors and windows (said doors and windows being in a closed position), door and window frames and the unit side surface of any glass or acrylic panels located therein.
 - iii) In the vicinity of suspended ceilings, bulkheads, ducts, pipe spaces and concrete columns, the unit boundaries are the back side faces of the drywall sheathing and production thereof enclosing said suspended ceilings, bulkheads, ducts, pipe spaces and masonry structural columns and walls.
 - iv) The vertical plane established by measurements.
2. **BOUNDARIES OF THE PARKING UNITS**
(Being 40 Units on Levels A, B and C)
 - a) Each Parking Unit shall be bounded vertically by:
 - i) The upper surface and plane of the concrete floor slab and/or the production thereof.
 - ii) The plane established 2.10 metres perpendicularly distant above and parallel to the upper finished surface of the concrete floor.
 - b) Each Parking Unit shall be bounded horizontally by one or a combination of:
 - i) The vertical plane established by measurements.
 - ii) The surface and plane of the masonry wall or column and/or the production thereof.

SCHEDULE 'C'**UNIT BOUNDARIES**

- iii) The vertical plane established by the line and face of the columns and/or the production thereof.
 - iv) The vertical plane established by the centreline of columns and/or the production thereof.
 - v) The vertical plane established by measurements and perpendicular to the masonry wall.
 - vi) The vertical plane established perpendicular to the masonry wall and passing through the centreline of the column and/or the production thereof.
3. **BOUNDARIES OF THE LOCKER UNITS**
(Being 21 Units on Levels A, B and C)
- a) Each Locker Unit shall be bounded vertically by:
 - i) The upper surface and plane of the concrete floor slab and or the production thereof.
 - ii) The interior surface and plane of the steel wire mesh and frame.
 - b) Each Locker Unit shall be bounded horizontally by one or a combination of:
 - i) The surface and plane of the masonry wall or column and/or the production thereof.
 - ii) The interior surface and plane of the steel wire mesh and frame
 - iii) The back side face of the drywall sheathing and production thereof.
4. **BOUNDARIES OF THE SERVICE UNITS**
(Being _ Units on Levels _)
- a) Each Service Unit shall be bounded vertically by:
 - i) The upper surface and plane of the concrete floor slab and/or the production thereof.
 - ii) The lower surface and plane of the concrete ceiling slab and/or the production thereof.
 - b) Each Service Unit shall be bounded horizontally by one or a combination of:
 - i) The vertical plane established by measurements.
 - ii) The surface and plane of the masonry wall or column and/or the production thereof.
 - iii) The unfinished unit side surface and plane of all exterior doors, door and window frames, the said doors and windows being in a closed position and the unit side surface of the glass or acrylic panels contained therein.
 - iv) The vertical plane established by measurements and perpendicular to the masonry wall or column

SCHEDULE "C"

UNIT BOUNDARIES

5. BOUNDARIES OF THE SIGN UNITS
(Being _ Units on Level _)

- a) Each Sign Unit shall be bounded vertically by one or a combination of:
- i) The horizontal plane defined by the upper surface of the metal frame and/or production thereof.
 - ii) The horizontal plane established perpendicular to the adjacent exterior masonry wall and defined by measurements.
 - iii) The horizontal plane established perpendicular to the adjacent exterior glass window and defined by measurements.
 - iv) The horizontal plane defined by the bottom surface of the metal frame and production thereof.
 - v) The horizontal plane established by measurement.
- b) Each Sign Unit shall be bounded horizontally by one or a combination of:
- i) The vertical plane established perpendicular to the adjacent exterior masonry wall and defined by measurements.
 - ii) The vertical plane established parallel to the adjacent exterior masonry wall and defined by measurements.
 - iii) The vertical plane established abutting the exterior masonry wall and defined by measurements.
 - iv) The vertical plane established parallel to the adjacent exterior glass window and defined by measurements.
 - v) The unfinished surface and plane of the masonry wall or column and/or the production thereof.
 - vi) The vertical plane established by measurement.

I hereby certify that the written description of the monuments and boundaries of the Units contained herein accurately corresponds with the diagrams of the Units shown on Part 1, Sheets 1 to 5 inclusive of the Description.

Dated

J. EDUARDO LINHARES
Ontario Land Surveyor

NOTE: The Declarant, at its sole, absolute and unfettered discretion, reserves the right to: (a) increase, decrease, eliminate or vary the number and types of all units on all levels; (b) increase or decrease the number of levels within the building which forms part of the Condominium; (c) re-number all unit and level numbers; (d) revise unit boundaries to reflect "as-built" conditions at the time of condominium registration.

SCHEDULE D

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	PERCENTAGE CONTRIBUTION TO COMMON EXPENSES	PERCENTAGE INTEREST IN COMMON ELEMENTS	PERCENTAGE CONTRIBUTION TO BULK INTERNET AND SMART HOME MONITORING SERVICES
PARKING UNITS	A, B and C	40 units	6.04295	6.04295	0.00000
LOCKER UNITS	A, B and C	20 units	0.90538	0.90538	0.00000
SIGN UNITS		3 units	0.00003	0.00003	0.00000
SERVICE UNITS		5 units	0.00005	0.00005	0.00000
201	2	1	3.81379	3.81379	5.00000
202	2	2	1.70844	1.70844	5.00000
203	2	3	5.40719	5.40719	5.00000
204	2	4	0.21667	0.21667	0.00000
COMMERCIAL / RESIDENTIAL UNIT (205)	2	5	1.73337	1.73337	5.00000
206	2	6	0.21667	0.21667	0.00000
301	3	1	2.54445	2.54445	5.00000
302	3	2	4.38327	4.38327	5.00000
303	3	3	2.83973	2.83973	5.00000
304	3	4	3.00272	3.00272	5.00000
401	4	1	2.56937	2.56937	5.00000
402	4	2	3.75052	3.75052	5.00000
403	4	3	2.85124	2.85124	5.00000
404	4	4	2.99121	2.99121	5.00000
501	5	1	6.18184	6.18184	5.00000
502	5	2	6.03994	6.03994	5.00000
601	6	1	5.70247	5.70247	5.00000
602	6	2	5.53566	5.53566	5.00000
701	7	1	8.90652	8.90652	5.00000
801	8	1	7.30737	7.30737	5.00000
802	8	2	5.38226	5.38226	5.00000
901	9	1	9.96687	9.96687	5.00000
TOTALS			100.00000	100.00000	100.00000

SCHEDULE F

EXCLUSIVE USE PORTIONS OF THE COMMON ELEMENTS

Subject to the provisions of the Declaration, the By-laws and the Rules of the Corporation as well as the right of entry in favour of the Corporation for the purposes of facilitating any requisite maintenance and/or repair work or to give access to the utility and service areas appurtenant thereto:

- a) The owner(s) of certain Residential Units on Levels 2 to 9 inclusive shall have exclusive use of that portion of the common elements to which their Unit provides sole and direct access and is designated as a Balcony/Juliet Balcony and/or Terrace.
- b) The owner(s) of the Residential Unit 1 on Level 9 shall have exclusive use of that portion of the common elements to which their Unit provides sole and direct access and is designated as Roof Top Terrace.

Notwithstanding the foregoing, any fixture, outlet, sign, apparatus or structure located within the limits of the Exclusive Use Portions of the Common Elements shall not form part thereof.

NOTE: The Declarant reserves the right, at its sole, absolute and unfettered discretion, to create and assign exclusive use portions of the common elements at the time of condominium registration.



MONTHLY COMMON ELEMENT FEES

MUNICIPAL NO.	LEVEL NO.	UNIT NO.	MONTHLY COMMON BULK INTERNET PER UNIT	MONTHLY COMMON SMART HOME MONITORING SERVICES PER UNIT	MONTHLY COMMON ELEMENT FEES BY UNIT	TOTAL MONTHLY COMMON ELEMENT FEES BY UNIT
PARKING UNITS	A, B and C	40 units	\$0.00 each	\$0.00 each	\$99.95 each	\$99.95 each
LOCKER UNITS	A, B and C	20 units	\$0.00 each	\$0.00 each	\$29.95 each	\$29.95 each
SIGN UNITS		3 units	\$0.00 each	\$0.00 each	\$0.00 each	\$0.00 each
SERVICE UNITS		5 unit	\$0.00 each	\$0.00 each	\$0.00 each	\$0.00 each
201	2	1	\$31.08	\$12.42	\$2,523.19	\$2,566.68
202	2	2	\$31.08	\$12.42	\$1,130.30	\$1,173.79
203	2	3	\$31.08	\$12.42	\$3,577.38	\$3,620.87
204	2	4	\$0.00	\$0.00	\$143.35	\$143.35
COMMERCIAL / RESIDENTIAL UNIT (205)	2	5	\$31.08	\$12.42	\$1,146.79	\$1,190.28
206	2	6	\$0.00	\$0.00	\$143.35	\$143.35
301	3	1	\$31.08	\$12.42	\$1,683.40	\$1,726.89
302	3	2	\$31.08	\$12.42	\$2,899.96	\$2,943.45
303	3	3	\$31.08	\$12.42	\$1,878.76	\$1,922.25
304	3	4	\$31.08	\$12.42	\$1,986.59	\$2,030.08
401	4	1	\$31.08	\$12.42	\$1,699.89	\$1,743.38
402	4	2	\$31.08	\$12.42	\$2,481.33	\$2,524.82
403	4	3	\$31.08	\$12.42	\$1,886.37	\$1,929.86
404	4	4	\$31.08	\$12.42	\$1,978.98	\$2,022.47
501	5	1	\$31.08	\$12.42	\$4,089.88	\$4,133.37
502	5	2	\$31.08	\$12.42	\$3,996.01	\$4,039.50
601	6	1	\$31.08	\$12.42	\$3,772.74	\$3,816.23
602	6	2	\$31.08	\$12.42	\$3,662.37	\$3,705.86
701	7	1	\$31.08	\$12.42	\$5,892.53	\$5,936.02
801	8	1	\$31.08	\$12.42	\$4,834.54	\$4,878.03
802	8	2	\$31.08	\$12.42	\$3,560.89	\$3,604.38
901	9	1	\$31.08	\$12.42	\$6,594.05	\$6,637.54
TOTALS			\$621.50	\$248.35	\$66,159.70	\$67,029.56

Property 128 Hazelton
901

Statement of Critical Dates
Delayed Occupancy Warranty

This Statement of Critical Dates forms part of the Addendum to which it is attached, which in turn forms part of the agreement of purchase and sale between the Vendor and the Purchaser relating to the Property. **The Vendor must complete all blanks set out below. Both the Vendor and Purchaser must sign this page.**

NOTE TO HOME BUYERS: Please visit Tarion's website: www.tarion.com for important information about all of Tarion's warranties including the Delayed Occupancy Warranty, the Pre-Delivery Inspection and other matters of interest to new home buyers. You can also obtain a copy of the Homeowner Information Package which is strongly recommended as essential reading for all home buyers. The website features a calculator which will assist you in confirming the various Critical Dates related to the occupancy of your home.

VENDOR Mizrahi (128 Hazelton) Inc.
Full Name(s)

PURCHASER David Berry
Full Name(s)

1. Critical Dates

The **First Tentative Occupancy Date**, which is the date that the Vendor anticipates the home will be completed and ready to move in, is: the 29th day of May, 2020.

The Vendor can delay Occupancy on one or more occasions by setting a subsequent **Tentative Occupancy Date**, in accordance with section 1 of the Addendum by giving proper written notice as set out in section 1.

By no later than 30 days after the Roof Assembly Date (as defined in section 12), with at least 90 days prior written notice, the Vendor shall set either (i) a **Final Tentative Occupancy Date**; or (ii) a **Firm Occupancy Date**.

For purchase agreements signed after the Roof Assembly Date, the First Tentative Occupancy Date is inapplicable and the Vendor shall instead elect and set either a Final Tentative Occupancy Date or Firm Occupancy Date.

the ___ day of _____, 20__
Final Tentative Occupancy Date

or

the ___ day of _____, 20__
Firm Occupancy Date

If the Vendor sets a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date, then the Vendor shall set a **Firm Occupancy Date** that is no later than 120 days after the Final Tentative Occupancy Date, with proper written notice as set out in section 1 below.

If the Vendor cannot provide Occupancy by the Firm Occupancy Date, then the Purchaser is entitled to delayed occupancy compensation (see section 7 of the Addendum) and the Vendor must set a Delayed Occupancy Date which cannot be later than the Outside Occupancy Date.

The **Outside Occupancy Date**, which is the latest date by which the Vendor agrees to provide Occupancy, is: the 31st day of May, 2021.

2. Notice Period for an Occupancy Delay

Changing an Occupancy date requires proper written notice. The Vendor, without the Purchaser's consent, may delay Occupancy one or more times in accordance with section 1 of the Addendum and no later than the Outside Occupancy Date. Notice of a delay beyond the First Tentative Occupancy Date must be given no later than: the 28th day of February, 2020.

(i.e., at least **90 days** before the First Tentative Occupancy Date), or else the First Tentative Occupancy Date automatically becomes the Firm Occupancy Date.

3. Purchaser's Termination Period

If the home is not complete by the Outside Occupancy Date, then the Purchaser can terminate the transaction during a period of **30 days** thereafter (the "**Purchaser's Termination Period**"), which period, unless extended by mutual agreement, will end on: the 30th day of June, 2021.

If the Purchaser terminates the transaction during the Purchaser's Termination Period, then the Purchaser is entitled to delayed occupancy compensation and to a full refund of all monies paid plus interest (see sections 7, 10 and 11 of the Addendum).

Note: Any time a Critical Date is set or changed as permitted in the Addendum, other Critical Dates may change as well. At any given time the parties must refer to: the most recent revised Statement of Critical Dates; or agreement or written notice that sets a Critical Date, and calculate revised Critical Dates using the formulas contained in the Addendum. Critical Dates can also change if there are unavoidable delays (see section 5 of the Addendum).

Acknowledged 16 this August 19 20__

VENDOR: [Signature]

PURCHASER: [Signature]

**Addendum to Agreement of Purchase and Sale
Delayed Occupancy Warranty**

This addendum, including the accompanying Statement of Critical Dates (the "Addendum"), forms part of the agreement of purchase and sale (the "Purchase Agreement") between the Vendor and the Purchaser relating to the Property. This Addendum is to be used for a transaction where the home is a condominium unit (that is not a vacant land condominium unit). This Addendum contains important provisions that are part of the delayed occupancy warranty provided by the Vendor in accordance with the *Ontario New Home Warranties Plan Act* (the "ONHWP Act"). If there are any differences between the provisions in the Addendum and the Purchase Agreement, then the Addendum provisions shall prevail. **PRIOR TO SIGNING THE PURCHASE AGREEMENT OR ANY AMENDMENT TO IT, THE PURCHASER SHOULD SEEK ADVICE FROM A LAWYER WITH RESPECT TO THE PURCHASE AGREEMENT OR AMENDING AGREEMENT, THE ADDENDUM AND THE DELAYED OCCUPANCY WARRANTY.**

Tarion recommends that Purchasers register on Tarion's **MyHome** on-line portal and visit Tarion's website - **tarion.com**, to better understand their rights and obligations under the statutory warranties.

The Vendor shall complete all blanks set out below.

VENDOR

Mizrahi (128 Hazelton) Inc.
Full Name(s)
44647
Tarion Registration Number
416-922-4200
Phone
1-866-300-0219
Fax
125 Hazelton Avenue
Address
TORONTO ON M5R 2E4
City Province Postal Code
reception@mizrahidevelopments.ca
Email*

PURCHASER

David Berry
Full Name(s)
514 Silvertip Road Canmore Alberta T1W 3H3
Address
416-500-9080
Phone
Davidmberry@rogers.com
Email*
Fax

PROPERTY DESCRIPTION

126 and 128 Hazelton Avenue
Municipal Address
Toronto
City
Ontario
Province
Part of Lots 1 and 2, Registered Plan 687-E and Part of Block A
Short Legal Description
Registered Plan 411, York, City of Toronto
Postal Code

INFORMATION REGARDING THE PROPERTY

The Vendor confirms that:

- (a) The Vendor has obtained Formal Zoning Approval for the Building. Yes No
If no, the Vendor shall give written notice to the Purchaser within 10 days after the date that Formal Zoning Approval for the Building is obtained.
- (b) Commencement of Construction: has occurred; or is expected to occur by the _____ day of _____, 20____.

The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.

*Note: Since important notices will be sent to this address, it is essential that you ensure that a reliable email address is provided and that your computer settings permit receipt of notices from the other party.

SETTING AND CHANGING CRITICAL DATES

1. Setting Tentative Occupancy Dates and the Firm Occupancy Date

- (a) **Completing Construction Without Delay:** The Vendor shall take all reasonable steps to complete construction of the Building subject to all prescribed requirements, to provide Occupancy of the home without delay, and, to register without delay the declaration and description in respect of the Building.
- (b) **First Tentative Occupancy Date:** The Vendor shall identify the First Tentative Occupancy Date in the Statement of Critical Dates attached to this Addendum at the time the Purchase Agreement is signed.
- (c) **Subsequent Tentative Occupancy Dates:** The Vendor may, in accordance with this section, extend the First Tentative Occupancy Date on one or more occasions, by setting a subsequent Tentative Occupancy Date. The Vendor shall give written notice of any subsequent Tentative Occupancy Date to the Purchaser at least 90 days before the existing Tentative Occupancy Date (which in this Addendum may include the First Tentative Occupancy Date), or else the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. A subsequent Tentative Occupancy Date can be any Business Day on or before the Outside Occupancy Date.
- (d) **Final Tentative Occupancy Date:** By no later than 30 days after the Roof Assembly Date, the Vendor shall by written notice to the Purchaser set either (i) a Final Tentative Occupancy Date; or (ii) a Firm Occupancy Date. If the Vendor does not do so, the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Vendor shall give written notice of the Final Tentative Occupancy Date or Firm Occupancy Date, as the case may be, to the Purchaser at least 90 days before the existing Tentative Occupancy Date, or else the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Final Tentative Occupancy Date or Firm Occupancy Date, as the case may be, can be any Business Day on or before the Outside Occupancy Date. For new Purchase Agreements signed after the Roof Assembly Date, the Vendor shall insert in the Statement of Critical Dates of the Purchase Agreement either: a Final Tentative Occupancy Date; or a Firm Occupancy Date
- (e) **Firm Occupancy Date:** If the Vendor has set a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date then the Vendor shall set a Firm Occupancy Date that is no later than 120 days after the Final Tentative Occupancy Date. The Vendor shall give written notice of the Firm Occupancy Date to the Purchaser at least 90 days before the Final Tentative Occupancy Date, or else the Final Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Firm Occupancy Date can be any Business Day on or before the Outside Occupancy Date.
- (f) **Notice:** Any notice given by the Vendor under paragraph (c), (d) or (e) must set out the stipulated Critical Date, as applicable.

2. Changing the Firm Occupancy Date – Three Ways

- (a) The Firm Occupancy Date, once set or deemed to be set in accordance with section 1, can be changed only:
 - (i) by the Vendor setting a Delayed Occupancy Date in accordance with section 3;
 - (ii) by the mutual written agreement of the Vendor and Purchaser in accordance with section 4; or
 - (iii) as the result of an Unavoidable Delay of which proper written notice is given in accordance with section 5.
- (b) If a new Firm Occupancy Date is set in accordance with section 4 or 5, then the new date is the "Firm Occupancy Date" for all purposes in this Addendum.

3. Changing the Firm Occupancy Date – By Setting a Delayed Occupancy Date

- (a) If the Vendor cannot provide Occupancy on the Firm Occupancy Date and sections 4 and 5 do not apply, the Vendor shall select and give written notice to the Purchaser of a Delayed Occupancy Date in accordance with this section, and delayed occupancy compensation is payable in accordance with section 7.
- (b) The Delayed Occupancy Date may be any Business Day after the date the Purchaser receives written notice of the Delayed Occupancy Date but not later than the Outside Occupancy Date.
- (c) The Vendor shall give written notice to the Purchaser of the Delayed Occupancy Date as soon as the Vendor knows that it will be unable to provide Occupancy on the Firm Occupancy Date, and in any event at least 10 days before the Firm Occupancy Date, failing which delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date, in accordance with paragraph 7(c). If notice of a new Delayed Occupancy Date is not given by the Vendor before the Firm Occupancy Date, then the new Delayed Occupancy Date shall be deemed to be the date which is 90 days after the Firm Occupancy Date.
- (d) After the Delayed Occupancy Date is set, if the Vendor cannot provide Occupancy on the Delayed Occupancy Date, the Vendor shall select and give written notice to the Purchaser of a new Delayed Occupancy Date, unless the delay arises due to Unavoidable Delay under section 5 or is mutually agreed upon under section 4, in which case the requirements of those sections must be met. Paragraphs (b) and (c) above apply with respect to the setting of the new Delayed Occupancy Date.
- (e) Nothing in this section affects the right of the Purchaser or Vendor to terminate the Purchase Agreement on the bases set out in section 10.

4. Changing Critical Dates – By Mutual Agreement

- (a) This Addendum sets out a framework for setting, extending and/or accelerating Critical Dates, which cannot be altered contractually except as set out in this section 4. Any amendment not in accordance with this section is voidable at the option of the Purchaser. For greater certainty, this Addendum does not restrict any extensions of the Closing date (i.e., title transfer date) where Occupancy of the home has already been given to the Purchaser.

- (b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend any of the Critical Dates. Any amendment which accelerates or extends any of the Critical Dates must include the following provisions:
- (i) the Purchaser and Vendor agree that the amendment is entirely voluntary – the Purchaser has no obligation to sign the amendment and each understands that this purchase transaction will still be valid if the Purchaser does not sign this amendment;
 - (ii) the amendment includes a revised Statement of Critical Dates which replaces the previous Statement of Critical Dates;
 - (iii) the Purchaser acknowledges that the amendment may affect delayed occupancy compensation payable; and
 - (iv) if the change involves extending either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement shall:
 - i. disclose to the Purchaser that the signing of the amendment may result in the loss of delayed occupancy compensation as described in section 7;
 - ii. unless there is an express waiver of compensation, describe in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation; and
 - iii. contain a statement by the Purchaser that the Purchaser waives compensation or accepts the compensation referred to in clause ii above, in either case, in full satisfaction of any delayed occupancy compensation payable by the Vendor for the period up to the new Firm Occupancy Date or Delayed Occupancy Date.

If the Purchaser for his or her own purposes requests a change of the Firm Occupancy Date or the Delayed Occupancy Date, then subparagraphs (b)(i), (iii) and (iv) above shall not apply.

- (c) A Vendor is permitted to include a provision in the Purchase Agreement allowing the Vendor a one-time unilateral right to extend a Firm Occupancy Date or Delayed Occupancy Date, as the case may be, for one (1) Business Day to avoid the necessity of tender where a Purchaser is not ready to complete the transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be. Delayed occupancy compensation will not be payable for such period and the Vendor may not impose any penalty or interest charge upon the Purchaser with respect to such extension.
- (d) The Vendor and Purchaser may agree in the Purchase Agreement to any unilateral extension or acceleration rights that are for the benefit of the Purchaser.

5. Extending Dates – Due to Unavoidable Delay

- (a) If Unavoidable Delay occurs, the Vendor may extend Critical Dates by no more than the length of the Unavoidable Delay Period, without the approval of the Purchaser and without the requirement to pay delayed occupancy compensation in connection with the Unavoidable Delay, provided the requirements of this section are met.
- (b) If the Vendor wishes to extend Critical Dates on account of Unavoidable Delay, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, and an estimate of the duration of the delay. Once the Vendor knows or ought reasonably to know that an Unavoidable Delay has commenced, the Vendor shall provide written notice to the Purchaser by the earlier of: 20 days thereafter; and the next Critical Date.
- (c) As soon as reasonably possible, and no later than 20 days after the Vendor knows or ought reasonably to know that an Unavoidable Delay has concluded, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, identifying the date of its conclusion, and setting new Critical Dates. The new Critical Dates are calculated by adding to the then next Critical Date the number of days of the Unavoidable Delay Period (the other Critical Dates changing accordingly), provided that the Firm Occupancy Date or Delayed Occupancy Date, as the case may be, must be at least 10 days after the day of giving notice unless the parties agree otherwise. Either the Vendor or the Purchaser may request in writing an earlier Firm Occupancy Date or Delayed Occupancy Date, and the other party's consent to the earlier date shall not be unreasonably withheld.
- (d) If the Vendor fails to give written notice of the conclusion of the Unavoidable Delay in the manner required by paragraph (c) above, then the notice is ineffective, the existing Critical Dates are unchanged, and any delayed occupancy compensation payable under section 7 is payable from the existing Firm Occupancy Date.
- (e) Any notice setting new Critical Dates given by the Vendor under this section shall include an updated revised Statement of Critical Dates.

EARLY TERMINATION CONDITIONS

6. Early Termination Conditions

- (a) The Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section.
- (b) The Vendor is not permitted to include any conditions in the Purchase Agreement other than: the types of Early Termination Conditions listed in Schedule A; and/or the conditions referred to in paragraphs (i), (j) and (k) below. Any other condition included in a Purchase Agreement for the benefit of the Vendor that is not expressly permitted under Schedule A or paragraphs (i), (j) and (k) below is deemed null and void and is not enforceable by the Vendor, but does not affect the validity of the balance of the Purchase Agreement.

- (c) The Vendor confirms that this Purchase Agreement is subject to Early Termination Conditions that, if not satisfied (or waived, if applicable), may result in the termination of the Purchase Agreement. Yes No
- (d) If the answer in (c) above is "Yes", then the Early Termination Conditions are as follows. The obligation of each of the Purchaser and Vendor to complete this purchase and sale transaction is subject to satisfaction (or waiver, if applicable) of the following conditions and any such conditions set out in an appendix headed "Early Termination Conditions":

Condition #1 (if applicable)

Description of the Early Termination Condition:

The Approving Authority (as that term is defined in Schedule A) is: _____

The date by which Condition #1 is to be satisfied is the _____ day of _____, 20 _____.

Condition #2 (if applicable)

Description of the Early Termination Condition:

The Approving Authority (as that term is defined in Schedule A) is: _____

The date by which Condition #2 is to be satisfied is the _____ day of _____, 20 _____.

The date for satisfaction of any Early Termination Condition may be changed by mutual agreement provided in all cases it is set at least 90 days before the First Tentative Occupancy Date, and will be deemed to be 90 days before the First Tentative Occupancy Date if no date is specified or if the date specified is later than 90 days before the First Tentative Occupancy Date. This time limitation does not apply to the condition in subparagraph 1(b)(iv) of Schedule A which must be satisfied or waived by the Vendor within 60 days following the later of: (A) the signing of the Purchase Agreement; and (B) the satisfaction or waiver by the Purchaser of a Purchaser financing condition permitted under paragraph (k) below.

Note: The parties must add additional pages as an appendix to this Addendum if there are additional Early Termination Conditions.

- (e) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph (d) above and any appendix listing additional Early Termination Conditions.
- (f) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions identified in subparagraph (d) above.
- (g) For conditions under paragraph 1(a) of Schedule A the following applies:
- (i) conditions in paragraph 1(a) of Schedule A may not be waived by either party;
 - (ii) the Vendor shall provide written notice not later than five (5) Business Days after the date specified for satisfaction of a condition that: (A) the condition has been satisfied; or (B) the condition has not been satisfied (together with reasonable details and backup materials) and that as a result the Purchase Agreement is terminated; and
 - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed not satisfied and the Purchase Agreement is terminated.
- (h) For conditions under paragraph 1(b) of Schedule A the following applies:
- (i) conditions in paragraph 1(b) of Schedule A may be waived by the Vendor;
 - (ii) the Vendor shall provide written notice on or before the date specified for satisfaction of the condition that: (A) the condition has been satisfied or waived; or (B) the condition has not been satisfied nor waived, and that as a result the Purchase Agreement is terminated; and
 - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties.
- (i) The Purchase Agreement may be conditional until Closing (transfer to the Purchaser of title to the home), upon compliance with the subdivision control provisions (section 50) of the *Planning Act* and, if applicable, registration of the declaration and description for the Building under the *Condominium Act, 1998*, which compliance shall be obtained by the Vendor at its sole expense, on or before Closing.
- (j) The Purchaser is cautioned that there may be other conditions in the Purchase Agreement that allow the Vendor to terminate the Purchase Agreement due to the fault of the Purchaser.
- (k) The Purchase Agreement may include any condition that is for the sole benefit of the Purchaser and that is agreed to by the Vendor (e.g., the sale of an existing dwelling, Purchaser financing or a basement walkout). The Purchase Agreement may specify that the Purchaser has a right to terminate the Purchase Agreement if any such condition is not met, and may set out the terms on which termination by the Purchaser may be effected.

MAKING A COMPENSATION CLAIM

7. Delayed Occupancy Compensation

- (a) The Vendor warrants to the Purchaser that, if Occupancy is delayed beyond the Firm Occupancy Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 4 and 5), then the Vendor shall compensate the Purchaser up to a total amount of \$7,500, which amount includes: (i) payment to the Purchaser of a set amount of \$150 a day for living expenses for each day of delay until the Occupancy Date or the date of termination of the Purchase Agreement, as applicable under paragraph (b) below; and (ii) any other expenses (supported by receipts) incurred by the Purchaser due to the delay.
- (b) Delayed occupancy compensation is payable only if: (i) Occupancy and Closing occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraph 10(b) of this Addendum. Delayed occupancy compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Occupancy, or after termination of the Purchase Agreement, as the case may be, and otherwise in accordance with this Addendum. Compensation claims are subject to any further conditions set out in the ONHWP Act.
- (c) If the Vendor gives written notice of a Delayed Occupancy Date to the Purchaser less than 10 days before the Firm Occupancy Date, contrary to the requirements of paragraph 3(c), then delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date.
- (d) Living expenses are direct living costs such as for accommodation and meals. Receipts are not required in support of a claim for living expenses, as a set daily amount of \$150 per day is payable. The Purchaser must provide receipts in support of any claim for other delayed occupancy compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed occupancy compensation in connection with a claim.
- (e) If delayed occupancy compensation is payable, the Purchaser may make a claim to the Vendor for that compensation after Occupancy or after termination of the Purchase Agreement, as the case may be, and shall include all receipts (apart from living expenses) which evidence any part of the Purchaser's claim. The Vendor shall assess the Purchaser's claim by determining the amount of delayed occupancy compensation payable based on the rules set out in section 7 and the receipts provided by the Purchaser, and the Vendor shall promptly provide that assessment information to the Purchaser. The Purchaser and the Vendor shall use reasonable efforts to settle the claim and when the claim is settled, the Vendor shall prepare an acknowledgement signed by both parties which:
- (i) includes the Vendor's assessment of the delayed occupancy compensation payable;
 - (ii) describes in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation (the "Compensation"), if any; and
 - (iii) contains a statement by the Purchaser that the Purchaser accepts the Compensation in full satisfaction of any delayed occupancy compensation payable by the Vendor.
- (f) If the Vendor and Purchaser cannot agree as contemplated in paragraph 7(e), then to make a claim to Tarion the Purchaser must file a claim with Tarion in writing within one (1) year after Occupancy. A claim may also be made and the same rules apply if the sale transaction is terminated under paragraph 10(b), in which case, the deadline for a claim is one (1) year after termination.
- (g) If delayed occupancy compensation is payable, the Vendor shall either pay the compensation as soon as the proper amount is determined; or pay such amount with interest (at the prescribed rate as specified in subsection 19(1) of O.Reg. 48/01 of the *Condominium Act, 1998*), from the Occupancy Date to the date of Closing, such amount to be an adjustment to the balance due on the day of Closing.

8. Adjustments to Purchase Price

Only the items set out in Schedule B (or an amendment to Schedule B), shall be the subject of adjustment or change to the purchase price or the balance due on Closing. The Vendor agrees that it shall not charge as an adjustment or readjustment to the purchase price of the home, any reimbursement for a sum paid or payable by the Vendor to a third party unless the sum is ultimately paid to the third party either before or after Closing. If the Vendor charges an amount in contravention of the preceding sentence, the Vendor shall forthwith readjust with the Purchaser. This section shall not: restrict or prohibit payments for items disclosed in Part I of Schedule B which have a fixed fee; nor shall it restrict or prohibit the parties from agreeing on how to allocate as between them, any rebates, refunds or incentives provided by the federal government, a provincial or municipal government or an agency of any such government, before or after Closing.

MISCELLANEOUS

9. Ontario Building Code – Conditions of Occupancy

- (a) On or before the Occupancy Date, the Vendor shall deliver to the Purchaser:
- (i) an Occupancy Permit (as defined in paragraph (d)) for the home; or
 - (ii) if an Occupancy Permit is not required under the Building Code, a signed written confirmation by the Vendor that all conditions of occupancy under the Building Code have been fulfilled and Occupancy is permitted under the Building Code.

- (b) Notwithstanding the requirements of paragraph (a), to the extent that the Purchaser and the Vendor agree that the Purchaser shall be responsible for one or more prerequisites to obtaining permission for Occupancy under the Building Code, (the "Purchaser Occupancy Obligations"):
- (i) the Purchaser shall not be entitled to delayed occupancy compensation if the reason for the delay is that the Purchaser Occupancy Obligations have not been completed;
 - (ii) the Vendor shall deliver to the Purchaser, upon fulfilling all prerequisites to obtaining permission for Occupancy under the Building Code (other than the Purchaser Occupancy Obligations), a signed written confirmation that the Vendor has fulfilled such prerequisites; and
 - (iii) if the Purchaser and Vendor have agreed that such prerequisites (other than the Purchaser Occupancy Obligations) are to be fulfilled prior to Occupancy, then the Vendor shall provide the signed written confirmation required by subparagraph (ii) on or before the Occupancy Date.
- (c) If the Vendor cannot satisfy the requirements of paragraph (a) or subparagraph (b)(ii), the Vendor shall set a Delayed Occupancy Date (or new Delayed Occupancy Date) on a date that the Vendor reasonably expects to have satisfied the requirements of paragraph (a) or subparagraph (b)(ii), as the case may be. In setting the Delayed Occupancy Date (or new Delayed Occupancy Date), the Vendor shall comply with the requirements of section 3, and delayed occupancy compensation shall be payable in accordance with section 7. Despite the foregoing, delayed occupancy compensation shall not be payable for a delay under this paragraph (c) if the inability to satisfy the requirements of subparagraph (b)(ii) is because the Purchaser has failed to satisfy the Purchaser Occupancy Obligations.
- (d) For the purposes of this section, an "Occupancy Permit" means any written or electronic document, however styled, whether final, provisional or temporary, provided by the chief building official (as defined in the *Building Code Act*) or a person designated by the chief building official, that evidences that permission to occupy the home under the Building Code has been granted.

10. Termination of the Purchase Agreement

- (a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written agreement. Such written mutual agreement may specify how monies paid by the Purchaser, including deposit(s) and monies for upgrades and extras are to be allocated if not repaid in full.
- (b) If for any reason (other than breach of contract by the Purchaser) Occupancy has not been given to the Purchaser by the Outside Occupancy Date, then the Purchaser has 30 days to terminate the Purchase Agreement by written notice to the Vendor. If the Purchaser does not provide written notice of termination within such 30-day period, then the Purchase Agreement shall continue to be binding on both parties and the Delayed Occupancy Date shall be the date set under paragraph 3(c), regardless of whether such date is beyond the Outside Occupancy Date.
- (c) If: calendar dates for the applicable Critical Dates are not inserted in the Statement of Critical Dates; or if any date for Occupancy is expressed in the Purchase Agreement or in any other document to be subject to change depending upon the happening of an event (other than as permitted in this Addendum), then the Purchaser may terminate the Purchase Agreement by written notice to the Vendor.
- (d) The Purchase Agreement may be terminated in accordance with the provisions of section 6.
- (e) Nothing in this Addendum derogates from any right of termination that either the Purchaser or the Vendor may have at law or in equity on the basis of, for example, frustration of contract or fundamental breach of contract.
- (f) Except as permitted in this section, the Purchase Agreement may not be terminated by reason of the Vendor's delay in providing Occupancy alone.

11. Refund of Monies Paid on Termination

- (a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), then unless there is agreement to the contrary under paragraph 10(a), the Vendor shall refund all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, within 10 days of such termination, with interest from the date each amount was paid to the Vendor to the date of refund to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor as a prerequisite to obtaining the refund of monies payable as a result of termination of the Purchase Agreement under this paragraph, although the Purchaser may be required to sign a written acknowledgement confirming the amount of monies refunded and termination of the purchase transaction. Nothing in this Addendum prevents the Vendor and Purchaser from entering into such other termination agreement and/or release as may be agreed to by the parties.
- (b) The rate of interest payable on the Purchaser's monies shall be calculated in accordance with the *Condominium Act, 1998*.
- (c) Notwithstanding paragraphs (a) and (b) above, if either party initiates legal proceedings to contest termination of the Purchase Agreement or the refund of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

12. Definitions

"Building" means the condominium building or buildings contemplated by the Purchase Agreement, in which the Property is located or is proposed to be located.

"Business Day" means any day other than: Saturday; Sunday; New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day; and any special holiday proclaimed by the Governor General or the Lieutenant Governor; and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is

not a Business Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are not Business Days; and where Christmas Day falls on a Friday, the following Monday is not a Business Day.

“**Closing**” means completion of the sale of the home, including transfer of title to the home to the Purchaser.

“**Commencement of Construction**” means the commencement of construction of foundation components or elements (such as footings, rafts or piles) for the Building.

“**Critical Dates**” means the First Tentative Occupancy Date, any subsequent Tentative Occupancy Date, the Final Tentative Occupancy Date, the Firm Occupancy Date, the Delayed Occupancy Date, the Outside Occupancy Date and the last day of the Purchaser’s Termination Period.

“**Delayed Occupancy Date**” means the date, set in accordance with section 3, on which the Vendor agrees to provide Occupancy, in the event the Vendor cannot provide Occupancy on the Firm Occupancy Date.

“**Early Termination Conditions**” means the types of conditions listed in Schedule A.

“**Final Tentative Occupancy Date**” means the last Tentative Occupancy Date that may be set in accordance with paragraph 1(d).

“**Firm Occupancy Date**” means the firm date on which the Vendor agrees to provide Occupancy as set in accordance with this Addendum.

“**First Tentative Occupancy Date**” means the date on which the Vendor, at the time of signing the Purchase Agreement, anticipates that the home will be complete and ready for Occupancy, as set out in the Statement of Critical Dates.

“**Formal Zoning Approval**” occurs when the zoning by-law required for the Building has been approved by all relevant governmental authorities having jurisdiction, and the period for appealing the approvals has elapsed and/or any appeals have been dismissed or the approval affirmed.

“**Occupancy**” means the right to use or occupy the home in accordance with the Purchase Agreement.

“**Occupancy Date**” means the date the Purchaser is given Occupancy.

“**Outside Occupancy Date**” means the latest date that the Vendor agrees to provide Occupancy to the Purchaser, as confirmed in the Statement of Critical Dates.

“**Property**” or “**home**” means the home being acquired by the Purchaser from the Vendor, and its interest in the related common elements.

“**Purchaser’s Termination Period**” means the 30-day period during which the Purchaser may terminate the Purchase Agreement for delay, in accordance with paragraph 10(b).

“**Roof Assembly Date**” means the date upon which the roof slab, or roof trusses and sheathing, as the case may be, are completed. For single units in a multi-unit block, whether or not vertically stacked, (e.g., townhouses or row houses), the roof refers to the roof of the block of homes unless the unit in question has a roof which is in all respects functionally independent from and not physically connected to any portion of the roof of any other unit(s), in which case the roof refers to the roof of the applicable unit. For multi-story, vertically stacked units, (e.g. typical high rise) roof refers to the roof of the Building.

“**Statement of Critical Dates**” means the Statement of Critical Dates attached to and forming part of this Addendum (in form to be determined by Tarion from time to time), and, if applicable, as amended in accordance with this Addendum.

“**The ONHWP Act**” means the *Ontario New Home Warranties Plan Act* including regulations, as amended from time to time.

“**Unavoidable Delay**” means an event which delays Occupancy which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor and are not caused or contributed to by the fault of the Vendor.

“**Unavoidable Delay Period**” means the number of days between the Purchaser’s receipt of written notice of the commencement of the Unavoidable Delay, as required by paragraph 5(b), and the date on which the Unavoidable Delay concludes.

13. Addendum Prevails

The Addendum forms part of the Purchase Agreement. The Vendor and Purchaser agree that they shall not include any provision in the Purchase Agreement or any amendment to the Purchase Agreement or any other document (or indirectly do so through replacement of the Purchase Agreement) that derogates from, conflicts with or is inconsistent with the provisions of this Addendum, except where this Addendum expressly permits the parties to agree or consent to an alternative arrangement. The provisions of this Addendum prevail over any such provision.

14. Time Periods, and How Notice Must Be Sent

- (a) Any written notice required under this Addendum may be given personally or sent by email, fax, courier or registered mail to the Purchaser or the Vendor at the address/contact numbers identified on page 2 or replacement address/contact numbers as provided in paragraph (c) below. Notices may also be sent to the solicitor for each party if necessary contact information is provided, but notices in all events must be sent to the Purchaser and Vendor, as applicable. If email addresses are set out on page 2 of this Addendum, then the parties agree that notices may be sent by email to such addresses, subject to paragraph (c) below.
- (b) Written notice given by one of the means identified in paragraph (a) is deemed to be given and received: on the date of delivery or transmission, if given personally or sent by email or fax (or the next Business Day if the date of delivery or transmission is not a Business Day); on the second Business Day following the date of sending by courier; or on the fifth Business Day following the date of sending, if sent by registered mail. If a postal stoppage or interruption occurs, notices shall not be sent by registered mail, and any notice sent by registered mail within 5

Business Days prior to the commencement of the postal stoppage or interruption must be re-sent by another means in order to be effective. For purposes of this section 14, Business Day includes Remembrance Day, if it falls on a day other than Saturday or Sunday, and Easter Monday.

- (c) If either party wishes to receive written notice under this Addendum at an address/contact number other than those identified on page 2 of this Addendum, then the party shall send written notice of the change of address, fax number, or email address to the other party in accordance with paragraph (b) above.
- (d) Time periods within which or following which any act is to be done shall be calculated by excluding the day of delivery or transmission and including the day on which the period ends.
- (e) Time periods shall be calculated using calendar days including Business Days but subject to paragraphs (f), (g) and (h) below.
- (f) Where the time for making a claim under this Addendum expires on a day that is not a Business Day, the claim may be made on the next Business Day.
- (g) Prior notice periods that begin on a day that is not a Business Day shall begin on the next earlier Business Day, except that notices may be sent and/or received on Remembrance Day, if it falls on a day other than Saturday or Sunday, or Easter Monday.
- (h) Every Critical Date must occur on a Business Day. If the Vendor sets a Critical Date that occurs on a date other than a Business Day, the Critical Date is deemed to be the next Business Day.
- (i) Words in the singular include the plural and words in the plural include the singular.
- (j) Gender-specific terms include both sexes and include corporations.

15. Disputes Regarding Termination

- (a) The Vendor and Purchaser agree that disputes arising between them relating to termination of the Purchase Agreement under section 11 shall be submitted to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and subsection 17(4) of the ONHWP Act.
- (b) The parties agree that the arbitrator shall have the power and discretion on motion by the Vendor or Purchaser or any other interested party, or of the arbitrator's own motion, to consolidate multiple arbitration proceedings on the basis that they raise one or more common issues of fact or law that can more efficiently be addressed in a single proceeding. The arbitrator has the power and discretion to prescribe whatever procedures are useful or necessary to adjudicate the common issues in the consolidated proceedings in the most just and expeditious manner possible. The *Arbitration Act, 1991* (Ontario) applies to any consolidation of multiple arbitration proceedings.
- (c) The Vendor shall pay the costs of the arbitration proceedings and the Purchaser's reasonable legal expenses in connection with the proceedings unless the arbitrator for just cause orders otherwise.
- (d) The parties agree to cooperate so that the arbitration proceedings are conducted as expeditiously as possible, and agree that the arbitrator may impose such time limits or other procedural requirements, consistent with the requirements of the *Arbitration Act, 1991* (Ontario), as may be required to complete the proceedings as quickly as reasonably possible.
- (e) The arbitrator may grant any form of relief permitted by the *Arbitration Act, 1991* (Ontario), whether or not the arbitrator concludes that the Purchase Agreement may properly be terminated.

For more information please visit www.tarion.com

SCHEDULE A

Types of Permitted Early Termination Conditions

1. The Vendor of a condominium home is permitted to make the Purchase Agreement conditional as follows:

- (a) upon receipt of Approval from an Approving Authority for:
- (i) a change to the official plan, other governmental development plan or zoning by-law (including a minor variance);
 - (ii) a consent to creation of a lot(s) or part-lot(s);
 - (iii) a certificate of water potability or other measure relating to domestic water supply to the home;
 - (iv) a certificate of approval of septic system or other measure relating to waste disposal from the home;
 - (v) completion of hard services for the property or surrounding area (i.e., roads, rail crossings, water lines, sewage lines, other utilities);
 - (vi) allocation of domestic water or storm or sanitary sewage capacity;
 - (vii) easements or similar rights serving the property or surrounding area;
 - (viii) site plan agreements, density agreements, shared facilities agreements or other development agreements with Approving Authorities or nearby landowners, and/or any development Approvals required from an Approving Authority; and/or
 - (ix) site plans, plans, elevations and/or specifications under architectural controls imposed by an Approving Authority.

The above-noted conditions are for the benefit of both the Vendor and the Purchaser and cannot be waived by either party.

(b) upon:

- (i) receipt by the Vendor of confirmation that sales of condominium dwelling units have exceeded a specified threshold by a specified date;
- (ii) receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by a specified date;
- (iii) receipt of Approval from an Approving Authority for a basement walkout; and/or
- (iv) confirmation by the Vendor that it is satisfied the Purchaser has the financial resources to complete the transaction.

The above-noted conditions are for the benefit of the Vendor and may be waived by the Vendor in its sole discretion.

2. The following definitions apply in this Schedule:

"Approval" means an approval, consent or permission (in final form not subject to appeal) from an Approving Authority and may include completion of necessary agreements (i.e., site plan agreement) to allow lawful access to and use and occupancy of the property for its intended residential purpose.

"Approving Authority" means a government (federal, provincial or municipal), governmental agency, Crown corporation, or quasi-governmental authority (a privately operated organization exercising authority delegated by legislation or a government).

3. Each condition must:

- (a) be set out separately;
- (b) be reasonably specific as to the type of Approval which is needed for the transaction; and
- (c) identify the Approving Authority by reference to the level of government and/or the identity of the governmental agency, Crown corporation or quasi-governmental authority.

4. For greater certainty, the Vendor is not permitted to make the Purchase Agreement conditional upon:

- (a) receipt of a building permit;
- (b) receipt of an occupancy permit; and/or
- (c) completion of the home.

SCHEDULE B**Adjustments to Purchase Price or Balance Due on Closing****PART I Stipulated Amounts/Adjustments**

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing, the dollar value of which is stipulated in the Purchase Agreement and set out below.

[Draft Note: List items with any necessary cross-references to text in the Purchase Agreement.]

1. SEE ATTACHED

2.

3.

**PART II All Other Adjustments – to be determined in accordance with the terms of the
Purchase Agreement**

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing which will be determined after signing the Purchase Agreement, all in accordance with the terms of the Purchase Agreement.

[Draft Note: List items with any necessary cross-references to text in the Purchase Agreement.]

1.

SEE ATTACHED

2.

3.

**SCHEDULE B TO ADDENDUM
ADJUSTMENT TO PURCHASE PRICE OR BALANCE DUE ON CLOSING**

PART I – Stipulated Amounts/Adjustments

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing, the dollar value of which is stipulated in the Purchase Agreement and set out below.

	DESCRIPTION	SECTION	AMOUNT
1	Cheque administration fee (subsection 81(6) of the Condominium Act)	6(d)(vii)	\$50.00 per cheque, plus HST
2	Certain Amendments	6(e)	\$350.00, plus HST
3	Unaccepted cheque	6(j)	\$250.000, per cheque

PART II – All Other Adjustments – to be determined in accordance with the terms of the Purchase Agreement

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing which will be determined after signing the Purchase Agreement, all in accordance with the terms of the Purchase Agreement.

	DESCRIPTION	SECTION
1	Utility costs	6(a)(i)
2	Occupancy Fees and other amounts	6(a)(ii); 23(b); Schedule C to Purchase Agreement
3	Realty taxes	6(b)(i)
	Common expense contributions	6(b)(ii)
4	Any new taxes or increases to existing taxes	6(d)(i)
5	Upgrades and/or extras and/or charges	6(d)(ii)
6	Increase of Levies or new Levies	6(d)(iii)
7	TWC enrolment fee	6(d)(iv)
8	Utility meters, connection, installation, energization, etc., charges	6(d)(v)
9	Law Society of Upper Canada charge imposed on Vendor or its solicitors	6(d)(vi)
10	Any other additional or further adjustments agreed to in writing between the Vendor and Purchaser subsequent to the execution of this Agreement	6(d)(vii)
11	Leased hot water tank	6(l)
12	Utility Supplier(s) deposit(s)	6(g)
13	HST Rebate where Purchaser does not qualify for the Rebate	6(h)
14	HST on Adjustments	6(i)
15	Removing unauthorized title registrations	16
16	Interest and liquidated damages	25(b)
17	Use of Vendor's solicitor's computer facilities	30(c)

Appendix “H”

**AMENDMENT TO THE
AGREEMENT OF PURCHASE AND SALE**

BETWEEN: **MIZRAHI (128 HAZELTON) INC.** (the "Vendor") and
DAVID BERRY (the "Purchaser")
Unit 1 Level 9, Suite 901 (the "Unit")

It is hereby understood and agreed between the Vendor and the Purchaser that the following change(s) shall be made to the Amendment to Agreement of Purchase and Sale dated as of May 15, 2017, a copy of which is annexed to above-mentioned Agreement of Purchase and Sale (the "Yappn Share Amendment"), and except for such change(s) noted below, all other terms and conditions of the Yappn Amendment shall remain as stated therein, and time shall continue to be of the essence.

1. All references in the Yappn Share Amendment to the Agreement of Purchase and Sale, including the first Recital therein shall be read as being in reference to the above-mentioned Agreement of Purchase and Sale (and for greater clarity not to the prior agreement of purchase and sale entered into by the Vendor and Purchaser for suites 901 and 802 (to be known as Suite 901) as referenced in the first Recital of the Yappn Share Amendment prior to the date of this Amendment. (the "Prior Agreement")
2. Paragraph 2.1 of the Yappn Share Amendment is deleted and replaced with the following:
"Section 1 of the Agreement of Purchase and Sale is hereby amended by adding the following sub-paragraph 1 (a) (ii) after section 1 (a) (i) thereof:

1 (a) (ii) The transfer from the Purchaser to the Vendor of the Vested Units (as that term is defined in the Amendment to Agreement of Purchase and Sale entered into by and between the Purchaser and Vendor on May 15, 2017) representing TWO MILLION DOLLARS (\$2,000,000.00) of the Purchase Price."
3. Notwithstanding anything to the contrary contained in the Mutual Release and Termination Agreement dated August 16, 2019, Yappn Share Amendment, including without limitation section 4.6, or any document signed in connection therewith, the parties acknowledge and agree that the Yappn Share Amendment (as amended herein) remains in full force and effect and the Yappn Share Amendment shall not be deemed to be terminated as a result of the termination of the Prior Agreement and shall apply to the above-mentioned agreement.

This Amendment may be properly delivered if delivered by facsimile transmission or if a copy of same is computer scanned and forwarded by electronic mail to the other party.

DATED at Toronto, this 16 day of August 2019

IN WITNESS whereof the parties hereto have affixed their hands and seals.

SIGNED, SEALED AND DELIVERED
in the presence of

)
)
)
)
)
)

Purchaser-David Berry

DATED at Toronto this 16 day of August, 2019

MIZRAHI (128 HAZELTON) INC.

Per:

Authorized Signing Officer c/s

I have the authority to bind the Corporation.

Appendix “I”

**AMENDMENT TO THE
AGREEMENT OF PURCHASE AND SALE**

BETWEEN: **Mizrahi (128 Hazelton) Inc.** (the "Vendor") and
David Berry (the "Purchaser")
Unit 01, Level 9, Suite 901 (the "Unit")

It is hereby understood and agreed between the Vendor and the Purchaser that the following change(s) shall be made to the above-mentioned Agreement of Purchase and Sale, and except for such change(s) noted below, all other terms and conditions of the Agreement shall remain as stated therein, and time shall continue to be of the essence.

DELETE

- **Purchase Price: SIX MILLION TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$6,250,000.00)**

INSERT

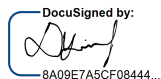
- **Purchase Price: SEVEN MILLION ONE HUNDRED FORTY TWO THOUSAND TWO HUNDRED FORTY FOUR DOLLARS (\$7,142,244.00)**

All parties agree that this offer, and any amendments and waivers hereto may be executed and accepted by telefax transmission, which for all purposes will be legally binding as if presented in original.

DATED at Toronto, this 13th day April, 2020.

IN WITNESS whereof the parties hereto have affixed their hands and seals.

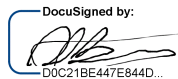
SIGNED, SEALED AND DELIVERED
in the presence of

DocuSigned by:

8A09E7A5CF08444...

)
)
)
)
)
)

Purchaser

Purchaser

DocuSigned by:

D0C21BE447E844D...

DATED at Toronto, this 13th day of April, 2020.

Mizrahi (128 Hazelton) Inc.

Per: 

c/s
Authorized Signing Officer
I have the authority to bind the Corporation.

Appendix “J”

Upgrades & Extras



David Berry
Suite: 901

Date: October 2, 2022

Description of change	Area	Total
Suite to be completed with extras and finishes installed in accordance with revised and final plans (and accompanying information) submitted by Hudson Kruse on September 21, 2022 (the "Plans") (attached to this agreement) while incorporating and installing materials provided by the purchaser (the "Purchaser's Materials") (the Plans and the Purchaser's Materials are attached to this amending agreement) for a price of \$800,000.00 inclusive of HST. The Purchaser's Materials will be delivered to the project's construction receiving area following arrival in Toronto and expert inspection and certification of condition. The purchaser acknowledges that the vendor was not involved in the selection of the Purchaser's Materials, nor are they responsible for the quantities that have been ordered. Should the Purchaser's Materials be determined by a qualified independent third party to be not of an acceptable quality or not in necessary quantities, the purchaser shall be responsible for acquiring replacement or additional Purchaser's Materials and having them delivered to the project's construction receiving area. While the purchaser acknowledges that the vendor does not warrant the quality of any material provided by the purchaser, the vendor does warrant the workmanship of all installations, including the Purchaser's Materials.		\$707,964.60
	SUBTOTAL	\$707,964.60
All Cheques to be made payable to Mizrahi (128 Hazelton) Inc.		
HST (13%)		
	TOTAL	\$92,035.40
		\$800,000.00

The purchaser is fully aware and accepts that there will be no changes and/or deletions after signing of this agreement, unless agreed to by both the vendor and the purchaser. The purchaser further acknowledges that all locations and specifications are approximate and subject to on site conditions, notwithstanding that any changes to the Plans shall require the written consent of the purchaser. The purchaser understands and agrees to pay for the upgrades, finishes, and work stated above and herein in the following manner:

• 25 percent of the total cost (\$200,000.00) by cheque within 5 business days of the execution of this agreement.

- Remaining amounts owing to be paid in 5 equal monthly instalments of \$120,000.00 (by cheque) commencing November 1, 2022, and in accordance with an agreed upon construction schedule. It is understood that payments shall reflect the percentage of work completed on the suite and that the final payment shall coincide with the completion and occupancy of the suite.

If the file needs to re-opened at a later date applicable reasonable administrative fees may apply.

The purchaser acknowledges and agrees that the vendor's obligation to supply and install the above is conditional and subject to the following terms and conditions:

1. The purchaser acknowledges and understands that:
 - a. Natural materials such as stone and hardwood are subject to variations in colour, grain and texture so that colours, finishes and materials set out herein and/or shown as part of the vendor's Standard Package may not match the exact colours, finishes and materials eventually installed in the purchaser's suite due to variances in manufacturing or supply.
 - b. Natural materials are subject to denting, scratching, marking, and staining.
 - c. Ceramic tiles and carpets are subject to pattern, shade and colour variations.
 - d. All features are as per the Plans (or schedule B of the APS, as applicable). All dimensions and ceiling heights are approximate only and are subject to variation to meet design requirements standard metric dimensions and field conditions.
 - e. The upgrades and extras provided to the purchaser through this request that are not part of the Vendor's Standard Package, shall not be subject to the Ontario New Home Warranty Program warranty and upgrades and extras are not insured and will not be insured under the Condominium Corporation's insurance after registration and the Purchaser is responsible to insure the upgrades and extras under the purchaser's contents insurance.
 - f. Unless otherwise noted, references to model types or model numbers refer to current manufacturer's models and vendor's internal codes. If these types or models shall change, the Vendor shall provide an equivalent or better product.
2. If unavailable, the vendor shall have the right, upon receipt of written consent of the purchaser (which in any event shall be received within 15 days of the vendor providing notice), to substitute other products and materials for those provided for in the Plans, provided that the substituted products and materials are of a quality and value equivalent to the products and materials so listed, or so provided. Furthermore, no substitution or replacement of the Purchaser's Materials shall be permitted without the written consent of the Purchaser.
3. The rooftop to the purchaser's suite shall be completed in accordance with Audax's construction drawing A213 (dated 6/1/2019) and design plans to be provided by the purchaser's project consultant, in consultation with the vendor (the "**Rooftop Work**"). It is understood that the Rooftop Work is included in the scope of work noted herein and shall be completed at no additional cost to the purchaser.
4. The purchaser shall be provided 4 individual underground parking spaces and receive access as of the date of execution of this agreement. The parking spaces shall be separated from the main parking garage by way of an independent, electronic security gate.
5. The vendor warrants that the work required to complete the purchaser's suite as outlined herein (including the purchase of all necessary materials) shall commence immediately upon the execution of this agreement.

Executed as of the first date noted above.



Purchaser Signature:



Vendor Signature:



Appendix “K”

**Condominium Form
(Tentative Occupancy Date)**

Property 128 Hazelton Private Residences

Statement of Critical Dates
Delayed Occupancy Warranty

This Statement of Critical Dates forms part of the Addendum to which it is attached, which in turn forms part of the agreement of purchase and sale between the Vendor and the Purchaser relating to the Property. **The Vendor must complete all blanks set out below. Both the Vendor and Purchaser must sign this page.**

NOTE TO HOME BUYERS: Home buyers are encouraged to refer to the Home Construction Regulatory Authority's website www.hcraontario.ca to confirm a vendor's licence status prior to purchase as well as to review advice about buying a new home. Please visit Tarion's website: www.tarion.com for important information about all of Tarion's warranties including the Delayed Occupancy Warranty, the Pre-Delivery Inspection and other matters of interest to new home buyers. The Warranty Information Sheet, which accompanies your purchase agreement and has important information, is strongly recommended as essential reading for all home buyers. The website features a calculator which will assist you in confirming the various Critical Dates related to the occupancy of your home.

VENDOR Mizrahi (128 Hazelton) Inc.
Full Name(s)

PURCHASER David Berry
Full Name(s)

1. Critical Dates

The **First Tentative Occupancy Date**, which is the date that the Vendor anticipates the home will be completed and ready to move in, is: the 27th day of February, 2023.

The Vendor can delay Occupancy on one or more occasions by setting a subsequent **Tentative Occupancy Date**, in accordance with section 1 of the Addendum by giving proper written notice as set out in section 1.

By no later than 30 days after the Roof Assembly Date (as defined in section 12), with at least 90 days prior written notice, the Vendor shall set either (i) a **Final Tentative Occupancy Date**; or (ii) a **Firm Occupancy Date**.

For purchase agreements signed after the Roof Assembly Date, the First Tentative Occupancy Date is inapplicable and the Vendor shall instead elect and set either a Final Tentative Occupancy Date or Firm Occupancy Date. the ___ day of _____, 20__.
Final Tentative Occupancy Date

or

the ___ day of _____, 20__.
Firm Occupancy Date

If the Vendor sets a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date, then the Vendor shall set a **Firm Occupancy Date** that is no later than 120 days after the Final Tentative Occupancy Date, with proper written notice as set out in section 1 below.

If the Vendor cannot provide Occupancy by the Firm Occupancy Date, then the Purchaser is entitled to delayed occupancy compensation (see section 7 of the Addendum) and the Vendor must set a Delayed Occupancy Date which cannot be later than the Outside Occupancy Date.

The **Outside Occupancy Date**, which is the latest date by which the Vendor agrees to provide Occupancy, is: the 29th day of December, 2023.

2. Notice Period for an Occupancy Delay

Changing an Occupancy date requires proper written notice. The Vendor, without the Purchaser's consent, may delay Occupancy one or more times in accordance with section 1 of the Addendum and no later than the Outside Occupancy Date.

Notice of a delay beyond the First Tentative Occupancy Date must be given no later than: the 29th day of November, 2022.

(i.e., at least **90 days** before the First Tentative Occupancy Date), or else the First Tentative Occupancy Date automatically becomes the Firm Occupancy Date.

3. Purchaser's Termination Period

If the home is not complete by the Outside Occupancy Date, then the Purchaser can terminate the transaction during a period of **30 days** thereafter (the "**Purchaser's Termination Period**"), which period, unless extended by mutual agreement, will end on: the 29th day of January, 2024.

If the Purchaser terminates the transaction during the Purchaser's Termination Period, then the Purchaser is entitled to delayed occupancy compensation and to a full refund of all monies paid plus interest (see sections 7, 10 and 11 of the Addendum).

Note: Any time a Critical Date is set or changed as permitted in the Addendum, other Critical Dates may change as well. At any given time the parties must refer to: the most recent revised Statement of Critical Dates; or agreement or written notice that sets a Critical Date, and calculate revised Critical Dates using the formulas contained in the Addendum. Critical Dates can also change if there are unavoidable delays (see section 5 of the Addendum).

Acknowledged this 7 day of November 2022

VENDOR: 

PURCHASER: 
David Berry



**Addendum to Agreement of Purchase and Sale
Delayed Occupancy Warranty**

This addendum, including the accompanying Statement of Critical Dates (the "Addendum"), forms part of the agreement of purchase and sale (the "Purchase Agreement") between the Vendor and the Purchaser relating to the Property. This Addendum is to be used for a transaction where the home is a condominium unit (that is not a vacant land condominium unit). This Addendum contains important provisions that are part of the delayed occupancy warranty provided by the Vendor in accordance with the *Ontario New Home Warranties Plan Act* (the "ONHWP Act"). If there are any differences between the provisions in the Addendum and the Purchase Agreement, then the Addendum provisions shall prevail. **PRIOR TO SIGNING THE PURCHASE AGREEMENT OR ANY AMENDMENT TO IT, THE PURCHASER SHOULD SEEK ADVICE FROM A LAWYER WITH RESPECT TO THE PURCHASE AGREEMENT OR AMENDING AGREEMENT, THE ADDENDUM AND THE DELAYED OCCUPANCY WARRANTY.**

Tarion recommends that Purchasers register on Tarion's **MyHome** on-line portal and visit Tarion's website – **tarion.com**, to better understand their rights and obligations under the statutory warranties.

The Vendor shall complete all blanks set out below.

VENDOR Mizrahi (128 Hazelton) Inc.

Full Name(s) B44647	125 Hazelton Avenue		
HCRA Licence Number	Address Toronto	Ontario	M5R 2E4
Phone	City	Province	Postal Code
866-300-0219	reception@mizrahidevelopments.ca		
Fax	Email*		

PURCHASER David Berry

Full Name(s)			
Address 416-500-9080	City	Province	Postal Code
Phone	davidmmberry@rogers.com		
Fax	Email*		

PROPERTY DESCRIPTION

128 Hazelton Avenue			
Municipal Address Toronto	Ontario	M5R 2E5416	
City	Province	Postal Code	
Short Legal Description Part of Lots 1 and 2, Registered Plan687-E and Part of Block A, Registered Plan 411, York, City of Toronto			

INFORMATION REGARDING THE PROPERTY

The Vendor confirms that:

- (a) The Vendor has obtained Formal Zoning Approval for the Building. Yes No
If no, the Vendor shall give written notice to the Purchaser within 10 days after the date that Formal Zoning Approval for the Building is obtained.
- (b) Commencement of Construction: has occurred; or is expected to occur by the _____ day of _____, 20____.

The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.

***Note: Since important notices will be sent to this address, it is essential that you ensure that a reliable email address is provided and that your computer settings permit receipt of notices from the other party.**

**Condominium Form
(Tentative Occupancy Date)**

SETTING AND CHANGING CRITICAL DATES

1. Setting Tentative Occupancy Dates and the Firm Occupancy Date

- (a) **Completing Construction Without Delay:** The Vendor shall take all reasonable steps to complete construction of the Building subject to all prescribed requirements, to provide Occupancy of the home without delay, and, to register without delay the declaration and description in respect of the Building.
- (b) **First Tentative Occupancy Date:** The Vendor shall identify the First Tentative Occupancy Date in the Statement of Critical Dates attached to this Addendum at the time the Purchase Agreement is signed.
- (c) **Subsequent Tentative Occupancy Dates:** The Vendor may, in accordance with this section, extend the First Tentative Occupancy Date on one or more occasions, by setting a subsequent Tentative Occupancy Date. The Vendor shall give written notice of any subsequent Tentative Occupancy Date to the Purchaser at least 90 days before the existing Tentative Occupancy Date (which in this Addendum may include the First Tentative Occupancy Date), or else the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. A subsequent Tentative Occupancy Date can be any Business Day on or before the Outside Occupancy Date.
- (d) **Final Tentative Occupancy Date:** By no later than 30 days after the Roof Assembly Date, the Vendor shall by written notice to the Purchaser set either (i) a Final Tentative Occupancy Date; or (ii) a Firm Occupancy Date. If the Vendor does not do so, the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Vendor shall give written notice of the Final Tentative Occupancy Date or Firm Occupancy Date, as the case may be, to the Purchaser at least 90 days before the existing Tentative Occupancy Date, or else the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Final Tentative Occupancy Date or Firm Occupancy Date, as the case may be, can be any Business Day on or before the Outside Occupancy Date. For new Purchase Agreements signed after the Roof Assembly Date, the Vendor shall insert in the Statement of Critical Dates of the Purchase Agreement either: a Final Tentative Occupancy Date; or a Firm Occupancy Date
- (e) **Firm Occupancy Date:** If the Vendor has set a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date then the Vendor shall set a Firm Occupancy Date that is no later than 120 days after the Final Tentative Occupancy Date. The Vendor shall give written notice of the Firm Occupancy Date to the Purchaser at least 90 days before the Final Tentative Occupancy Date, or else the Final Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Firm Occupancy Date can be any Business Day on or before the Outside Occupancy Date.
- (f) **Notice:** Any notice given by the Vendor under paragraph (c), (d) or (e) must set out the stipulated Critical Date, as applicable.

2. Changing the Firm Occupancy Date – Three Ways

- (a) The Firm Occupancy Date, once set or deemed to be set in accordance with section 1, can be changed only:
 - (i) by the Vendor setting a Delayed Occupancy Date in accordance with section 3;
 - (ii) by the mutual written agreement of the Vendor and Purchaser in accordance with section 4; or
 - (iii) as the result of an Unavoidable Delay of which proper written notice is given in accordance with section 5.
- (b) If a new Firm Occupancy Date is set in accordance with section 4 or 5, then the new date is the "Firm Occupancy Date" for all purposes in this Addendum.

3. Changing the Firm Occupancy Date – By Setting a Delayed Occupancy Date

- (a) If the Vendor cannot provide Occupancy on the Firm Occupancy Date and sections 4 and 5 do not apply, the Vendor shall select and give written notice to the Purchaser of a Delayed Occupancy Date in accordance with this section, and delayed occupancy compensation is payable in accordance with section 7.
- (b) The Delayed Occupancy Date may be any Business Day after the date the Purchaser receives written notice of the Delayed Occupancy Date but not later than the Outside Occupancy Date.
- (c) The Vendor shall give written notice to the Purchaser of the Delayed Occupancy Date as soon as the Vendor knows that it will be unable to provide Occupancy on the Firm Occupancy Date, and in any event at least 10 days before the Firm Occupancy Date, failing which delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date, in accordance with paragraph 7(c). If notice of a new Delayed Occupancy Date is not given by the Vendor before the Firm Occupancy Date, then the new Delayed Occupancy Date shall be deemed to be the date which is 90 days after the Firm Occupancy Date.
- (d) After the Delayed Occupancy Date is set, if the Vendor cannot provide Occupancy on the Delayed Occupancy Date, the Vendor shall select and give written notice to the Purchaser of a new Delayed Occupancy Date, unless the delay arises due to Unavoidable Delay under section 5 or is mutually agreed upon under section 4, in which case the requirements of those sections must be met. Paragraphs (b) and (c) above apply with respect to the setting of the new Delayed Occupancy Date.
- (e) Nothing in this section affects the right of the Purchaser or Vendor to terminate the Purchase Agreement on the bases set out in section 10.

4. Changing Critical Dates – By Mutual Agreement

- (a) This Addendum sets out a framework for setting, extending and/or accelerating Critical Dates, which cannot be altered contractually except as set out in this section 4. Any amendment not in accordance with this section is voidable at the option of the Purchaser. For greater certainty, this Addendum does not restrict any extensions of the Closing date (i.e., title transfer date) where Occupancy of the home has already been given to the Purchaser.

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- (b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend any of the Critical Dates. Any amendment which accelerates or extends any of the Critical Dates must include the following provisions:
- (i) the Purchaser and Vendor agree that the amendment is entirely voluntary – the Purchaser has no obligation to sign the amendment and each understands that this purchase transaction will still be valid if the Purchaser does not sign this amendment;
 - (ii) the amendment includes a revised Statement of Critical Dates which replaces the previous Statement of Critical Dates;
 - (iii) the Purchaser acknowledges that the amendment may affect delayed occupancy compensation payable; and
 - (iv) if the change involves extending either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement shall:
 - i. disclose to the Purchaser that the signing of the amendment may result in the loss of delayed occupancy compensation as described in section 7;
 - ii. unless there is an express waiver of compensation, describe in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation; and
 - iii. contain a statement by the Purchaser that the Purchaser waives compensation or accepts the compensation referred to in clause ii above, in either case, in full satisfaction of any delayed occupancy compensation payable by the Vendor for the period up to the new Firm Occupancy Date or Delayed Occupancy Date.

If the Purchaser for his or her own purposes requests a change of the Firm Occupancy Date or the Delayed Occupancy Date, then subparagraphs (b)(i), (iii) and (iv) above shall not apply.

- (c) A Vendor is permitted to include a provision in the Purchase Agreement allowing the Vendor a one-time unilateral right to extend a Firm Occupancy Date or Delayed Occupancy Date, as the case may be, for one (1) Business Day to avoid the necessity of tender where a Purchaser is not ready to complete the transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be. Delayed occupancy compensation will not be payable for such period and the Vendor may not impose any penalty or interest charge upon the Purchaser with respect to such extension.
- (d) The Vendor and Purchaser may agree in the Purchase Agreement to any unilateral extension or acceleration rights that are for the benefit of the Purchaser.

5. Extending Dates – Due to Unavoidable Delay

- (a) If Unavoidable Delay occurs, the Vendor may extend Critical Dates by no more than the length of the Unavoidable Delay Period, without the approval of the Purchaser and without the requirement to pay delayed occupancy compensation in connection with the Unavoidable Delay, provided the requirements of this section are met.
- (b) If the Vendor wishes to extend Critical Dates on account of Unavoidable Delay, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, and an estimate of the duration of the delay. Once the Vendor knows or ought reasonably to know that an Unavoidable Delay has commenced, the Vendor shall provide written notice to the Purchaser by the earlier of: 20 days thereafter; and the next Critical Date.
- (c) As soon as reasonably possible, and no later than 20 days after the Vendor knows or ought reasonably to know that an Unavoidable Delay has concluded, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, identifying the date of its conclusion, and setting new Critical Dates. The new Critical Dates are calculated by adding to the then next Critical Date the number of days of the Unavoidable Delay Period (the other Critical Dates changing accordingly), provided that the Firm Occupancy Date or Delayed Occupancy Date, as the case may be, must be at least 10 days after the day of giving notice unless the parties agree otherwise. Either the Vendor or the Purchaser may request in writing an earlier Firm Occupancy Date or Delayed Occupancy Date, and the other party's consent to the earlier date shall not be unreasonably withheld.
- (d) If the Vendor fails to give written notice of the conclusion of the Unavoidable Delay in the manner required by paragraph (c) above, then the notice is ineffective, the existing Critical Dates are unchanged, and any delayed occupancy compensation payable under section 7 is payable from the existing Firm Occupancy Date.
- (e) Any notice setting new Critical Dates given by the Vendor under this section shall include an updated revised Statement of Critical Dates.

EARLY TERMINATION CONDITIONS

6. Early Termination Conditions

- (a) The Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section.
- (b) The Vendor is not permitted to include any conditions in the Purchase Agreement other than: the types of Early Termination Conditions listed in Schedule A; and/or the conditions referred to in paragraphs (i), (j) and (k) below. Any other condition included in a Purchase Agreement for the benefit of the Vendor that is not expressly permitted under Schedule A or paragraphs (i), (j) and (k) below is deemed null and void and is not enforceable by the Vendor, but does not affect the validity of the balance of the Purchase Agreement.

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- (c) The Vendor confirms that this Purchase Agreement is subject to Early Termination Conditions that, if not satisfied (or waived, if applicable), may result in the termination of the Purchase Agreement. Yes No
- (d) If the answer in (c) above is "Yes", then the Early Termination Conditions are as follows. The obligation of each of the Purchaser and Vendor to complete this purchase and sale transaction is subject to satisfaction (or waiver, if applicable) of the following conditions and any such conditions set out in an appendix headed "Early Termination Conditions":

Condition #1 (if applicable)

Description of the Early Termination Condition:

The Approving Authority (as that term is defined in Schedule A) is: _____

The date by which Condition #1 is to be satisfied is the ____ day of _____, 20 ____.

Condition #2 (if applicable)

Description of the Early Termination Condition:

The Approving Authority (as that term is defined in Schedule A) is: _____

The date by which Condition #2 is to be satisfied is the ____ day of _____, 20 ____.

The date for satisfaction of any Early Termination Condition may be changed by mutual agreement provided in all cases it is set at least 90 days before the First Tentative Occupancy Date, and will be deemed to be 90 days before the First Tentative Occupancy Date if no date is specified or if the date specified is later than 90 days before the First Tentative Occupancy Date. This time limitation does not apply to the condition in subparagraph 1(b)(iv) of Schedule A which must be satisfied or waived by the Vendor within 60 days following the later of: (A) the signing of the Purchase Agreement; and (B) the satisfaction or waiver by the Purchaser of a Purchaser financing condition permitted under paragraph (k) below.

Note: The parties must add additional pages as an appendix to this Addendum if there are additional Early Termination Conditions.

- (e) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph (d) above and any appendix listing additional Early Termination Conditions.
- (f) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions identified in subparagraph (d) above.
- (g) For conditions under paragraph 1(a) of Schedule A the following applies:
- (i) conditions in paragraph 1(a) of Schedule A may not be waived by either party;
 - (ii) the Vendor shall provide written notice not later than five (5) Business Days after the date specified for satisfaction of a condition that: (A) the condition has been satisfied; or (B) the condition has not been satisfied (together with reasonable details and backup materials) and that as a result the Purchase Agreement is terminated; and
 - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed not satisfied and the Purchase Agreement is terminated.
- (h) For conditions under paragraph 1(b) of Schedule A the following applies:
- (i) conditions in paragraph 1(b) of Schedule A may be waived by the Vendor;
 - (ii) the Vendor shall provide written notice on or before the date specified for satisfaction of the condition that: (A) the condition has been satisfied or waived; or (B) the condition has not been satisfied nor waived, and that as a result the Purchase Agreement is terminated; and
 - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties.
- (i) The Purchase Agreement may be conditional until Closing (transfer to the Purchaser of title to the home), upon compliance with the subdivision control provisions (section 50) of the *Planning Act* and, if applicable, registration of the declaration and description for the Building under the *Condominium Act, 1998*, which compliance shall be obtained by the Vendor at its sole expense, on or before Closing.
- (j) The Purchaser is cautioned that there may be other conditions in the Purchase Agreement that allow the Vendor to terminate the Purchase Agreement due to the fault of the Purchaser.
- (k) The Purchase Agreement may include any condition that is for the sole benefit of the Purchaser and that is agreed to by the Vendor (e.g., the sale of an existing dwelling, Purchaser financing or a basement walkout). The Purchase Agreement may specify that the Purchaser has a right to terminate the Purchase Agreement if any such condition is not met, and may set out the terms on which termination by the Purchaser may be effected.

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MAKING A COMPENSATION CLAIM

7. Delayed Occupancy Compensation

- (a) The Vendor warrants to the Purchaser that, if Occupancy is delayed beyond the Firm Occupancy Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 4 and 5), then the Vendor shall compensate the Purchaser up to a total amount of \$7,500, which amount includes: (i) payment to the Purchaser of a set amount of \$150 a day for living expenses for each day of delay until the Occupancy Date or the date of termination of the Purchase Agreement, as applicable under paragraph (b) below; and (ii) any other expenses (supported by receipts) incurred by the Purchaser due to the delay.
- (b) Delayed occupancy compensation is payable only if: (i) Occupancy and Closing occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraph 10(b) of this Addendum. Delayed occupancy compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Occupancy, or after termination of the Purchase Agreement, as the case may be, and otherwise in accordance with this Addendum. Compensation claims are subject to any further conditions set out in the ONHWP Act.
- (c) If the Vendor gives written notice of a Delayed Occupancy Date to the Purchaser less than 10 days before the Firm Occupancy Date, contrary to the requirements of paragraph 3(c), then delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date.
- (d) Living expenses are direct living costs such as for accommodation and meals. Receipts are not required in support of a claim for living expenses, as a set daily amount of \$150 per day is payable. The Purchaser must provide receipts in support of any claim for other delayed occupancy compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed occupancy compensation in connection with a claim.
- (e) If delayed occupancy compensation is payable, the Purchaser may make a claim to the Vendor for that compensation after Occupancy or after termination of the Purchase Agreement, as the case may be, and shall include all receipts (apart from living expenses) which evidence any part of the Purchaser's claim. The Vendor shall assess the Purchaser's claim by determining the amount of delayed occupancy compensation payable based on the rules set out in section 7 and the receipts provided by the Purchaser, and the Vendor shall promptly provide that assessment information to the Purchaser. The Purchaser and the Vendor shall use reasonable efforts to settle the claim and when the claim is settled, the Vendor shall prepare an acknowledgement signed by both parties which:
- (i) includes the Vendor's assessment of the delayed occupancy compensation payable;
 - (ii) describes in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation (the "Compensation"), if any; and
 - (iii) contains a statement by the Purchaser that the Purchaser accepts the Compensation in full satisfaction of any delayed occupancy compensation payable by the Vendor.
- (f) If the Vendor and Purchaser cannot agree as contemplated in paragraph 7(e), then to make a claim to Tarion the Purchaser must file a claim with Tarion in writing within one (1) year after Occupancy. A claim may also be made and the same rules apply if the sale transaction is terminated under paragraph 10(b), in which case, the deadline for a claim is one (1) year after termination.
- (g) If delayed occupancy compensation is payable, the Vendor shall either pay the compensation as soon as the proper amount is determined; or pay such amount with interest (at the prescribed rate as specified in subsection 19(1) of O.Reg. 48/01 of the *Condominium Act, 1998*), from the Occupancy Date to the date of Closing, such amount to be an adjustment to the balance due on the day of Closing.

8. Adjustments to Purchase Price

Only the items set out in Schedule B (or an amendment to Schedule B), shall be the subject of adjustment or change to the purchase price or the balance due on Closing. The Vendor agrees that it shall not charge as an adjustment or readjustment to the purchase price of the home, any reimbursement for a sum paid or payable by the Vendor to a third party unless the sum is ultimately paid to the third party either before or after Closing. If the Vendor charges an amount in contravention of the preceding sentence, the Vendor shall forthwith readjust with the Purchaser. This section shall not: restrict or prohibit payments for items disclosed in Part I of Schedule B which have a fixed fee; nor shall it restrict or prohibit the parties from agreeing on how to allocate as between them, any rebates, refunds or incentives provided by the federal government, a provincial or municipal government or an agency of any such government, before or after Closing.

MISCELLANEOUS

9. Ontario Building Code – Conditions of Occupancy

- (a) On or before the Occupancy Date, the Vendor shall deliver to the Purchaser:
- (i) an Occupancy Permit (as defined in paragraph (d)) for the home; or
 - (ii) if an Occupancy Permit is not required under the Building Code, a signed written confirmation by the Vendor that all conditions of occupancy under the Building Code have been fulfilled and Occupancy is permitted under the Building Code.

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- (b) Notwithstanding the requirements of paragraph (a), to the extent that the Purchaser and the Vendor agree that the Purchaser shall be responsible for one or more prerequisites to obtaining permission for Occupancy under the Building Code, (the "Purchaser Occupancy Obligations"):
- (i) the Purchaser shall not be entitled to delayed occupancy compensation if the reason for the delay is that the Purchaser Occupancy Obligations have not been completed;
 - (ii) the Vendor shall deliver to the Purchaser, upon fulfilling all prerequisites to obtaining permission for Occupancy under the Building Code (other than the Purchaser Occupancy Obligations), a signed written confirmation that the Vendor has fulfilled such prerequisites; and
 - (iii) if the Purchaser and Vendor have agreed that such prerequisites (other than the Purchaser Occupancy Obligations) are to be fulfilled prior to Occupancy, then the Vendor shall provide the signed written confirmation required by subparagraph (ii) on or before the Occupancy Date.
- (c) If the Vendor cannot satisfy the requirements of paragraph (a) or subparagraph (b)(ii), the Vendor shall set a Delayed Occupancy Date (or new Delayed Occupancy Date) on a date that the Vendor reasonably expects to have satisfied the requirements of paragraph (a) or subparagraph (b)(ii), as the case may be. In setting the Delayed Occupancy Date (or new Delayed Occupancy Date), the Vendor shall comply with the requirements of section 3, and delayed occupancy compensation shall be payable in accordance with section 7. Despite the foregoing, delayed occupancy compensation shall not be payable for a delay under this paragraph (c) if the inability to satisfy the requirements of subparagraph (b)(ii) is because the Purchaser has failed to satisfy the Purchaser Occupancy Obligations.
- (d) For the purposes of this section, an "Occupancy Permit" means any written or electronic document, however styled, whether final, provisional or temporary, provided by the chief building official (as defined in the *Building Code Act*) or a person designated by the chief building official, that evidences that permission to occupy the home under the Building Code has been granted.

10. Termination of the Purchase Agreement

- (a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written agreement. Such written mutual agreement may specify how monies paid by the Purchaser, including deposit(s) and monies for upgrades and extras are to be allocated if not repaid in full.
- (b) If for any reason (other than breach of contract by the Purchaser) Occupancy has not been given to the Purchaser by the Outside Occupancy Date, then the Purchaser has 30 days to terminate the Purchase Agreement by written notice to the Vendor. If the Purchaser does not provide written notice of termination within such 30-day period, then the Purchase Agreement shall continue to be binding on both parties and the Delayed Occupancy Date shall be the date set under paragraph 3(c), regardless of whether such date is beyond the Outside Occupancy Date.
- (c) If: calendar dates for the applicable Critical Dates are not inserted in the Statement of Critical Dates; or if any date for Occupancy is expressed in the Purchase Agreement or in any other document to be subject to change depending upon the happening of an event (other than as permitted in this Addendum), then the Purchaser may terminate the Purchase Agreement by written notice to the Vendor.
- (d) The Purchase Agreement may be terminated in accordance with the provisions of section 6.
- (e) Nothing in this Addendum derogates from any right of termination that either the Purchaser or the Vendor may have at law or in equity on the basis of, for example, frustration of contract or fundamental breach of contract.
- (f) Except as permitted in this section, the Purchase Agreement may not be terminated by reason of the Vendor's delay in providing Occupancy alone.

11. Refund of Monies Paid on Termination

- (a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), then unless there is agreement to the contrary under paragraph 10(a), the Vendor shall refund all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, within 10 days of such termination, with interest from the date each amount was paid to the Vendor to the date of refund to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor as a prerequisite to obtaining the refund of monies payable as a result of termination of the Purchase Agreement under this paragraph, although the Purchaser may be required to sign a written acknowledgement confirming the amount of monies refunded and termination of the purchase transaction. Nothing in this Addendum prevents the Vendor and Purchaser from entering into such other termination agreement and/or release as may be agreed to by the parties.
- (b) The rate of interest payable on the Purchaser's monies shall be calculated in accordance with the *Condominium Act, 1998*.
- (c) Notwithstanding paragraphs (a) and (b) above, if either party initiates legal proceedings to contest termination of the Purchase Agreement or the refund of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

12. Definitions

"Building" means the condominium building or buildings contemplated by the Purchase Agreement, in which the Property is located or is proposed to be located.

"Business Day" means any day other than: Saturday; Sunday; New Year's Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day; and any special holiday proclaimed by the Governor General or the Lieutenant Governor; and where New Year's Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is

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not a Business Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are not Business Days; and where Christmas Day falls on a Friday, the following Monday is not a Business Day.

“**Closing**” means completion of the sale of the home, including transfer of title to the home to the Purchaser.

“**Commencement of Construction**” means the commencement of construction of foundation components or elements (such as footings, rafts or piles) for the Building.

“**Critical Dates**” means the First Tentative Occupancy Date, any subsequent Tentative Occupancy Date, the Final Tentative Occupancy Date, the Firm Occupancy Date, the Delayed Occupancy Date, the Outside Occupancy Date and the last day of the Purchaser’s Termination Period.

“**Delayed Occupancy Date**” means the date, set in accordance with section 3, on which the Vendor agrees to provide Occupancy, in the event the Vendor cannot provide Occupancy on the Firm Occupancy Date.

“**Early Termination Conditions**” means the types of conditions listed in Schedule A.

“**Final Tentative Occupancy Date**” means the last Tentative Occupancy Date that may be set in accordance with paragraph 1(d).

“**Firm Occupancy Date**” means the firm date on which the Vendor agrees to provide Occupancy as set in accordance with this Addendum.

“**First Tentative Occupancy Date**” means the date on which the Vendor, at the time of signing the Purchase Agreement, anticipates that the home will be complete and ready for Occupancy, as set out in the Statement of Critical Dates.

“**Formal Zoning Approval**” occurs when the zoning by-law required for the Building has been approved by all relevant governmental authorities having jurisdiction, and the period for appealing the approvals has elapsed and/or any appeals have been dismissed or the approval affirmed.

“**Occupancy**” means the right to use or occupy the home in accordance with the Purchase Agreement.

“**Occupancy Date**” means the date the Purchaser is given Occupancy.

“**Outside Occupancy Date**” means the latest date that the Vendor agrees to provide Occupancy to the Purchaser, as confirmed in the Statement of Critical Dates.

“**Property**” or “**home**” means the home being acquired by the Purchaser from the Vendor, and its interest in the related common elements.

“**Purchaser’s Termination Period**” means the 30-day period during which the Purchaser may terminate the Purchase Agreement for delay, in accordance with paragraph 10(b).

“**Roof Assembly Date**” means the date upon which the roof slab, or roof trusses and sheathing, as the case may be, are completed. For single units in a multi-unit block, whether or not vertically stacked, (e.g., townhouses or row houses), the roof refers to the roof of the block of homes unless the unit in question has a roof which is in all respects functionally independent from and not physically connected to any portion of the roof of any other unit(s), in which case the roof refers to the roof of the applicable unit. For multi-story, vertically stacked units, (e.g. typical high rise) roof refers to the roof of the Building.

“**Statement of Critical Dates**” means the Statement of Critical Dates attached to and forming part of this Addendum (in form to be determined by Tarion from time to time), and, if applicable, as amended in accordance with this Addendum.

“**The ONHWP Act**” means the *Ontario New Home Warranties Plan Act* including regulations, as amended from time to time.

“**Unavoidable Delay**” means an event which delays Occupancy which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor and are not caused or contributed to by the fault of the Vendor.

“**Unavoidable Delay Period**” means the number of days between the Purchaser’s receipt of written notice of the commencement of the Unavoidable Delay, as required by paragraph 5(b), and the date on which the Unavoidable Delay concludes.

13. Addendum Prevails

The Addendum forms part of the Purchase Agreement. The Vendor and Purchaser agree that they shall not include any provision in the Purchase Agreement or any amendment to the Purchase Agreement or any other document (or indirectly do so through replacement of the Purchase Agreement) that derogates from, conflicts with or is inconsistent with the provisions of this Addendum, except where this Addendum expressly permits the parties to agree or consent to an alternative arrangement. The provisions of this Addendum prevail over any such provision.

14. Time Periods, and How Notice Must Be Sent

- (a) Any written notice required under this Addendum may be given personally or sent by email, fax, courier or registered mail to the Purchaser or the Vendor at the address/contact numbers identified on page 2 or replacement address/contact numbers as provided in paragraph (c) below. Notices may also be sent to the solicitor for each party if necessary contact information is provided, but notices in all events must be sent to the Purchaser and Vendor, as applicable. If email addresses are set out on page 2 of this Addendum, then the parties agree that notices may be sent by email to such addresses, subject to paragraph (c) below.
- (b) Written notice given by one of the means identified in paragraph (a) is deemed to be given and received: on the date of delivery or transmission, if given personally or sent by email or fax (or the next Business Day if the date of delivery or transmission is not a Business Day); on the second Business Day following the date of sending by courier; or on the fifth Business Day following the date of sending, if sent by registered mail. If a postal stoppage or interruption occurs, notices shall not be sent by registered mail, and any notice sent by registered mail within 5

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- Business Days prior to the commencement of the postal stoppage or interruption must be re-sent by another means in order to be effective. For purposes of this section 14, Business Day includes Remembrance Day, if it falls on a day other than Saturday or Sunday, and Easter Monday.
- (c) If either party wishes to receive written notice under this Addendum at an address/contact number other than those identified on page 2 of this Addendum, then the party shall send written notice of the change of address, fax number, or email address to the other party in accordance with paragraph (b) above.
 - (d) Time periods within which or following which any act is to be done shall be calculated by excluding the day of delivery or transmission and including the day on which the period ends.
 - (e) Time periods shall be calculated using calendar days including Business Days but subject to paragraphs (f), (g) and (h) below.
 - (f) Where the time for making a claim under this Addendum expires on a day that is not a Business Day, the claim may be made on the next Business Day.
 - (g) Prior notice periods that begin on a day that is not a Business Day shall begin on the next earlier Business Day, except that notices may be sent and/or received on Remembrance Day, if it falls on a day other than Saturday or Sunday, or Easter Monday.
 - (h) Every Critical Date must occur on a Business Day. If the Vendor sets a Critical Date that occurs on a date other than a Business Day, the Critical Date is deemed to be the next Business Day.
 - (i) Words in the singular include the plural and words in the plural include the singular.
 - (j) Gender-specific terms include both sexes and include corporations.

15. Disputes Regarding Termination

- (a) The Vendor and Purchaser agree that disputes arising between them relating to termination of the Purchase Agreement under section 11 shall be submitted to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and subsection 17(4) of the ONHWP Act.
- (b) The parties agree that the arbitrator shall have the power and discretion on motion by the Vendor or Purchaser or any other interested party, or of the arbitrator's own motion, to consolidate multiple arbitration proceedings on the basis that they raise one or more common issues of fact or law that can more efficiently be addressed in a single proceeding. The arbitrator has the power and discretion to prescribe whatever procedures are useful or necessary to adjudicate the common issues in the consolidated proceedings in the most just and expeditious manner possible. The *Arbitration Act, 1991* (Ontario) applies to any consolidation of multiple arbitration proceedings.
- (c) The Vendor shall pay the costs of the arbitration proceedings and the Purchaser's reasonable legal expenses in connection with the proceedings unless the arbitrator for just cause orders otherwise.
- (d) The parties agree to cooperate so that the arbitration proceedings are conducted as expeditiously as possible, and agree that the arbitrator may impose such time limits or other procedural requirements, consistent with the requirements of the *Arbitration Act, 1991* (Ontario), as may be required to complete the proceedings as quickly as reasonably possible.
- (e) The arbitrator may grant any form of relief permitted by the *Arbitration Act, 1991* (Ontario), whether or not the arbitrator concludes that the Purchase Agreement may properly be terminated.

For more information please visit www.tarion.com

**Condominium Form
(Tentative Occupancy Date)**

SCHEDULE A

Types of Permitted Early Termination Conditions

1. The Vendor of a condominium home is permitted to make the Purchase Agreement conditional as follows:

- (a) upon receipt of Approval from an Approving Authority for:
- (i) a change to the official plan, other governmental development plan or zoning by-law (including a minor variance);
 - (ii) a consent to creation of a lot(s) or part-lot(s);
 - (iii) a certificate of water potability or other measure relating to domestic water supply to the home;
 - (iv) a certificate of approval of septic system or other measure relating to waste disposal from the home;
 - (v) completion of hard services for the property or surrounding area (i.e., roads, rail crossings, water lines, sewage lines, other utilities);
 - (vi) allocation of domestic water or storm or sanitary sewage capacity;
 - (vii) easements or similar rights serving the property or surrounding area;
 - (viii) site plan agreements, density agreements, shared facilities agreements or other development agreements with Approving Authorities or nearby landowners, and/or any development Approvals required from an Approving Authority; and/or
 - (ix) site plans, plans, elevations and/or specifications under architectural controls imposed by an Approving Authority.

The above-noted conditions are for the benefit of both the Vendor and the Purchaser and cannot be waived by either party.

- (b) upon:
- (i) receipt by the Vendor of confirmation that sales of condominium dwelling units have exceeded a specified threshold by a specified date;
 - (ii) receipt by the Vendor of confirmation that financing for the project on terms satisfactory to the Vendor has been arranged by a specified date;
 - (iii) receipt of Approval from an Approving Authority for a basement walkout; and/or
 - (iv) confirmation by the Vendor that it is satisfied the Purchaser has the financial resources to complete the transaction.

The above-noted conditions are for the benefit of the Vendor and may be waived by the Vendor in its sole discretion.

2. The following definitions apply in this Schedule:

“Approval” means an approval, consent or permission (in final form not subject to appeal) from an Approving Authority and may include completion of necessary agreements (i.e., site plan agreement) to allow lawful access to and use and occupancy of the property for its intended residential purpose.

“Approving Authority” means a government (federal, provincial or municipal), governmental agency, Crown corporation, or quasi-governmental authority (a privately operated organization exercising authority delegated by legislation or a government).

3. Each condition must:

- (a) be set out separately;
- (b) be reasonably specific as to the type of Approval which is needed for the transaction; and
- (c) identify the Approving Authority by reference to the level of government and/or the identity of the governmental agency, Crown corporation or quasi-governmental authority.

4. For greater certainty, the Vendor is not permitted to make the Purchase Agreement conditional upon:

- (a) receipt of a building permit;
- (b) receipt of an occupancy permit; and/or
- (c) completion of the home.

Condominium Form
(Tentative Occupancy Date)

SCHEDULE B

Adjustments to Purchase Price or Balance Due on Closing

PART I Stipulated Amounts/Adjustments

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing, the dollar value of which is stipulated in the Purchase Agreement and set out below.

[Draft Note: List items with any necessary cross-references to text in the Purchase Agreement.]

A handwritten signature in black ink, appearing to be the initials 'AM' or similar, located in the bottom right corner of the page.

Condominium Form
(Tentative Occupancy Date)

PART II All Other Adjustments – to be determined in accordance with the terms of the Purchase Agreement

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing which will be determined after signing the Purchase Agreement, all in accordance with the terms of the Purchase Agreement.

[Draft Note: List items with any necessary cross-references to text in the Purchase Agreement.]

A handwritten signature in black ink, appearing to be the initials 'AM' or similar, located in the bottom right corner of the page.

**SCHEDULE B TO ADDENDUM
ADJUSTMENT TO PURCHASE PRICE OR BALANCE DUE ON CLOSING**

PART I – Stipulated Amounts/Adjustments

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing, the dollar value of which is stipulated in the Purchase Agreement and set out below.

	DESCRIPTION	SECTION	AMOUNT
1	Cheque administration fee (subsection 81(6) of the Condominium Act)	6(d)(vii)	\$50.00 per cheque, plus HST
2	Certain Amendments	6(e)	\$350.00, plus HST
3	Unaccepted cheque	6(j)	\$250.000, per cheque

PART II – All Other Adjustments – to be determined in accordance with the terms of the Purchase Agreement

These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing which will be determined after signing the Purchase Agreement, all in accordance with the terms of the Purchase Agreement.

	DESCRIPTION	SECTION
1	Utility costs	6(a)(i)
2	Occupancy Fees and other amounts	6(a)(ii); 23(b); Schedule C to Purchase Agreement
3	Realty taxes	6(b)(i)
	Common expense contributions	6(b)(ii)
4	Any new taxes or increases to existing taxes	6(d)(i)
5	Upgrades and/or extras and/or charges	6(d)(ii)
6	Increase of Levies or new Levies	6(d)(iii)
7	TWC enrolment fee	6(d)(iv)
8	Utility meters, connection, installation, energization, etc., charges	6(d)(v)
9	Law Society of Upper Canada charge imposed on Vendor or its solicitors	6(d)(vi)
10	Any other additional or further adjustments agreed to in writing between the Vendor and Purchaser subsequent to the execution of this Agreement	6(d)(vii)
11	Leased hot water tank	6(f)
12	Utility Supplier(s) deposit(s)	6(g)
13	HST Rebate where Purchaser does not qualify for the Rebate	6(h)
14	HST on Adjustments	6(i)
15	Removing unauthorized title registrations	16
16	Interest and liquidated damages	25(b)
17	Use of Vendor's solicitor's computer facilities	30(c)

Appendix “L”

TERM SHEET

1. BORROWER: Mizrahi Developments Inc. (the "**Borrower**")
2. GUARANTORS: Mizrahi Development Group (1451 Wellington) Inc. ("**1451**") as to Loan Facility #1 and Loan Facility #2; and Sam Mizrahi ("**Sam**"), personally, as to Loan Facility #2 only (collectively, the "**Guarantors**")

(the Borrower and the Guarantors are hereinafter collectively referred to as the "**Credit Parties**", and Loan Facility #1 and Loan Facility #2 are collectively referred to as the "**Loan**")
3. LENDER: David Berry, or an affiliate to be named (the "**Lender**") (the Lender shall have the right to assign all or any part of the Loan at any time after a period of one (1) year following the date of the initial advance of funds pursuant to this loan facility)
4. LOAN FACILITY #1: Commercial Loan Financing [Term Loan, Non-Revolving].
5. LOAN FACILITY #2: Commercial Loan Financing [Term Loan, Non-Revolving].
6. LOAN AMOUNT #1: \$4,000,000(CDN) (available in a single draw of the entire Loan amount)
7. LOAN AMOUNT #2 \$6,000,000(CDN) (available in a single draw of the entire Loan amount)
8. USE OF PROCEEDS: To finance: (a) repayment of any existing mortgages registered on title to the Property (as hereinafter defined), save and except the Vendor-Take-Back Mortgage registered as Instrument No. OC1484155 on June 6, 2013 on title to 1451 Wellington Street West, Ottawa, Ontario, in the principal sum of \$1,000,000.00 in favour of Dacando Enterprises Limited (the "**Vendor-Take Back Mortgage**"); (b) certain to be agreed upon development costs in respect of the development, construction and sale (the particulars of which are set out on the budget annexed hereto as Schedule "A") relating to a proposed midrise condominium project (the "**Project**") to be constructed on the properties municipally known as 1445 Wellington and 1451 Wellington, and as more particularly described in Schedule "B" attached hereto (collectively, the "**Property**"); and (c) a portion of the Borrower's equity in the Project in order to obtain construction financing for the Project. The Borrower covenants not to remove or distribute any equity in or profit from the Project or otherwise compensate any of its shareholders or other persons by way of income, dividend or other payment other than to repay the Loan or as otherwise agreed upon by the parties.

9. LOAN FACILITY #1 TERM: The Loan shall mature the earlier of: (a) 2 years from the date of the initial advance of Loan Facility #1 (the "Two Year Deadline"); (b) issuance of the above-grade building permit; and (c) receipt of any proceeds or funds from the Construction Lender (as defined in Section 16(c) herein) (the "Loan Facility #1 Term").

10. LOAN FACILITY #2 TERM: The Loan shall mature the earlier of: (a) 45 days following the date of registration of the condominium corporation Project on the Property; and (b) December 31, 2021 (the "Loan Facility #2 Term").

11. LOAN FACILITY #1 INTEREST RATE: 12.0% per annum, calculated and compounding annually, and payable on maturity of the Facility #1 Term.

12. LOAN FACILITY #2 INTEREST RATE: 12.0% per annum, calculated and compounding annually, and payable on maturity of the Facility #2 Term.

13. CLOSING DATE: Subject to the satisfaction of all of the conditions herein, as determined by the Lender, in its sole discretion, Friday, June 10, 2016 or such other date as the parties may mutually agree upon (the "Closing Date").

14. CONDITIONS PRIOR TO FUNDING:

- (a) All Security, in form and content satisfactory to Lender and its legal counsel, to be executed, delivered and, where applicable, registered creating a first priority security interest (save as otherwise noted herein);
- (b) Receipt of credit reports for the Credit Parties and financial statements for 1451 as the Lender may request that are satisfactory to the Lender, in sole and absolute discretion;
- (c) the Lender being satisfied, in its sole and absolute discretion, with the results of the due diligence searches, enquiries and reports provided by the Borrower to the Lender and in respect of such additional due diligence, searches, enquiries and reports prepared for the Lender, including, without limitation:
 - (i) reliance letters addressed to the Lender with respect to the soil tests and geotechnical reports;
 - (ii) reliance letters addressed to the Lender with respect to the phase 1 environmental tests (and if recommended, Phase 2 environmental tests or audits);
 - (iii) current appraisals of the Property, if available;
- (d) Satisfactory review of the Altus Group report with respect to the Borrower

Do be defined at JGO prep. not stated slightly B R

and its subsidiaries and their projects, the Project budget, the draft Project plans and the appraisals.

- (e) The Borrower has provided the Lender to its satisfaction with information or an organizational list or chart setting out: (i) all of the subsidiaries of the Borrower; (ii) the properties each one owns; and (iii) confirmation that all such subsidiaries are owned solely by the Borrower.
- (f) The cost consultant for the Project (the "**Cost Consultant**") shall be acceptable to and approved by the Lender. The Lender hereby confirms that Altus Group is an acceptable Cost Consultant.
- (g) Delivery by the Borrower to the Lender of a statutory declaration (in a form provided by the Lender) executed by Sam Mizrahi, confirming, inter alia, the terms of the leases and that all of the landlord's and tenants' obligations, if any, therein have been complied with and the Lender being satisfied with its review of all of the leases of the Property.
- (h) Delivery by the Borrower to the Lender of evidence of all-risk and liability insurance (inclusive of IBC standard mortgage clauses) naming the Lender as mortgagee and additional loss payee.
- (i) Delivery by the Borrower to the Lender of evidence that all realty taxes for the Property have been paid in full to date.
- (j) The Lender having received officer's certificates and certified copies of resolutions of the board of directors for each of the Credit Parties concerning the due authorization, execution and delivery of all of the Security Documents and such other related matters as may be required by the Lender.
- (k) The Lender receiving an opinion from the Borrower's counsel regarding the corporate status of each of the Credit Parties, the due authorization, execution, delivery and enforceability of the Security Documents and such other matters as the Lender may require, in form and substance satisfactory to the Lender.
- (l) A title insurance policy issued by a recognized title insurer in Ontario, in a form satisfactory to the Lender, in respect of the Property which title insurance policy insures the interest of the Lender for the full amount of the Loan. The Borrower will pay all premiums and costs associated with the title insurance policy. The Lender may deduct such premiums and costs from the initial advance.
- (m) The Borrower has provided evidence, satisfactory to the Lender of the current zoning of the Property.
- (n) Satisfactory ruling from the OMB.
- (o) 1451 shall have delivered to the Lender a warrant (or similar contractual

entitlement) entitling the Lender, for the price of \$1.00, to acquire twenty five percent (25%) of the Net Profits in the Project. "Net Profits" shall be defined in the loan agreement, but shall include the net sale proceeds from all unit closings in respect of the Project immediately following repayment of the Construction Financing and payment of Harmonized Sales Tax. The loan agreement shall provide the Lender with an audit right in order to confirm the calculation of Net Profits, and the loan agreement shall further define the nature of expenses which may be included in such calculation.

15. GENERAL CONDITIONS:

- (a) All costs incurred by Lender in connection with the Loan including legal as well as other costs which may be identified as time progresses shall be the responsibility of the Borrower (collectively, the "Lender's Costs").
- (b) During the Term, with respect to each subsidiary, nominee or trustee corporation or development property owned or controlled directly or indirectly by the Borrower, the Lender shall be provided with a copy of each survey, appraisal, environmental, geotechnical or soil and/or cost consultant's report, zoning approvals and permits, approvals and agreements with respect to the construction, as applicable, as soon as same is available to the Borrower.
- (c) During the Term, the Borrower will have monthly meetings to update the Lender with respect to all its subsidiaries, projects and operations, including without limitation, the Project. In connection with the monthly meetings the Borrower is to provide a written report in respect of the Project budget, Project related expenditures, zoning and approval status, marketing and sales status, (including, if applicable, copies of all signed agreements of purchase and sale) copies of all Project related agreements and contracts and, if required by the Lender, acting reasonably, periodic written reports from the Cost Consultant regarding all of the foregoing, provided that the Cost Consultant's report shall not be required more frequently than quarterly.

16. SECURITY:

- (a) a loan agreement reflecting the terms herein and such other terms as the Lender may require including, without limitation, positive and negative covenants and reporting;
- (b) promissory notes reflecting the terms herein;
- (c) Prior to commencement of construction of the Project, the Lender acknowledges and agrees that the Borrower (or the appropriate Credit Parties) shall be permitted to register a charge/mortgage in favour of a construction lender for the Project (the "Construction Lender"). The Lender further acknowledges and agrees that the Borrower shall be permitted to register a charge/mortgage on title to the Property in favour of Taron and Aviva and or Westmount Insurance (or some other entity approved by the Lender), acting as a deposit bond insurer, as security for

the deposit bond facility and excess deposit bond facility for the Project;

- (d) a general security agreement from the Borrower and 1451 being a ~~first priority~~ security interest in all present and after-acquired personal property of the Borrower and 1451 pursuant to the provisions of the *Personal Property Security Act (Ontario)* ("**PPSA**"); *only to be registered upon under a default*
- (e) A pre-signed acknowledgement and direction, witnessed by counsel for 1451, irrevocably authorizing the Lender to register a mortgage on title to the Property should all amounts due and owing under Loan Facility #1 not be repaid to the Lender in full by the Two Year Deadline;
- (f) an assignment of any/all contracts relating to the Project, which shall not be the subject of a registration under the PPSA unless there is an event of default which has not been remedied;
- (g) an assignment of all policies of insurance, which shall not be the subject of a registration under the PPSA unless there is an event of default which has not been remedied;
- (h) a joint and several guarantee and postponement of claim from the Guarantor for all indebtedness, which shall not be the subject of a registration under the PPSA;
- (i) a guarantee from Sam for all indebtedness under Loan Facility #2 only which shall not be the subject of a registration under the PPSA (the "**Sam Guarantee**");
- (j) a postponement of claim from Sam in respect of all indebtedness of the Borrower and 1451 in favour of Sam Mizrahi; and
- (k) an environmental indemnity from the Borrower and Guarantor.

Save and except for the Vendor-Take-Back Mortgage, the construction loan security and the deposit bond and excess bond security, no additional encumbrances shall be permitted to be registered on title to the Property without the prior written consent of the Lender.

The Borrower acknowledges and agrees that any default by the Borrower or any of its subsidiaries to any permitted lender shall be a default under this Loan Facility.

For greater certainty, a default by the Borrower shall not constitute an event of default unless: (a) in the case of a default in payment of money by the Borrower, which has continued for at least ten (10) days after receiving notice of such monetary default; and (b) in the case of a default in performance of any other obligation, it has continued for at least ten (10) days after notice thereof has been given to the Borrower. Notwithstanding the foregoing, the Borrower shall be deemed to have committed a default, without having received notice of such default and an opportunity to cure same, in the event the Borrower gives or creates a mortgage, charge, lien (save and except for construction liens, in

respect of which the Borrower shall have received notice with an opportunity to bond off and vacate such lien) or encumbrance upon the Property or any Project asset, save and except for the Permitted Encumbrances referred to in Paragraph 8 herein, or in the event the Borrower sells, agrees to sell or otherwise disposes of all or any part of the Property, the Project or any collateral secured by the security contemplated by this Section 16.

17. REPAYMENT OF LOAN FACILITY #1

The Borrower shall repay the Lender the principal amount of Loan Facility #1 plus accrued interest on the maturity date of the Loan Facility #1 Term.

18. REPAYMENT OF LOAN FACILITY #2

The Lender shall in his sole discretion have the following options with respect to repayment of Loan Facility #2:

- (a) The Borrower shall repay the Lender the principal amount of Loan Facility #2 plus accrued interest on the maturity date of the Loan Facility #2 Term; or
- (b) The Lender shall have the right to exercise an option within 6 months from the date of Closing to notify the Borrower of its intention to convert any or all of the accrued interest (for both Loan Facility #1 and/or Loan Facility #2) and/or the Net Profits to which the Lender is entitled towards the purchase of a residential unit in the Project, based upon the sale price of \$900 per square foot for a penthouse unit, and \$875 per square foot for a sub-penthouse unit. The Lender covenants to execute the Borrower's (or its related party's) standard form of Agreement of Purchase and Sale and to pay a minimum of 20% down payment.

19. PURCHASE AT 128 HAZELTON

The Credit Parties and Lender acknowledge that the Lender has executed an Agreement of Purchase and Sale, as the same may be amended from time to time (the "APS") for the purchase of Suite PH 901, at 128 Hazelton Avenue, Toronto (the "Lender's Unit"), being a condominium project to be developed by Mizrahi (128 Hazelton) Inc. ("Hazelton Inc."), a company affiliated with Sam. In the event that the final closing of the Lender's Unit occurs before Loan Facility #2 is repaid to the Lender in full, then Sam unconditionally agrees to pay to Hazelton Inc. (or any successor or assignees) any and all amounts due and owing by the Lender to Hazelton Inc. for the Lender's Unit pursuant to the APS (such payment referred to herein as the "Mizrahi Bridge Payment") up to a maximum amount of that amount of principal that remains outstanding under Loan Facility #2 plus all accrued interest, and such Mizrahi Bridge Payment shall bear the following terms:

- (i) The Mizrahi Bridge Payment will bear interest at a rate of 5% per

annum (for a maximum of eighteen (18) months from the date of advance of the Mizrahi Bridge Payment (the "Interest End Date")), calculated and compounding annually, and payable on the Mizrahi Bridge Repayment Date (as defined below). It is understood that notwithstanding that the Mizrahi Bridge Repayment Date may occur after the Interest End Date, the Mizrahi Bridge Payment shall only bear interest for a maximum of eighteen (18) months from the date of advance of the Mizrahi Bridge Payment, and after such time shall be non-interest bearing;

- (ii) Repayment of the Mizrahi Bridge Payment by the Lender to Sam shall occur immediately subsequent to full confirmed repayment by the Borrower to the Lender of all amounts due and owing to the Lender pursuant to Loan Facility #2 (such repayment date referred to as the "Mizrahi Bridge Repayment Date").

SUCCESSION:

In the event of the death or incapacity (for a period of 120 days) of Sam Mizrahi prior to repayment in full of the Loan, the Credit Parties acknowledge and agree that the Lender shall be appointed (and the Security Documents shall contain such power of appointment) to act as the sole manager of the Project, with the authority, but not the obligation and liability, to administer and manage the completion of the Project and the sale or disposition the rest or completion of unit sales and the terms and conditions herein shall remain in full force and effect.

20. CONFIDENTIALITY:

The matters set forth in this Term Sheet and any information provided with respect to the transaction are confidential. Any party may disclose such information to their respective parties who need to know such information in order to conclude the transaction contemplated by this Letter of Intent and who are informed of the obligation to keep such information confidential or as may be required by applicable law.

21. COUNTERPARTS:

This Term Sheet may be executed: (i) by electronic transmission, including facsimile, scanned or email, and scanned electronic or facsimile signatures shall be treated as originals for all purposes; and (ii) in counterparts and all counterparts taken together shall constitute an executed copy of this Letter of Intent.

22. SUCCESSORS AND ASSIGNS

This Term Sheet shall be binding upon the parties hereto and their respective heirs, executors, administrators, representatives, successors and permitted assigns.


Signature page follows

The foregoing reflects the general terms and conditions on which the Borrower wishes to have the Lender proceed with the Loan.

Yours truly,


BORROWER:

MIZRAHI DEVELOPMENTS INC.

PER: 
Sam Mizrahi, President
I have authority to bind the Corporation

GUARANTOR:

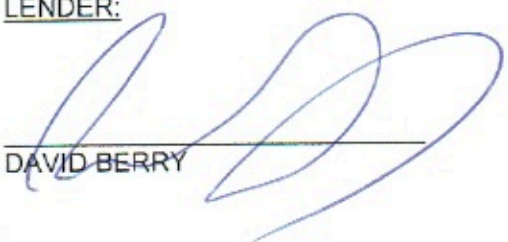
MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

PER: 
Sam Mizrahi, President
I have authority to bind the Corporation

ACCEPTANCE

Accepted on the terms and conditions herein provided this 6th day of June, 2016.

LENDER:


DAVID BERRY

Appendix “M”

SUPPLEMENTARY AGREEMENT

This agreement ("**Agreement**") is made the 28 day of June, 2016 (the "**Effective Date**").

BETWEEN: DAVID BERRY, of the City of Toronto in the Province of Ontario

(hereinafter referred to as "**David**")

AND SAM MIZRAHI, of the City of Toronto in the Province of Ontario

(hereinafter referred to as "**Sam**")

AND MIZRAHI (128 HAZELTON) INC., an Ontario corporation

(hereinafter referred to as "**Hazelton Inc.**")

RECITALS

WHEREAS David, Sam, Mizrahi Developments Inc. ("**MDI**") and Mizrahi Development Group (1451 Wellington) Inc. ("**Wellington Inc.**") have entered into a term sheet (the "**Term Sheet**") whereby David has agreed to loan MDI the aggregate amount of ten million dollars (\$10,000,000) (the "**Loan Transaction**");

AND WHEREAS on or about the date of execution of this Agreement, David, Sam, MDI and Wellington Inc. have, or shall, enter into a loan agreement, personal guarantee, general security agreements and other ancillary documents to consummate the Loan Transaction;

AND WHEREAS David has executed an Agreement of Purchase and Sale, as the same may be amended from time to time (the "**APS**") for the purchase of Suite PH 901, at 128 Hazelton Avenue, Toronto (the "**Lender's Unit**"), being a condominium project to be developed by Hazelton Inc., a company affiliated with Sam;

AND WHEREAS in the event that the closing of the Lender's Unit occurs before all amounts due and owing pursuant to Loan Facility #2 have been repaid to David in full, Sam has agreed to provide a bridge loan whereby Sam will pay to Hazelton Inc. any and all amounts due and owing by David to Hazelton Inc. for the Lender's Unit pursuant to the APS up to a maximum amount of that amount of principal that remains outstanding under Loan Facility #2 plus all accrued interest (the "**Mizrahi Bridge Payment**");

AND WHEREAS in order to guarantee repayment of the Loan Facility #2, Sam has agreed to execute a personal guarantee in favour of David (the "**Sam Personal Guarantee**");

AND WHEREAS in the event that Sam fails to provide the Mizrahi Bridge Payment and/or provide payment pursuant to the Sam Personal Guarantee, or if any amounts remain due and owing to David on account of Loan Facility #1 and/or Loan Facility #2 (including all interest accrued thereon), Sam, as a director and officer of Hazelton Inc., has agreed that David shall not be required to make any additional payments to Hazelton Inc. (including its successors and/or assignees) for the purchase of the Lender's Unit, whether on account of the final closing of the purchase of the Lender's Unit or otherwise (the "**Payment Postponement**");

AND WHEREAS in the event that any amounts remain due and owing to David on account of Loan Facility #1, and after Sam provides the Mizrahi Bridge Payment to Hazelton Inc. (or its successors or assigns (per Section 2 above), there remains any amounts owing to Hazelton Inc. on account of the final closing (or otherwise) of the Lender's Unit, David shall be entitled to use any and all cash and/or shares of Yappa Corp. held in escrow (as further described in this Agreement) to fund such remaining payment;

AND WHEREAS the Bridge Loan, the Sam Personal Guarantee and the Payment Postponement are intended to be confidential in nature;

NOW THEREFORE, in consideration of the background, the mutual covenants contained herein, and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the Parties), the Parties agree as follows:

ARTICLE 1 – DEFINED TERMS

Capitalized terms used herein but not defined herein shall have the meanings ascribed thereto in the Term Sheet.

ARTICLE 2 - BRIDGE LOAN

In the event that the final closing of the Lender's Unit occurs before Loan Facility #1 and Loan Facility #2 are repaid to David in full, Sam unconditionally covenants and agrees to pay to Hazelton Inc. (or any successors or assignees) any and all amounts due and owing by David to Hazelton Inc. for the Lender's Unit pursuant to the APS (such payment referred to herein as the "Mizrahi Bridge Payment") up to a maximum amount of that amount of principal that remains outstanding under Loan Facility #2 plus all accrued interest, and such Mizrahi Bridge Payment shall bear the following terms:

- (i) The Mizrahi Bridge Payment will bear interest at a maximum rate of 5% per annum (for a maximum of eighteen (18) months from the date of advance of the Mizrahi Bridge Payment (the "Interest End Date")), calculated and compounding annually, and payable on the Mizrahi Bridge Repayment Date (as defined below). It is understood that notwithstanding that the Mizrahi Bridge Repayment Date may occur after the Interest End Date, the Mizrahi Bridge Payment shall only bear interest for a maximum of eighteen (18) months from the date of advance of the Mizrahi Bridge Payment, and after such time shall be non-interest bearing. Notwithstanding the foregoing, it is understood that Sam will obtain a credit facility in order to provide the Mizrahi Bridge Payment, and, in connection therewith, Sam agrees to use his best efforts to obtain the credit facility to support the Mizrahi Bridge Payment at the best possible rate of interest and David shall pay such favourable rate of interest (up to a maximum rate of 5% per annum, as set out above);
- (ii) Repayment of the Mizrahi Bridge Payment by David to Sam shall occur immediately subsequent to full confirmed repayment by the Borrower to David of all amounts due and owing to David pursuant to Loan Facility #1 and Loan Facility #2 (such repayment date referred to as the "Mizrahi Bridge Repayment Date").

In connection with the foregoing, Hazelton Inc. agrees that, upon notice by David that Loan Facility #1 and/or Loan Facility #2 has not been repaid in full, notwithstanding anything to the contrary contained in the APS, (a) Hazelton Inc. (or any successor or assignee) shall seek any and all amounts due and owing to Hazelton Inc. (or any successor or assignee) for the final closing of the Lender's Unit from Sam, (b) David's rights under the APS shall not be affected in any way, and (c) the final closing of the Lender's Unit will be completed notwithstanding that funds for said closing may not have been provided by Sam.

ARTICLE 3 - YAPPN SHARES

In the event that:

- (i) any amounts remain due and owing to David on account of the Loan Facility #1 and/or Loan Facility #2, and
- (ii) after Sam provides the Mizrahi Bridge Payment to Hazelton Inc. (or its successors or assigns (per Section 2 above), there remains any amounts owing to Hazelton Inc. on account of the final closing (or otherwise) of the Lender's Unit (the "Remaining Fees"),

David shall be entitled to use any and all cash and/or Yappn Shares (being common shares of Yappn Corp.) held in escrow (as same is detailed in the amending agreement dated April 28, 2016 between David and Hazelton Inc. amending the terms of the APS (the "**Amending Agreement**")) up to a maximum amount of the Remaining Fees, to pay such Remaining Fees. In the event David obtains Yappn Shares from escrow in order to fund such Remaining Payment, the value attributed to such Yappn Shares shall be equal to the average VWAP per Yappn Share for the period covering the ten (10) trading days immediately preceding the date that David obtains such shares from escrow. "VWAP" means, for any date, the price determined by the first of the following clauses that applies:

- (a) the dollar volume-weighted average price of the Yappn Shares in the U.S. over-the-counter market on the electronic bulletin board for such shares during the Trading Period as reported by Bloomberg, L.P.;
- (b) the dollar volume-weighted average price for the Yappn Shares on any other trading market during the Trading Period as reported by Bloomberg, L.P.;
- (c) if no dollar volume-weighted average price is reported for the Yappn Shares by Bloomberg, L.P. for such hours, the average of the highest closing bid price and the lowest closing ask price of any of the market makers for the Yappn Shares as reported by OTC Markets Group in the OTC Pink marketplace; and
- (d) if the VWAP cannot be calculated for the Yappn Shares on a particular date on any of the foregoing bases, the VWAP of the Yappn Shares shall be the fair market value of the Yappn Shares on such date as determined by an independent appraiser selected in

ARTICLE 4 PERSONAL GUARANTEE

In the event that Loan Facility #2 is not repaid to David in full (including any and all accrued interest thereon) by the expiration of the Loan Facility #2 Term, or if Sam fails to provide the Mizrahi Bridge Payment, David may use all legal remedies available to him in order to enforce the Sam Personal Guarantee.

ARTICLE 5 PAYMENTS POSTPONED

In the event that Sam fails to provide the Mizrahi Bridge Payment and/or provide payment pursuant to the Sam Personal Guarantee, or if any amounts remain due and owing to David on account of Loan Facility #1 and/or Loan Facility #2 (including all interest accrued thereon), Sam, as a director and officer of Hazelton Inc., confirms and agrees that David shall not be required to make any additional payments to Hazelton Inc. (including its successors and/or assignees) for the purchase of the Lender's Unit, whether on account of the final closing of the purchase of the Lender's Unit or otherwise. Sam agrees that (a) Hazelton Inc. (or any successor or assignee) shall seek any and all amounts due and owing to Hazelton Inc. (or any successor or assignee) for the final closing of the Lender's Unit from Sam, (b) David's rights under the APS shall not be affected in any way, and (c) the final closing of the Lender's Unit will be completed notwithstanding that funds for said closing may not have been provided by Sam.

ARTICLE 6 - MISCELLANEOUS PROVISIONS

6.1 Amendment:

This Agreement may be amended, modified or supplemented only by a written agreement signed by each party hereto.

6.2 Waiver of Rights:

Any waiver of, or consent to depart from the requirements of any provision of this Agreement shall be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party to exercise, and no delay in exercising, any right under this Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

6.3 Choice of Law:

This Agreement shall be construed by, interpreted and enforced in accordance with the laws of the province of Ontario. The parties agree that the courts located in Toronto, Ontario shall be the exclusive forum for the resolution of any dispute arising from or relating to this Agreement. Each party hereby consents to the jurisdiction and venue of any such Ontario court.

6.4 Assignment:

Neither party may assign this Agreement without the prior written consent of the other party, except that David shall have the right to assign all or any part of this Agreement at any time after a period of one (1) year following the date of the initial advance of funds pursuant to the Loan Transaction.

6.5 Severability:

Nothing contained in this Agreement shall be construed as requiring any act contrary to the law. In the event there is a conflict between any provision of this Agreement and any applicable statute, law or regulation, the latter shall prevail and, within sixty (60) days of any such conflict coming to their attention, the parties shall confer to negotiate in good faith to modify this Agreement to the extent necessary to make the terms valid and enforceable.

6.6 Notice:

Any notice, demand or other communication (in this Article, a "notice") required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if, or

- (a) delivered in person during usual business hours of the recipient on a business day in Toronto, Canada ("**Business Day**") and left with a receptionist or other responsible employee of the recipient at the applicable address set forth below;
- (b) sent by prepaid first class mail; or
- (c) sent by any electronic means of sending messages, including email transmission, which produces a record ("**Transmission**") during normal business hours on a Business Day, charges prepaid and confirmed by prepaid first class mail;

in the case of a notice to Sam, addressed to him at:

189 Forest Hill Road
Toronto, Ontario
M5P 2N3
Email: sam@mizrahidevelopments.ca

in the case of a notice to David, addressed to him at:

124 Park Rd.
Toronto, Ontario
M4W 2N7
Email: davidmmberry@rogers.com

Each notice sent in accordance with this Article shall be deemed to have been received:

- (a) on the day it was delivered; or
- (b) on the third Business Day after it was mailed (excluding any Business Day which there existed any general interruption of postal services due to strike, lockout or other cause); or
- (c) on the same day it was sent by Transmission, or on the first Business Day thereafter if the day on which it was sent by transmission was not a Business Day.

Any Party may change its address for notice by giving notice to the other Party.

6.7 Term

This Agreement shall automatically terminate upon repayment to David of all amounts due and owing pursuant to Loan Facility #1 and Loan Facility #2, but shall remain in full force and effect until such time.

6.8 Notwithstanding

This Agreement shall be interpreted and enforced in accordance with its terms notwithstanding any "entire agreement" or similar clause which may be contained in any Loan Transaction document.

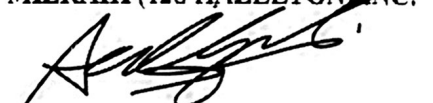
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.



SAM MIZRAHI

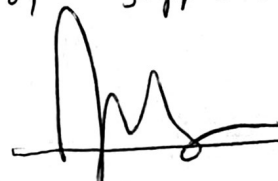


DAVID BERRY

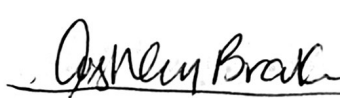
MIZRAHI (128 HAZELTON) INC.


Sam Mizrahi
President

As representative of
Mizrahi developments
I acknowledge this
is the only copy
of Supplementary agreement



Josh Lax
VP Development
mizrahi developments

 June 28/16

witness

Ashley
Ashley Brate

Concierge 133 Hazelton

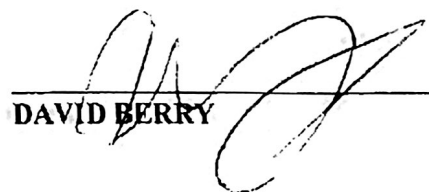
Appendix “N”

Agreement by David (which includes by way of delivering a copy of same) as required by law, or disclosure of the existence and/or terms of the Supplementary Agreement by David (which includes by way of delivering a copy of same) in connection with enforcement of this Supplementary Agreement or any other agreement or document delivered in connection with the Loan Transaction, shall not be considered a violation of this Section 1.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.



SAM MIZRAHI



DAVID BERRY

Appendix “O”

LOAN AGREEMENT

THIS AGREEMENT dated as of June 19, 2016 is between:

Mizrahi Developments Inc.

(the “**Borrower**”)

and

David Berry

(the “**Lender**”)

and

Mizrahi Development Group (1451 Wellington) Inc.

(“**1451**”)

and

Sam Mizrahi

(“**Sam**”)

RECITALS

- A. The Borrower has applied to the Lender for the Loan (as hereinafter defined).
- B. The Lender has agreed to lend the Borrower the Loan for such purposes on the terms and conditions set out herein.

AGREEMENTS

For good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties agree as follows:

PART 1 - DEFINITIONS AND INTERPRETATION

- 1.1 **Definitions.** In this Agreement, unless the context otherwise requires:

- (a) "**Assets**" means collectively all of the property, personal or real, and assets of the Credit Parties as of the date of this Agreement, including, without limitation, the Property, or hereafter acquired or otherwise obtained by the Credit Parties in any manner whatsoever;
- (b) "**Business Day**" means a day other than a Saturday or Sunday or any day banks in the City of Toronto are not open for business;
- (c) "**Closing**" means the date of the first advance of any portion of the Loan;
- (d) "**Collateral**" means all of the Credit Parties' rights, title and interests in and to the Assets and all cash flow therefrom and all other property and assets subject to the Security;
- (e) "**Cost Consultant**" means the Altus Group;
- (f) "**Credit Parties**" means collectively the Borrower and the Guarantors;
- (g) "**Encumbrance**" means any mortgage, lien, pledge, assignment, charge, security interest, title retention agreement, hypothec, levy, execution, seizure, attachment, garnishment, right of distress or other claim in respect of property of any nature or kind whatsoever howsoever arising (whether consensual, statutory or arising by operation of law or otherwise) and includes arrangements known as sale and lease back, sale and buy back and sale with option to buy back;
- (h) "**Environmental Laws**" means all applicable federal, provincial, regional, state, municipal or local laws, common law, statutes, regulations, ordinances, codes, rules, guidelines, requirements, certificates of approval, licences or permits relating to Hazardous Substances or the use, consumption, handling, transportation, storage or release thereof including, without limitation and in addition to any such laws relating to the environment generally, any such laws relating to public health, occupational health and safety, product liability or transportation;
- (i) "**Environmental Order**" means any prosecution, order, decision, notice, direction, report, recommendation or request issued, rendered or made by any Governmental Authority in connection with Environmental Laws or Environmental Orders;
- (j) "**Financial Indebtedness**" of the Borrower means any of the following:
 - (i) money borrowed, indebtedness represented by notes payable, and drafts accepted representing extensions of credit (including, as regards any note or draft issued at a discount, any amount that could reasonably be regarded as being the amortized portion of such discount as at the date of determination);
 - (ii) all obligations which are evidenced by bonds, debentures, notes or other similar instruments or not so evidenced but which would be considered to be indebtedness for borrowed money;
 - (iii) all indebtedness upon which interest charges are customarily paid;
 - (iv) net amounts payable pursuant to interest swap arrangements;

- (v) capital lease obligations and all other indebtedness issued or assumed as full or partial payment for property or services or by way of capital contribution;
- (vi) all letters of credit and letters of guarantee issued by a financial institution at the request of or for the benefit of the Borrower;
- (vii) any guarantee (other than by endorsement of negotiable instruments for collection or deposit in the ordinary course of business) in any manner, directly or indirectly, of any part or all of any obligation of a type referred to in any of paragraphs (i) to (v) above; and
- (viii) any of the foregoing amounts in respect of any of 1451 whose accounts are not required under generally accepted accounting principles to be consolidated with the accounts of the Borrower;

including, without limitation, all Obligations, but excluding:

- (i) trade payables, expenses accrued in the ordinary course of business, customer advance payments and deposits received in the ordinary course of business unless the time for due payment of which extends, or is intended to extend, more than twelve (12) months from the date as of which the determination of Financial Indebtedness is being made; and
 - (ii) the Permitted Encumbrances;
- (k) "**Governmental Authority**" means any nation, government, province, state, region, municipality or other political subdivision or any governmental department, ministry, commission, board, agency or instrumentality or other public authority or person, domestic or foreign, exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing and includes any court of competent jurisdiction;
 - (l) "**Guarantor**" or "**Guarantors**" means 1451 as to Loan Facility No. 1 and Loan Facility No. 2; and Sam Mizrahi ("**Sam**"), personally, as to Loan Facility No. 2 only;
 - (m) "**Hazardous Substances**" means any substance, combination of substances or by-product of any substance which is or may become hazardous, toxic, injurious or dangerous to any person, property, air, land, water, flora, fauna or wildlife; and includes but is not limited to contaminants, pollutants, wastes and dangerous, toxic, deleterious or designated substances as defined in or pursuant to any Environmental Laws or Environmental Orders;
 - (n) "**Loan**" means collectively Loan Facility No. 1 and Loan Facility No. 2;
 - (o) "**Loan Documents**" means, collectively, this Agreement and all other agreements and other instruments delivered to the Lender by the Borrower (whether now existing or presently arising) for the purpose of establishing, perfecting, preserving or protecting any security held by the Lender in respect of any Obligations, including, without limitation those listed in Section 5.1;

- (p) “**Loan Facility No. 1**” means a loan facility of \$4,000,000, as set out under Section 2.1;
- (q) “**Loan Facility No. 2**” means a loan facility of \$6,000,000 as set out under Section 2.4;
- (r) “**Net Profits**” means the aggregate net income (“**Net Income**”) of the Project (including, without limitation, that net income emanating from the sale of condominium units) calculated and reported upon in accordance with Canadian generally accepted accounting principles (“**GAAP**”) and as initially projected in the draft Project budget in the Cost Consultant’s Report, appended hereto as Schedule “C”, accompanied by a written report of an auditor jointly approved by the Lender and the Borrower. Notwithstanding the application of GAAP, the calculation of Net Income shall be made without reference to the following items:
 - (i) Executive compensation in any form that exceeds the aggregate sum of \$900,000 per year, it being understood that, included in such aggregate number shall be a monthly fee of \$5,000 for a one (1) year period, commencing on such date as the Lender shall advise the Borrower;
 - (ii) Related party transactions that have not been consented to in writing by the Lender or as disclosed in the Project budget attached hereto as Schedule C, and, for greater certainty, Mizrahi Inc. shall be the builder of the Project. Notwithstanding the foregoing, it is understood that any permitted or disclosed related party transactions shall be at prices and on terms not less favourable to the Borrower or 1451, as the case may be, than could be obtained in a comparable arm's length transaction with another person; and
 - (iii) Expenses incurred prior to the advance of the Loan that have not been consented to in writing by the Lender

The parties agree that, subject to the written consent of the Lender (not to be unreasonably withheld or delayed), the calculation of Net Profits shall be subject to any changes which may occur in the development process, and subject further to any act of force majeure.

- (s) “**Obligations**” means all monies now or at any time and from time to time hereafter owing or payable by the Borrower to the Lender and all other obligations (whether now existing, presently arising or created in the future) of the Borrower in favour of the Lender, and whether direct or indirect, absolute or contingent, matured or not, whether arising from agreement or dealings between the Lender and the Borrower and whether the Borrower be bound alone or with another or others and whether as principal or surety and without limiting the generality of the foregoing, specifically including the obligations of the Borrower under this Agreement and the Security;
- (t) “**Permitted Encumbrances**” means the following:
 - (i) liens, the validity of which are being contested by the Borrower in good faith by appropriate legal proceedings and in respect of which either:
 - (A) security adequate in the opinion of the Lender has been provided to it to ensure payment of such liens; or

- (B) the Lender is of the opinion that such liens are not materially prejudicial to the security hereof;
- (ii) agreements with any governmental authority, easements, rights-of-way and other similar rights in real property, or any interest therein, for a development similar in nature and with respect to the Property, provided the same are not of such nature as to materially adversely affect the use of the Property, and provided that such matters are reviewed by the Lender, acting reasonably;
- (iii) any reservations, limitations, provisos and conditions expressed in any original grant from the Crown which do not in the Lender's opinion materially detract from the value of the property concerned or materially impair its use in the operation of the business of the Borrower;
- (iv) title defects or irregularities which, in the opinion of counsel to the Lender, are of a minor nature and in the aggregate will not in the Lender's opinion materially detract from the value of the property concerned or materially impair its use in the operation of the business of the Borrower; and
- (v) those specific permitted encumbrances set out in Schedule "B" annexed hereto;
- (u) "**Person**" means an individual, company, partnership (whether or not having separate legal personality), corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture or other entity, or a government, state or political subdivision thereof or any agency of such government, state or political subdivision;
- (v) "**Project**" means the proposed midrise residential and retail condominium project to be constructed by the Borrower and/or 1451 on the Property;
- (w) "**Property**" means collectively the lands and premises in the City of Ottawa, Province of Ontario, municipally known as 1451 Wellington Street West and 1445 Wellington Street West, as more particularly described on Schedule "A" attached hereto;
- (x) "**Related Party**" means in respect of each of the Borrower and 1451 (i) a person which alone or in combination with others holds a sufficient number of securities or has contractual rights sufficient to affect materially the control of the Borrower or 1451, (ii) a person in respect of which a person referred to in clause (i) alone or in combination with others holds a sufficient number of securities or has contractual rights sufficient to affect materially its control, (iii) a person in respect of which the Borrower or 1451 alone or in combination with others holds a sufficient number of securities or has contractual rights sufficient to affect materially its control, (iv) a person who beneficially owns, directly or indirectly, voting securities of the Borrower or 1451 or who exercises control or direction over voting securities of the Borrower or 1451 or a combination of both carrying more than 10% of the voting rights attached to all voting securities of the Borrower or 1451 for the time being outstanding, (v) a director or senior officer of the Borrower or 1451, or related party of the Borrower or 1451, or (vi) an affiliate of any of the foregoing;
- (y) "**Security**" or "**Security Documents**" means all of the security documents to be provided to the Lender under Section 5.1; and

- (z) "**Sum**" has the meaning given in Section 17.8;
 - (aa) "**Term Sheet**" means the binding term sheet between the Borrower, the Guarantors and the Lender, accepted by the Lender on June 6th, 2016;
 - (bb) "**Townhome Project**" means the proposed development of town homes or other residential and/or retail spaces on those lands municipally known as 42 Garrison Street, Ottawa, ON, 46 Garrison Street, Ottawa, Ontario, 50 Garrison Street, Toronto, Ontario, and 54 Garrison Street, Toronto, Ontario;
 - (cc) "**Vendor Take Back Charge**" means a charge, registered as Instrument No. OC1484155 on June 6, 2013 on title to 1451 Wellington Street West, Ottawa, Ontario, in the principal sum of \$1,000,000.00 in favour of Dacando Enterprises Limited;
 - (dd) "**Voting Control**" means the direct or indirect ownership or control of a sufficient number of outstanding shares of a corporation to elect a majority of its directors.
- 1.2 **Headings.** The headings are inserted for convenience of reference only and will not affect the construction or interpretation of this Agreement.
- 1.3 **Governing Law.** This Agreement will be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.
- 1.4 **Submission to Jurisdiction.** The Borrower submits to the jurisdiction of the courts of the Province of Ontario and agrees to be bound by any suit, action or proceeding commenced in such courts and by any order or judgment resulting from such suit, action or proceeding, and the foregoing will in no way limit the right of the Lender to commence suits, actions, or proceedings based on this Agreement or any of the Security in any jurisdiction.
- 1.5 **Invalidity of Any Provision.** If any covenant, obligation or provision contained in this Agreement is invalid or unenforceable, the remainder of this Agreement will not be affected and each covenant, obligation or provision of this Agreement will separately be valid and enforceable to the fullest extent permitted by law.
- 1.6 **Conflict with Other Documents.** If the provisions of the Security conflict with, or are inconsistent with, the provisions of this Agreement, the provisions of this Agreement will prevail, provided that in the event of conflict between the provisions of the Term Sheet and the terms of this Agreement, the provisions of this Agreement will prevail.
- 1.7 **Amendments.** This Agreement may only be amended from time to time in writing and any such amendment may be evidenced by memoranda or letters signed by an authorized officer of the respective parties without the necessity of such amendment being executed under seal.
- 1.8 **Currency.** Unless otherwise indicated, all references in this Agreement to "dollars" or \$ means lawful funds of Canada.

PART 2 – LOAN FACILITIES

- 2.1 **Loan Facility No. 1.** Subject to the terms and conditions of this Agreement, the Lender hereby agrees to establish a term, non-revolving credit facility in favour of the Borrower in the principal

sum of \$4,000,000.00 (CDN).

- 2.2 **Advance.** The Loan Facility No. 1 shall be available in a single draw or advance of the entire Loan Facility No. 1 amount on or before July 8, 2016.
- 2.3 **Term.** The Loan Facility No. 1 shall mature the earlier of: (a) 2 years from the date of the initial advance of Loan Facility No. 1 (the “**Two Year Deadline**”); (b) issuance of the above-grade building permit; and (c) receipt of any proceeds or funds from the Construction Lender (as defined herein)..
- 2.4 **Loan Facility No. 2.** Subject to the terms and conditions of this Agreement, the Lender hereby agrees to establish a term, non-revolving credit facility in favour of the Borrower in the principal sum of \$6,000,000.00 (CDN).
- 2.5 **Advance.** The Loan Facility No. 2 shall be available in a single draw or advance of the entire Loan Facility No. 2 amount on or before July 8, 2016.
- 2.6 **Term.** The Loan Facility No. 2 shall mature the earlier of: (a) 45 days following the date of registration of the condominium corporation resulting from the Project on the Property; and (b) December 31, 2021.
- 2.7 **Purpose.** The Borrower covenants that the Loan shall only be used by the Borrower to finance:
- (a) repayment of all loans and existing mortgages registered on title to the Property (save and except the Vendor Take Back Charge);
 - (b) the soft costs relating to the Project, the particulars of which are set out on the Project budget annexed hereto as Schedule "C"; and
 - (c) a portion of the Borrower's equity in the Project, provided that the Borrower shall not and the Borrower covenants not to remove or distribute any equity in or profit from the Project or otherwise compensate any of its shareholders or other persons by way of income, dividend or other payment other than to repay the Loan or otherwise as agreed upon in writing by the Lender.

PART 3 – INTEREST, REPAYMENT AND RIGHT TO AUDIT

- 3.1 **Interest Rate.** Interest on any outstanding principal amount of the Loan shall be calculated and compounded annually and shall be payable as follows:
- (a) Loan Facility No. 1: 14% per annum.
 - (b) Loan Facility No. 2: 14% per annum.
- 3.2 **Payment- Loan Facility No. 1 and Loan Facility No. 2.** The full amount of the outstanding principal together with accrued interest for Loan Facility No. 1 shall be due and payable on the maturity date of Loan Facility No. 1. The full amount of the outstanding principal together with accrued interest for Loan Facility No. 2 shall be due and payable on the maturity date of Loan Facility No. 2.
- 3.3 **Payment Options.** The Lender shall have the right to exercise an option within six (6) months

from the date of Closing by giving notice to the Borrower of his intention to apply any or all of the accrued interest (for either or both of Loan Facility No. 1 and/or Loan Facility No. 2) and/or the Net Profits to which the Lender is entitled (pursuant to the warrant described in this Agreement) towards the purchase of a residential unit in the Project (the “**Unit**”), based upon the sale price of \$900 per square foot for a penthouse unit, and \$875 per square foot for a sub-penthouse unit. The Lender covenants to execute the Borrower’s (or its related party’s) standard form of Agreement of Purchase and Sale and to pay a minimum of 20% down payment. The parties agree that the balance of the purchase price of the Unit less the Interim Net Profit Calculation (as defined below) shall be funded by the Lender from his own sources. Notwithstanding the exercise of the option and subject to section 3.4, interest will continue to accrue (and payable by the Borrower) at the interest rate noted herein until such time as the principal to which such interest applies is repaid in full. For clarity and as an example, should the Lender decide, through exercise of the option within the time period set out in this Section 3.3, that the right to the interest from Loan Facility No. 1 should be applied to the purchase of a Unit, and the principal from Loan Facility No. 1 is not repaid until the maturity date for Loan Facility No. 1, the amount of interest deemed applied into a Unit shall be equal to the amount of interest which the Borrower would have had to repay to the Lender on the maturity date for Loan Facility No. 1.

It is understood by the parties hereto that Net Profits for the Project may not have been finally determined by that point in time when the Lender is required to make any interim or final payment for the Unit. In the event that Net Profits for the Project have not been finally determined by the respective time period as aforesaid, the parties shall mutually agree on an estimate of Net Profits for the Project (the “**Interim Net Profit Calculation**”), and such estimate shall be used for determining the monetary amount to be applied to the Unit in accordance with this section (the “**Interim Applied Amount**”). In the event that the parties cannot come to an agreement on the Interim Net Profit Calculation, the parties agree to appoint MNP LLP (or such other firm as the Lender may determine should MNP LLP be unable or unwilling to act) to make such estimation, which shall be final and binding until the Adjustment Date (as defined below).

The Lender shall execute a promissory note (the “**Unit Purchase Note**”) on the closing of the Unit purchase promising to pay an amount equal to the Interim Applied Amount. The Unit Purchase Note shall contain a right of set-off. Once the Final Net Profit Calculation (as defined below) is determined, the Lender shall have the right to set-off his rights to the Net Profits (as determined pursuant to the Final Net Profit Calculation) against the amounts owing under the Unit Purchase Note. Any difference between the Interim Net Profit Calculation and the Final Net Profit Calculation shall be adjusted as set out below.

At such point in time when Net Profits can be finally determined (or such earlier date should the Lender notify the Borrower in writing that he wishes to finally calculate Net Profits at that point in time) (the “**Adjustment Date**”), the Borrower shall engage an auditor to provide an opinion as to the final determination of Net Profits, which determination shall be final and binding (the “**Final Net Profit Calculation**”). Upon such determination, to the extent that the Interim Net Profit Calculation exceeds the Final Net Profit Calculation, the Lender shall pay to the Borrower (or 1451), within 10 days of the determination of the Final Net Profit Calculation, twenty-five percent (25%) of the difference between the Interim Net Profit Calculation and the Final Net Profit Calculation. To the extent that the Final Net Profit Calculation exceeds the Interim Net Profit Calculation, the Borrower shall pay to the Lender, within 10 days of the determination of the Final Net Profit Calculation, twenty-five percent (25%) of the difference between the Final Net Profit Calculation and the Interim Net Profit Calculation. This section shall survive termination or expiration of this Agreement without limit of time.

- 3.4 **Prepayment.** Notwithstanding anything else contained herein, the Borrower shall have the right to pay all or part of the principal outstanding on Loan Facility No. 1 after six (6) months from the date of advance of Loan Facility No. 1, and/or Loan Facility No. 2 after one (1) year from the date of advance of Loan Facility No. 2, at any time or times upon at least 30 day's written notice provided to the Lender. Notwithstanding the foregoing and notwithstanding anything to the contrary which may be contained in this Agreement or any document delivered in connection with the Loan, in no event regardless of the timing of any prepayment) shall the Lender receive less than one (1) years interest for the full amount of Loan Facility No. 1 and three (3) years interest for the full amount of Loan Facility No. 2 (collectively, the "**Minimum Interest**").
- 3.5 **Payments.** All payments made by the Borrower will be applied first to interest accrued to the date of payment, second to costs and other charges payable hereunder and third to principal, except that any such payment will not be taken in substitution or reduction of interest payments required hereunder.
- 3.6 **Purchase at 128 Hazelton.** The Credit Parties and Lender acknowledge that the Lender has executed an Agreement of Purchase and Sale, as the same may be amended from time to time (the "**APS**") for the purchase of Suite PH 901, at 128 Hazelton Avenue, Toronto (the "**Lender's Unit**"), being a condominium project to be developed by Mizrahi (128 Hazelton) Inc. ("**Hazelton Inc.**"), a company affiliated with and controlled by Sam. In the event that the final closing of the Lender's Unit occurs before Loan Facility No. 1 and Loan Facility No. 2 are repaid to the Lender in full, then Sam unconditionally agrees to pay to Hazelton Inc. (or any successor or assignees) any and all amounts due and owing by the Lender to Hazelton Inc. for the Lender's Unit pursuant to the APS (such payment referred to herein as the "**Mizrahi Bridge Payment**") up to a maximum amount of that amount of principal that remains outstanding under Loan Facility No. 2 plus all accrued interest, and such Mizrahi Bridge Payment shall bear the following terms:
- (a) The Mizrahi Bridge Payment will bear interest at a rate of 5% per annum (for a maximum of eighteen (18) months from the date of advance of the Mizrahi Bridge Payment (the "**Interest End Date**")), calculated and compounding annually, and payable on the Mizrahi Bridge Repayment Date (as defined below). It is understood that notwithstanding that the Mizrahi Bridge Repayment Date may occur after the Interest End Date, the Mizrahi Bridge Payment shall only bear interest for a maximum of eighteen (18) months from the date of advance of the Mizrahi Bridge Payment, and after such time shall be non-interest bearing. Notwithstanding the foregoing, it is understood that Sam will obtain a credit facility in order to provide the Mizrahi Bridge Payment, and, in connection therewith, Sam agrees to use his best efforts to obtain the credit facility to support the Mizrahi Bridge Payment at the best possible rate of interest, and the Lender shall pay such rate of interest (up to a maximum rate of 5% per annum, as set out above);
 - (b) Repayment of the Mizrahi Bridge Payment by the Lender to Sam shall occur immediately subsequent to full confirmed repayment by the Borrower to the Lender of all amounts due and owing to the Lender pursuant to Loan Facility No. 1 and Loan Facility No. 2 (such repayment date referred to as the "**Mizrahi Bridge Repayment Date**").
- 3.7 **Right to Audit.** The Borrower shall establish and maintain a reasonable accounting system that enables the Lender to readily identify the Borrower's and 1451's assets, expenses, costs of goods, and use of funds. The Lender and his authorized representatives shall have the right, at any time during normal business hours upon two (2) days' advance notice, to attend at the Borrower's and/or 1451's offices to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic,

or other) relating to or pertaining to this Agreement and the calculation of Net Profits, including, but not limited to those kept by the Borrower, 1451, and their employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled cheques; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence.

The Borrower shall, at all times during the term of this Agreement and for a period of three (3) years after the termination or expiration of this Agreement, maintain such records, together with such supporting or underlying documents and materials. The Borrower shall at any time requested by the Lender, whether during or after completion of this Agreement, and at the Project's own expense, make such records available for inspection and audit (including copies and extracts of records as required) by the Lender. Such records shall be made available to the Lender or his representatives during normal business hours at the Borrower's office or place of business and subject to at least three (3) days' written notice.

Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by the Lender except as otherwise set out herein. If the audit identifies any discrepancies in the calculation of Net Profits, adjustments equal to the discrepancies shall be made to the calculation of Net Profits. If the audit identifies any discrepancy in the calculation of Net Profits equal to or greater than five percent (5%), the Borrower shall reimburse the Lender for the total costs of the audit.

If the auditor reports on findings related to fraud, material misrepresentation or material non-performance, the Lender may recoup the costs of the audit work from the Borrower and such findings shall be considered an immediate Event of Default with no ability to cure.

Notwithstanding anything to the contrary contained herein, the Lender shall be permitted to exercise the audit right contained herein no more than once per year until determination of the Final Net Profit Calculation.

PART 4 - LENDER'S FEES

- 4.1 **Costs.** All costs incurred by the Lender in connection with the Loan, including interest, legal as well as other costs which may be identified as time progresses, shall be the responsibility of the Project (collectively "**Lender's Costs**").

PART 5 SECURITY

- 5.1 **Security from the Borrower.** Repayment of the Loan, interest, costs and all other Obligations owing by the Borrower to the Lender and performance of the covenants, agreements and obligations in this Agreement and the Security will be secured by the following, all to be satisfactory to the Lender in form and substance:
- (a) two promissory notes executed by the Borrower in favour of the Lender reflecting the terms herein;

- (b) 1451 shall execute and deliver an Acknowledgement and Direction in favour of the Lender's solicitors annexing a mortgage against the Property setting out the amounts due and owing under Loan Facility No. 1 which is to be held by the Lender's solicitors in escrow and shall not be registered unless Loan Facility No. 1 has not been repaid in full by the Two Year Deadline;
- (c) a general security agreement securing all present and after-acquired personal property of the Borrower and 1451 for registration pursuant to the provisions of the *Personal Property Security Act* (Ontario) ("**PPSA**"); provided, however, that the Lender shall not register the Borrower's general security agreement or the security created therein pursuant to the PPSA unless there is an Event of Default which has not been remedied;
- (d) an assignment of any/all contracts relating to the Project, which shall not be the subject of a registration under the PPSA unless there is an Event of Default which has not been remedied;
- (e) an assignment of all policies of insurance, which shall not be the subject of a registration under the PPSA unless there is an Event of Default which has not been remedied;
- (f) guarantee from 1451 for all indebtedness under Loan Facility No. 1 and Loan Facility No. 2;;
- (g) a guarantee from Sam for all indebtedness under Loan Facility No. 2, which shall not be the subject of a registration under the PPSA;
- (h) a postponement of claim from Sam in respect of all indebtedness of the Borrower and 1451 in favour of Sam, if required by the Lender;
- (i) an environmental indemnity from the Borrower and Guarantor;
- (j) a warrant, exercisable by the Lender within 6 months from the date of Closing, respecting the acquisition for \$1.00 of 25% on the Net Profits in the Project, which warrant shall describe, in detail, Net Profit calculations(s), payment terms and the like; and
- (k) an irrevocable direction executed by the Credit Parties, in blank, to be held by Lender's solicitors in escrow, irrevocably authorizing and directing the Construction Lender or Project solicitors, as the case may be, to remit any proceeds or funds from the Construction Lender to the Lender, while the Loan Facility No. 1 remains unpaid, in priority to payment to any of the Credit Parties. The Lender covenants to provide the Construction Lender and Borrower with a copy of the information/payout statement confirming any amounts outstanding.

The Borrower acknowledges and agrees that any default by the Credit Parties to any permitted lender shall be a default under this Agreement.

PART 6 – CONDITIONS PRECEDENT FOR ADVANCE

- 6.1 **Conditions of Advance.** Subject to the fulfilment of the following conditions precedent, the Loan will be advanced at such time as the Borrower may direct the Lender in writing:

- (a) the Borrower shall have acquired a good and marketable title to the Assets, save and except the property at 1445 Wellington Street West, Ottawa, which is subject to an Agreement of Purchase and Sale which has not been cancelled or revoked, free and clear of any Encumbrance other than Permitted Encumbrances;
- (b) confirmation that the Security has been duly executed, delivered and registered, where applicable, in a form and manner satisfactory to the Lender and its counsel;
- (c) the Lender shall have received credit reports for the Credit Parties and financial statements for 1451 as the Lender may request that are satisfactory to the Lender, in its sole and absolute discretion;
- (d) the Lender being satisfied, in its sole and absolute discretion, with the results of the due diligence searches, enquiries and reports provided by the Borrower to the Lender and in respect of such additional due diligence, searches, enquiries and reports prepared for the Lender, including, without limitation:
 - (i) reliance letters addressed to the Lender with respect to the soil tests and geotechnical reports (already provided to the Lender);
 - (ii) reliance letters addressed to the Lender with respect to the phase 1 environmental tests (and if recommended, Phase 2 environmental tests or audits);
 - (iii) current appraisals of the Property, if available;
- (e) satisfactory review of the draft Cost Consultant report with respect to the Borrower and the Project, the Project budget, the draft Project plans and the appraisals;
- (f) the Borrower has provided the Lender to its satisfaction with information or an organizational list or chart setting out: (i) all of the subsidiaries of the Borrower; (ii) the properties each one owns; and (iii) confirmation that all such subsidiaries are owned solely by the Borrower;
- (g) delivery by the Borrower to the Lender of evidence of all-risk and liability insurance (inclusive of IBC standard mortgage clauses) naming the Lender as mortgagee and additional loss payee;
- (h) delivery by the Borrower to the Lender of evidence that all realty taxes for the Property owned by 1451 has been paid in full to date;
- (i) the Lender having received officer's certificates and certified copies of resolutions of the board of directors for each of the Borrower and 1451 concerning the due authorization, execution and delivery of all of the Security Documents and such other related matters as may be required by the Lender;
- (j) the Lender receiving an opinion from the Borrower's counsel regarding the corporate status of each of the Borrower and 1451, the due authorization, execution, delivery and enforceability of the Security and such other matters as the Lender may require, in form and substance satisfactory to the Lender;

- (k) a title insurance policy issued by a recognized title insurer in Ontario, in a form satisfactory to the Lender, in respect of the Property owned by 1451 which title insurance policy insures the interest of the Lender for the full amount of the Loan. The Borrower will pay all premiums and costs associated with the title insurance policy. The Lender may deduct such premiums and costs from the initial advance. In the event a title insurance policy is not available the Lender will accept a title opinion from the Borrower's solicitors in a form and substance satisfactory to the Lender;
 - (l) the Borrower has provided evidence, satisfactory to the Lender of the current zoning of the Property and confirmation of no adverse municipal or regulatory inspection reports; and
 - (m) a satisfactory ruling from the Ontario Municipal Board.
- 6.2 **Advance.** The net proceeds of the Loan will be paid to the Borrower, or as it may otherwise direct, on Closing. On the Closing, the Lender will hold back for the Lender's Costs.

PART 7 – INTERCREDITOR

- 7.1 The Lender hereby acknowledges that the Borrower may enter into a senior construction facility for the Project.
- 7.2 The Lender hereby acknowledges that the Borrower may enter into a charge/mortgage with Tarion and Aviva and/or Westmount Insurance (“**Bond Insurer**”) (or some other entity approved by the Lender, acting reasonably) acting as a deposit bond insurer, as security for the deposit bond facility and/or excess deposit bond facility for the Project.
- 7.3 The Lender hereby agrees to postpone, subordinate and standstill its Security and interest in the Borrower, if required, by either the bona fide senior construction lender with respect to a senior construction facility (the “**Construction Lender**”) and/or Bond Insurer when same becomes available and provided that the Lender shall enter into an intercreditor agreement with the first construction lender and/or Bond Insurer, as the case may be, on terms satisfactory to the Lender, acting reasonably. The Borrower acknowledges and agrees that any default by any of the Credit Parties to the senior construction lender or Bond Insurer shall be a default under this Agreement and the Loan Documents.

PART 8 - REPRESENTATIONS AND WARRANTIES

- 8.1 **Representations and Warranties.** The Borrower represents and warrants to the Lender that:
- (a) Each of the Borrower and 1451 is duly incorporated and validly subsisting under the laws of their jurisdiction of incorporation and has the corporate power and capacity to own their properties and assets and to carry on their businesses as presently carried on by the Borrower and 1451 and to hold all material licences, permits and assets as are required to own their assets and to carry on business in each jurisdiction in which they so do.
 - (b) The Borrower and 1451 each has the corporate power and capacity to enter into this Agreement and each of the Loan Documents to which it is a party and to do all acts and

things as are required or contemplated hereunder or thereunder to be done, observed and performed by it.

- (c) The Borrower and 1451 have taken all necessary corporate action to authorize the execution, delivery and performance of this Agreement and each of the Loan Documents and each such document constitutes, or upon execution and delivery will constitute, a valid and binding obligation of the Borrower and 1451 enforceable against each of the Borrower and 1451 in accordance with its terms.
- (d) The execution and delivery of this Agreement and the other Loan Documents and the performance by the Credit Parties of their respective obligations thereunder (i) does not and will not violate any law or any provision of the articles, by laws, constating documents or other organizational documents of the Borrower and 1451 or constitute a breach of any existing contractual or other obligation of the Borrower and 1451 or contravene any licence or permit to which the Borrower and 1451 are subject, (ii) will not result in the creation of, or require the Borrower and 1451 to create, any Encumbrance in favour any Person other than the Lender and other than the Permitted Encumbrances, and (iii) will not result in or permit the acceleration of the maturity of any indebtedness or other obligations of the Borrower or 1451.
- (e) No authorization, consent or approval of, or filing with or notice to, any Person is required in connection with the execution, delivery or performance of this Agreement or any of the other Loan Documents by the Borrower and/or 1451.
- (f) The financial information of the Credit Parties in the form delivered by the Borrower to the Lender fairly, completely and accurately presents the financial condition of the Credit Parties and the financial information presented therein for the period and as at the date thereof. Since the date of the financial information delivered to the Lender there has been no development which has had or will have a material adverse effect upon the business, property, financial condition or prospects of the Credit Parties or upon the ability of the Borrower to perform its obligations under this Agreement or any of the Loan Documents.
- (g) Each of the Credit Parties is not an insolvent person within the meaning of the *Bankruptcy and Insolvency Act* (Canada).
- (h) Neither the Borrower nor 1451 is in violation of its constating documents, its by-laws or any shareholders' agreement applicable to it.
- (i) There are no actions, suits, judgements, awards or proceedings pending or, to the knowledge of the Borrower, threatened against any of the Credit Parties before any court or government department, commission, board, agency or instrumentality, domestic or foreign, or before any other authority, or before any arbitrator of any kind, which would, if determined adversely to the Credit Parties materially adversely affect their business, property, financial condition or prospects or their ability to perform any of the provisions of this Agreement or any Loan Document to which they are a party or which purports to affect the legality, validity or enforceability of this Agreement or any Loan Documents or the Lender's ability to realize upon the Collateral, and the Credit Parties are not in default with respect to any judgment, order, writ, injunction, award, rule or regulation of any Governmental Authority or any arbitrator, which individually or in the aggregate results in any such material adverse effect.

- (j) Each of the Credit Parties is not in default or breach under any material commitment or obligation or under any order, writ, decree or demand of any Governmental Authority or with respect to any leases, licences or permits to own and/or operate material properties and assets or to carry on business and there exists no state of facts which, after notice or the passage of time or both, would constitute such a default or breach; and there are not any proceedings in progress, pending or threatened, which may result in the revocation, cancellation, suspension or any adverse modification of any such leases, licences or permits.
- (k) The Borrower and 1451 are each in compliance with all material agreements to which it is a party and none of the Borrower nor 1451 or any other party to any material agreement has defaulted under any of the material agreements. No event has occurred which, with the giving of notice, lapse of time or both would constitute a default under, or in respect of, any material agreement. There is no dispute regarding any material agreement;
- (l) All books and records of the Borrower and 1451 have been fully, properly and accurately kept and completed and there are no material inaccuracies or discrepancies of any kind contained or reflected therein.
- (m) The Borrower has provided to the Lender all material information relating to the financial condition, business and prospects of the Credit Parties and all such information is true, accurate and complete in all material respects and does not omit any material fact necessary in order to make such information not misleading, and the Borrower shall give prompt notice of any material change in the business or condition of the Credit Parties to the Lender.
- (n) There are no shareholder loans to the Borrower other than from Sam or direct or indirect subsidiaries, related entities or associates of Sam, in respect of which loans Sam has executed a postponement of claim to and in favour of the Lender.
- (o) There are no shareholder loans to 1451 other than from Sam or direct or indirect subsidiaries, related entities or associates of Sam, in respect of which loans Sam has executed a postponement of claim to and in favour of the Lender.
- (p) The Credit Parties have good title to the Assets, save and except the property at 1445 Wellington Street West, Ottawa, and are the legal and beneficial owners thereof.
- (q) There are no liens, claims, charges or encumbrances whatsoever against the Assets, the Borrower or the Property, other than the Permitted Encumbrances.
- (r) The Credit Parties have good title to, and possession of, the Collateral.
- (s) Sam is the sole shareholder of the Borrower. Borrower is the sole shareholder of 1451. No Person has any right to acquire any shares from the said shareholders thereof, and no Person has any right pursuant to any contract, agreement, option or otherwise to acquire any of the unissued shares of the Borrower or 1451.
- (t) Sam is the sole director of each of the Borrower and 1451.
- (u) The following corporations are the only subsidiaries of the Borrower:

- (a) 1451 – A wholly-owned subsidiary of the Borrower
 - (b) Mizrahi (128 Hazelton) Inc. – A subsidiary of the Borrower in which the Borrower owns a fifty percent (50%) equity interest; and
 - (c) Sam M Inc. – A wholly-owned subsidiary of the Borrower (which subsidiary owns a fifty percent (50%) equity interest in Mizrahi Development Group (The One) Inc.;
 - (v) The chief executive offices of the Borrower and 1451 are located at 189 Forest Hill Road, Toronto, Ontario M5P 2N3. The Borrower has material assets only at the location listed herein.
 - (w) All (i) forecasts and projections supplied to the Lender were prepared in good faith, adequately disclosed all relevant assumptions and are reasonable, and (ii) other written information supplied to the Lender is true and accurate in all material respects. There is no fact known to the Borrower which could reasonably be expected to have a material adverse effect and which has not been fully disclosed to the Lender.
 - (x) Each of the Credit Parties has filed, or caused to be filed, all tax returns, reports and declarations which are required to be filed. All information in such tax returns, reports and declarations is complete and accurate in all material respects. The Credit Parties have each paid or caused to be paid all taxes due and payable or claimed due and payable in any assessment received by each of them, except taxes the validity of which are being contested by appropriate proceedings diligently pursued and available and with respect to which adequate reserves have been set aside. Adequate provisions have been made for the payment of all accrued and unpaid federal, provincial, municipal, local and foreign and other taxes whether or not yet due and payable and whether or not disputed.
 - (y) None of the Borrower or 1451 sponsor or is obligated to contribute to any pension plans.
 - (z) None of the Borrower or 1451 is a party to any stock option plan or has any obligation to issue shares to any person;
 - (aa) Each of the Borrower and 1451 is the sole and exclusive owner or licensee of, with all right, title and interest in and to (free and clear of any claims by any Person), its Intellectual Property (as hereinafter defined) and has sole and exclusive rights to the use thereof. The Borrower and 1451 have not knowingly infringed or violated and is not aware of any infringement or violation of any Intellectual Property of any other Person. “**Intellectual Property**” shall mean patents, industrial designs, trade-marks, trade names, brand names, service marks, logos and copyrights.
- 8.2 The representations and warranties in this Agreement and in any certificates or documents delivered to the Lender shall not merge in or be prejudiced by and shall survive any Loan advance and shall continue in full force and effect so long as any amounts are owing by the Borrower and/or 1451 to the Lender under this Agreement or any Loan Document.

PART 9 - POSITIVE COVENANTS

- 9.1 **Covenants.** Each of the Borrower and 1451 jointly and severally covenants with the Lender that:

- (a) in the case of the Borrower, it will promptly pay all principal, interest and other amounts due hereunder at the times and in the manner specified herein;
- (b) it will at all times maintain its corporate existence;
- (c) it will comply will all applicable laws (including, without limitation, all Environmental Laws) and obtain and maintain in good standing all contracts, licenses, permits, consents and approvals required in connection with the Project and necessary to carry on business;
- (d) it will carry on and conduct its business in a proper, efficient and businesslike manner so as to preserve and protect the Assets and income therefrom and in accordance with good business practices;
- (e) it will keep or cause to be kept proper books of account in accordance with Canadian generally accepted accounting principles;
- (f) the Project will be undertaken only by the Borrower and/or 1451 and by no other Person;
- (g) it shall punctually pay and discharge every obligation, failure to pay or discharge which might result in any lien or charge or right of distress, forfeiture, termination or sale or any other remedy being enforced against the Assets (other than a Permitted Encumbrance) and provide to the Lender when required satisfactory evidence of such payment and discharge, but the Borrower may, on giving the Lender such security (if any) as the Lender may require, refrain from paying or discharging any obligation so long as it contests in good faith its liability therefor;
- (h) during the term of the Loan, with respect to the Property, the Lender shall be provided with a copy of each survey, appraisal, environmental, geotechnical or soil and/or cost consultant's report, zoning approvals and permits, approvals and agreements with respect to the construction, as applicable, as soon as same is available to the Borrower.
- (i) during the term of the Loan, the Borrower will have monthly meetings to update the Lender with respect to the Property and the Project;
- (j) in addition to the monthly meetings, the Borrower covenants to provide a monthly written report to the Lender regarding the status of the Project, in a format acceptable to the Lender, which report shall include the following information:
 - (i) the aggregate amount of all Project costs (including hard cost, soft costs, property costs, interest and financing costs) incurred to date;
 - (ii) cash flow projections;
 - (iii) estimates of the cost to complete the Project and details regarding any material changes to the Project budget;
 - (iv) zoning, approval and permit status, together with copies of any zoning decisions, approvals or permits, if required by the Lender;

- (v) sales report for the Project together with copies of all unit sales agreements and all amendments thereto together with a report on the status of all deposits received to date;
- (vi) status report regarding construction of the Project and work completed to date;
- (vii) copies of all material project agreements and contracts relating to the construction of the Project; and
- (viii) if required by the Lender, acting reasonably, periodic written reports from the Cost Consultant regarding all of the foregoing, provided the Cost Consultant's report shall not be required more frequently than quarterly.

Notwithstanding the foregoing, the Borrower shall not be required to provide anything in excess of what the Borrower will be required to provide to a senior construction lender;

- (k) it will promptly notify the Lender of any fact which may be construed as constituting an Event of Default, and upon the occurrence of an Event of Default which has not been remedied in accordance with the terms and conditions herein contained, it will register or permit the Lender to register, file and record the Security as provided for herein, and all supplemental instruments at the proper offices where such registration, filing or recording may be necessary or of advantage to protect the security constituted;
- (l) it will pay and discharge all taxes, rates, levies, charges, assessments, statute labour or other imposition whatsoever now or in the future rated, charged, assessed, levied or imposed by any legislative or municipal authority or otherwise on any of the Collateral or on the Borrower or 1451;
- (m) it will insure and keep the Collateral and the Property insured to its full insurable value by a company or companies selected by the Borrower and approved in writing by the Lender, acting reasonably, against extended risks, loss or damage by fire and such other risks as the Lender may from time to time specify and containing loss of income provisions; and the Borrower shall:
 - (i) if requested by the Lender, furnish a certificate by an independent appraiser or insurance adjuster selected by the Borrower and approved by the Lender as to the sufficiency of such insurance, which certificate will be conclusive as against the Borrower and 1451 both as to the amount of insurance required under this Agreement and the perils against which coverage is required and the Borrower and 1451 will immediately insure in accordance with such certificate and provide proof of same to the Lender;
 - (ii) cause to be endorsed in such form as may be required by the Lender on the policies evidencing such insurance a notation that any amounts payable under such policies will be paid to the Lender as its interest may appear, and to cause Lender to be named as a loss payee and additional insured; and
 - (iii) deposit with the Lender every policy and renewal certificate for such insurance or a certified copy of each;

all policies shall provide for at least 30 days prior written notice to Lender of any cancellation or reduction of coverage. The Lender is authorized, but not required, to obtain and maintain such insurance at the expense of the Borrower if the Borrower and 1451 fail to do so.

- (n) it will deliver to the Lender within one hundred and twenty (120) days after the close of each financial year of the Borrower, one copy of the annual financial statements of the Borrower and 1451, which has been duly certified by a chartered accountant (CA) that is a member in good standing with the Canadian Institute of Chartered Accountants, and such financial statements shall include a balance sheet and statements of income and retained earnings. Such financial statements shall also be signed by an authorized officer of the Borrower (and 1451 if applicable). The Borrower and 1451 shall provide the Lender any other information concerning their financial positions and business operations, including but not limited to supporting schedules to the financial statements, which the Lender may from time to time request, acting reasonably. The financial statements referred to herein shall only be reviewed by the Lender and/or its appointed advisor on the premises of the Borrower. Notwithstanding the foregoing, the Borrower and 1451 shall provide the Lender with any financial statement or financial information of the Borrower or 1451 that it is required to provide, and in the same manner that it is required to provide, in connection with the Permitted Encumbrances;
- (o) it will promptly give written notice to the Lender of all claims or proceedings pending or threatened against the Credit Parties, the Collateral or the Property which may give rise to uninsured liability or which may have a material adverse affect on the businesses or operations of the Borrower and 1451;
- (p) save and except for demolition of the existing buildings on the Property pursuant to demolition permits issued by the City of Ottawa (provided the Property is zoned in final form to permit construction of the Project, sufficient pre-sales have been achieved to qualify for construction financing for the Project and all other lender's conditions have been satisfied in order to obtain an initial advance under the Project construction loan facility), it will keep the Collateral in good condition and repair and if it neglects to keep the Collateral or any part of it in good condition and repair or commits or permits any act of waste to be committed in respect of it and if such neglect, commission or default continues for 30 days after written notice of it has been given by the Lender to the Borrower then the Lender may from time to time make such repairs as it in its sole discretion considers necessary and the Lender may add the cost of such repairs to the Loan and the Borrower shall reimburse the Lender for such costs forthwith upon demand;
- (q) it will pay and discharge as they become due all payments due and owing under, or concerning, any indebtedness created or security given by the Borrower to any Person and will observe, perform and carry out all related terms, covenants, provisions and agreements and any default in payment of any monies due and payable under or relating to any indebtedness or security or in the observance, performance or carrying out of any of the related terms, covenants, provisions and agreements that will be considered a default thereunder will be considered to be a default under this Agreement at the option of the Lender and any and all remedies available to the Lender by reason of any default or by law or otherwise be immediately available to the Lender upon any default of the Borrower under the indebtedness or Security;

- (r) it will forthwith advise the Lender in writing, with full particulars, of any material assets, goods, chattels, fixtures, machinery, equipment or effects acquired by the Borrower having a value greater than \$10,000 and will provide the Lender with a good and valid first charge over any such assets and will, if the Lender so requires, extend the general security agreement over such additional goods, chattels, fixtures, machinery, equipment or effects;
- (s) the Borrower will forthwith pay Project costs when due and complete the Project in accordance with the Project budget;
- (t) deposit, and cause the Project marketing agents and realtors and the Project conveyancing solicitors to deposit, all purchaser deposits into the Tarion deposit trust account immediately after the expiry of the respective purchasers' statutory ten-day rescission period and the Borrower shall obtain a deposit bond and/or excess deposit insurance bonding if necessary, and take all other actions as may be necessary or desirable from time to time in order to permit the deposits to be used to pay Project costs;
- (u) co-operate fully with the Cost Consultant at all times, permit the Cost Consultant to inspect the Property from time to time, and provide the Cost Consultant with such information as it may reasonably require from time to time;
- (v) provide a complete copy of each unit sale agreement and each amendment thereto to the Lender within fifteen (15) days after the execution thereof;
- (w) sell all units in the Project in a commercially reasonable manner;
- (x) the Borrower will work diligently to provide the Lender with such further documents or instruments, and do such things as the Lender may reasonably require to perfect or rectify any deficiency in the Security, all within the time reasonably prescribed by the Lender;
- (y) perform and do all things and acts that are necessary to complete the Project materially in accordance with the plans, specifications and budget approved by the Lender, in accordance with the timetable (subject to force majeure) also approved by the Lender and in accordance with all applicable laws, and to provide the Lender with such information respecting the Collateral as Lender may request from time to time;
- (z) each of the Borrower and 1451 shall cooperate and exercise its influence in order to give effect to this Agreement and the Security and shall assist the Lender to the fullest extent possible in the enforcement and realization of its Security upon the occurrence of any Event of Default;
- (aa) at its cost and expense, upon request of the Lender, execute and deliver or cause to be executed and delivered to the Lender such further instruments and do and cause to be done such further acts as may be necessary or proper in the reasonable opinion of the Lender to carry out more effectually the provisions and purposes of this Agreement and the Loan Documents;
- (bb) promptly notify the Lender of any delays, inspections or regulatory events that are adverse to the Project; and

- (cc) appoint as the Borrower's accountants a firm of national standing or accountants otherwise acceptable to the Lender.
- 9.2 The positive covenants in this Agreement and in any certificates or documents delivered to the Lender shall not merge in or be prejudiced by and shall survive any Loan advance and shall continue in full force and effect so long as any amounts are owing by the Borrower and/or 1451 to the Lender under this Agreement or any Loan Document.

PART 10 - NEGATIVE COVENANTS

- 10.1 **Covenants.** The Borrower covenants with the Lender that the Borrower will not, without first obtaining the consent in writing of the Lender:
- (a) make, give or create or attempt to make, give or create any mortgage, charge, lien or encumbrance upon the Collateral or the Property or any part or parts of it save and except for the Permitted Encumbrances;
 - (b) create or permit to arise any Encumbrance on any of the Collateral, Assets or Property (other than Permitted Encumbrances), and will not permit 1451 to do the same (other than Permitted Encumbrances) save and except as contemplated under Part 7 hereof;
 - (c) change, alter or amend its name or the name of 1451 or of the Borrower's chief place of business without first providing notice to the Lender;
 - (d) purchase, establish or acquire in any manner any new business undertaking;
 - (e) sell, exchange, lease, release or abandon or otherwise dispose of any of its assets or properties to any person other than (i) bona fide sales, exchanges, leases, abandonments or other dispositions in the ordinary course of business for the purpose of carrying its business, and at fair market value, and (ii) property or assets (other than shares or other securities) which have no material economic value in the Project, as the case may be, or are obsolete;
 - (f) remove or distribute any equity in or profit from the Project or otherwise compensate any of its shareholders or other persons by way of income, dividend or other payment other than to repay the Loan;
 - (g) materially change the nature of the Borrower's or any of the Credit Parties' businesses as presently carried on;
 - (h) amalgamate, consolidate or merge or enter into a partnership, joint venture or syndicate with any other person;
 - (i) change its financial year end, or permit 1451 to change its financial year end;
 - (j) enter into any transaction, or permit 1451 to do so, outside the ordinary active business operations of the Borrower, other than Permitted Encumbrances and the eventual completion of the Agreement of Purchase and Sale for 1445 Wellington Street West, Ottawa;

- (k) permit the Borrower or any of the Credit Parties to be dissolved whether by act or omission;
- (l) permit any Encumbrance, lien or similar charge to be placed against the Collateral, the Property or any part of it, (other than Permitted Encumbrances) except that the registration of any such lien will not be considered a breach of this covenant if the Borrower contests and notifies the Lender in writing that it desires to contest the same and gives the Lender reasonable security for the due payment of the claim in respect to it in case it will be held to be a valid lien or charge; and that the Lender may (but will not be obliged to) pay and satisfy any such lien (without waiving a breach of this covenant of the Borrower) in the event of the Borrower failing to pay off the same within a reasonable time, and the amount so paid together with all costs, charges and expenses which may be incurred by reason of the necessity of paying off and satisfying any such lien or charge may be added by the Lender to the Loan and the Borrower shall reimburse the Lender for all such costs, charges and expenses forthwith upon demand and the propriety of paying out any such sum in respect of any such claim or lien will be a matter on which the discretion of the Lender will be absolute and final and in the event of the Lender satisfying any such lien or charge it will be entitled to all the equities and securities of the Person or persons so paid off whether any such charge has or has not been in fact discharged;
- (m) change the Voting Control of the Borrower or 1451;
- (n) create, issue, incur or otherwise become liable upon, directly or indirectly, any Financial Indebtedness or permit 1451 to do so other than the Permitted Encumbrances;
- (o) reduce or make any distribution of the Borrower or any of Credit Parties' capital, or redeem, purchase or otherwise retire or pay for any shares in their present or future capital stock;
- (p) create, allot or issue any shares in its capital, change its capital structure, enter into any agreement, or make any offer, to do so or permit any 1451 to do any such thing with respect to the capital or capital structure of 1451;
- (q) make or repay or guarantee any loan or advance to any person, or endorse or otherwise become surety or guarantor for or upon, or indemnify against loss arising from, the obligations of any person, except by endorsement of negotiable instruments for deposit or collection, and the Borrower shall not permit 1451 to do any such thing save and except as contemplated under Part 7 hereof;
- (r) in respect of the Borrower and the Credit Parties, make any distribution of profits or other compensation by way of income, dividend or otherwise to its shareholders or any of them;
- (s) directly or indirectly, enter into any agreement with, make any financial accommodation for, or otherwise enter into any transaction with, a Related Party except in the ordinary course of, and pursuant to the reasonable requirements of, business and at prices and on terms not less favourable to the Borrower or 1451, as the case may be, than could be obtained in a comparable arm's length transaction with another person. Notwithstanding the above, the Lender acknowledges that the construction of the Project shall be conducted by a Related Party, namely, Mizrahi Inc., and other Related Parties may be

involved in the Project, provided the amounts paid are as set out in the Project budget attached hereto as Schedule C and are at prices and on terms not less favourable to the Borrower or 1451, as the case may be, than could be obtained in a comparable arm's length transaction with another person;

- (t) in relation to the Project, change any advance, salary, bonus, consulting fee, management fee, incentive compensation or other amount, or grant any other benefits not currently provided to any director, former director, officer, shareholder, employee or affiliate of the Borrower, or 1451, or enter into any contract which would obligate any of the Borrower or 1451 to make any such payment or grant such benefits;
 - (u) Become a participating or sponsoring employer under any employee plan that is or should be subject to applicable pension standards legislation not currently maintained or sponsored by the Borrower or 1451; or
 - (v) redeem or purchase any of the shares of the Borrower or 1451.
- 10.2 The negative covenants in this Agreement and in any certificates or documents delivered to the Lender shall not merge in or be prejudiced by and shall survive any Loan advance and shall continue in full force and effect so long as any amounts are owing by the Borrower and/or 1451 to the Lender under this Agreement or any Loan Document.

PART 11 - ENVIRONMENTAL MATTERS

- 11.1 **Environmental Representations.** The Borrower and 1451 represent and warrant to the Lender that, save and except as disclosed to the Lender as of the date hereof, the Assets are in material compliance with all applicable Environmental Laws and each of the Borrower and 1451 has operated its business at all times and have, at all times, received, handled, used, stored, treated, shipped and disposed of all Hazardous Substances, if any, in material compliance with all Environmental Laws;
- 11.2 **Notice of Hazardous Substances Violations.** The Borrower and 1451 will promptly notify the Lender (and provide whatever information the Lender may reasonably request) upon becoming aware of the occurrence of any violation of any Environmental Law or permit related to Hazardous Substances, or the receipt of notice of any alleged violation or the receipt of an order, direction or notice under any Environmental Law with respect to the Assets or the Property.
- 11.3 **Hazardous Substances Indemnity.** The Borrower and 1451 each agrees, at its sole cost and expense, to indemnify, protect, hold harmless and defend (with counsel of the Lender's choice) the Lender and its successors and assigns and their respective directors, officers, agents, attorneys and employees (an "**Indemnitee**") from and against all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses (including, without limitation, fees, disbursements and costs of lawyers, environmental consultants and experts), of any kind or of any nature whatsoever which may at any time be imposed upon, incurred or suffered by or asserted or awarded against any Indemnitee directly or indirectly relating to or arising from any Hazardous Substance which originated on or from any of the Assets or the Property at any time, past, present or future. This Part 11.3 shall survive the re-payment of the Loan and the termination or expiration of this Agreement and/or any of the Loan Documents.

PART 12 - EVENTS OF DEFAULT

- 12.1 **Events of Default.** At the option of the Lender, the whole of the outstanding balance of the Loan will immediately become due and payable and the Security will become enforceable in each and every of the following events (each an “**Event of Default**”):
- (a) if the Borrower fails to observe or perform any term, condition, covenant or undertaking involving the payment of money contained in this Agreement or the Loan Documents;
 - (b) if any of the Credit Parties fail to observe or perform any term, condition, covenant or undertaking contained in this Agreement, the Loan Documents or any other document, other than a term, condition, covenant or undertaking involving the payment of money after receipt of written notice of default from the Lender;
 - (c) if an order is made or a resolution passed for the dissolution of the Borrower or 1451 or the winding up of the Borrower or 1451;
 - (d) if a petition is filed for the winding up of the Borrower or 1451;
 - (e) if any of the Credit Parties commits or threatens to commit any act of bankruptcy or becomes insolvent or makes an assignment or proposal under the *Bankruptcy and Insolvency Act* or a general assignment in favour of its respective creditors or a bulk sale of its assets;
 - (f) if a bankruptcy petition is filed or served against any of the Credit Parties;
 - (g) if any proceedings concerning the Borrower or 1451 are commenced under the *Companies' Creditors Arrangement Act*;
 - (h) if any proposal is made or any petition is filed by the Borrower or any of the Guarantors under any law having for its purpose the extension of time for payment, composition or compromise of the liabilities of the Borrower or any of the Guarantors or other reorganization or arrangement respecting its liabilities or if the Borrower or any of the Guarantors gives notice of its intention to make or file any such proposal or petition including without limitation an application to any court for an order to stay or suspend any proceedings of creditors pending the making or filing of any such proposal or petition;
 - (i) if any execution, sequestration, extent or any other process of any Court becomes enforceable against any of the Credit Parties;
 - (j) if a distress or analogous process is levied upon all or any part of the Collateral;
 - (k) if a receiver or a receiver manager is appointed to control or conduct the business or assets of the Borrower or any of the Credit Parties any of the Guarantors;
 - (l) if the Borrower permits any sum which has been admitted as due by the Borrower or is not disputed to be due by it and which forms or is capable of being made a charge upon any of the Collateral in priority to, or *pari passu* with, any charge created by the Security to remain unpaid for 30 days after proceedings have been taken to enforce the same as a prior charge;

- (m) if the Borrower defaults in payment of indebtedness or liability to the Lender, whether secured by the Loan Documents or otherwise after receipt of written notice of default from the Lender;
- (n) if any proceedings are taken to enforce any Encumbrance affecting the Borrower, any of the Collateral or the Property;
- (o) if any action is taken or power or right is exercised by any Governmental Authority or if any claim or proceeding is pending or threatened by any Person which may have a material adverse effect on the Borrower, its business or operations, its properties or its prospects;
- (p) if any of the Borrower's covenants or representations in this Agreement, in any of the Loan Documents or in any certificate, statement or report furnished in connection herewith is found to be false or incorrect in any way so as to make it materially misleading when made or when deemed to have been made;
- (q) if any of the Credit Parties sells, agrees to sell or otherwise disposes of the Collateral or any part or parts of it, other than as permitted herein; or
- (r) if, pursuant to Section 3.7, the audit discovers findings related to fraud, misrepresentation or non-performance.

12.2 **Grace Period.** Unless otherwise provided herein, a default referred to in Section 12.1 shall not constitute an Event of Default unless: (a) in the case of default in payment of money, it has continued for at least ten (10) days after the due date for payment; (b) in the case of default in performance of any other obligation, it has continued for at least ten (10) days after notice thereof has been given to the Borrower; or (c) in the case of an Event of Default under Sections 12.1(d), 12.1(f), 12.1(g), 12.1(j) and 12.1(k) it has continued for at least ten (10) days after the date of occurrence of such event thereunder provided that the Borrower and/or 1451 are diligently contesting such Event of Default in a bona fide manner. Notwithstanding the foregoing and save and except for Permitted Encumbrances, the Borrower shall be deemed to have committed an Event of Default, without having received notice of such default and an opportunity to cure same, in the event the Borrower or 1451 gives or creates a mortgage or charge, upon the Property or any Project asset, or in the event the Borrower sells, agrees to sell or otherwise disposes of all or any part of the Project or Collateral outside of the ordinary course of development of the Project, or in the event that, pursuant to section 3.7, the audit discovers findings related to fraud, material misrepresentation or gross non-performance.

12.3 **Waiver.** The Lender may waive any breach by the Borrower or 1451 of any of the provisions contained in this Agreement or any default by the Borrower or 1451 in the observance or performance of any covenant or condition required to be observed or performed by them under the terms of this Agreement or any of the Security, provided always that no waiver by the Lender or any failure to take any action to enforce its rights or any security will extend to or be taken in any manner to affect any subsequent breach or default or the rights resulting from the breach or default.

12.4 **Remedies Not Restrictive.** All remedies stipulated for by the Lender under this Agreement or in any of the Security will be considered to be in addition to and not restrictive of the remedies which the Lender might be entitled to at law or in equity and the Lender may realize any Security or any part of it in such order as it may be advised and any such realization by any means will not

bar realization of any other security or any part or parts of them nor will any single or partial exercise of any right or remedy preclude any other or further exercise of nor will the failure on the part of the Lender or any delay in exercising any rights under this Agreement or any of the Security operate as a waiver.

- 12.5 **Costs Caused By Default.** If any of the Borrower or 1451 defaults in any covenant to be performed by either of them under this Agreement or under the Security, the Lender may perform any covenant of the Borrower or 1451 capable of being performed by the Lender and if the Lender is put to any costs, charges, expenses or outlays to perform any such covenant, the Borrower and 1451 will indemnify the Lender for such costs, charges, expenses or outlays and such costs, charges, expenses or outlays incurred by the Lender (including solicitors' fees and charges incurred by the Lender) will be added to the principal amount of the Loan and secured by the Security.
- 12.6 **Court Costs.** In any judicial proceedings taken to enforce this Agreement and the covenants of the Borrower or 1451 under it or to enforce or redeem the Security or to foreclose the interest of the Borrower in any Collateral the Lender will be entitled to costs on a solicitor and client basis. Any costs so recovered will be credited against any solicitors' fees and charges paid or incurred by the Lender relating to the matters in respect of which the costs were awarded and which have been added to the monies secured pursuant to the Security.
- 12.7 **Enforcement.** Upon the occurrence of any Event of Default, which is continuing, the Lender may by instrument in writing declare that the Security has become enforceable and crystallized and the Lender shall have the following rights and powers:
- (a) to enter into possession of all or any part of the Collateral;
 - (b) to preserve and maintain the Collateral and make such replacements thereof and additions thereto as it deems advisable;
 - (c) to borrow money in the Borrower's name or in the Lender's name or to advance the Lender's own money to the Borrower, in any case upon such terms as the Lender may deem reasonable and upon the Security;
 - (d) to pay or otherwise satisfy in whole or in part any Encumbrances which, in the Lender's opinion, rank in priority to the security hereof; and
 - (e) after entry by its officers or agents or without entry to sell, lease or otherwise dispose in any way whatsoever of all or any part of the Collateral either en bloc or separately at public auction or by tender or by private agreement and at such time or times and on such terms and conditions as the Lender in its absolute discretion may determine and without any notice to or concurrence of the Borrower except as may be required by applicable law.
- 12.8 **Receiver.** And it is further agreed that in addition to all other powers exercisable hereunder or by virtue of any other agreement or at common law and equity, the Lender may by writing under the Lender's own hand or the hand of any solicitor or agent authorized on its behalf, upon any Event of Default, which has not been remedied as per 12.2 above, on the part of the Borrower in payment of the Loan or interest hereby secured, or in the observance of any of the covenants and conditions herein contained of the Borrower and/or 1451, from time to time appoint any Person (including an officer of the Lender) to be a receiver or receiver manager of the Collateral. The

Lender may likewise remove any such receiver or receiver manager and appoint another in his place, and any such receiver or receiver manager appointed, pursuant to the foregoing provisions, shall have the following powers:

- (a) Possession - To take possession of the Collateral and, for that purpose, and to do any act and take any proceedings in the name of the Borrower, or otherwise, as he shall deem necessary;
- (b) Carry on Business - To carry on or concur in carrying on the business of the Borrower related to the Collateral, and to employ and discharge such agents, managers, clerks, accountants, servants, workmen and others upon such terms and with such wages or remuneration as he shall think proper; and to repair and keep in repair the buildings, plant or other property comprised in the Collateral, and to do all necessary acts and things for the carrying on any business of the Borrower and the protection of the undertaking, property and assets of the Borrower related to the Collateral;
- (c) Make Arrangements - To make any reasonable arrangement or compromise which he shall think expedient in the interest of the Lender; and with Court approval to exchange any part or parts of the Collateral for any other property suitable for the purposes of the Borrower, and upon such terms as may seem expedient;
- (d) Raise Money - To raise on the security of the Collateral or any part of the undertaking, property and assets of the Borrower related to the Collateral, any sum of money required for the carrying on of the Borrower's business related to the Collateral, or for the repairs, insurance, protection, or any other purpose herein mentioned, or as may be required to pay off or discharge any lien, charge or encumbrance upon the Collateral, or any part thereof, which would, or might, have priority over the charge created by the Security;
- (e) Sell or Lease - To sell or lease or to concur in the selling or leasing of the Collateral or any part thereof, and to carry any such sale or lease into effect, by conveying in the name or on behalf of the Borrower, or otherwise; and any such sale may be made either at public auction or private sale as to him may seem appropriate, and any such sale may be made from time to time as to the whole or any part or parts of the Collateral; and he may make any stipulations as to title or conveyance or commitment of title, or otherwise, which he shall deem proper; and he may buy in or rescind or vary any contract for the sale of any part of the Collateral and may resell; and he may sell any of the same on such terms as to credit or part cash and part credit, or otherwise as shall appear to be most advantageous and at such prices as can reasonably be obtained therefor, and in the event of a sale on credit neither he, nor the Lender shall be accountable for, or charged with, any moneys until actually received; and it is agreed that no purchaser at any sale purporting to be made in pursuance of the aforesaid power, shall be bound or concerned to see or enquire whether any default has been made or continues, or whether any notice required hereunder has been given, or as to the necessity or expediency of the stipulation subject to which such sale shall have been made, or otherwise as to the propriety of such sale or regularity of its proceedings, or be affected by notice that no such default has been made or continues, or notice given as aforesaid, or that the sale is otherwise unnecessary, improper or irregular, and notwithstanding any impropriety or irregularity, or notice thereof to such purchaser, the sale as regards such purchaser shall be deemed to be within the aforesaid power and valid accordingly and the remedy (if any) of the Borrower in respect of any impropriety or irregularity whatsoever in any such sale shall be in damages only; and

- (f) Complete Construction - If applicable, to complete or cause to be completed, in whole or in part, or embark on the completion of the construction of such improvements on the Collateral as he shall think proper in the interests of the Lender and to employ and discharge such contractors, subcontractors, materialmen, agents, managers, clerks, accountants, servants, workmen and others upon such terms and in accordance with such contract arrangements, salaries, wages or remuneration as he shall think proper.
- 12.9 **Distribution of Receiver's Income.** The receiver or receiver manager appointed and acting under any of the foregoing provisions shall be entitled out of the moneys to arise out of the taking possession of the Collateral, and the carrying on of any of the Borrower's business related to the Collateral or out of any sale or lease of any part of the Collateral as aforesaid, in the first place to pay and satisfy all the costs and expenses attending such taking of possession, carrying on and managing the Borrower's business, or sale or completing in whole or in part the construction or embarking thereon or otherwise relating to the exercise of his powers under this Agreement, including his remuneration as receiver or receiver manager, and in the second place to pay and satisfy any lien or charge ranking in priority to the Security, and in the third place to pay and satisfy all amounts outstanding under the Loan which shall then be owing hereunder, and in the fourth place to pay and satisfy any arrears of interest which shall then be owing hereunder, and should any surplus remain in the hands of the said Receiver or Receiver Manager after payment as aforesaid, then the Borrower shall be entitled to such surplus.
- 12.10 **Liability of Receiver.** The receiver or receiver manager appointed and exercising his powers hereunder shall not be liable for any loss howsoever arising, unless the same shall be caused by his own negligence or wilful default; and he shall, when so appointed, be deemed to be the agent of the Borrower and the Borrower shall be solely responsible for his acts and defaults and for his remuneration.
- 12.11 **Dealing with Collateral.** In exercising his powers hereunder, any receiver or receiver manager will be free to deal with the Collateral and any assets of the Borrower related thereto in such order or manner as he may be directed by the Lender any rule of law or equity to the contrary notwithstanding, including, without limitation, the equitable principle or doctrine of marshalling.
- 12.12 **Notices.** In this Agreement any notice or other communication to be given by any party hereunder to another party shall be given or made by delivering the same by overnight delivery service, by same-day courier, by hand delivery, by e-mail, or by other means of rapid written or electronic communication ("**Notice**") to the party to whom the notice is directed, in either case, at the address set out below or to such alternative address as may from time to time be designated by Notice given to the other party in the manner provided in this Section:

Borrower addressed to it at:

Mizrahi Developments Inc.
189 Forest Hill Road
Toronto, Ontario
M5P 2N3

Attention: Sam Mizrahi, President
Email: sam@mizrahidevelopments.ca

-and to-

Baldwin Sennecke Halman LLP
 Barristers and Solicitors
 25 Adelaide Street East
 Suite 900, Victoria Tower
 Toronto, Ontario
 M5C 3A1

Attention: Jeffrey A. Halman
 Email: jhalman@bashllp.com

Lender addressed to it at:

David Berry
 124 Park Rd.
 Toronto, Ontario
 M4W 2N7

Email: davidmmberry@rogers.com

-and to-

Stikeman Keeley Spiegel Pasternack LLP
 Barristers and Solicitors
 200 Front Street West, Suite 2300
 Toronto, Ontario
 M5V 3K2

Attention: Michael W. Pasternack
 Email: pasternack@stikeman.to

The date of giving Notice shall be the date of delivery thereof if delivered by hand. If sent by overnight delivery service, by same-day courier, by hand delivery, by e-mail or other means of rapid written or electronic communication, the date of giving Notice shall be the date of transmission if transmission occurs prior to 6:00 p.m. (Toronto time) on a Business Day and on the Business Day next following the date of transmission in any other case.

PART 13 - INDEMNITY

- 13.1 Each of the Borrower and 1451 hereby agrees, on a joint and several liability basis, to indemnify, exonerate and hold Lender (his successors, heirs, administrators, executors, legal personal representatives and permitted assigns) free and harmless from and against any and all claims, demands, actions, causes of action, suits, losses, costs, charges, liabilities and damages, and expenses in connection therewith, and including without limitation, reasonable legal fees and out of pocket disbursements and amounts paid in settlement of any and every kind whatsoever paid, incurred or suffered by, or relating to (i) the extension of the Loan; (ii) the direct or indirect use of the proceeds of the Loan, including but not limited to for the purposes as set out in Part 2.7 of this Agreement; (iii) any actual or threatened investigation, litigation or other proceeding relating to the Loan extended herein; (iv) any breach of any representation, warranty, covenant or other obligation of the Borrower and/or 1451 contained in this Agreement, or (v) the execution,

delivery, performance or enforcement of any Loan Documents and any instrument, document or agreement executed pursuant hereto or thereto. This Part 13 shall survive the re-payment of the Loan and the termination or expiration of this Agreement and/or any of the Loan Documents. Any such indemnity payment shall be considered an expense of the Project.

PART 14 – RIGHT OF FIRST REFUSAL

- 14.1 Sam, the Borrower and 1451 covenant and agree that they (collectively and individually), on their own behalf and on behalf of any Related Party and/or affiliates, shall grant a right of first refusal to the Lender to act as lender, financier or lead investor in respect of any subsequent credit facilities, loan arrangements, private placement of equity or the like by the Borrower, 1451, or any of their Related Parties and/or affiliates in connection with the Townhome Project. Notwithstanding anything set out herein, the Lender acknowledges that this paragraph does not obligate either the Borrower or 1451 or their affiliates or related companies to proceed with or develop the Townhome Project.

PART 15 – PARKING

- 15.1 In connection with the Lender's Unit (as defined herein), it is understood that notwithstanding anything to the contrary contained herein or in any documentation relating to the purchase of the Lender's Unit, Sam irrevocably agrees to provide to the Lender, at no charge or cost whatsoever, one (1) additional indoor parking space located at 128 Hazelton Avenue, Toronto, Ontario, which parking space, combined with the three (3) existing parking spaces purchased by the Lender pursuant to the APS, shall be separately "walled" (such that, subject to receipt of applicable building permits (which Sam shall use commercially reasonable efforts to obtain), the space is a self-contained four (4) parking space garage unit and only provides access to the Lender or his designee) with an automatic garage door opener.

PART 16 - SUCCESSION

- 16.1 In the event of the untimely death or incapacity for a period of 120 days in any 180 day period of Sam Mizrahi prior to repayment in full of the Loan prior to expiration of the Term hereof or the completion of the Project, the Credit Parties acknowledge and agree that the Lender shall be appointed (and the Credit Parties grant a power of appointment for such purposes) to act as the sole manager of the Project, with the authority, but not the obligation and liability to administer and manage the completion of the Project and the sales, disposition or completion of the unit sales and the terms and conditions hereof shall remain in full force and effect.

PART 17 - GENERAL

- 17.1 **Records.** The records of the Lender as to the Borrower and the amount outstanding under this Agreement and under the Security will be final and conclusive without further proof, so long as the Lender is acting reasonably with respect to all such matters.
- 17.2 **Costs.** The Borrower will pay the costs of, and incidental to, the preparation, execution and delivery of this Agreement and of the preparation and registration of the Security or any other security required to or from time to time given by the Borrower to the Lender and, at its option,

the Lender may pay the said costs out of the monies to be advanced on account of the Loan.


- 17.3 **Confidentiality.** The matters set forth in this Agreement and any information provide with respect to the transaction are strictly confidential and shall not be disclosed to any parties without the express written consent of the other party, other than as may be required by law. Notwithstanding the foregoing, the Lender shall be permitted to disclose the Agreement and the information relating to this transaction to its advisors prior to and after the initial advance provided such advisors acknowledge the confidentiality obligations herein contained. Any party may disclose such information to their respective advisors who need to know such information in order to conclude the transaction contemplated by this Agreement and who are informed of the obligation to keep such information confidential or as may be required by applicable law.
- 17.4 **Assignment by Borrower.** The Borrower will not be entitled to assign any of its rights under this Agreement except with the prior written consent of the Lender.
- 17.5 **Assignment by Lender.** The Lender will not be entitled to assign any of its rights under this Agreement except with the prior written consent of the Borrower.
- 17.6 **Enurement.** This Agreement and all its provisions will enure to the benefit of and be binding upon the parties, their heirs, executors, administrators, successors and permitted assigns.
- 17.7 **“this Agreement”, “herein”, “hereof”, “hereto”** and similar expressions mean and refer to this Agreement and include any instrument amending, supplementing or modifying the same, and the expression “Section” followed by a number means and refers to the specified Section of this Agreement.
- 17.8 **Maximum Return.** The Borrower and the Lender acknowledge and agree that it is their express intention and desire that in no event will the total payment to the Lender whether for interest, fees, bonus, commission, commitment, stand by or processing fees, or service charges or otherwise (collectively, “Sum”) exceed the maximum payment permitted under the *Criminal Code* (Canada) as amended. If the amount of the Sum but for this Section is a criminal rate, then the Sum will be reduced to an effective annual rate which is 1% less than the criminal rate calculated using generally accepted actuarial practices and principles, by reducing the interest rate, fees, bonus, or other changes accordingly. Any overpayment by the Borrower after recalculation under this Section will immediately be returned by the Lender to the Borrower.
- 17.9 **Entire Agreement in Writing.** This Agreement, including the Schedules hereto and the Security, constitutes the entire agreement between the parties hereto. There are no representations, warranties, collateral agreements or conditions which affect this Agreement other than as set out herein.
- 17.10 **Counterparts.** This Agreement may be executed: (i) by electronic transmission, including facsimile, scanned or email, and scanned electronic or facsimile signatures shall be treated as originals for all purposes; and (ii) in counterparts and all counterparts taken together shall constitute an executed copy of this Agreement.

[Signatures to Follow on Next Page]

TO EVIDENCE THEIR AGREEMENT each party has executed this Agreement on the date first above written.


MIZRAHI DEVELOPMENTS INC.

X

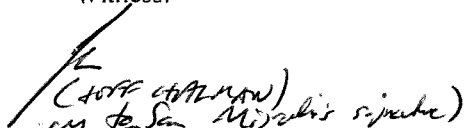
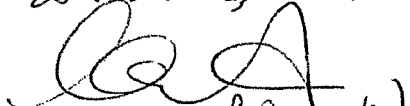
Per: 
Name: Sam Mizrahi
Title: President
I have authority to bind the Corporation

MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.


X

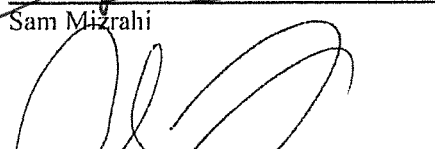
Per: 
Name: Sam Mizrahi
Title: President
I have authority to bind the Corporation

Witness:


(Crossed out signature)
as to Sam Mizrahi's signature)

(Michael Pasternack)
as to David Berry's
Signature

X



Sam Mizrahi


David Berry

TO EVIDENCE THEIR AGREEMENT each party has executed this Agreement on the date first above written.


MIZRAHI DEVELOPMENTS INC.

Per:
Name: Sam Mizrahi
Title: President
I have authority to bind the Corporation

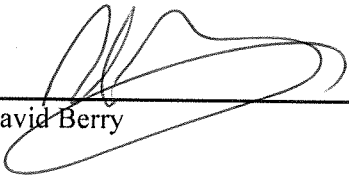
MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

Per:
Name: Sam Mizrahi
Title: President
I have authority to bind the Corporation

Witness:


(Michael Pasternack)
as to David Berry's signature

Sam Mizrahi



David Berry

SCHEDULE A**LEGAL DESCRIPTION OF THE PROPERTY**

1451 Wellington Street West, Ottawa

Lots 1 and 2, Plan 145 N/S Richmond Road (now Wellington Street), being all of PIN 04030-0154.

1445 Wellington Street West, Ottawa (still under Agreement of Purchase and Sale between Mizrahi Enterprises Inc., in trust for a corporation to be incorporated, as Buyer, and Alfredo Giannuzzi, Mario Giannuzzi and Eugenio Milito, dated April 17, 2013.)

Lot 3 and Part of Lot 4, Plan 145 N/S Richmond Road (now Wellington Street), being all of PIN 04030-0155.

SCHEDULE B**SPECIFIC PERMITTED ENCUMBRANCES****REAL PROPERTY**

1. the Vendor Take Back Charge.
2. a charge/mortgage in favour of a construction lender for the Project that is a Schedule "A" chartered bank, and if the construction lender is not a Schedule "A" chartered bank, the construction lender and the terms and conditions of such construction financing must be approved by the Lender, acting reasonably.
3. a charge/mortgage in favour of Aviva Insurance Company of Canada or Westmount Insurance (or some other entity approved by the Lender), acting as a deposit bond issuer, as security for the deposit bond facility and excess deposit bond facility for the Project.

PPSA

Notices of security interest in favour of the construction lender, Tarion, deposit bond insurer and excess deposit bond facility insurer.

SCHEDULE C
PROJECT BUDGET



**1451 WELLINGTON STREET WEST
CONDOMINIUM PROJECT
Ottawa, Ontario
SW: 20130.100379.000**

Prepared for:
MIZRAHI DEVELOPMENTS

Prepared By:
**ALTUS GROUP COST CONSULTING
& PROJECT MANAGEMENT**

Issued: **January 19, 2016**

Unpublished Work © 2016 Altus Group Limited

**1451 WELLINGTON STREET WEST
CONDOMINIUM PROJECT
Project Pro Forma Report
At December 2015**



Street Smart. World Wise.

January 19, 2016

Our Ref.: 20130.100379.000

Mizrahi Developments
126 Hazelton Road
Toronto, Ontario, M5R 2E5

Attention: Mr. Sam Mizrahi

Dear Sir,

Re: 1451 Wellington Street West, Condominium Project

We enclose our Project Pro Forma Report.

Based on the documentation provided to date, we have calculated a proforma project budget of \$71,500,000 to construct and develop a condominium project, including 98 residential condominiums, and $\pm 6,157$ sf of retail above a four-level, below-grade parking garage containing 146 parking stalls. The project budget is based on the following:

- Architectural drawings submitted to the Ontario Municipal Board as well as the Altus Group preliminary construction estimate of \$44,507,000, which equates to \$325/sf of GFA;
- Land value of \$6,300,000;
- Lead broker fees of 1.25% of net revenue;
- Outside broker fees of 4.0% for 90% of deals;
- Financing based on typical industry assumptions including a commitment fee of 1%, stand-by fees of 0.3% per annum and an average interest rate of 4.5% throughout the term of the assumed loan of 24 months;
- Assumed construction schedule of 28 months;
- Project contingencies of $\pm \$4,251,000$ are included in the project budget

We have prepared a projected revenue summary and an executive summary detailing the following project metrics:

- Residential sales area of 110,306 sf with 108,306 sf for sale. 2,000 sf forming part of the land purchase deal;
- Average residential gross sales price of $\pm \$715$ per sf;
- Parking stall revenue of \$35,000 per stall and locker revenue of \$5,000 per locker;
- Retail value of $\pm \$2,969,255$ based on \$50/sf at 7.0 cap rate;
- HST payable on residential sales of $\pm \$7,421,000$ (approx. 9.86% of net residential revenue)

/...2



January 19, 2016

1451 Wellington Street West, Condominium Project

Page 2

All assumptions should be confirmed and if you have any questions or require further analysis, please do not hesitate to call.

It should be noted that this report is not intended for general circulation, publication or reproduction for any other person or purpose without express written permission to each specific instance. Furthermore, this report is written for the exclusive use of Mizrahi Developments, and are not to be relied upon by any other party. Altus Group Limited does not hold any reporting responsibility to any other party.

Yours truly,

ALTUS GROUP LIMITED

Per: Stuart R. Wilson
Senior Director

c.c. Jonny Cracower, Mizrahi Developments
Remy Del Bel, Mizrahi Developments
Alison Castellano, AGCC
Isabel Bercasio, AGCC



Contents

Letter of Transmittal

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1451 Wellington Street West
Condominium Project, Toronto
Project Pro Forma Report at January 2016



1 Executive Summary



Altus Group

98 Residential Suites, Mixed Use Condominium
1451 Wellington Street West
Ottawa, Ontario

Proforma
100379
19-Jan-16

Executive Summary

Net Project Revenue	78,985,685
Project Budget	71,500,000
Net Projected Profit	<u>7,485,685</u>
Add Land Appraisal Surplus	3,850,000
Total Projected Profit	<u>11,335,685</u>
Total Profit as % of Budget	15.85%
Total Profit as % of Equity	90.13%

1451 Wellington Street West
Condominium Project, Toronto
Project Pro Forma Report at January 2016



2 Proforma Budget Summary

AltusGroup		PROJECT BUDGET PROFORMA AT JANUARY 2016				Project No	100379
98 Residential Suites, Mixed Use Condominium 1451 Wellington Street West Ottawa, Ontario						Date	19-Jan-16
						Report No	Proforma
		Key Performance Indicators		Garage = 33.2%			
		Efficiency = 79.10%		Average Suite 1,042			
Item	Developer Code	Item	Altus Group Proforma Budget January 2016	205,117 Cost per sf GFA	136,917 Cost per sf GLA	108,306 Cost per #f NSA/NLA	98 Cost per Suite
LAND							
1		Land Cost	2,150,000	10.48	15.70	19.85	21,939
2		Vacant Possession Agreement (Bella's Bistro)	300,000	1.46	2.19	2.77	3,061
3		Land Appraisal Surplus	3,850,000	18.77	28.12	35.55	39,286
4		Land Financing and VTB Interest	350,000	1.71	2.56	3.23	3,571
5		Land Transfer Taxes	29,595	0.14	0.22	0.27	302
6		Land Commissions	N/A	N/A	N/A	N/A	N/A
7		Lease Termination	N/A	N/A	N/A	N/A	N/A
8		Realty Taxes	300,000	1.46	2.19	2.77	3,061
9		Real Estate/Municipal Legal	50,000	0.24	0.37	0.46	510
10		Zoning/OMB/Site Plan Approval Fees	350,000	1.71	2.56	3.23	3,571
11		Liability and Builder's Risk Insurance	201,121	0.98	1.47	1.86	2,052
Subtotal			7,580,715	36.96	55.37	69.99	77,354
Check			7,580,715	36.96	55.37	69.99	77,354
CONSTRUCTION (HARD)							
12		Construction	40,016,583	195.09	292.27	369.48	408,332
13		Offsite Works	N/A	N/A	N/A	N/A	N/A
14		Escalation Contingency	Excluded	N/A	N/A	N/A	N/A
15		Design and Post Contract Contingency	3,296,830	16.07	24.08	30.44	33,641
16		Contaminated Soil Abatement	600,000	2.93	4.38	5.54	6,122
17		Demolition	80,000	0.39	0.58	0.74	816
18		Furnishings	100,000	0.49	0.73	0.92	1,020
19		Utility Connections	200,000	0.98	1.46	1.85	2,041
20		Purchaser Upgrades	Excluded	N/A	N/A	N/A	N/A
21		Warranty	98,000	0.48	0.72	0.90	1,000
22		Public Art Contribution	N/A	N/A	N/A	N/A	N/A
23		Construction Management Fees	1,193,587	5.82	8.72	11.02	12,179
Subtotal			45,585,000	222.24	332.94	420.89	465,153
Check			45,585,000	222.24	332.94	420.89	465,153
CONSTRUCTION (SOFT)							
24		Tarion Enrolment Fees	131,900	0.64	0.96	1.22	1,346
25		Section 37 Contribution	N/A	N/A	N/A	N/A	N/A
26		Development Charges	1,382,354	6.74	10.10	12.76	14,106
27		Parkland Dedication	500,000	2.44	3.65	4.62	5,102
28		Building Permit	203,197	0.99	1.48	1.88	2,073
29		Educational Development Charges	253,573	1.24	1.85	2.34	2,587
Subtotal			2,471,024	12.05	18.05	22.82	25,215
Check			2,471,024	12.05	18.05	22.82	25,215
DESIGN							
30		Architect	750,000	3.66	5.48	6.92	7,653
31		Design Consultant - Interior Design	250,000	1.22	1.83	2.31	2,551
32		Structural Engineer	175,000	0.85	1.28	1.62	1,786
33		Rebar Detailing	Included	N/A	N/A	N/A	N/A
34		Mechanical & Electrical Engineer	175,000	0.85	1.28	1.62	1,786
35		Civil Engineer	5,000	0.02	0.04	0.05	51
36		Shoring Consultant	70,000	0.34	0.51	0.65	714
37		Landscape Architect	30,000	0.15	0.22	0.28	306
38		Sustainable Design Consultant	N/A	N/A	N/A	N/A	N/A
39		Printing and Couriering	40,000	0.20	0.29	0.37	408
40		Consultants Disbursements	40,000	0.20	0.29	0.37	408
41		Cost Consultant	50,000	0.24	0.37	0.46	510
42		Planning Consultant	300,000	1.46	2.19	2.77	3,061
43		Municipal Approvals Consultant	50,000	0.24	0.37	0.46	510
44		Traffic consultant	10,000	0.05	0.07	0.09	102
45		Testing and Inspections/Bulletin 19	100,000	0.49	0.73	0.92	1,020
46		Soils and Environment Consultant	125,000	0.61	0.91	1.15	1,276
47		Legal Surveys	50,000	0.24	0.37	0.46	510
48		Miscellaneous & Other Fees	400,000	1.95	2.92	3.69	4,082
Subtotal			2,620,000	12.77	19.14	24.19	26,735
Check			2,620,000	12.77	19.14	24.19	26,735
LEGAL & ADMINISTRATION							
49		Legal Fees - General	100,000	0.49	0.73	0.92	1,020
50		Legal Fees - Corporate / Finance / Lender	60,000	0.29	0.44	0.55	612
51		Legal Fees - Sales/Closings/Leasing	98,000	0.48	0.72	0.90	1,000
52		External Audit and Accountant	50,000	0.24	0.37	0.46	510
53		Development Management Fees	3,000,000	14.63	21.91	27.70	30,612
Subtotal			3,308,000	16.13	24.16	30.54	33,755
Check			3,308,000	16.13	24.16	30.54	33,755



PROJECT BUDGET PROFORMA
AT JANUARY 2016

Project No 100379
Date 19-Jan-16
Report No Proforma

98 Residential Suites, Mixed Use Condominium
1451 Wellington Street West
Ottawa, Ontario

Item	Developer Code	Item	Altus Group Proforma Budget January 2016	Key Performance Indicators			
				205,117 Cost per sf GFA	136,917 Cost per sf GLA	108,306 Cost per sf NSA/NLA	98 Cost per Suite
				Efficiency = 79.10%			
				Garage = 33.2%			
				Average Suite 1,042			
MARKETING / SALES / LEASING							
54		Marketing & Advertising	1,750,000	8.53	12.78	16.16	17,857
55		Sales Commissions Lead Broker (Residential)	940,847	4.59	6.87	8.69	9,600
56		Sales Commissions Third party (Residential)	2,709,638	13.21	19.79	25.02	27,649
57		Sales Office - maintenance/salaries/telephone	192,000	0.94	1.40	1.77	1,959
58		Sales Office - Construction	750,000	3.66	5.48	6.92	7,653
59		Sales Office - furniture and models	200,000	0.98	1.46	1.85	2,041
60		Tenant Inducements	N/A	N/A	N/A	N/A	N/A
61		Retail Leasing Commissions	35,000	0.17	0.26	0.32	357
62		Purchaser Incentives/Giveaways	N/A	N/A	N/A	N/A	N/A
		Subtotal	6,577,485	32.07	48.04	60.73	67,117
		Check	6,577,485	32.07	48.04	60.73	67,117
OCCUPANCY OPERATING EXPENSES							
63		Operating Costs & Taxes	216,613	1.06	1.58	2.00	2,210
64		Realty Tax	Included	N/A	N/A	N/A	N/A
		Subtotal	216,613	1.06	1.58	2.00	2,210
		Check	216,613	1.06	1.58	2.00	2,210
FINANCE							
65		Commitment Fees	438,705	2.14	3.20	4.05	4,477
66		Deposit Insurer Commitment Fees	7,500	0.04	0.05	0.07	77
67		Bank Administration Fees	10,000	0.05	0.07	0.09	102
68		Bank Discharge Fees	11,400	0.06	0.08	0.11	116
69		Standby Fee	146,235	0.71	1.07	1.35	1,492
70		LC Fees/ Premiums for Tarion	100,750	0.49	0.74	0.93	1,028
71		ECDI Fees	83,000	0.40	0.61	0.77	847
72		Project Monitor	123,000	0.60	0.90	1.14	1,255
73		Predevelopment Loan Interest	N/A	N/A	N/A	N/A	N/A
74		Construction Loan Interest	2,193,525	10.69	16.02	20.25	22,383
		Subtotal	3,114,115	15.18	22.74	28.75	31,777
		Check	3,114,115	15.18	22.74	28.75	31,777
CONTINGENCY							
75		Development Contingency	958,167	4.67	7.00	8.85	9,777
		Subtotal	958,167	4.67	7.00	8.85	9,777
		Check	958,167	4.67	7.00	8.85	9,777
GOVERNMENT TAXES							
76		HST on Revenue	In Revenue	N/A	N/A	N/A	N/A
77		HST Payable	8,450,000	41.20	61.72	78.02	86,224
78		HST Recoverable	(8,450,000)	(41.20)	(61.72)	(78.02)	(86,224)
		Subtotal	0	0.00	0.00	0.00	0
		Check	0	0.00	0.00	0.00	0
GROSS EXPENDITURES (A)							
		Subtotal	72,431,118	353.12	529.01	668.76	739,093
		Check	72,431,118	353.12	529.01	668.76	739,093
OFFSETTING INCOME RECEIVED							
79		Occupancy Income (Residential Units)	(931,118)	(4.54)	(6.80)	(8.60)	(9,501)
		Subtotal	(931,118)	(4.54)	(6.80)	(8.60)	(9,501)
		Check	(931,118)	(4.54)	(6.80)	(8.60)	(9,501)
NET EXPENDITURES (A - B)							
		Subtotal	71,500,000	348.58	522.21	660.16	729,592
		Check	71,500,000	348.58	522.21	660.16	729,592

Colour legend

Deferred Costs

	Project Contingencies	January 2016
15	Design and Post Contract Contingency	3,296,830
75	Development Contingency	958,167
	Project Contingencies	4,254,997

SCHEDULE ASSUMPTIONS (MONTHS)	
18	Marketing Phase
10	Excav and Form (U/G)
6	Form (Tower)
8	Top-off to Initial Occup
4	Occupancies
28	Construction Total



3 Projected Revenue



98 Residential Suites, Mixed Use Condominium
 1451 Wellington Street West
 Ottawa, Ontario

Report Project 100379
 Date 19-Jan-16

Preliminary Reveue Calculation

Area	No.	Price/SF		
Suites Sold	0	-	per sf (Bella's Bistro)	0
Suites Sold		715	per sf	0
Suites Unsold	98	715	per sf	77,439,128
Suites Total	98	715	per sf	77,439,128 A
Parking				
	146		Total Stalls	
Less	0		Included in Suite Purchase	
Less	(6)		Visitor Parking Requirement	
Less	(4)		Bella's Bistro	
Less	0	\$	Sold	35,000 ea
	136	\$	Unsold	35,000 ea
				4,760,000
Lockers	98		Total Lockers	
Less	0		Incl. in Sold Units Price	
	98	\$	Available at	5,000 ea
				490,000 B
Gross Sales Revenue				
		Average Price \$		843,767
				9.86%
Net HST Payable				(7,421,398)
Net Sales Revenue				75,267,730
Commercial				
Add Retail value			2,000 sf Returned to Bella's Bistro	0
			4,157 sf at \$50/sf at a 7.0% CAP rate	2,969,255
Total Retail Value				2,969,255
Closing Adjustments				
Tarion				127,400
Development Charge Recovery				570,000
Hydro Metering Recovery				45,600
Law Society of Upper Canada Fees				5,700
Interest Payable on Deposits nets to Zero				0
				748,700
Anticipated Project Revenue				78,985,685



4 Source of Funding



98 Residential Suites, Mixed Use Condominium
 1451 Wellington Street West
 Ottawa, Ontario

Report Project Date
 Proforma 100379
 19-Jan-16

Preliminary Projected Source and Use of Funding

Source of Funding

Equity (Land)	2,150,000	3.01%
Equity (Land Appraisal Surplus)	3,850,000	5.38%
Equity (cash)	6,155,000	8.61%
Insured Deposits	8,600,000	12.03%
Deferred Costs	2,000,000	2.80%
Construction Loan	48,745,000	68.17%
Source of Funds	<u>71,500,000</u>	100.00%

Insured Residential Deposits

Assume 70% Presales	57,882,389	98 Total Units
Assumed 15% deposits Required	8,682,358	69 Sold Tarion Units
	<u>8,600,000</u>	
Tarion	1,960,000	
ECDI	6,640,000	

Deferred Costs

Legal Fees (Closing)	98,000
Warranty	98,000
Discharge Fees	11,400
Commissions Lead (50%)	470,423
Commissions Outside (50%)	1,354,819
Total	2,032,642
Required	<u>2,000,000</u>

1451 Wellington Street West
Condominium Project, Toronto
Project Pro Forma Report at January 2016



5 Preliminary Construction Cost Estimate



1451 Wellington Street West
Preliminary Construction Cost Estimate - R1
 Ottawa, Ontario
 December 2015

EXECUTIVE SUMMARY

The 'Hard' Construction Cost Estimate can be summarized as follows :

Component		GFA(M2)	GFA(SF)	\$/SF	\$ BUDGET	No. of Units	\$/Unit
Parking (4 levels below grade)		6,336	68,200	\$120	\$8,158,350	146	\$55,900
Tower (12 levels + MPH)		12,720	136,917	\$237	\$32,391,660	98	\$330,500
Site Development		1,843	19,838	\$33	\$660,600	98	\$6,700
Sub Total - GLA (Excluding Contingencies Allowance)		12,720	136,917	\$301	\$41,210,610	98	\$420,500
Design Contingency	5.0%	12,720	136,917	\$15	\$2,060,530	98	\$21,000
Sub Total - GLA (Including Design Allowance)		12,720	136,917	\$316	\$43,271,140	98	\$441,500
Contingency :							
Escalation Contingency - EXCLUDED	0.0%	12,720	136,917	0	\$0	98	\$0
Post - Contract Contingency	3.0%	12,720	136,917	\$9	\$1,236,300	98	\$12,600
TOTAL CONSTRUCTION COST (Excluding HST)		12,720	136,917	\$325	\$44,507,000	98	\$454,200
HST - Excluded	0.0%	12,720	136,917	\$0	EXCLUDED	98	\$0
TOTAL CONSTRUCTION COST (Excluding HST)		12,720	136,917	\$325	\$44,507,000	98	\$454,200

Notes:

1. See Our Estimate Summary for breakdown of estimated costs by component.
2. HST is Excluded
3. Furnishings/blinds/interior plantings are excluded - FF&E.
4. Any Construction Cost Escalation/De-Escalation beyond December 2015 has been excluded.
5. Premiums for Bonds and insurances are excluded.
6. Utility connection charges/costs and or relocations are excluded.
7. 3% Post Contract Contingency and 5% Design Contingency has been included.
8. Dewatering system - allowance is included).
9. Demolition to existing buildings is excluded.
10. LEED premiums and associated costs are excluded.
11. Soft Costs are excluded.
12. Prefinished engineered wood flooring to suites is included at \$75/m2.
13. Kitchen cabinets and vanities allowance of \$15,000/unit.
14. Suite appliances allowance of \$20,000/unit
15. No allowance has been included for asbestos abatement/removal/handling of contaminated materials from inside of the the building.

1451 WELLINGTON ST. WEST
Preliminary Construction Cost Estimate – R1
January 6, 2016



3. Divisional Summary



DRAFT FOR DISCUSSION PURPOSES ONLY

Job No: 100379

06-Jan-16

1451 Wellington Street West
 Preliminary Construction Cost Estimate - R1
 December 2015

DIVISIONAL SUMMARY

Description			Cost/ GLA/m2	Cost/ Unit	% of Grand Total
0 FEES	3.0%	1,200,310	94.36	12,248	2.70
1 GENERAL CONDITIONS	10.9%	3,945,200	310.16	40,257	8.86
2 SITE WORK		2,844,063	223.59	29,021	6.39
3 CONCRETE		9,398,338	738.86	95,901	21.12
4 MASONRY		336,650	26.47	3,435	0.76
5 METALS		585,550	46.03	5,975	1.32
6 CARPENTRY		2,724,525	214.19	27,801	6.12
7 THERMAL & MOISTURE		2,892,594	227.41	29,516	6.50
8 DOORS & WINDOWS		2,154,745	169.40	21,987	4.84
9 FINISHES		3,293,759	258.94	33,610	7.40
10 SPECIALTIES		1,005,250	79.03	10,258	2.26
11 EQUIPMENT		2,130,000	167.45	21,735	4.79
12 FURNISHINGS		5,000	0.39	51	0.01
13 SPECIAL CONST		0	0.00	0	0.00
14 CONVEYING SYSTEMS		680,000	53.46	6,939	1.53
15 MECHANICAL		5,470,446	430.07	55,821	12.29
16 ELECTRICAL		2,544,212	200.02	25,961	5.72
	Sub Total	\$41,210,642	\$3,239.83	\$420,517	92.59
Design Contingency	5.0%	\$2,060,500	\$161.99	\$21,026	4.63
Escalation Contingency - EXCLUDED	0.0%	\$0	\$0.00	\$0	0.00
Post - Contract Contingency	3.0%	\$1,236,300	\$97.19	\$12,615	2.78
	Sub Total	\$44,507,000	\$3,499	\$454,160	100.00
	GST	\$0	\$0.00	\$0	0.00
	Grand Total	\$44,507,000	\$3,499	\$454,200	100.00

GLA 12,720 m2

Cost/m2 \$3,498.98

GLA 136,917 sf

Cost/sf \$325.07

Number of Suites 98 No

Cost/unit \$454,153

AltusGroup		ELEMENTAL COST SUMMARY					
		Parking (4 levels below grade)					
Project:	1451 Wellington Street West	File:	100379				
Location:	Ottawa, Ontario	Date:	6-Jan-16				
Owner/Client:	Mizrahi Developments	Project Number:	100379				
Architect:	Page+Steele IBI Group Architects	Gross Floor Area:	6,336 m2				
DRAFT FOR DISCUSSION PURPOSES ONLY							
Element	Ratio to GFA	Elemental Quantity	Elemental Unit Rate	Elemental Amount	Cost/m2	Total	%
A SHELL							
A1 SUBSTRUCTURE							
A11 Foundation	0.28	1,770 m2	\$202.41	\$358,268	\$421.00	\$56.54	
A12 Basement Excavation	3.01	19,054 m3	\$121.19	\$2,309,194	\$364.46	\$2,667,462	30.3%
A2 STRUCTURE							
A21 Lowest Floor Construction	0.28	1,770 m2	\$45.67	\$80,841	\$12.76		
A22 Upper Floor Construction	0.72	4,566 m2	\$304.11	\$1,388,587	\$219.16		
A23 Roof Construction	0.28	1,770 m2	\$321.97	\$569,884	\$89.94	\$2,039,312	23.1%
A3 EXTERIOR ENCLOSURE							
A31 Walls Below Grade	0.30	1,875 m2	\$384.35	\$720,658	\$113.74		
A32 Walls Above Grade	0.00	0 m2	\$0.00	\$0	\$0.00		
A33 Windows & Entrance	0.00	0 m2	\$0.00	\$0	\$0.00		
A34 Roof Covering	0.11	727 m2	\$55.00	\$39,985	\$6.31		
A35 Projections	0.00	0 m2	\$0.00	\$0	\$0.00	\$760,643	8.6%
B INTERIORS							
B1 PARTITIONS & DOORS							
B11 Partitions	0.26	1,653 m2	\$178.91	\$295,743	\$46.68		
B12 Doors	0.01	33 no	\$1,267.58	\$41,830	\$6.60	\$337,573	3.8%
B2 FINISHES							
B21 Floor Finishes	0.91	5,752 m2	\$31.73	\$182,525	\$28.81		
B22 Ceiling Finishes	0.91	5,752 m2	\$13.68	\$78,715	\$12.42		
B23 Wall Finishes	0.82	5,181 m2	\$4.32	\$22,359	\$3.53	\$283,599	3.2%
B3 FITTING & EQUIPMENT							
B31 Fitting & Fixtures	1.00	6,336 m2	\$12.92	\$81,850	\$12.92		
B32 Equipment	1.00	6,336 m2	\$9.47	\$60,000	\$9.47		
B33 Conveying Systems	0.00	8 Stp	\$20,000.00	\$160,000	\$25.25	\$301,850	3.4%
C SERVICES							
C1 MECHANICAL							
C11 Plumbing & Drainage	1.00	6,336 m2	\$35.59	\$225,480	\$35.59		
C21 Fire Protection	1.00	6,336 m2	\$22.75	\$144,144	\$22.75		
C13 HVAC	1.00	6,336 m2	\$12.39	\$78,507	\$12.39		
C14 Controls	1.00	6,336 m2	\$4.24	\$26,880	\$4.24	\$475,011	5.4%
C2 ELECTRICAL							
C21 Service & distribution	1.00	6,336 m2	\$2.78	\$17,600	\$2.78		
C22 Lighting, Devices & Heating	1.00	6,336 m2	\$23.79	\$150,764	\$23.79		
C23 Systems & Ancillaries	1.00	6,336 m2	\$16.71	\$105,895	\$16.71	\$274,259	3.1%
NET BUILDING COST (Excluding Site)					\$1,126.85	\$7,139,709	81.0%
D SITE							
D1 SITE WORK							
D11 Site Development	0.00	0 m2	\$0.00	\$0	\$0.00		
D12 Mechanical Site Services	0.00	0 m2	\$0.00	\$0	\$0.00		
D13 Electrical Site Services	0.00	0 m2	\$0.00	\$0	\$0.00	\$0	0.0%
D2 ANCILLARY WORK							
D21 Demolition	0.00	0 m2	\$0.00	\$0	\$0.00		
D22 Alterations	0.00	0 m2	\$0.00	\$0	\$0.00	\$0	0.0%
NET BUILDING COST (Including Site)					\$1,126.85	\$7,139,709	81.0%
Z MARKUPS							
Z1 GENERAL REQUIREMENTS 13.9%							
Z11 General Requirements	10.9%			\$781,020	\$123.27		
Z12 Fee	3.0%			\$237,622	\$37.50	\$1,018,642	11.6%
TOTAL CONSTRUCTION ESTIMATE (Excluding Contingencies)					\$1,287.62	\$8,158,351	92.6%
Z2 CONTINGENCIES 8.0%							
Z21 Design Contingency	5.0%			\$407,918	\$64.38		
Z22 Escalation Contingency	0.0%	EXCLUDED		\$0	\$0.00		
Z23 Construction Contingency	3.0%			\$244,751	\$38.63	\$652,668	7.4%
HARMONIZED SALES TAX 0%							
EXCLUDED					\$0	\$0	0.0%
TOTAL CONSTRUCTION ESTIMATE (Including Allowances)					\$1,390.63	\$8,811,019	100.0%
GFA:	6,336 m2				per m2	\$1,390.63	
GFA:	68,200 sf				per sf	\$129.19	
Unit/Spaces:	146 no				per unit	\$60,349.45	

AltusGroup		ELEMENTAL COST SUMMARY					
		Tower (12 levels + MPH)					
Project:	1451 Wellington Street West	File:	100379				
Location:	Ottawa, Ontario	Date:	6-Jan-16				
Owner/Client:	Mizrahi Developments	Project Number:	100379				
Architect:	Page+Steele IBI Group Architects	Gross Floor Area:	12,720 m2				
DRAFT FOR DISCUSSION PURPOSES ONLY							
Element	Ratio to GFA	Elemental Quantity	Elemental Unit Rate	Elemental Amount	Cost/m2	Total	%
A SHELL							
A1 SUBSTRUCTURE							
A11 Foundation	0.00	0 m2	\$0.00	\$0	\$0.00		
A12 Basement Excavation	0.00	0 m3	\$0.00	\$0	\$0.00	\$0	0.0%
A2 STRUCTURE							
A21 Lowest Floor Construction	0.08	1,043 m2	\$0.00	\$0	\$0.00		
A22 Upper Floor Construction	0.92	11,677 m2	\$256.42	\$2,994,223	\$235.39		
A23 Roof Construction	0.10	1,314 m2	\$223.58	\$293,785	\$23.10	\$3,288,008	9.4%
A3 EXTERIOR ENCLOSURE							
A31 Walls Below Grade	0.00	0 m2	\$0.00	\$0	\$0.00		
A32 Walls Above Grade	0.35	4,488 m2	\$728.72	\$3,270,493	\$257.11		
A33 Windows & Entrance	0.25	3,140 m2	\$549.63	\$1,725,840	\$135.68		
A34 Roof Covering	0.10	1,314 m2	\$287.38	\$377,615	\$29.69		
A35 Projections	1.00	12,720 m2	\$130.14	\$1,655,373	\$130.14	\$7,029,321	20.1%
B INTERIORS							
B1 PARTITIONS & DOORS							
B11 Partitions	1.48	18,778 m2	\$136.83	\$2,569,387	\$202.00		
B12 Doors	0.07	837 no	\$819.86	\$686,220	\$53.95	\$3,255,607	9.3%
B2 FINISHES							
B21 Floor Finishes	0.90	11,448 m2	\$80.08	\$916,741	\$72.07		
B22 Ceiling Finishes	0.90	11,448 m2	\$43.34	\$496,188	\$39.01		
B23 Wall Finishes	3.37	42,840 m2	\$13.36	\$572,475	\$45.01	\$1,985,404	5.7%
B3 FITTING & EQUIPMENT							
B31 Fitting & Fixtures	1.00	12,720 m2	\$245.10	\$3,117,700	\$245.10		
B32 Equipment	1.00	12,720 m2	\$162.74	\$2,070,000	\$162.74		
B33 Conveying Systems	0.00	24 Stp	\$21,666.67	\$520,000	\$40.88	\$5,707,700	16.3%
C SERVICES							
C1 MECHANICAL							
C11 Plumbing & Drainage	1.00	12,720 m2	\$134.67	\$1,713,040	\$134.67		
C21 Fire Protection	1.00	12,720 m2	\$30.00	\$381,600	\$30.00		
C13 HVAC	1.00	12,720 m2	\$208.17	\$2,647,945	\$208.17		
C14 Controls	1.00	12,720 m2	\$12.02	\$152,850	\$12.02	\$4,895,435	14.0%
C2 ELECTRICAL							
C21 Service & distribution	1.00	12,720 m2	\$52.21	\$664,050	\$52.21		
C22 Lighting, Devices & Heating	1.00	12,720 m2	\$90.22	\$1,147,604	\$90.22		
C23 Systems & Ancillaries	1.00	12,720 m2	\$29.41	\$374,149	\$29.41	\$2,185,803	6.2%
NET BUILDING COST (Excluding Site)					\$2,228.56	\$28,347,278	81.0%
D SITE							
D1 SITE WORK							
D11 Site Development	0.00	0 m2	\$0.00	\$0	\$0.00		
D12 Mechanical Site Services	0.00	0 m2	\$0.00	\$0	\$0.00		
D13 Electrical Site Services	0.00	0 m2	\$0.00	\$0	\$0.00	\$0	0.0%
D2 ANCILLARY WORK							
D21 Demolition	0.00	0 m2	\$0.00	\$0	\$0.00		
D22 Alterations	0.00	0 m2	\$0.00	\$0	\$0.00	\$0	0.0%
NET BUILDING COST (Including Site)					\$2,228.56	\$28,347,278	81.0%
Z MARKUPS							
Z1 GENERAL REQUIREMENTS							
Z11 General Requirements	13.9%			\$317.95			
Z12 Fee	10.9%			\$3,100,936	\$243.78		
	3.0%			\$943,446	\$74.17	\$4,044,382	11.6%
TOTAL CONSTRUCTION ESTIMATE (Excluding Contingencies)					\$2,546.51	\$32,391,660	92.6%
Z2 CONTINGENCIES							
Z21 Design Contingency	8.0%			\$203.72			
Z22 Escalation Contingency	5.0%			\$1,619,583	\$127.33		
Z23 Construction Contingency	0.0%	EXCLUDED		\$0	\$0.00		
	3.0%			\$971,750	\$76.40	\$2,591,333	7.4%
HARMONIZED SALES TAX					0%	EXCLUDED	\$0
TOTAL CONSTRUCTION ESTIMATE (Including Allowances)					\$2,750.24	\$34,982,993	100.0%
GFA:	12,720 m2				per m2	\$2,750.24	
GFA:	136,917 sf				per sf	\$255.51	
Unit/Spaces:	98 no				per unit	\$356,969.31	

AltusGroup		ELEMENTAL COST SUMMARY					
		Site Development					
Project:	1451 Wellington Street West	File:	100379				
Location:	Ottawa, Ontario	Date:	6-Jan-16				
Owner/Client:	Mizrahi Developments	Project Number:	100379				
Architect:	Page+Steele IBI Group Architects	Site Area:	1,843 m2				
DRAFT FOR DISCUSSION PURPOSES ONLY							
Element	Ratio to GFA	Elemental Quantity	Elemental Unit Rate	Elemental Amount	Cost/m2	Total	%
A SHELL							
A1 SUBSTRUCTURE							
A11 Foundation	0.00	0 m2	\$0.00		\$0.00		
A12 Basement Excavation	0.00	0 m3	\$0.00	\$0	\$0.00	\$0	0.0%
A2 STRUCTURE							
A21 Lowest Floor Construction	0.00	0 m2	\$0.00	\$0	\$0.00		
A22 Upper Floor Construction	0.00	0 m2	\$0.00	\$0	\$0.00		
A23 Roof Construction	0.00	0 m2	\$0.00	\$0	\$0.00	\$0	0.0%
A3 EXTERIOR ENCLOSURE							
A31 Walls Below Grade	0.00	0 m2	\$0.00		\$0.00		
A32 Walls Above Grade	0.00	0 m2	\$0.00	\$0	\$0.00		
A33 Windows & Entrance	0.00	0 m2	\$0.00	\$0	\$0.00		
A34 Roof Covering	0.00	0 m2	\$0.00	\$0	\$0.00		
A35 Projections	0.00	0 m2	\$0.00	\$0	\$0.00	\$0	0.0%
B INTERIORS							
B1 PARTITIONS & DOORS							
B11 Partitions	0.00	0 m2	\$0.00	\$0	\$0.00		
B12 Doors	0.00	0 no	\$0.00	\$0	\$0.00	\$0	0.0%
B2 FINISHES							
B21 Floor Finishes	0.00	0 m2	\$0.00	\$0	\$0.00		
B22 Ceiling Finishes	0.00	0 m2	\$0.00	\$0	\$0.00		
B23 Wall Finishes	0.00	0 m2	\$0.00	\$0	\$0.00	\$0	0.0%
B3 FITTING & EQUIPMENT							
B31 Fitting & Fixtures	0.00	0 m2	\$0.00	\$0	\$0.00		
B32 Equipment	0.00	0 m2	\$0.00	\$0	\$0.00		
B33 Conveying Systems	0.00	0 Stp	\$0.00	\$0	\$0.00	\$0	0.0%
C SERVICES							
C1 MECHANICAL							
C11 Plumbing & Drainage	0.00	0 m2	\$0.00	\$0	\$0.00		
C21 Fire Protection	0.00	0 m2	\$0.00	\$0	\$0.00		
C13 HVAC	0.00	0 m2	\$0.00	\$0	\$0.00		
C14 Controls	0.00	0 m2	\$0.00	\$0	\$0.00	\$0	0.0%
C2 ELECTRICAL							
C21 Service & distribution	0.00	0 m2	\$0.00	\$0	\$0.00		
C22 Lighting, Devices & Heating	0.00	0 m2	\$0.00	\$0	\$0.00		
C23 Systems & Ancillaries	0.00	0 m2	\$0.00	\$0	\$0.00	\$0	0.0%
NET BUILDING COST (Excluding Site)					\$0.00	\$0	0.0%
D SITE							
D1 SITE WORK							
D11 Site Development	1.00	1,843 m2	\$213.78	\$393,994	\$213.78		
D12 Mechanical Site Services	1.00	1,843 m2	\$54.26	\$100,000	\$54.26		
D13 Electrical Site Services	1.00	1,843 m2	\$45.66	\$84,150	\$45.66	\$578,144	81.0%
D2 ANCILLARY WORK							
D21 Demolition	0.00	0 m2	\$0.00	\$0	\$0.00		
D22 Alterations	0.00	0 m2	\$0.00	\$0	\$0.00	\$0	0.0%
NET BUILDING COST (Including Site)					\$313.70	\$578,144	81.0%
Z MARKUPS							
Z1 GENERAL REQUIREMENTS							
Z11 General Requirements	13.9%				\$44.76		
Z12 Fee	10.9%			\$63,244	\$34.32		
	3.0%			\$19,242	\$10.44	\$82,486	11.6%
TOTAL CONSTRUCTION ESTIMATE (Excluding Contingencies)					\$358.45	\$660,630	92.6%
Z2 CONTINGENCIES							
Z21 Design Contingency	8.0%			\$33,032	\$28.68		
Z22 Escalation Contingency	5.0%	EXCLUDED		\$0	\$0.00		
Z23 Construction Contingency	0.0%			\$19,819	\$10.75	\$52,850	7.4%
	3.0%						
HARMONIZED SALES TAX							
	0%	EXCLUDED		\$0	\$0.00	\$0	0.0%
TOTAL CONSTRUCTION ESTIMATE (Including Allowances)					\$387.13	\$713,480	100.0%
Site Area:	1,843 m2			per m2	\$387.13		
Site Area:	19,838 sf			per sf	\$35.97		
Units:	98 no			per unit	\$7,280.41		

Description	Takeoff Quantity	Cost/Unit	Total Amount
01000 GENERAL CONDITIONS			
01000 General Conditions			
Site supervision	30 mths	16,200.00	486,000
Site clerk	30 mths	4,500.00	135,000
Construction labour (3 no.)	90 mths	10,000.00	900,000
Hoist operator	24 mths	11,000.00	264,000
Assistant Superintendent	30 mths	10,800.00	324,000
Site survey	1 sum	7,500.00	7,500
Site safety inspection	30 mths	450.00	13,500
Temporary hydro connection	1 sum	50,000.00	50,000
Temporary hydro consumption	98 unit	1,900.00	186,200
Temporary lighting	1 sum	15,000.00	15,000
Temporary heating rentals	98 unit	900.00	88,200
Temporary heating consumption	98 unit	1,900.00	186,200
Temporary water	1 sum	10,000.00	10,000
Temporary sanitary facilities	30 mths	1,400.00	42,000
Temporary fire protection	1 sum	10,000.00	10,000
Man and material hoist including rental	1 sum	120,000.00	120,000
Temporary telephone	30 mths	800.00	24,000
Security guard	30 mths	4,500.00	135,000
Police / Traffic control	1 sum	30,000.00	30,000
Hoarding / Fencing	1 sum	50,000.00	50,000
Winter protection	1 sum	100,000.00	100,000
Site office	30 mths	1,200.00	36,000
Office supplies	1 sum	10,000.00	10,000
Courier	1 sum	10,000.00	10,000
Equipment rental supply	98 unit	1,500.00	147,000
Construction clean up	98 unit	700.00	68,600
First aid supply	1 sum	5,000.00	5,000
Garbage removal	98 unit	1,000.00	98,000
Small tools	1 sum	100,000.00	100,000
Deficiency repairs	98 unit	1,500.00	147,000
General construction supply	98 unit	1,500.00	147,000
01000 General Conditions			3,945,200
01000 GENERAL CONDITIONS			3,945,200

02000 SITE WORK

Description	Takeoff Quantity	Cost/Unit	Total Amount
02050 Demolition			
Allowance for demolition of existing buildings on site - EXCLUDED	1 sum		
02111 Site Clearing			
Clear & grub site	1,843 m2	3.00	5,529
02111 Site Clearing			5,529
02151 Shoring			
Caisson walls to all 4 sides - Assumed upto 0.5m into bedrock TBC	664 m2	900.00	597,600
Shotcrete to all exposed rock face	1,349 m2	300.00	404,700
Allowance for removal of obstructions during shoring work	1 sum	20,000.00	20,000
02151 Shoring	2,013 m2	507.85	1,022,300
02220 Excavation			
Bulk excavation in earth	5,912 m3	12.00	70,944
Allowance for removal of obstructions	1 sum	10,000.00	10,000
Bulk excavation in shale / rock (average 3.34m below ground level)	13,142 m3	48.00	630,816
Trench excavation in shale / rock	287 m3	48.00	13,755
Pit excavation in shale / rock	635 m3	48.00	30,501
Allow for ramp work	1 sum	25,000.00	25,000
Cart material off site	19,976 m3	21.00	419,496
Backfill foundations - labour	865 m3	22.00	19,037
Backfill special foundations - labour	14 m3	22.00	316
02220 Excavation	19,976 m3	61.07	1,219,865
02221 Backfill			
Granular backfill - material	526 m3	50.00	26,284
Granular base slab on grade - material	354 m3	60.00	21,240
02221 Backfill			47,524
02401 Dewatering			
Allow for dewatering - Allowance (water level 1.7m to 4.3m below ground level)	1 sum	150,000.00	150,000

Description	Takeoff Quantity	Cost/Unit	Total Amount
02401 Dewatering			150,000
02411 Foundation Drainage			
Perf weeping tile & gravel	173 m	60.00	10,380
02411 Foundation Drainage			10,380
02483 Landscaping			
Precast seating wall - 450mm wide x 580mm height	6 m	600.00	3,600
Precast seating wall - 450mm wide x 580mm height - City	62 m	600.00	37,200
Bike double ring - City	4 No	300.00	1,200
Bike rack - City	2 No	2,500.00	5,000
Benches - City	4 No	1,500.00	6,000
Allow for sculpture	2 No	10,000.00	20,000
Waste bins - City	1 No	1,500.00	1,500
Fence	50 m	180.00	9,000
Concrete sidewalk - City	80 m2	125.00	10,000
Cobbles to be salvaged and reused - City	17 m2	50.00	850
Playground surface - engineered wood fibre - City	75 m2	200.00	15,000
Unit paving - Driveway	271 m2	200.00	54,200
Unit paving - City	342 m2	180.00	61,560
200mm conc Curb - City	120 m	100.00	12,000
500mm conc curb @ playground - City	11 m	350.00	3,850
Concrete sidewalk	13 m2	125.00	1,625
Ramp	1 m2	300.00	300
Allow for irrigation	1 sum	15,000.00	15,000
Allow for shrubs and minor plantings	1 sum	20,000.00	20,000
Exhaust shafts	1 m2	400.00	400
Allowance for play structure, water feature and miscellaneous site improvements	1 sum	80,000.00	80,000
Sod	518 m2	10.00	5,180
Allow for trees (56 no)	1 sum	25,000.00	25,000
02483 Landscaping			388,465
02000 SITE WORK			2,844,063

Description	Takeoff Quantity	Cost/Unit	Total Amount
03000 CONCRETE			
03110 Structural Concrete Formwork			
Formwork - strip footings	119 m2	100.00	11,940
Formwork - pad footings	429 m2	100.00	42,900
Formwork - crane base	22 m2	100.00	2,200
Formwork - foundation stub wall	358 m2	100.00	35,820
Formwork - wall below grade	740 m2	95.00	70,300
Formwork - wall above grade	10,256 m2	85.00	871,760
Formwork - wall above grade	1,300 m2	85.00	110,500
Formwork - wall ends	820 m2	85.00	69,700
Formwork - wall ends	60 m2	95.00	5,700
Formwork - basement wall	3,750 m2	95.00	356,250
Formwork - edge of slab on grade	22 m2	95.00	2,054
Formwork - edge of slab below grade	52 m2	95.00	4,931
Formwork - edge of slab above grade	166 m2	85.00	14,114
Formwork - edge of slab below grade	130 m2	95.00	12,326
Formwork - edge of slab above grade	501 m2	85.00	42,549
Formwork - square columns below grade	320 m2	140.00	44,811
Formwork - square columns above grade	47 m2	130.00	6,084
Formwork - square columns below grade	562 m2	140.00	78,610
Formwork - square columns above grade	758 m2	130.00	98,592
Formwork - drop panels below grade	216 m2	130.00	28,080
Formwork - square or rectangular capitals	44 m2	140.00	6,178
Formwork - slab soffit below grade	1,770 m2	95.00	168,150
Formwork - slab soffit above grade	1,890 m2	90.00	170,100
Formwork - voids	136 m2	90.00	12,240
Formwork - slab soffit below grade	4,566 m2	95.00	433,770
Formwork - slab soffit above grade	11,677 m2	90.00	1,050,930
Formwork - beam sides below grade	120 m2	130.00	15,600
Formwork - beam sides above grade	100 m2	120.00	12,000
Formwork - beam sides below grade	300 m2	130.00	39,000
Formwork - beam sides above grade	160 m2	120.00	19,200
Formwork - upstand/curb	391 m2	120.00	46,896
Sonotube 800mm (32") dia.	150 m	280.00	42,000
1100mm (44") risers - one riser	679 No	120.00	81,480
03110 Structural Concrete Formwork	41,781 m2	95.90	4,006,766

Description	Takeoff Quantity	Cost/Unit	Total Amount
03200 Re-bar Material (average 110kg / m3 - gross)			
Reinforcing steel - material (excl. detailing)	988,599 kg	0.96	949,055
03200 Re-bar Material (average 110kg / m3 - gross)	988,599 kg	0.96	949,055
03211 Re-bar Labour			
Reinforcing steel - labour	988,599 kg	0.56	553,616
03211 Re-bar Labour	988,599 kg	0.56	553,616
03212 Reinforcing Accessories			
Reinforcing accessories	988,599 kg	0.12	118,632
03212 Reinforcing Accessories	988,599 kg	0.12	118,632
03250 Concrete Accessories			
Concrete accessories	8,530 m3	7.50	63,978
03250 Concrete Accessories			63,978
03302 Concrete Materials			
25 Mpa (3500psi)	221 m3	108.00	23,895
25 Mpa (3500psi) waste (5%)	11 m3	108.00	1,195
30 Mpa (4000psi)	3,838 m3	114.00	437,504
30 Mpa (4000psi) waste (5%)	172 m3	114.00	19,616
30 Mpa (4000psi) waste (20%)	79 m3	114.00	9,036
35 Mpa (5000psi)	4,471 m3	128.00	572,340
35 Mpa (5000psi) waste (5%)	224 m3	128.00	28,617
Extra over for C-1	2,667 m3	15.00	40,005
Extra over for C-1 waste (5%)	133 m3	15.00	2,000
Extra over for C-4	221 m3	10.00	2,213
Extra over for C-4 waste (5%)	11 m3	10.00	111
Winter heat - 50% Tower	2,610 m3	16.00	41,760
Winter heat - 50% Parking	1,898 m3	16.00	30,368
Accelerated strength - Tower allowance	3,382 m3	40.00	135,280
Air entrainment	1,092 m3	6.00	6,554
Corrosion inhibitor - parking suspended slabs	1,393 m3	30.00	41,790
Allow for admixtures - Parking	1 sum	50,000.00	50,000

Description	Takeoff Quantity	Cost/Unit	Total Amount
03302 Concrete Materials			
Allow for admixtures - Tower	1 sum	70,000.00	70,000
Allowance for higher strength concrete	1 sum	50,000.00	50,000
Environmental / washout	9,016 m3	6.00	54,096
03302 Concrete Materials	9,016 m3	179.28	1,616,380
03303 Conc. Pouring-labour			
Place concrete - Footing	36 m3	46.00	1,648
Place concrete - columns	298 m3	46.00	13,709
Place concrete - foundation Stub Wall	54 m3	46.00	2,472
Place concrete - Pads	331 m3	46.00	15,203
Place concrete - crane base	30 m3	46.00	1,380
Place concrete - slab on grade	221 m3	46.00	10,178
Place concrete - walls	725 m3	46.00	33,350
Place concrete - shearwalls	1,248 m3	46.00	57,403
Place concrete - slabs	5,015 m3	46.00	230,682
Place concrete - drop panels	162 m3	46.00	7,452
Place concrete - capitals	8 m3	46.00	357
Place concrete - beams	349 m3	46.00	16,054
Place concrete - upstands	55 m3	46.00	2,512
Place concrete - waste	486 m3	46.00	22,355
03303 Conc. Pouring-labour	9,016 m3	46.00	414,754
03345 Concrete Finishing			
Allow for saw cuts - slab on grade	1 sum	5,000.00	5,000
Allow for construction joints	1 sum	5,000.00	5,000
Concrete sealer to SOG	1,525 m2	7.50	11,438
Concrete sealer to Retail	572 m2	15.00	8,580
Allow for floor levelling - Tower	12,720 m2	12.00	152,640
03345 Concrete Finishing			182,658
03410 Precast Concrete			
Precast panels - assumed 5" thick	578 m2	430.00	248,540
Precast panels - assumed 5" thick - Parapet	372 m2	430.00	159,960
Precast panels - allow for returns	50 m2	430.00	21,500
Allow for features	1 sum	50,000.00	50,000
Precast panels - brick type (assumed)	2,250 m2	450.00	1,012,500

Description	Takeoff Quantity	Cost/Unit	Total Amount
03410 Precast Concrete	3,250 m2	459.23	1,492,500
03000 CONCRETE			9,398,338
04000 MASONRY			
04271 Masonry			
150mm (6") block	1,531 m2	110.00	168,410
200mm (8") block	452 m2	120.00	54,240
04271 Masonry	1,983 m2	112.28	222,650
04401 Stone			
Stone cladding	285 m2	400.00	114,000
04401 Stone	285 m2	400.00	114,000
04000 MASONRY			336,650
05000 METALS			
05120 Struct. Steel S & I			
Allow for misc steel framing - Allowance	1 sum	150,000.00	150,000
05120 Struct. Steel S & I			150,000
05500 Metal Fabrications			
Steel wall rail	350 m	120.00	42,000
Steel balustrade	118 m	250.00	29,500
Allow for misc metals - Parking	1 sum	25,000.00	25,000
Allow for misc metals - Tower	98 unit	1,000.00	98,000
05500 Metal Fabrications			194,500
05600 Balcony Glazing			
Glazed balcony railings - assumed tempered	329 m	325.00	106,925
Glazed terrace railings	186 m	400.00	74,400
E.O for metal planters @ balcony railing	58 no	700.00	40,600
Terrace / balcony privacy screens	85 m	225.00	19,125
05600 Balcony Glazing	515 m	468.06	241,050
05000 METALS			585,550
06000 WOOD & PLASTICS			
06100 Rough Carpentry			
Allow for rough carpentry	98 unit	300.00	29,400

Description	Takeoff Quantity	Cost/Unit	Total Amount
06100 Rough Carpentry	98 unit	300.00	29,400
06230 Finish Carpentry			
Allow for misc. finish carpentry to suites	98 unit	800.00	78,400
Allow for millwork to lobby	1 sum	50,000.00	50,000
Allow for concierge desk	1 sum	25,000.00	25,000
Allow for millwork to amenity space	1 sum	50,000.00	50,000
Allow for architectural moulding	98 unit	500.00	49,000
Closet organizers	98 unit	700.00	68,600
Allow for bases to common areas	1 sum	10,000.00	10,000
Allow for bases to suites	98 unit	650.00	63,700
Trim to doors	105 No	250.00	26,250
Wood door frame - single	437 No	125.00	54,625
Mail boxes	98 No	100.00	9,800
Install hollow metal int. door	95 No	150.00	14,250
Install solid core int. door	105 No	150.00	15,750
Install hollow core int. door	437 No	150.00	65,550
Install hollow metal ext. door	6 No	150.00	900
Solid core interior door	105 No	350.00	36,750
Hollow core interior door	437 No	150.00	65,550
Interior signage - Tower	1 sum	5,000.00	5,000
06230 Finish Carpentry	98 unit	7,031.89	689,125
06409 Kitchen/Bath Cabinet			
Custom kitchen cabinets and vanities - Allowance TBC	98 unit	15,000.00	1,470,000
Allow for amenity kitchen cabinets	1 sum	10,000.00	10,000
Allow for vanity units - bathrooms at amenity	1 sum	4,000.00	4,000
06409 Kitchen/Bath Cabinet	98 unit	15,142.86	1,484,000
06410 Counter Tops			
Allow for countertop to amenity kitchen	1 sum	2,000.00	2,000
Natural stone countertop to suite kitchen - Allowance TBC	98 No	2,000.00	196,000
Stone vanity countertop to suite bathrooms - Allowance TBC	160 No	1,500.00	240,000

Description	Takeoff Quantity	Cost/Unit	Total Amount
06410 Counter Tops	98 unit	4,469.39	438,000
06430 Wood Stairs			
Allow for wood stairs (all in) for lofts	7 no	12,000.00	84,000
06430 Wood Stairs			84,000
06000 WOOD & PLASTICS			2,724,525
07000 THERMAL & MOISTURE			
07100 Waterproofing			
Waterproofing to basement wall	1,875 m2	80.00	150,000
Waterproof membrane on protection board	727 m2	55.00	39,985
Allow for misc waterproofing to water storage etc	1 sum	20,000.00	20,000
Waterproofing to balcony slab	576 m2	25.00	14,400
Liquid epoxy to M&E	182 m2	45.00	8,190
Liquid epoxy to M&E	403 m2	45.00	18,135
07100 Waterproofing			250,710
07200 Insulation			
Allow for misc insulation	1 sum	50,000.00	50,000
07200 Insulation			50,000
07270 Air Barriers			
Blue Skin air barrier	4,488 m2	22.00	98,736
07270 Air Barriers			98,736
07400 Roofing & Siding Panels			
Copper cladding - Allowance spec TBC	1,290 m2	800.00	1,032,000
Copper cladding - at balcony / parapet - Allowance spec TBC	318 m2	800.00	254,400
Copper cladding to MPH (as advised by client) - Allowance spec TBC	498 m2	800.00	398,400
Prefinished metal soffit	292 m2	350.00	102,200
07400 Roofing & Siding Panels	2,398 m2	745.20	1,787,000
07500 Membrane Roofing			
Roofing (all in)	1,314 m2	180.00	236,520

Description	Takeoff Quantity	Cost/Unit	Total Amount
07500 Membrane Roofing			
E.O. Green roof (all in) - assumed 40%	526 m2	160.00	84,160
Roof accessories	1 sum	5,000.00	5,000
E.O. precast pavers	799 m2	65.00	51,935
07500 Membrane Roofing	1,314 m2	287.38	377,615
07570 Traffic Topping			
Traffic topping	3,557 m2	35.00	124,495
07570 Traffic Topping			124,495
07920 Caulking/Wtherstrpg			
Horizontal firestopping	2,260 m	12.50	28,250
Vertical firestopping	319 m	12.50	3,988
Allow for sealing and caulking - Tower	98 unit	1,600.00	156,800
Allow for sealing and caulking - Parking	1 sum	15,000.00	15,000
07920 Caulking/Wtherstrpg			204,038
07000 THERMAL & MOISTURE			2,892,594
08000 DOORS & WINDOWS			
08110 Hollow Metal Doors & Frames			
Hollow metal int. door	95 No	175.00	16,625
Hollow metal ext. door	6 No	195.00	1,170
Single hollow metal frame	198 No	80.00	15,840
Double hollow metal frame	4 No	90.00	360
08110 Hollow Metal Doors & Frames			33,995
08360 Garage O.H. Doors			
Overhead loading door	1 No	25,000.00	25,000
Gate - Dividing residents/visitors parking	1 No	15,000.00	15,000
Overhead garage door	1 No	25,000.00	25,000
08360 Garage O.H. Doors			65,000
08370 Sliding Closet Doors & Shelves			
Closet rod and shelf	98 unit	200.00	19,600
Double swing bedroom closet door	132 Pr	800.00	105,600
Allow for sliding barn doors @ bedroom entry - Allowance	1 sum	40,000.00	40,000

Description	Takeoff Quantity	Cost/Unit	Total Amount
08370 Sliding Closet Doors & Shelves			
Double swing entry closet door	98 Pr	800.00	78,400
Mirrors to suites	160 No	100.00	16,000
Allow for mirrors to common area	1 sum	1,000.00	1,000
Allowance for convex mirrors - Parking	1 sum	2,500.00	2,500
08370 Sliding Closet Doors & Shelves			263,100
08380 Shower Enclosures			
Frameless glass enclosure - Shower	62 No	950.00	58,900
08380 Shower Enclosures			58,900
08520 Aluminum Windows			
Window wall system	3,165 m2	415.00	1,313,475
Storefront	245 m2	800.00	196,000
E.O glazed aluminum double door - interior	2 No	2,500.00	5,000
Glazed partition	77 m2	450.00	34,650
Allow for glazed partition / doors in parking	1 sum	30,000.00	30,000
<i>E.O. balcony sliding doors - Included in windows</i>	122 Set		
E.O. balcony swing doors - exterior	11 No	500.00	5,500
E.O. Glazed aluminum double door - exterior	3 No	2,500.00	7,500
08520 Aluminum Windows	3,487 m2	456.59	1,592,125
08700 Hardware			
Hardware to HM interior door	95 No	375.00	35,625
Hardware to HM exterior door	6 No	425.00	2,550
Hardware to wood interior door - suite entry	98 No	450.00	44,100
Hardware to wood interior door	437 No	100.00	43,700
Hardware to wood interior door - common	7 No	450.00	3,150
Automatic door operators	5 No	2,500.00	12,500
08700 Hardware			141,625
08000 DOORS & WINDOWS			2,154,745
09000 FINISHES			
09220 Stucco			
Stucco behind parapet	200 m2	75.00	15,000

Description	Takeoff Quantity	Cost/Unit	Total Amount
09220 Stucco			
Stucco to underside of balcony slab	576 m2	40.00	23,040
09220 Stucco			38,040
09250 Drywall			
Unfinished - Retail soffit	572 m2		
12mm (1/2") drywall-standard to walls	27,557 m2	13.00	358,241
12mm (1/2") fire rated to walls	5,014 m2	14.00	70,196
16mm (5/8") fire rated to walls	3,512 m2	15.00	52,680
12mm (1/2") drywall laminated to wall	9,460 m2	13.50	127,710
Allowance for bulkheads	98 unit	700.00	68,600
Allow for feature ceiling - amenity	240 m2	100.00	24,000
41mm (1-5/8") s.studs 400mm (16") o\c	4,783 m2	16.00	76,528
64mm (2-1/2") s.studs 400mm (16") o\c	10,118 m2	18.00	182,124
92mm (3-5/8") s.studs 400mm (16") o\c	3,009 m2	20.00	60,180
150mm (6") s.studs 400mm (16") o\c	4,488 m2	30.00	134,640
64mm (2-1/2") batt insulation	950 m2	10.00	9,500
150mm (6") batt insulation	4,488 m2	13.00	58,344
38mm (1-1/2") sound attenuation batt.	3,587 m2	10.00	35,870
50mm (2") sound attenuation batt.	500 m2	12.00	6,000
100mm (4") sound attenuation batt.	2,253 m2	13.00	29,289
6 Mil air/vapour barrier, poly	5,438 m2	1.50	8,157
Suspended drywall ceiling to elevator lobby/vestibule	183 m2	45.00	8,235
Suspended drywall ceiling to suites	1,544 m2	35.00	54,040
Suspended drywall ceiling to common	698 m2	35.00	24,430
Allow for feature ceiling - lobby / mail / vest	157 m2	100.00	15,700
E.O. allowance for coffered ceiling in master bedrooms	98 unit	1,000.00	98,000
Insulated soffit	1,043 m2	45.00	46,935
Smooth finish to suites	7,489 m2	22.00	164,758
09250 Drywall	98 unit	17,491.40	1,714,157
09300 Tile			
Tile to lobby/vestibule - Parking	183 m2	90.00	16,470
Ceramic to garbage chute room	22 m2	70.00	1,540
Tile to bathrooms	662 m2	130.00	86,060

Description	Takeoff Quantity	Cost/Unit	Total Amount
09300 Tile			
Ceramic to laundry	98 m2	80.00	7,840
Tile to tub/shower surround	1,204 m2	140.00	168,560
Stone kitchen backsplash	98 unit	800.00	78,400
Ceramic to walls - garbage chute	183 m2	70.00	12,810
Stone flooring - lobby / vestibule / mail room	157 m2	250.00	39,250
09300 Tile	98 unit	4,193.16	410,930
09550 Wood Flooring			
Prefinished engineered wood flooring to foyer, living room, dining room, bedrooms and den	8,273 m2	75.00	620,475
Hardwood flooring to amenity area	240 m2	100.00	24,000
09550 Wood Flooring	98 unit	6,576.28	644,475
09680 Carpet			
Carpet to corridor	698 m2	50.00	34,900
09680 Carpet			34,900
09900 Painting			
Paint to H.M. door complete	101 No	65.00	6,565
Paint to wood door	542 No	65.00	35,230
Paint to walls	44,051 m2	3.50	154,179
Paint drywall ceilings	1,278 m2	5.00	6,390
Paint smooth ceilings	7,489 m2	5.00	37,445
Paint exposed structure	5,274 m2	5.00	26,370
Paint concrete columns	845 m2	5.00	4,225
Paint concrete floors	200 m2	7.00	1,400
Paint concrete stairs	399 m2	7.00	2,793
Vinyl wall covering	2,583 m2	20.00	51,660
09900 Painting	98 unit	3,329.15	326,257
09980 Special Finishes			
Allow for special finishes to lobby / amenity	1 sum	125,000.00	125,000
09980 Special Finishes			125,000
09000 FINISHES			3,293,759

Description	Takeoff Quantity	Cost/Unit	Total Amount
10000 SPECIALTIES			
10200 Louvres and Vents			
Allow for louvred grilles	1 sum	100,000.00	100,000
10200 Louvres and Vents			100,000
10305 Fireplaces			
Allow for fireplace to amenity	1 sum	25,000.00	25,000
Fireplace to suites including mantle and surround -TBC	98 No	5,000.00	490,000
10305 Fireplaces			515,000
10500 Lockers			
Bicycle lockers	59 no	250.00	14,750
Allow for storage lockers	1 sum	30,000.00	30,000
10500 Lockers			44,750
10530 Canopies & Miscellaneous Projections			
Allowance for decorative gate @ South side of building	1 sum	25,000.00	25,000
Allowance for metal & glass entrance canopy	45 m2	1,000.00	45,000
Allowance for miscellaneous projections	1 sum	75,000.00	75,000
Allowance for copper feature @ roof	1 sum	200,000.00	200,000
10530 Canopies & Miscellaneous Projections			345,000
10830 Toilet & Bath Acc.			
Washroom accessories - amenity washrooms	1 sum	500.00	500
Washroom accessories to suites - Included in ceramics	98 unit		
10830 Toilet & Bath Acc.			500
10000 SPECIALTIES			1,005,250
11000 EQUIPMENT			
11010 Window Washing Systems			
Window washing equipment	1 sum	100,000.00	100,000
11010 Window Washing Systems			100,000
11170 Waste Handling Equipment			

Description	Takeoff Quantity	Cost/Unit	Total Amount
11170 Waste Handling Equipment			
Garbage compactor, bins & sorter	1 sum	45,000.00	45,000
11170 Waste Handling Equipment			45,000
11172 Control Equipment at Entry			
Control equipment at entry	1 sum	15,000.00	15,000
11172 Control Equipment at Entry			15,000
11480 Amenity Equipment			
Amenity / Exercise equipment - excluded FF&E	1 sum		
11800 Appliances			
Appliances to amenity	1 sum	10,000.00	10,000
Appliances to suites - Miele - Allowance TBC	98 unit	20,000.00	1,960,000
11800 Appliances	98 unit	20,102.04	1,970,000
11000 EQUIPMENT			2,130,000
12000 FURNISHINGS			
12501 Drapes & Tracks			
Vertical blinds - Excluded FF&E	1 sum		
12540 Furniture			
Allow for furnishings - Excluded FF&E	1 sum		
12670 Rugs and Mats			
Pedimat entrance mat	1 sum	5,000.00	5,000
12670 Rugs and Mats			5,000
12800 Int. Plants/Planting			
Interior plantings - Excluded FF&E	1 sum		
12000 FURNISHINGS			5,000
14000 CONVEYING SYSTEMS			
14200 Elevators			
Allow for cab finishes	2 No	20,000.00	40,000

Description	Takeoff Quantity	Cost/Unit	Total Amount
14200 Elevators			
Passenger Elevator - 2 nos x 4 stops (P4 to P1)	8 stp	20,000.00	160,000
Passenger Elevator - 2 nos x 12 stops (GF to 12/F)	24 stp	20,000.00	480,000
14200 Elevators	32 stp	21,250.00	680,000
14000 CONVEYING SYSTEMS			680,000
15000 MECHANICAL			
15100 Mechanical Site Services			
Mechanical site services	1 sum	100,000.00	100,000
15100 Mechanical Site Services			100,000
15200 Plumbing & Drainage			
Plumbing & drainage	1 sum	225,480.00	225,480
Plumbing & drainage	1 sum	1,713,040.00	1,713,040
15200 Plumbing & Drainage			1,938,520
15300 Fire Protection			
Fire protection	1 sum	144,144.00	144,144
Fire protection	1 sum	381,600.00	381,600
15300 Fire Protection			525,744
15500 HVAC			
HVAC	1 sum	78,507.00	78,507
HVAC	1 sum	2,647,945.00	2,647,945
15500 HVAC			2,726,452
15950 Controls			
Controls	1 sum	26,880.00	26,880
Controls	1 sum	152,850.00	152,850
15950 Controls			179,730
15000 MECHANICAL	98 unit	55,820.88	5,470,446
16000 ELECTRICAL			
16050 Electrical Site Services			
Electrical site services	1 sum	84,150.00	84,150

Description	Takeoff Quantity	Cost/Unit	Total Amount
16050 Electrical Site Services			84,150
16100 Service & Distribution			
Service and Distribution	1 sum	17,600.00	17,600
Service and Distribution	1 sum	664,050.00	664,050
Retail	1 sum	37,752.00	37,752
16100 Service & Distribution			719,402
16200 Lighting & Power			
Lighting and power	1 sum	97,090.00	97,090
Lighting and power	1 sum	982,534.00	982,534
Lighting Fixtures	1 sum	53,674.00	53,674
Lighting Fixtures	1 sum	165,070.00	165,070
16200 Lighting & Power			1,298,368
16300 Systems			
Security Equipment	1 sum	53,570.00	53,570
Security Equipment	1 sum	99,220.00	99,220
Systems	1 sum	52,325.00	52,325
Systems	1 sum	237,177.00	237,177
16300 Systems			442,292
16000 ELECTRICAL	98 unit	25,961.35	2,544,212

Estimate Totals

Description	Amount	Totals	Rate	pt of Total
Labor				
Material				
Subcontract	40,010,331			89.90%
Equipment				
Other				
	40,010,331	40,010,331		89.90
General Requirements		40,010,331		
Fees	1,200,310		3.000 %	2.70%
	1,200,310	41,210,641		2.70
Desian Continaency	2,060,532		5.000 %	4.63%
Construction Continaency	1,236,319		3.000 %	2.78%
	3,296,851	44,507,492		7.41
Total		44,507,492		

ALTUS GROUP

File :#100379 - 1451 Wellington St West - Mechanical (Nov 23, 2015)

Date : 11/26/2015

1451 Wellington Street West

Ottawa, ON

Parking & Tower

Date: 11/26/2015

Job No: 100379

Description	Parking Garage			Tower			Total		
	\$	\$/m2	\$/suite	\$	\$/m2	\$/suite	\$	\$/m2	\$/suite
GFA	6,336 m2 146 spaces			12,720 m2 98 units			19,056 m2 98 units		
C1 MECHANICAL									
C11 Plumbing & Drainage	225,480	35.59	2,300.82	1,713,040	134.67	17,480.00	1,938,520	101.73	19,780.82
C12 Fire Protection	144,144	22.75	1,470.86	381,600	30.00	3,893.88	525,744	27.59	5,364.73
C13 HVAC	78,507	12.39	801.09	2,647,945	208.17	27,019.85	2,726,452	143.08	27,820.94
C14 Controls	26,880	4.24	274.29	152,850	12.02	1,559.69	179,730	9.43	1,833.98
SUBTOTAL BUILDING MECHANICAL	475,011	74.97	4,847.05	4,895,435	384.86	49,953.42	5,370,446	281.82	54,800.47
D21 Mechanical Site Services							100,000	5.25	1,020.41
TOTAL BUILDING MECHANICAL	475,011	74.97	4,847.05	4,895,435	384.86	49,953.42	5,470,446	287.07	55,820.88

Notes:

- This estimate was based on architectural drawings dated Oct 05, 2015, and project statistics Dated Nov 19, 2015
- No mechanical drawings/specifications were provided at the time this estimate was prepared

	Name	Date
Updated. By	DW	13-Dec-13
Check By	DW	13-Dec-13
Updated. By	YA	23-Nov-15
Check By	HF	24-Nov-15

ALTUS GROUP

File :#100379 - 1451 Wellington St West - Mechanical (Nov 23, 2015)

Date : 11/26/2015

1451 Wellington Street West
Ottawa, ONDate: 11/26/2015
Job No: 100379Notes:

- This estimate was based on architectural drawings dated Oct 05, 2015, and project statistics Dated Nov 19, 2015

DescriptionIncluded:

- medium quality plumbing fixtures
- gas fired domestic hot water boilers and storage tanks
- sanitary, storm and elevator sump pumps
- UV filtration in suites as per drawings
- domestic cold water booster pump package, temperature water control valve assembly
- allowance for storm water management
- residential floors to have full standpipe and sprinkler coverage
- parking garage and common areas to be sprinklered
- makeup air unit, glycol pre-heating, heating/cooling coil
- water to water heat pump to serve MUA heating/cooling coils
- gas fired building heating boiler provides hot water to MAU and heating elements
- fluid cooler serves makeup air units and heat pump units
- suite heat pump units, ERV and humidifier
- kitchen and washroom exhaust directly vented
- gas for generator, boilers, heaters, humidifier, fire place, cook top, etc.
- snow melting - ceiling bare elements as per drawing
- suite DCW, DHW, gas meters
- allowance for parking garage drainage and sub drainage
- allowance for parking garage ventilation and CO monitoring system
- allowance for mechanical site services
- DDC control and major equipment local controls

Excluded:

- site services connections excluded
- gas service and meter to the building is by the local gas utility company
- ramp heating - electric
- retail fit out
- individual suite water, and gas meter, and gas line to fireplace & cook top.
- mechanical wiring, MCC's and BAS system

1	Client		Mizrahi Developments Inc
2	Mechanical Specification	No	
3	Mechanical Drawings	No	
4	Architectural Drawings	Yes	18-Apr-13 15-Feb-13 19-Jun-13 01-Nov-13
5	Features & Finishes Schedule	Yes	
6	Project Statistics	Yes	10-Dec-13
7	Estimate send to engineer	No	
8	Received comments from engineer	No	

ALTUS GROUP

File :#100379 - 1451 Wellington St West - Mechanical (Nov 23, 2015)

Date : 11/26/2015

1451 Wellington Street West
Parking

Date: 11/26/2015

Job No: 100379

Description	Trade	Quantity	Rate	Amount
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C1 MECHANICAL

	Area	Units Count
Parking	6,336 m2	146 space
Total GFA	6,336 m2	146 space

C11 Plumbing & Drainage

Parking Garage			
parking garage drainage	4,566 m2	30.00	136,980
parking garage sub-drainage	1,770 m2	50.00	88,500
(Subtotal Parking Garage \$225480)			
Total C11 Plumbing & Drainage	6,336 m2	35.59	225,480
		\$ 1,544.38	per space

C12 Fire Protection

Parking			
parking garage sprinklers & standpipe system	5,742 m2	22.00	126,324
common area sprinkler	594 m2	30.00	17,820
(Subtotal Parking \$144144)			
Total C12 Fire Protection	6,336 m2	22.75	144,144
		\$ 987.29	per space

C13 HVAC

Parking Garage			
garage ventilation	5,742 m2	8.50	48,807
common area ventilation	594 m2	50.00	29,700
ramp heating			assume electric
(Subtotal Parking Garage \$78507)			
Total C13 HVAC	6,336 m2	12.39	78,507
		\$ 537.72	per space

C14 Controls

parking garage CO monitoring and control	1 ls		15,000
allowance for common area controls	594 m2	20.00	11,880
Total C14 Controls	6,336 m2	4.24	26,880
		\$ 184.11	per space

TOTAL C1 MECHANICAL

6,336 m2	74.97	475,011
	\$ 3,253.50	per space

ALTUS GROUP

File :#100379 - 1451 Wellington St West - Mechanical (Nov 23, 2015)

Date : 11/26/2015

1451 Wellington Street West

Date: 11/26/2015

Tower

Job No: 100379

Description	Trade	Quantity	Rate	Amount
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C1 MECHANICAL

	Area	Units Count
Tower	12,720 m2	98 no
Total GFA	12,720 m2	98 no

C11 Plumbing & Drainage

Equipment

water meter and backflow preventer	1 no	12,500.00	12,500
domestic hot water heaters & circulation pumps	2 no	25,000.00	50,000
domestic hot water storage tanks	2 no	12,000.00	24,000
domestic hot water recirculation pump	1 no	3,500.00	3,500
domestic booster pump package	1 ls	35,000.00	35,000
elevator pits sump pump	1 no	5,000.00	5,000
sanitary sump pump-duplex	1 no	8,500.00	8,500
storm sump pump-duplex	1 no	8,500.00	8,500
central water filtration system	1 ls		15,000
allowance for storm water management system	1 ls		35,000
(Subtotal Equipment \$197000)			

Piping

domestic cold water	850 m	88.00	74,800
domestic hot water	850 m	88.00	74,800
domestic hot water recirculation	450 m	85.00	38,250
sanitary drain and vent	1,500 m	92.00	138,000
storm drainage	300 m	100.00	30,000
pipe insulation	1 ls		27,500
(Subtotal Piping \$383350)			

Common Area Fixtures

water closet	1 no	750.00	750
lavatory	1 no	800.00	800
kitchen sink	1 no	750.00	750
janitor's mop sink - allowance	1 no	750.00	750
non freeze hose bib	1 ls		2,000
floor drains/ terrace drains	1 ls		7,000
roof drains - control flow	1 ls		3,000
rough-in retail	1 ls		20,000
plumbing fixtures - installation only	1 ls	2,020.00	2,020
(Subtotal Common Area Fixtures \$37070)			

Suite Fixtures

water closet	160 no	785.00	125,600
lavatory	160 no	885.00	141,600
shower	62 no	1,100.00	68,200
bath tub c/w fixed shower head, thermostatic valve/diverter spout	98 no	1,350.00	132,300
kitchen sink	98 no	950.00	93,100
rough-in dish washer	98 no	300.00	29,400
rough-in washer/dryer	98 no	300.00	29,400
cold and hot water meter	98 no	1,000.00	98,000
UV filtration	127 no	500.00	63,500
plumbing fixtures - installation only	1 ls		314,520

ALTUS GROUP

File :#100379 - 1451 Wellington St West - Mechanical (Nov 23, 2015)

Date : 11/26/2015

1451 Wellington Street West

Date: 11/26/2015

Tower

Job No: 100379

Description	Trade	Quantity	Rate	Amount
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(Subtotal water closet \$1095620)

Total C11 Plumbing & Drainage		12,720 m2	134.67	1,713,040
			17,480.00 per unit	

C12 Fire Protection

allowance for building sprinkler and fire standpipe coverage		12,720 m2	30.00	381,600
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Total C12 Fire Protection		12,720 m2	30.00	381,600
			3,893.88 per unit	

C13 HVAC

Cooling Plant

fluid cooler -210 ton		1 no	148,000.00	148,000
expansion tank		1 no	10,000.00	10,000
condenser water pumps		2 no	12,500.00	25,000
heat pump loop pumps		2 no	25,000.00	50,000
glycol / water heat exchanger		1 no	7,500.00	7,500
chemical treatment		1 ls	10,000.00	10,000
(Subtotal Cooling Plant \$250500)				

Heating Plant

heating boiler		2 no	66,000.00	132,000
primary heating pumps		2 no	10,000.00	20,000
secondary heating pumps		2 no	6,500.00	13,000
glycol heat exchanger		1 no	7,500.00	7,500
glycol fill tank and pump		1 no	6,000.00	6,000
expansion tank		2 no	4,500.00	9,000
boiler combustion air ductwork / flue		1 ls	15,000.00	15,000
(Subtotal Heating Plant \$202500)				

Air Handlers and Fans

MUA - Includes glycol heat and DX cooling		1 no	90,000.00	90,000
elevator Machine Room A/C unit		1 no	6,000.00	6,000
elevator Machine Room exhaust fan		1 no	750.00	750
elevator pressurization fan / stair pressurization fan		2 no	6,500.00	13,000
mechanical room exhaust fan		1 no	1,500.00	1,500
lobby & amenity		361 m2	120.00	43,320
retail heat pump units		572 m2	70.00	40,040
M & E services		202 m2	30.00	6,060
garbage/recycling		223 m2	25.00	5,575
miscellaneous exhaust fans		1 ls	5,000.00	5,000
(Subtotal Air Handlers and Fans \$211245)				

ALTUS GROUP

File :#100379 - 1451 Wellington St West - Mechanical (Nov 23, 2015)

Date : 11/26/2015

1451 Wellington Street West

Date: 11/26/2015

Tower

Job No: 100379

Description	Trade	Quantity	Rate	Amount
Miscellaneous				
fuel oil system -piping, pumps, tanks, etc...		1 ls		25,000
install generator exhaust/ buffer		1 ls		15,000
testing and balancing		1 ls		15,000
gas valved and connection to in-suite fire place & cook top		1 ls		35,000
gas check meter for boilers, DHWH's, HUM c/w PRV		1 ls		8,000
suite individual meter		98 no	500.00	49,000
garbage chute		1 ls		13,200
allowance for site conditions includes site access, material handling, material delievery,set-up,etc.		1 ls		125,000
(Subtotal Miscellaneous \$285200)				
Piping				
heat pump loop supply and return		1,300 m	95.00	123,500
condensate drain		650 m	88.00	57,200
natural gas to mechanical room		150 m	92.00	13,800
hot water piping		400 m	95.00	38,000
mechanical room piping		150 m	275.00	41,250
gas piping to suites		1,200 m	100.00	120,000
pipe insulation		1 ls		58,000
glycol piping		1 ls		6,000
(Subtotal Piping \$457750)				
Common Areas				
vestibule force flow heaters		1 ls		6,000
unit heaters		1 ls		5,000
allowance for perimeter heating		1 ls		8,500
(Subtotal Common Areas \$19500)				
Suites				
heat pump unit		127 no	3,200.00	406,400
suite ERV unit		98 no	1,900.00	186,200
kitchen exhaust fan	by others			
washroom exhaust fan		62 no	250.00	15,500
humidifier		127 no	750.00	95,250
dryer exhaust fan c/w lint trap		98 no	300.00	29,400
fire place vent		98 no	750.00	73,500
ductwork, diffusers and grilles		98 no	3,000.00	294,000
(Subtotal kitchen exhaust fan \$1100250)				
Ductwork and Air Distribution				
galvanized steel ductwork		4,000 kg	23.00	92,000
diffusers, registers and grilles		1 ls		9,000
duct insulation		1 ls		16,500
silencers		1 ls		3,500
(Subtotal Ductwork and Air Distribution \$121000)				
Total C13 HVAC		12,720 m2	208.17	2,647,945
			27,019.85 per unit	

ALTUS GROUP

File :#100379 - 1451 Wellington St West - Mechanical (Nov 23, 2015)

Date : 11/26/2015

1451 Wellington Street West

Date: 11/26/2015

Tower

Job No: 100379

Description	Trade	Quantity	Rate	Amount
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C14 Controls

Controls

heating/cooling plant		1 ls		27,500
air handlers		1 no	10,000.00	10,000
humidifier		1 ls	1,500.00	1,500
suite heat pump thermostat		127 no	350.00	44,450
suite HRV unit		98 no	300.00	29,400
generator monitoring		1 ls	5,000.00	5,000
allowance for common area equipment		1 ls		35,000
(Subtotal Controls \$152850)				

Total C14 Controls

12,720 m2 12.02 152,850
1,559.69 per unit

TOTAL C1 MECHANICAL

12,720 m2 384.86 4,895,435
49,953.42 per unit

D21 Mechanical Site Services

Mechanical Site Services

water services		1 ls	25,000.00	25,000
sanitary services		1 ls	35,000.00	35,000
storm services		1 ls	40,000.00	40,000
(Subtotal Mechanical Site Services \$100000)				

Gas service to building

by utility

Total D21 Mechanical Site Services

12,720 m2 7.86 100,000

TOTAL C1 AND D21 MECHANICAL

12,720 m2 392.72 4,995,435
50,973.83 per unit

Altus Group Cost Consulting

Date: Nov 24' 2015

Project : 1451 Wellington Street West

Job# 100379

Location: Ottawa, ON

Electrical Estimate Summary - (O of M)

Description	U/G Parking			Tower			Site		Total		
	\$	\$/m2	\$/unit	\$	\$/m2	\$/unit	\$	\$/m2	\$	\$/m2	\$/unit
Project Statistics :											
GFA	6,336	m2		12,720	m2		1,365		19,056	m2	
Units #	98			98					98	no	
Unit Average Area #				103	m2				103	m2	
Floors	4			10					14		
Common area%				16%							
Parking Spots #	146	no							146	no	
Parking GFA/Spot #	35	m2							35	m2	
C2 Electrical											
C21 Distribution	\$ 17,600	\$ 2.78	\$ 180	\$ 664,050	\$ 52.21	\$ 6,776			\$ 681,650	\$ 35.77	\$ 6,956
C22 Lighting & Power	\$ 97,090	\$ 15.32	\$ 991	\$ 982,534	\$ 77.24	\$ 10,026			\$ 1,079,624	\$ 56.66	\$ 11,017
C23 Systems	\$ 52,325	\$ 8.26	\$ 534	\$ 237,177	\$ 18.65	\$ 2,420			\$ 289,501	\$ 15.19	\$ 2,954
SUBTOTAL BUILDING ELECTRICAL	\$ 167,015	\$ 26.36	\$ 1,704	\$ 1,883,760	\$ 148.09	\$ 19,222	\$ -	\$ -	\$ 2,050,775	\$ 107.62	\$ 20,926
C22 Lighting Fixtures	\$ 53,674	\$ 8.47	\$ 548	\$ 165,070	\$ 12.98	\$ 1,684	\$ 15,000	\$ 10.99	\$ 233,744	\$ 12.27	\$ 2,385
C23 Security	\$ 53,570	\$ 8.45	\$ 547	\$ 99,220	\$ 7.80	\$ 1,012			\$ 152,790	\$ 8.02	\$ 1,559
C23 Retail	\$ -	\$ -	\$ -	\$ 37,752	\$ 2.97	\$ 385			\$ 37,752	\$ 1.98	\$ 385
TOTAL C2 ELECTRICAL	\$ 274,259	\$ 43.29	\$ 2,799	\$ 2,185,802	\$ 171.84	\$ 22,304	\$ 15,000	\$ 10.99	\$ 2,475,061	\$ 129.88	\$ 25,256
D13 Electrical Site Services	\$ -	\$ -		\$ -	\$ -		\$ 69,150	\$ 50.66	\$ 69,150	\$ 3.63	\$ 706
TOTAL ELECTRICAL WORK	\$ 274,259	\$ 43.29	\$ 2,799	\$ 2,185,802	\$ 171.84	\$ 22,304	\$ 84,150	\$ 61.65	\$ 2,544,211	\$ 133.51	\$ 25,961

ck: \$ 2,544,211

Reference	Provided	Comments
Client		Mizrahi Developments
Architectural Drawings	Yes	
Interior Design Drawings	No	
Electrical Drawings	No	
Electrical Specifications	No	
Project Statistics	Yes	Dated; Nov 19' 15
Feature List	No	

Prep. By	HF
Date :	Nov 24' 2015
Check. By	
Date :	Nov 24' 2015

Altus Group Cost Consulting

Nov 24' 2015

Project: 1451 Wellington Street West

100379

Location: Ottawa, ON

Electrical Estimate Summary - (O of M)

Description

Included:

- 1 Service and distribution including emergency power
- 2 Digital metering (installation only).
- 3 Lighting fixtures
- 4 Lighting control system allowance
- 5 Fire Alarm system
- 6 Security equipment and devices
- 7 Residential suites -
 - High-end residential quality fixtures.
 - Lutron lighting controls
 - Insuite security
 - Inflow heating
 - Blinds control systems.
- 8 Communication system - rough ins only
- 9 Ramp snow melting
- 10 Lightning protection
- 11 Electrical site services

Excluded:

- 1 Hydro charges
- 2 Telephone, Internet & TV Cables - Assumed by Local Provider (Bell, Rogers etc.)
- 3 Electric vehicle (E.V.) charging system and stations
- 4 Public Address System
- 5 CO Detection Devices in Parking/ Installation - By Division 15
- 6 Electric Fireplace Equipment
- 7 Central Vac Equipment
- 8 Lobby chandeliers
- 9 LEED Electrical requirements

Altus Group Cost Consulting

Nov 24' 2015

Project : 1451 Wellington Street West

100379

Location: Ottawa, ON

Parking

Description	Quantity	Rate	Amount
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Electrical Summary:

Cost/m2

C21 Distribution	6,336 m2	\$	2.78	17,600
C22 Lighting, Devices and Heating	6,336 m2	\$	15.32	97,090
C22 Lighting Fixtures	6,336 m2	\$	8.47	53,674
C23 Systems	6,336 m2	\$	8.26	52,325
C23 Security	6,336 m2	\$	8.45	53,570

Total - Parking	6,336 m2	\$	43.29	274,259
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Project Statistics:

Total GFA (m2)				6,336
Elevator				64
Elevator lobby				80
Garbage/ recycling				149
Lobby				
Locker/ Storage				200
M & E				33
Shafts				520
Stairs				76
Vestibule				103
Water storage				29
Parking				5082
Parking Spots				146
Parking Levels				4
GFA Per Spot (m2)				35

C2 Electrical:

C21 Distribution

Allowance for Distribution	200 Amps	\$	80.00	\$	80.00	\$	16,000
Overhead	1 no			\$	1,280.00	\$	1,280
Mark-up	1 no			\$	320.00	\$	320

C21 Total Distribution	6,336 m2	\$	2.78	\$	17,600
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Altus Group Cost Consulting

Nov 24' 2015

Project : 1451 Wellington Street West

100379

Location: Ottawa, ON

Parking

Description	Quantity	Rate	Amount
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C22 Lighting, Devices and Heating**C221 Lighting**

Fixture Type - Elevator lobby	13 no	\$ 220.00	\$ 220.00	\$ 2,933
Fixture Type - Garbage/ recycling	19 no	\$ 110.00	\$ 110.00	\$ 2,049
Fixture Type - Locker/ Storage	33 no	\$ 150.00	\$ 150.00	\$ 5,000
Fixture Type - M & E	6 no	\$ 150.00	\$ 150.00	\$ 825
Fixture Type - Shafts	52 no	\$ 100.00	\$ 100.00	\$ 5,200
Fixture Type - Stairs	13 no	\$ 180.00	\$ 180.00	\$ 2,280
Fixture Type - Vestibule	17 no	\$ 220.00	\$ 220.00	\$ 3,777
Fixture Type - Parking	145 no	\$ 130.00	\$ 130.00	\$ 18,876
Fixture Type - Emergency battery unit	8 no	650.00	\$ 650.00	\$ 5,200
Fixture Type - Exit	16 no	175.00	\$ 175.00	\$ 2,800
Overhead	1 no		\$ 3,915.18	\$ 3,915
Mark-up	1 no		\$ 818.80	\$ 819

Sub Total Lighting	6,336 m2	\$ 8.47	\$ 53,674
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C222 Devices

Fixture branch wiring	332 no	\$ 100.00	\$ 100.00	\$ 33,249
Fixture installation	332 no	\$ 40.00	\$ 40.00	\$ 13,300
Switches single pole	21 no	\$ 65.00	\$ 65.00	\$ 1,365
O/S sensor	13 no	\$ 250.00	\$ 250.00	\$ 3,250
Devices (common area only)	10 no	\$ 110.00	\$ 110.00	\$ 1,100
Motor supplies	14 no	\$ 350.00	\$ 350.00	\$ 4,900
O/H door power supply	2 no	\$ 1,200.00	\$ 1,200.00	\$ 2,400
Misc. power supplies	6 no	\$ 250.00	\$ 550.00	\$ 3,300
Overhead	1 no		\$ 5,029.11	\$ 5,029
Mark-up	1 no		\$ 1,257.28	\$ 1,257

Sub Total Devices	6,336 m2	\$ 10.91	\$ 69,150
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C223 Heating

Unit Heater	2 no	\$ 850.00	\$ 850.00	\$ 1,700
Snow Melting	1 no	\$ 15,000.00	\$ 15,000.00	\$ 15,000
Pipe tracing	1 no	\$ 7,500.00	\$ 7,500.00	\$ 7,500
Pipe tracing power supplies	10 no	\$ 120.00	\$ 120.00	\$ 1,200
Overhead	1 no		\$ 2,032.00	\$ 2,032
Mark-up	1 no		\$ 508.00	\$ 508

Sub Total Heating	6,336 m2	\$ 4.41	\$ 27,940
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C22 Total Lighting, Devices and Heating	6,336 m2	\$ 23.79	\$ 150,764
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Altus Group Cost Consulting

Nov 24' 2015

Project : 1451 Wellington Street West

100379

Location: Ottawa, ONParking

Description	Quantity	Rate	Amount
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C23 Systems

C231 Fire Alarm

Fire alarm zones	4 no	\$ 450.00	\$ 450.00	\$ 1,800
Speaker	42 no	\$ 85.00	\$ 85.00	\$ 3,570
Smoke/heat detectors	63 no	\$ 75.00	\$ 75.00	\$ 4,725
Pullstations	12 no	\$ 120.00	\$ 120.00	\$ 1,440
Handsets	12 no	\$ 150.00	\$ 150.00	\$ 1,800
Connection to main Fire alarm system	1 ls	\$ 5,000.00	\$ 5,000.00	\$ 5,000
Conduit & wire	133 no	\$ 110.00	\$ 110.00	\$ 14,630
Installation	133 no	\$ 45.00	\$ 45.00	\$ 5,985
Verification	133 no	\$ 16.00	\$ 16.00	\$ 2,128
Overhead	1 no		\$ 3,286.24	\$ 3,286
Mark-up	1 no		\$ 821.56	\$ 822

Sub Total Fire Alarm	6,336 m2	\$ 7.13	\$ 45,186
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C232 Communication

Tel/Data Devices	5 no	\$ 350.00	\$ 350.00	\$ 1,750
Intercom	8 no	\$ 350.00	\$ 350.00	\$ 2,800
Plywood backbaord	4 no	\$ 120.00	\$ 110.00	\$ 440
empty conduit	1 ls	\$ 1,500.00	\$ 1,500.00	\$ 1,500
Overhead	1 no		\$ 519.20	\$ 519
Mark-up	1 no		\$ 129.80	\$ 130

Sub Total Communication	6,336 m2	\$ 1.13	\$ 7,139
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C233 Security

CCTV camera outlets	16 no	\$ 250.00	\$ 250.00	\$ 4,000
Card access conduits	8 no	\$ 250.00	\$ 250.00	\$ 2,000
Other Security Outlets	8 no	\$ 250.00	\$ 250.00	\$ 2,000
CCTV cameras	16 no	\$ 1,250.00	\$ 1,250.00	\$ 20,000
Card readers	8 no	\$ 900.00	\$ 900.00	\$ 7,200
Conection to main security head-end equipment	1 no	\$ 6,000.00	\$ 6,000.00	\$ 6,000
Panic attack system & radio transmitters	1 no	\$ 7,500.00	\$ 7,500.00	\$ 7,500
Overhead	1 no		\$ 3,896.00	\$ 3,896
Mark-up	1 no		\$ 974.00	\$ 974

Sub Total Security	6,336 m2	\$ 8.45	\$ 53,570
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C23 Total Systems	6,336 m2	\$ 16.71	\$ 105,895
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C2 Total Electrical - Parking	6,336 m2	\$ 43.29	\$ 274,259
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Altus Group Cost Consulting

Nov 24' 2015

Project : 1451 Wellington Street West

\$ 100,379.00

Location: Ottawa, ON

Tower

Description	Quantity	Rate	Amount
Electrical Summary			
		Cost/m2	
C21 Distribution	12,720 m2	\$ 52.21	\$ 664,050.20
C22 Lighting & Power - Suites	10,062 m2	\$ 86.50	\$ 870,338.00
C22 Lighting & Power - Common Area	2,086 m2	\$ 53.79	\$ 112,195.60
C22 Retail	572 m2	\$ 66.00	\$ 37,752.00
C22 Light fixtures - Suites	10,062 m2	\$ 9.50	\$ 95,550.00
C22 Light fixtures - Common Area	2,086 m2	\$ 33.33	\$ 69,520.00
C23 Systems	12,720 m2	\$ 18.65	\$ 237,176.50
C23 Security	12,720 m2	\$ 7.80	\$ 99,220.00
Total - Tower	12,720 m2	\$ 171.84	\$ 2,185,802.30

Project Statistics:

Total GFA (m2):	12,720
Functional Breakdown	
Residential	
Retail	10,062
Amenity	572
Corridor	240
Elevator	698
Garbage / Recycling	192
Loading / Moving	223
Lobby	
M & E	112
Mail	202
Shafts	9
Stairs	51
Vestibule	323
# of Floors	36
# of condo suites	10
Average suite size in m2	98
Common Area in m2	103
Common Area %	2,086
Total cost per unit	16%
Total - Tower	\$ 22,304.11
	\$ 2,185,802.30

C2 Electrical**C21 Service & Distribution****C211 Equipment****High Voltage Switchgear**

High Voltage Substation	1 no	\$	30,000.00	\$	30,000.00
HV Transformer, 13.8KV:600V	1,000 KVA	\$	50.00	\$	50,000.00
High Voltage Cables	1 lot	\$	7,500.00	\$	7,500.00
Installation	1 ls	\$	7,500.00	\$	7,500.00

Low Voltage Switchgear

Main Switchboard	1,600 A	\$	65.00	\$	104,000.00
Meter cabinets	1 no	\$	500.00	\$	500.00
Digital Metering - by hydro company	98 no	\$	-		By Hydro

Altus Group Cost Consulting

Nov 24' 2015

Project : 1451 Wellington Street West

\$ 100,379.00

Location: Ottawa, ON

Tower

Description	Quantity	Rate	Amount
Digital Metering installation	98 no	\$ 150.00	\$ 14,700.00
Distribution Panel	1,000 A	\$ 20.00	\$ 20,000.00
Suite Distribution Panel	3 no	\$ 3,500.00	\$ 10,500.00
Emergency Distribution Panel	300 A	\$ 24.00	\$ 7,200.00
Other Distribution Panels	2 no	\$ 5,200.00	\$ 10,400.00
Timer and control	1 no	\$ 850.00	\$ 850.00
Splitter(s)	2 no	\$ 1,500.00	\$ 3,000.00
Grounding	1 no	\$ 5,000.00	\$ 5,000.00
Overhead	1 no	\$ 21,692.00	\$ 21,692.00
Mark-up	1 no	\$ 5,423.00	\$ 5,423.00
Sub Total Equipment	12,720 m2	\$ 23.45	\$ 298,265.00

C212 Auxiliary power equipment

Emergency generator

Emergency Generator	300 KW	\$ 350.00	\$ 105,000.00
Emergency Generator Distribution Panel	500 A	\$ 20.00	\$ 10,000.00
Installation	1 ls	\$ 7,500.00	\$ 7,500.00

Transfer switches

Transfer Switch 1	100 A	\$ 45.00	\$ 4,500.00
Transfer Switch 2	400 A	\$ 45.00	\$ 18,000.00
Transfer switch 100 amp - fire pump	1 no	\$ -	By Div. 15

Generator control equipment

Generator control panel	1 no	\$ -	Included w/ generator
Overhead	1 no	\$ 11,600.00	\$ 11,600.00
Mark-up	1 no	\$ 2,900.00	\$ 2,900.00

Sub Total Auxiliary power equipment	12,720 m2	\$ 12.54	\$ 159,500.00
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C213 Distribution

Panel Boards	13 no	\$ 1,850.00	\$ 23,532.00
Transformers	4 no	\$ 6,500.00	\$ 26,000.00
Building Feeders	32 no	\$ 2,500.00	\$ 79,300.00
Empty conduit	60 m	\$ 60.00	\$ 3,600.00
Suite feeders	98 no	\$ 350.00	\$ 34,300.00
Allowance for grounding	1 no	\$ 5,000.00	\$ 5,000.00
HVAC power supply	1 no	\$ 6,500.00	\$ 6,500.00
Mechanical power supply	3 no	\$ 1,500.00	\$ 4,500.00
Elevator power supplies	2 no	\$ 750.00	\$ 1,500.00
Miscellaneous power supply	6 no	\$ 550.00	\$ 3,300.00
Overhead	1 no	\$ 15,002.56	\$ 15,002.56
Mark-up	1 no	\$ 3,750.64	\$ 3,750.64

Sub Total Distribution	12,720 m2	\$ 16.22	\$ 206,285.20
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Project : 1451 Wellington Street West

\$ 100,379.00

Location: Ottawa, ON

Tower

Description	Quantity	Rate	Amount
C214 MCC			
MCC	1 no	\$ 5,000.00 NIC	
Overhead	1 no	\$ -	-
Mark-up	1 no	\$ -	-
Sub Total MCC	12,720 m2	\$ -	\$ -

C21 Total Service and Distribution	12,720 m2	\$ 52.21	\$ 664,050.20
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C22 Lighting, devices & heating

C22 Suites:	98			
Average suite size:	103 m2			
Fixture suite	15 no	\$ 65.00	\$ 975.00	
Fixture outlets	16 no	\$ 30.00	\$ 480.00	
Fixture Installation	15 no	\$ 30.00	\$ 450.00	
Switches single pole	16 no	\$ 30.00	\$ 480.00	
Switches three way	2 no	\$ 35.00	\$ 70.00	
Stove	1 no	\$ 110.00	\$ 110.00	
Counter-top stove/microwave	1 no	\$ 70.00	\$ 70.00	
Washer	1 no	\$ 40.00	\$ 40.00	
Dryer	1 no	\$ 90.00	\$ 90.00	
Duplex receptacle	13 no	\$ 35.00	\$ 455.00	
Duplex receptacle AFCI	7 no	\$ 30.00	\$ 210.00	
GFI receptacle	7 no	\$ 40.00	\$ 280.00	
Split receptacle	1 no	\$ 40.00	\$ 40.00	
Duplex receptacle WP	1 no	\$ 40.00	\$ 40.00	
Dishwasher power supply	1 no	\$ 75.00	\$ 75.00	
Fridge receptacle - 20 amp	1 no	\$ 35.00	\$ 35.00	
Mechanical connection	1 no	\$ 140.00	\$ 140.00	
Fan circuits	3 no	\$ 30.00	\$ 80.00	
Range hood fan	1 no	\$ 25.00	\$ 25.00	
Laundry fan relay	1 no	\$ 95.00	\$ 95.00	
Junction Box	1 no	\$ 30.00	\$ 30.00	
Security panel	1 no	\$ 25.00	\$ 25.00	
Security door switch	1 no	\$ 15.00	\$ 15.00	
Key Pad	1 no	\$ 30.00	\$ 30.00	
Telephone outlet	7 no	\$ 25.00	\$ 175.00	
TV outlet	6 no	\$ 25.00	\$ 150.00	
Data outlet	1 no	\$ 75.00	\$ 75.00	
Thermostat	1 no	\$ 50.00	\$ 50.00	
Main switch - Allowance	1 no	\$ 450.00	NIC	
Telecommunication control Panel	1 no	\$ 60.00	\$ 60.00	
Lutron Lighting controls - allowance	1 no	\$ 2,500.00	\$ 2,500.00	
Ensuite floor heating - allowance	1 no	\$ 850.00	\$ 850.00	
Blinds controls - allowance	1 no	\$ 600.00	\$ 600.00	
Suite panel (ls in dollars)	1 ls	\$ 160.00	\$ 160.00	
Typical cost for one suite	1 no	\$ 8,960.00		
Total remaining suites	97 no		\$ 869,120.00	
Overhead	1 no	\$ 70,246.40	\$ 70,246.40	
Mark-up	1 no	\$ 17,561.60	\$ 17,561.60	
Sub Total Lighting, devices & heating - Suites	10,062 m2	\$ 95.99	\$ 965,888.00	

Altus Group Cost Consulting

Nov 24' 2015

Project : 1451 Wellington Street West

\$ 100,379.00

Location: Ottawa, ON**Tower**

Description	Quantity	Rate	Amount
C22 Common area:			
Fixture Type - Amenity	40 no	\$ 280.00	\$ 11,200.00
Fixture Type - Corridor	116 no	\$ 250.00	\$ 29,000.00
Fixture Type - Elevator	38 no	\$ 275.00	NIC
Fixture Type - Garbage / Recycling	28 no	\$ 110.00	\$ 3,080.00
Fixture Type - Loading / Moving	- no	\$ 110.00	-
Fixture Type - Lobby	19 no	\$ 250.00	\$ 4,750.00
Fixture Type - M & E	25 no	\$ 110.00	\$ 2,750.00
Fixture Type - Mail	2 no	\$ 150.00	\$ 300.00
Fixture Type - Shafts	5 no	\$ 180.00	\$ 900.00
Fixture Type - Stairs	40 no	\$ 180.00	\$ 7,200.00
Fixture Type - Vestibule	7 no	\$ 250.00	\$ 1,750.00
Emergency remote heads	21 no	\$ 110.00	\$ 2,310.00
Emergency battery units	8 no	\$ 650.00	\$ 5,200.00
Exit lights	8 no	\$ 135.00	\$ 1,080.00
Conduit & wire	357 no	\$ 120.00	\$ 42,840.00
Fixture installation	357 no	\$ 45.00	\$ 16,065.00
Single pole switches	10 no	\$ 45.00	\$ 450.00
Three way switches	30 no	\$ 50.00	\$ 1,500.00
Perimeter photo cell	7 no	\$ 400.00	\$ 2,800.00
Dimmers	4 no	\$ 150.00	\$ 600.00
Occupancy sensors	17 no	\$ 350.00	\$ 5,950.00
Duplex receptacle	42 no	\$ 160.00	\$ 6,720.00
Lighting/Dimming control	2,086 m2	\$ 3.50	\$ 7,301.00
Security Decives	7 no	\$ 200.00	\$ 1,400.00
Tel/Data Devices	10 no	\$ 150.00	\$ 1,500.00
Plywood backbaord	10 no	\$ 105.00	\$ 1,050.00
Communication conduit	1 ls	\$ 7,500.00	\$ 7,500.00
Overhead	1 no	\$ 13,215.68	\$ 13,215.68
Mark-up	1 no	\$ 3,303.92	\$ 3,303.92
Sub Total Common Area	2,086 m2	\$ 87.11	\$ 181,715.60
C22 Retail Area:			
Retail shell space allowance	572 m2	\$ 60.00	\$ 34,320.00
Overhead	1 no	\$ 2,745.60	\$ 2,745.60
Mark-up	1 no	\$ 686.40	\$ 686.40
Sub Total Retail Area	572 m2	\$ 66.00	\$ 37,752.00
C22 Total Lighting, Devices and Heating	12,720 m2	\$ 93.19	\$ 1,185,355.60

Altus Group Cost Consulting

Nov 24' 2015

Project : 1451 Wellington Street West

\$ 100,379.00

Location: Ottawa, ON

Tower

Description	Quantity	Rate	Amount
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C23 Systems & Ancillaries

C232 Fire Alarm

Smoke alarm	123 no	\$ 40.00	\$ 4,920.00
Speaker	147 no	\$ 65.00	\$ 9,555.00
Silencer	98 no	\$ 75.00	\$ 7,350.00
Detectors	127 no	\$ 75.00	\$ 9,540.00
Pullstations, Horn, Strobe, etc.	127 no	\$ 110.00	\$ 13,992.00
Handsets	10 no	\$ 150.00	\$ 1,500.00
Conduit & wire	632 no	\$ 120.00	\$ 75,888.00
Installation	632 no	\$ 45.00	\$ 28,458.00
Verification c/w third party	632 no	\$ 30.00	\$ 18,972.00
Main fire alarm system	1 no	\$ 20,000.00	\$ 20,000.00
Overhead	1 no	\$ 15,214.00	\$ 15,214.00
Mark-up	1 no	\$ 3,803.50	\$ 3,803.50

Sub Total Fire Alarm	12,720 m2	\$ 16.45	\$ 209,192.50
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C232 Communication

Internet data cables	10 no	\$ 250.00	NIC
Telephone cables	10 no	\$ 150.00	NIC
TV cables	10 ls	\$ 200.00	NIC
Overhead	1 no	\$ -	-
Mark-up	1 no	\$ -	-

Sub Total Communication	12,720 m2	\$ -	\$ -
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C233 Security

Suite security	98 no	\$ 350.00	\$ 34,300.00
CCTV camera	24 no	\$ 1,250.00	\$ 30,000.00
Card readers	4 no	\$ 850.00	\$ 3,400.00
Enterphone System	1 no	\$ 7,500.00	\$ 7,500.00
Security head-end equipment	1 no	\$ 15,000.00	\$ 15,000.00
Overhead	1 no	\$ 7,216.00	\$ 7,216.00
Mark-up	1 no	\$ 1,804.00	\$ 1,804.00

Sub Total Security	12,720 m2	\$ 7.80	\$ 99,220.00
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C233 Lighting Protection

Lightning Protection - allowance	12,720 m2	\$ 2.00	\$ 25,440.00
Overhead	1 no	\$ 2,035.20	\$ 2,035.20
Mark-up	1 no	\$ 508.80	\$ 508.80

Sub Total Lighting Protection	12,720 m2	\$ 2.20	\$ 27,984.00
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C23 Total Systems	12,720 m2	\$ 26.45	\$ 336,396.50
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C2 Total Electrical - Tower	12,720 m2	\$ 171.84	\$ 2,185,802.30
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Altus Group Cost Consulting

Nov 24' 2015

Project : 1451 Wellington Street West

100379

Location: Ottawa, ONSite

Description	Quantity	Rate	Amount
Total GFA (m2)			1,365
Duct banks			
Primary Ductbank - 6 x100mm	50 m	\$ 280.00	\$ 14,000.00
Secondary Ductbank - 6 x100mm	50 m	\$ 260.00	\$ 13,000.00
6X4" Conduit - Tel / Com. Service	50 m	\$ 120.00	\$ 6,000.00
Hydro charges	0 no	\$ -	By Hydro
Pad for Transformer	1 no	\$ 3,500.00	\$ 3,500.00
Grounding	1 no	\$ 3,500.00	\$ 3,500.00
Overhead	1 no	\$ 3,200.00	\$ 3,200.00
Markup	1 no	\$ 800.00	\$ 800.00
Sub Total Duct banks	1,365 m2	\$ 32.23	\$ 44,000

Exterior lighting and wiring

Fixture type - Site	1 lot	\$ 15,000.00	\$ 15,000.00
Photo cell	1 no	\$ 350.00	\$ 350.00
Sign	1 no	\$ 550.00	\$ 550.00
Conduit & wire	16 no	\$ 250.00	\$ 4,000.00
Card reader	2 no	\$ 3,200.00	\$ 6,400.00
CCTV -camera	2 no	\$ 2,400.00	\$ 4,800.00
Junction Box	10 no	\$ 120.00	\$ 1,200.00
Conduit & wire	14 no	\$ 250.00	\$ 3,500.00
Duplex receptacle - WP	5 no	\$ 140.00	\$ 700.00
Overhead	1 no	\$ 2,920.00	\$ 2,920.00
Markup	1 no	\$ 730.00	\$ 730.00
Sub Total Exterior lighting and wiring	1,365 m2	\$ 29.41	\$ 40,150

D13 Total Electrical Site Service	1,365 m2	\$ 61.65	\$ 84,150
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6 Project Statistics



Project Statistics based on Architectural Drawings Issued for Rezoning/Siteplan Approval dated Oct 5, 2015

Project Name: 1451 Wellington Street West, Ottawa

U/G Parking		area m2	void m2	area m2	area sf	units no.	perimeter m	height m	
P4		1,026	0	1,026	11,044	25	124	2.70	
P3		1,770	0	1,770	19,052	47	173	2.70	
P2		1,770	0	1,770	19,052	46	173	2.70	
P1		1,770	0	1,770	19,052	28	173	3.50	
A	sub-total	6,336	0	6,336	68,200	146		11.60	m

Tower:		area m2	void m2	area m2	area sf	units no.	perimeter m	height m	balcony m2
G/F		1,043	0	1,043	11,227	0	162	5.00	0.00
2/F		1,314	136	1,178	12,680	7	193	3.25	27.00
3/F		1,314	0	1,314	14,144	11	193	3.50	77.00
4/F		1,314	0	1,314	14,144	11	193	3.25	77.00
5/F		1,002	0	1,002	10,785	11	184	2.95	40.00
6/F		1,002	0	1,002	10,785	11	184	2.95	80.00
7/F		1,002	0	1,002	10,785	11	184	3.25	80.00
8/F		1,002	0	1,002	10,785	11	184	3.25	80.00
9/F		1,002	0	1,002	10,785	11	184	3.25	80.00
10/F		859	0	859	9,246	7	172	3.25	35.00
11/F		859	0	859	9,246	7	172	3.25	0.00
12/F		859	0	859	9,246	0	172	3.85	0.00
MPH		284	0	284	3,057	0	83	6.00	0.00
B	sub-total	12,856	136	12,720	136,917	98		47.00	m

Project Totals: TCA (A + B) **19,056** m2 **205,117** sf

Total Parking Area: TPA **6,336** m2 **68,200** sf

Total Non-Parking Area: GCA **12,720** m2 **136,917** sf

Functional Breakdown		
	m2	sf
U/G Parking		
Elevator	64	689
Elev Lobby	80	861
Garbage/ Recycling	149	1,604
Lockers	200	2,153
M&E	33	355
Shafts	520	5,597
Stairs	76	818
Vestibule	103	1,109
Water Storage	29	312
Parking	5,082	54,702
total	6,336	68,200
	6,336	68,200
Tower:		
Amenity	240	2,583
Corridor	698	7,513
Elevator	192	2,067
Garbage/ Recycling	223	2,400
Lobby	112	1,206
M & E	202	2,174
Mail	9	97
Shafts	51	549
Stairs	323	3,477
Vestibule	36	388
Retail	572	6,157
Residential	10,062	108,306
total	12,720	136,917
	12,720	136,917
total	19,056	205,117
	19,056	205,117

Suite Breakdown - Tower	
1 Bed	36
2 Bed	51
3 Bed	4
2 Bed + Lofts	3
3 Bed + Lofts	4
Total	98

Site Area	1,843
Surface Parking	0

original areas:	Colin Perry
date:	16-Nov-15
areas checked:	Kogulan S
date:	19-Nov-15

MAIN DESIGN EFFICIENCY SUMMARY	
Average area/below grade parking (gross)	467 sf
Average residential suite size (gross)	1,397 sf
Average residential suite size (net)	1,105 sf
TPA / TCA	0.33
Building efficiency (NSA & NLA / GCA)	0.84

Appendix “P”

April 16, 2020

David Berry
124 Park Road
Toronto, Ontario
M4W 2M7

Dear David,

Re: Additional Parking Space for Suite 901 at 128 Hazelton

This letter is to confirm that upon your final closing of Suite 901 at 128 Hazelton Avenue, on unit transfer date, Suite 901 will have four (4) parking spaces in total, as contemplated on Page 30 of the Loan Agreement between yourself and Mizrahi Developments Inc. in relation to 1451 Wellington in Ottawa.

For further clarity, your APS for Suite 901 at 128 Hazelton Avenue currently has 3 parking spaces. In accordance with our separate agreement relating to 1451 Wellington in Ottawa, we agreed that you would receive one (1) additional parking space at 128 Hazelton.

As stated on page 30 of the loan agreement, under Section 15.1:

In connection with the Lender's Unit (as defined herein), it is understood that notwithstanding anything to the contrary contained herein or in any documentation relating to the purchase of the Lender's Unit, Sam irrevocably agrees to provide to the Lender, at no charge or cost whatsoever, one (1) additional parking space, combined with the three (3) existing parking spaces purchased by the Lender pursuant to the APS, shall be separately "walled" (such that, subject to receipt of applicable building permits (which Sam shall use commercially reasonable efforts to obtain), the space is a self-contained four (4) parking space garage unit and only provides access to the Lender or his designee with an automatic garage door opener.

Please accept this letter as confirmation of the above.

Sincerely,



Mizrahi Developments Inc.
Per: Sam Mizrahi
President



Mizrahi (128 Hazelton) Inc.
Per: Sam Mizrahi
President



Mizrahi Development Group (1451 Wellington) Inc.
Per: Sam Mizrahi
President



Sam Mizrahi

Appendix “Q”

THIS AMENDING AGREEMENT made this 12 day of October 2021 (the “**Effective Date**”);

BETWEEN:

MIZRAHI DEVELOPMENTS INC. (hereinafter, the “**Borrower**”)

-and-

DAVID BERRY (hereinafter, the “**Lender**”)

-and-

MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC. (hereinafter, “**1451**”)

-and-

SAM MIZRAHI (hereinafter, “**Sam**”)

WHEREAS the Borrower, the Lender, 1451, and Sam entered in a loan agreement (the “**Loan Agreement**”) dated June 29, 2016, pursuant the Lender extended credit facilities in a total principal amount of \$10,000,000.00 to the Borrower (with 1451 and Sam serving as guarantors as outlined in the Loan Agreement) in connection to the development of a condominium complex located at 1451 Wellington Street, Ottawa, Ontario;

AND WHEREAS the Borrower, the Lender, 1451, and Sam wish to amend the Loan Agreement as outlined in this Amending Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower, the Lender, 1451, and Sam agree as follows:

1. All terms used and not defined in this Amending Agreement shall bear the respective definitions assigned to them in the Loan Agreement.
2. The following amendments shall apply to the Loan Agreement:

(a) Section 2.3 shall now read as follows:

2.3 Term. The Loan Facility Number 1 shall mature on the date of execution of the APS’s (as defined below) (the “**Maturity Date**”).

(b) Section 2.6 shall now read as follows:

2.6. Term. The Loan Facility Number ² shall mature on the Maturity Date.

(c) Section 3.3 shall now read as follows:

3.3 Payment Options. The full amount of the outstanding principal and accrued interest on Loan Facility No. 1 and Loan Facility No. 2 plus any other indebtedness owing in connection to Loan Facility No. 1 and Loan Facility No. 2 shall be repaid and satisfied in the manner and order set forth below (unless otherwise agreed upon by the Lender):

- (i) A payment of \$4,000,000.00 towards outstanding principal and interest on Loan Facility No. 1 (receipt of payment confirmed on November 4, 2019).
- (ii) The transfer to the Lender by Sam of all the issued and outstanding shares in

2659100 Ontario Inc. (a corporation controlled by Sam) (the “**Thrive Shares**”) which holds legal and beneficial ownership to 21,298,566 common shares in Terrafarma Inc. (“**Terrafarma**”). Documentation necessary to affect the transfer of the Thrive Shares shall be executed within thirty (30) days of the execution of this Amending Agreement (the “**Closing of the Thrive Share Transfer**”) and the purchase price of the Thrive Shares shall be offset against principal and/or interest amounts accrued under Loan Facility No. 1 and Loan Facility No. 2 outstanding as of the Maturity Date.

The purchase price of the Thrive Shares shall be based off a total Terrafarma valuation of \$75,000,000.00 CDN and calculated in accordance with the Thrive Shares’ percentage of the total number of outstanding and issued shares in the capital of Terrafarma (as per the Terrafarma share registry as of the Effective Date) and on a fully diluted basis.

As a result of the delay between the execution of this Amending Agreement and the Closing of the Thrive Share Transfer, it is understood upon that upon execution of this Amending Agreement Sam shall provide the Lender with a full and binding proxy (the “**Proxy**”) in connection to the Thrive Shares. Documentation confirming the Proxy shall be executed concurrently with the execution of this Amending Agreement.

As of the Effective Date, a dispute exists between 2659100 Ontario Inc. and Terrafarma with respect to an additional 3,701,434 common shares in the capital of Terrafarma which were legally and beneficially owned by 2659100 Ontario Inc. but were cancelled by Terrafarma in advance of the Effective Date (the “**Disputed Shares**”). As of the Effective Date, 2659100 Ontario Inc. and/or Sam agree to forego any and all interests that 2659100 Ontario Inc. and/or Sam (or any entities in anyway connected to 2659100 Ontario Inc. and/or Sam) may have or could claim in the Disputed Shares. For greater certainty, should the Disputed Shares be returned to 2659100 Ontario Inc. and/or the Lender or a corporation controlled by the Lender it understood that no additional consideration should be owing to Sam.

The parties further agree that except as necessary per relevant regulatory and/or corporate requirements (including any requirement to notify Terrafarma of a change of control of 2659100 Ontario Inc.) or otherwise agreed to by the Lender, the transfer of the Thrive Shares and all information pertaining to the transfer of the Thrive Shares as highlighted herein shall remain confidential.

- (iii) A purchase price reduction by way of an offset of outstanding interest accrued to the Maturity Date (for either or both of Loan Facility No.1 and/or Loan Facility No. 2) and the Lender’s portion of Net Profits towards the Lender’s purchase of a two (2) residential penthouse units (unit 1102 and unit 1103) in the Project (the “**Units**”), based upon the sale price of \$900 per square foot for space on the twelfth (12th) floor and \$875 per square foot for space on the eleventh (11th) floor. With respect to the purchase of the Units, the Lender covenants to execute with the Borrower (or a related) agreements of purchase and sale (the “**APS’s**”) concurrent with the execution of this Amending Agreement. Furthermore, interest accrued in connection to Loan Facility No. 1 and Loan Facility No. 2 shall be applied towards any down payment required for the purchase the Units (to a maximum of 25 percent and in accordance with a schedule set out in the APS’s) and the remainder of the purchase price of the Units. Any amount of the purchase price of the Units owing following the application of accrued interest, Principal, and Net Profits (as set out herein), shall be paid by the Lender upon the closing of the purchase of the Units.
-

Notwithstanding any of the foregoing, if registration of the Project and closing of the purchase of the Units has not occurred within eighteen (18) months of the date of execution of the APS's, all interest and/or principal amounts under Loan Facility No. 1 and Loan Facility No. 2 applied towards the purchase price of the Units shall recommence to accrue interest at rates as set out in the Loan Agreement on the day following eighteen (18) month anniversary of the date of execution of the APS's and until such point as registration of the Project and closing of the purchase of the Units occurs.

- (iv) A credit in the amount of \$2,566,200.00 (the “**One Credit**”) applied towards the Lender’s acquisition of at least two (2) residential units (the “**One Units**”) in a condominium, hotel, and retail development located at 1 Bloor Street West, Toronto, Ontario M4W 1A3 (the “**One**”) and developed by _____, a corporation controlled by Sam (the “**One Developer**”). The One Units shall be agreed upon by the Lender, Sam, and the One Developer and are further described on Schedule A to this Amending Agreement. Standard purchase agreements for the One Units along with the agreement relating to the One Credit will be executed concurrently with the execution of this Amending Agreement. It is further understood that the One Credit is equal to the difference between the purchase price of unit 1101 (“**Unit 1101**”) and 1104 (“**Unit 1104**”) (together, “**1101 and 1104**”) in the Project (further described on Schedule B hereto) based upon the price of \$900 per square foot for space on the twelfth (12th) floor and \$875 per square foot for space on the eleventh (11th) floor, and a sale price of the highest per square foot per square foot price received by the Lender for 1101 and 1104 pursuant to agreements of purchase and sale executed and dated on February 26, 2019 (Unit 1101) and April 23, 2019 (Unit 1104) (together, the “**1101 and 1104 APS’s**”).
-

Redacted copies of the 1101 and 1104 APS’s are attached as Schedule C to this Agreement. Despite the long-standing relationship between the Lender and Sam, the parties acknowledge that the errors and omissions do occasionally occur in fast-paced real estate transactions, and as such the parties agree that following penalties will apply with respect to inaccurate and/or incorrect information and/or documentation received by the Lender from the Borrower and/or Sam (or any other relevant and connected entity) in connection to Unit 1101 and Unit 1104 and the sales of Unit 1101 and Unit 1104 (including the 1101 and 1104 APS’s). In the event that:

- (a) the actual sales price of Unit 1101 and/or Unit 1104 is less than twenty (20) percent greater than their individual or combined sale price(s) as outlined in the 1101 and 1104 APS’s, the One Credit will be increased by the exact dollar amount of the difference;
-
- (b) the actual sales price of Unit 1101 and/or Unit 1104 is twenty (20) percent greater (or more) than their individual or combined sales price(s) as outlined in the 1101 and 1104 APS’s, the One Credit will be increased to \$5,132,400.00; or
-
- (c) Unit 1101 and/or Unit 1104 were not sold as of the Effective Date, the One Credit will be increased to \$5,132,400.00.
-

(d) Section 3.4 shall now read as follows:

3.4 Net Profits. It is understood by the parties hereto that Net Profits for the Project may not have been finally determined by that point in time when the Lender is required to make a final payment for the Unit. In the event that Net Profits for the Project have not been finally determined by the respective time period as aforesaid, the parties shall mutually agree on an estimate of Net Profits for the Project (the "**Interim Net Profit Calculation**"), and such estimate shall be used for determining the monetary amount to be applied towards the purchase price of the Units (the "**Interim Applied Amount**"). In the event that the parties cannot come to an agreement on the Interim Net Profit Calculation, the parties agree to appoint MNP LLP (or such other firm as the Lender and Borrower may determine should MNP LLP be unable or unwilling to act) to make such estimation, which shall be final and binding until the Adjustment Date (as defined below).

The Lender shall execute a promissory note (the "**Unit Purchase Note**") on the closing of the purchase of the Units promising to pay an amount equal to the Interim Applied Amount. The Unit Purchase Note shall contain a right of set-off. Once the Final Net Profit Calculation (as defined below) is determined, the Lender shall have the right to set-off his rights to the Net Profits (as determined pursuant to the Final Net Profit Calculation) against the amounts owing under the Unit Purchase Note. Any difference between the Interim Net Profit Calculation and the Final Net Profit Calculation shall be adjusted as set out below.

At such point in time when Net Profits can be finally determined (or such earlier date should the Lender notify the Borrower in writing that he wishes to finally calculate Net Profits at that point in time) (the "**Adjustment Date**"), the Borrower, with the approval of the Lender, shall engage an auditor to provide an opinion as to the final determination of Net Profits, which determination shall be final and binding (the "**Final Net Profit Calculation**"). Upon such determination, to the extent that the Interim Net Profit Calculation exceeds the Final Net Profit Calculation, the Lender shall pay to the Borrower (or 1451), within 10 days of the determination of the Final Net Profit Calculation, twenty-five percent (25%) of the difference between the Interim Net Profit Calculation and the Final Net Profit Calculation. To the extent that the Final Net Profit Calculation exceeds the Interim Net Profit Calculation, the Borrower shall pay to the Lender, within 10 days of the determination of the Final Net Profit Calculation, twenty-five percent (25%) of the difference between the Final Net Profit Calculation and the Interim Net Profit Calculation. This section shall survive termination or expiration of this Agreement without limit of time.

(e) Section 3.6 shall now read as follows:

3.6 DELETED

3. The Borrower, the Lender, 1451, and Sam hereby acknowledge and agree that the terms of the Loan Agreement are in all other respects ratified and confirmed and remain in full force and effect unamended.

[Signature Page to Follow]

IN WITNESS WHEREOF the Parties have executed this Amending Agreement as of the above.

MIZRAHI DEVELOPMENTS INC.

By:



Name: Sam Mizrahi

Title: President



MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

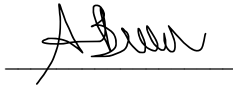
By: 

Name: Sam Mizrahi

Title: President



SAM MIZRAHI



Witness



DAVID BERRY



Witness

SCHEDULE A

SCHEDULE B

SCHEDULE C

Appendix “R”

Summary

318

128 Hazelton - Suite 901

11/20/2024

Project Summary:		Estimate Summary
-------------------------	--	-------------------------

Estimate - Suite 901	LS	\$2,573,166
General Conditions (GC)	9.84%	\$253,326
Contingency	10.00%	\$257,317
Insurance - Other than CGL	NIC	Not included
Insurance - Commercial General Liability	LS	\$8,018
Head Contracting Bonding	LS	\$0

SUBTOTAL **\$3,091,826**

Base Fee 4.00% **\$123,673**

TOTAL CONSTRUCTION ESTIMATE **\$3,215,500**

NOT INCLUDED:

- HST
- Head Contract Bonding
- Builders Risk Insurance
- Wrap-up Insurance
- Automobile Insurance
- Pollution Liability Insurance
- Boiler & Machinery Insurance
- Errors & Omission Insurance
- Demolition Fee
- Site Plan Approval + Variances
- Building Permit
- Development, education, park fees or levies
- Furniture, fixtures and equipment, Systems Furniture & Lab Casework
- LEED / Sustainability Consultant
- 3rd Party Commissioning Agent
- 3rd Party Building Envelope Commissioning Agent
- Testing & Inspection
- Site Security Monitoring and/or Security Guards
- Temporary Power & Water Consumption

ASSUMPTIONS:

- Price based on scope shown on drawings, need to determine what material on site is re-usable
- No work to existing envelope

SECTION	ITEM	QUANTITY	UOM	\$/UNIT	UOM	TOTALS	REMARKS	SECTION TOTAL
02 00 00	DEMOLITION							\$35,000
03 00 00	CONCRETE						N/A	\$0
04 00 00	MASONRY						N/A	\$0
05 00 00	STRUCTURAL METAL						N/A	\$0
06 00 00	WOOD & PLASTICS						Rough + Finish Carpentry + Millwork	\$371,700
07 00 00	THERMAL & MOISTURE PROTECTION						Caulking + Firestop	\$15,000
08 00 00	DOORS & WINDOWS						Misc Glazing + Mirrors	\$45,000
09 00 00	FINISHES						Drywall + Flooring + Painting	\$1,164,360
10 00 00	SPECIALTIES						Washroom Accessories	\$10,000
11 00 00	EQUIPMENT						Appliances	\$60,000
12 00 00	FURNISHINGS						NIC	\$0
13 00 00	SPECIAL CONSTRUCTION						Sauna + Steam Room	\$40,000
14 00 00	CONVEYING SYSTEMS						N/A	\$0
21 00 00	MECHANICAL							\$452,500
26 00 00	ELECTRICAL							\$339,606
50 00 00	BONDING						N/A	\$0
51 00 00	ALLOWANCES						Cut & Core + Investigative Work	\$40,000
51 20 00	OWNER SPECIFIED CASH ALLOWANCES						N/A	\$0

Total Projected Construction Costs

\$2,573,166 +HST

\$2,573,166

Appendix “S”

APPRAISAL OF



LOCATED AT:

128 Hazelton Avenue #901
Toronto, Ont. M5R 1J3

FOR:

KSV Advisory Inc.

BORROWER:

Not Applicable

AS OF:

October 18, 2024

BY:

Heather Markoff CRA P.App

Client Reference No.:

File No.: 24100115A

October 25, 2024

KSV Advisory Inc.
Jordan Wong

Address of Property: 128 Hazelton Avenue #901
Toronto, Ont. M5R 1J3

Market Value: \$ 12,165,000

The purpose of the report was to develop an estimate of market value, as improved and as is, in unencumbered condominium ownership for current market value estimation purposes only.

The estimate of value is as of the effective date and is subject to assumptions and limiting conditions included in the report and to which the reader's attention is specifically directed. The appraisal is enclosed and must be read in its entirety.

No person other than the authorized users specifically identified herein can rely on this report without first obtaining consent from the client and written authorization from the author.


The appraisal was prepared in accordance with the Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP).


Heather Markoff CRA P.App

RESIDENTIAL APPRAISAL REPORT

Client Reference:

File # 24100115A

CLIENT	CLIENT: <u>KSV Advisory Inc.</u>	APPRAISER	AIC MEMBER: <u>Heather Markoff CRA P.App</u>	
	ATTENTION: <u>Jordan Wong</u>		COMPANY: <u>Simon & Associates Ltd.</u>	
	ADDRESS: <u>1300-200 Bay Street</u> <u>Toronto, Ontario M5J2W4</u>		ADDRESS: <u>4250 Weston Road, 2nd Floor</u> <u>Toronto, Ontario M9L 1W9</u>	
	E-MAIL: _____		E-MAIL: <u>heather.markoff@simonandassociates.net</u>	
	PHONE: _____		PHONE: <u>(416)398-1234</u>	

SUBJECT	PROPERTY ADDRESS: <u>128 Hazelton Avenue #901</u> CITY: <u>Toronto</u> PROVINCE: <u>Ont.</u> POSTAL CODE: <u>M5R 1J3</u>
	LEGAL DESCRIPTION: <u>TSCP 2967 LEVEL 9 UNIT 1- parking and locker descriptions were unavailable</u> Source: <u>Geowarehouse</u>
	MUNICIPALITY AND DISTRICT: <u>City of Toronto</u> Property ID: <u>Roll# 190405225000125</u>
	ASSESSMENT: <u>5,562,000</u> Assessment Date <u>January 1, 2024</u> Taxes \$ <u>39,784</u> Year <u>2024</u>
	EXISTING USE: <u>Residential Condominium</u> OTHER USES _____ OCCUPIED BY: <u>Vacant</u>

ASSIGNMENT	NAME: <u>KSV Advisory Inc.</u> Name Type: _____
	PURPOSE: <input checked="" type="checkbox"/> To estimate market value <input type="checkbox"/> To estimate market rent <input type="checkbox"/> _____
	AUTHORIZED USE: <input checked="" type="checkbox"/> To estimate current market value <input type="checkbox"/> _____
	AUTHORIZED USERS (by name): <u>KSV Advisory Inc.- None other without the written consent from both the client and the appraiser</u>
	REQUESTED BY: <input checked="" type="checkbox"/> Client above <input type="checkbox"/> Other _____
	VALUE: <input checked="" type="checkbox"/> Current <input type="checkbox"/> Retrospective
	<input type="checkbox"/> Update of original report completed on _____ With an effective date of _____ File No. _____
	PROPERTY RIGHTS / OWNERSHIP: <input type="checkbox"/> Fee Simple <input type="checkbox"/> Leasehold <input checked="" type="checkbox"/> Condo/Strata <input type="checkbox"/> Other _____
	MAINTENANCE FEE (if applicable): \$ <u>9,251.68</u> <input checked="" type="checkbox"/> monthly <input type="checkbox"/> annual Source <u>Client</u>
	CONDO/STRATA NAME (if applicable): <u>Private Residences Of 128 Hazelton</u>
APPROACHES USED: <input checked="" type="checkbox"/> DIRECT COMPARISON APPROACH <input type="checkbox"/> COST APPROACH <input type="checkbox"/> INCOME APPROACH	
EXTRAORDINARY ASSUMPTIONS & LIMITING CONDITIONS <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES _____	
HYPOTHETICAL CONDITION: <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES _____ see Extraordinary Items page	

NEIGHBOURHOOD	<input checked="" type="checkbox"/> Residential <input type="checkbox"/> Commercial <input type="checkbox"/> Industrial <input type="checkbox"/> Agricultural <input type="checkbox"/> First Nations/Indigenous Land	AGE RANGE(years): <u>New</u> <u>100+</u>
	<input checked="" type="checkbox"/> Urban <input type="checkbox"/> Suburban <input type="checkbox"/> Rural <input type="checkbox"/> Recreational/Resort <input type="checkbox"/> Forestry/Public/Park	PRICE RANGE: <u>415,000</u> <u>9,775,000</u>
	<input checked="" type="checkbox"/> Improving <input type="checkbox"/> Stable <input type="checkbox"/> Transitioning <input type="checkbox"/> Deteriorating <input type="checkbox"/> _____	C02 Annex condo sales since 4/1/2024
	BUILT UP: <input checked="" type="checkbox"/> Over 75% <input type="checkbox"/> 25 - 75% <input type="checkbox"/> Under 25%	MARKET OVERVIEW: Supply <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Low
	SUBJECT TYPICAL FOR NBHD: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (see comments)	Demand <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Low
	<input type="checkbox"/> Detrimental Conditions Observed	PRICE TRENDS: <input type="checkbox"/> Increasing <input checked="" type="checkbox"/> Stable <input type="checkbox"/> Declining
	COMMENTS:	Values in the area have remained relatively stable
	<u>The subject is located west of Bay Street, east of Avenue Road on the south west corner of Davenport Road and Hazelton Avenue in the upscale Yorkville neighborhood in Toronto. Relatively easy access to the Bloor and Yonge subway lines, Royal Ontario Museum, Queen's Park, University of Toronto and all other amenities such as shopping and entertainment. No adverse influences were evident.</u>	

SITE	SITE DIMENSIONS: <u>n/a condo</u>	UTILITIES: <input checked="" type="checkbox"/> Natural Gas <input checked="" type="checkbox"/> Storm Sewer <input checked="" type="checkbox"/> Sanitary Sewer <input type="checkbox"/> Open Ditch <input type="checkbox"/> Septic <input type="checkbox"/> Holding Tank
	LOT SIZE: <u>n/a condo</u> Unit of Measurement <u>Sq.Ft.</u>	WATER SUPPLY: <input checked="" type="checkbox"/> Municipal <input type="checkbox"/> Private Well <input type="checkbox"/> _____
	SOURCE: <u>Assessment Records</u>	FEATURES: <input type="checkbox"/> Gravel Road <input checked="" type="checkbox"/> Paved Road <input type="checkbox"/> Lane <input checked="" type="checkbox"/> Sidewalk <input checked="" type="checkbox"/> Curbs <input checked="" type="checkbox"/> Streetlights
	TOPOGRAPHY: <u>Level Throughout</u>	ELECTRICAL: <input checked="" type="checkbox"/> Overhead <input type="checkbox"/> Underground <input type="checkbox"/> _____
	CONFIGURATION: <u>Irregular</u>	DRIVEWAY: <input type="checkbox"/> Private <input checked="" type="checkbox"/> Shared <input type="checkbox"/> None <input type="checkbox"/> Single <input type="checkbox"/> Double
	ZONING CODE/DESCRIPTION: <u>CR 2.0 (c1.0; r2.0) SS2 (x89)</u>	<input checked="" type="checkbox"/> Underground <input type="checkbox"/> Laneway <input type="checkbox"/> _____
	ZONING SOURCE: <u>Online municipal zoning map</u>	PARKING: <input checked="" type="checkbox"/> Garage <input type="checkbox"/> Carport <input type="checkbox"/> Driveway <input type="checkbox"/> Street <input type="checkbox"/> _____
	OTHER LAND USE CONTROLS <input type="checkbox"/> YES <input type="checkbox"/> NO	LANDSCAPING: <input checked="" type="checkbox"/> Good <input type="checkbox"/> Average <input type="checkbox"/> Fair <input type="checkbox"/> Poor/Other
	EXISTING LAND USE CONFORMS <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
	IN FLOODPLAIN/FLOOD ZONE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO FLOOD MAP DATE: _____	
EASEMENTS <u>Assumed Typical</u>		
<input type="checkbox"/> Detrimental Conditions Observed		
<u>A fully serviced apartment condominium site, which is a common element of the Condominium Corporation providing access to parking facilities and offering amenities such as 24/7 concierge and valet service, event room, lounge, fitness room and backyard garden with dining area.</u>		



RESIDENTIAL APPRAISAL REPORT

Client Reference:

File # 24100115A

Year Built (estimated): <u>2022</u>	PROPERTY TYPE: <u>Condominium</u>	ROOFING: <u>Tar and gravel</u>
YEAR ADDITIONS (estimated): _____	DESIGN/STYLE: <u>Apartment</u>	Condition: <input checked="" type="checkbox"/> Good <input type="checkbox"/> Average <input type="checkbox"/> Fair <input type="checkbox"/> Poor
EFFECTIVE AGE: <u>0</u> years	CONSTRUCTION: <u>Concrete</u>	Roofing: flat; assumed in good condition given the age of the building. Unobserved
REMAINING ECONOMIC LIFE: <u>60</u> years	WINDOWS: <u>Metal Frame Double</u>	EXTERIOR FINISH: <u>Precast concrete panels</u>
<input type="checkbox"/> Under Construction	BASEMENT: <u>None</u>	Condition: <input checked="" type="checkbox"/> Good <input type="checkbox"/> Average <input type="checkbox"/> Fair <input type="checkbox"/> Poor
<input checked="" type="checkbox"/> Appraised As Is	BASEMENT AREA: <u>N/A</u>	
<input type="checkbox"/> As if Complete (new construction/renovation)	BASEMENT FINISH: _____ %	
As if complete condition assumed to be good	FOUNDATION WALLS: <u>Poured Concrete</u>	

Energy Label: <u>None</u>	INTERIOR FINISH: Walls <input checked="" type="checkbox"/> Ceilings <input checked="" type="checkbox"/>	Flooring: <u>engineered hardwood tile</u>
Efficiency Rating: _____	Drywall: <input checked="" type="checkbox"/> Plaster: <input type="checkbox"/> Panelling: <input type="checkbox"/>	
EV Charger Type: <u>None</u>	Other: _____	
Solar Panels: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	PLUMBING LINES: <u>Copper/ Plastic</u>	Info Source: <u>Assumed</u>
ELECTRICAL: <input type="checkbox"/> Fuses <input checked="" type="checkbox"/> Breakers <u>Assumed</u>	BUILT-INS: <input checked="" type="checkbox"/> Cooktop <input checked="" type="checkbox"/> Oven <input checked="" type="checkbox"/> Dishwasher <input checked="" type="checkbox"/> Microwave	
ESTIMATED RATED CAPACITY OF MAIN PANEL: <u>200</u> amps	<input checked="" type="checkbox"/> <u>steam and sauna</u>	
HEATING SYSTEM: <u>Forced Air</u> Fuel type: <u>Gas</u>	EXTRAS: <input checked="" type="checkbox"/> Security System <input checked="" type="checkbox"/> fireplace <input type="checkbox"/> HR/ER Ventilator <input type="checkbox"/> Pool	
WATER HEATER: <u>Gas</u>		
COOLING SYSTEM: <u>Central Air</u>	OVERALL INT. COND: <input checked="" type="checkbox"/> Good <input type="checkbox"/> Average <input type="checkbox"/> Fair <input type="checkbox"/> Poor	
	Source of Interior Information: <u>Observed by AIC Member</u>	

LEVEL:	Entrance	Living	Dining	Kitchen	Family	Bedrooms	Den	Full Bath	Part Bath	Laundry	office	gym	games	Room Total	Area
MAIN	x	1	1	1		3	1	3	1	x	1	1	1	10	4753
SECOND															315
THIRD															
ABOVE GRADE TOTALS:	10					3		3	F 1 P					10	5,068
BASEMENT															

SOURCE OF MEASUREMENT: Builder Plan/ MPAC UNIT OF MEASUREMENT: SqFt

GARAGE/PARKING: Attached Detached Built-in Single Double Triple Three underground

As per the client

SITE IMPROVEMENTS

The subject includes one 219 square foot and one 101 square foot balcony. In addition, there is a wrap around 857 square foot balcony. The reader should note that despite the size of the wrap around balcony, the balcony is quite narrow in most areas and there is not room for a full patio set. A substantial portion of the balcony space is not usable. There is also a roof top patio of approximately 1783 square feet with plans for a hot tub and swimming pool. As the subject unit occupies the entire ninth floor, it enjoys 360 degree views, north, south, east and west.

Delinquent Conditions Observed: _____

COMMENTS

Upon completion, the subject will be a three bedroom condominium apartment unit of approximately 5,068 square feet that occupies the entire ninth floor (penthouse) of the Private Residences Of 128 Hazelton development. The building consists of only 20 residential units. At the time of inspection, the subject was at the framing stage of construction. Features will include engineered hardwood and tile flooring throughout. It is assumed finishes will be of high quality and consistent with units of similar caliber in the building and similar units in the subject area. This appraisal has been performed on an 'As if complete' basis. The monthly maintenance fees are \$9,251.68, as per the client. Please see Hypothetical Conditions and the addendum .

BASEMENT

Not Applicable, Condominium Apartment

RESIDENTIAL APPRAISAL REPORT

Client Reference:

File # 24100115A

HIGHEST AND BEST USE

LAND VALUE AS IF VACANT: N/A \$ _____ SOURCE OF DATA: _____ COMMENT: _____
 Existing Use: **Residential Condominium**
 HIGHEST AND BEST USE OF THE LAND AS IF VACANT: Residential Other _____
 HIGHEST AND BEST USE OF THE LAND AS IMPROVED: Existing Residential Use Other _____
 HBU COMMENTS PERMITTED/DISCRETIONARY USES:

The subject site is improved with a residential condominium apartment building which was completed in 2022. The subject unit comprises a floor area of approximately 5,068 square feet. As of the date of inspection, the unit was at the framing stage of construction. It is assumed that upon completion it will reflect good quality and visual appeal. As of the effective date, the dwelling was unoccupied, unfinished, assumed to be legal and conforming, and that it will be utilized for its intended purpose. Thus, it is considered to add utility and value to the underlying lands. Based on the information available, the highest and best use of the subject property is the continuation of the residential use of the premises.

DEFINITION OF HIGHEST AND BEST USE: The reasonably probable use of real property, that is physically possible, legally permissible, financially feasible, maximally productive and that results in the highest value. (CUSPAP)

DIRECT COMPARISON APPROACH

SUBJECT	COMPARABLE NO. 1		COMPARABLE NO. 2		COMPARABLE NO. 3	
	Description	Adjustment	Description	Adjustment	Description	Adjustment
128 Hazelton Avenue #901 Toronto, Ont. M5R 1J3	36 Hazelton Avenue #5B Toronto, Ont. M5R 2E2		50 Yorkville Avenue #4501 Toronto, Ont. M5R 0A3		50 Yorkville Avenue #4303 Toronto, Ont. M5R 0A3	
DATA SOURCE	MLS		MLS		MLS	
DATE OF SALE	May 15, 2024		June 21, 2024		April 23, 2024	
SALE PRICE	\$ 9,150,000/ \$2,314 psf		\$ 8,400,000/ \$2,923 psf		\$ 9,775,000/ \$2,857 psf	
DAYS ON MARKET	44		26		28	
LIST PRICE	\$ 9,988,000		\$ 8,995,000		\$ 9,975,000	
APPROX KMs from SUBJECT	0.34 km SE		0.54 km SE		0.54 km SE	
LOCATION	Good		Good		Good	
SITE DIMENSIONS	N/A		N/A		N/A	
LOT SIZE	n/a condo		n/a condo		n/a condo	
PROPERTY TYPE	Condominium		Condominium		Condominium	
DESIGN/STYLE	Apartment		Apartment		Apartment	
AGE/CONDITION	2 Good	10 Similar	12 Similar		12 Similar	
FLOOR AREA	5,068 SqFt	3,955 Sq.Ft.	2,874 Sq.Ft.		3,422 Sq.Ft.	
	Total Rooms Bedrooms	Total Rooms Bedrooms	Total Rooms Bedrooms		Total Rooms Bedrooms	
ROOM COUNT	10 3	7 2	6 2		6 2	
BATHROOMS	3 F 1 P	2 Full, 1 Half Bath	2 Full, 1 Half Bath	40,000	3 Full, 1 Half Bath	
BASEMENT	None	None	None		None	
PARKING FACILITIES	Three Underground	Three Underground	Two Underground	100,000	Two Underground	100,000
Locker	One	One	One		One	
Exposure	east, south, north, west	East, South, West	North West		South West	
Balcony	3 balconies/ Roof top Terrace	Terrace+ Balconies	Large Full Balcony	250,000	Two Full Balconies	250,000
Corner Unit	Yes/ Full Floor	Yes/ Half Floor	Yes		Yes	
Adjusted \$ PSF		\$2,324 psf	\$3,058 psf		\$2,959 psf	
ADJUSTMENTS (Gross %, Net \$)		0.4 40,000	4.6 390,000		3.6 350,000	
ADJUSTED VALUES		\$ 9,190,000	\$ 8,790,000		\$ 10,125,000	

ANALYSIS AND COMMENTS

The reader should note that the subject occupies the entire penthouse level in a high end mid-rise building with full concierge service. There have been no current comparable sales in the subject building. Sale 1 is a smaller unit located in a similar boutique building (1 of 19 units) just south of the subject. Sales 2 and 3 are located in the Four Seasons development and are considered to be in a somewhat similar caliber of building, albeit with superior brand recognition. Expansion of the search area was considered, however, the subject is located in a premium building in a high end, coveted neighborhood and subjective location adjustments would have been required. Adjustments have been made for variances recognized by the marketplace such as parking, exposure, balcony and number of bathrooms. Please see addendum for further analysis.

The appraiser has utilized a price per square foot unit of comparison in arriving at the market value conclusion for the subject property. The adjusted psf unit rates reflected by the three sales range between \$2,324 psf and \$3,058 psf. Most weight has been applied to the adjusted value of sale 1 as it is located in a similar boutique building. In addition, with consideration to economies of scale, valuation towards the lower end of the adjusted value range is considered to be reasonable. Therefore market value may be calculated as follows: 5,068 sf x \$2,400 psf = \$12,165,000 Rounded

ESTIMATED VALUE BY DIRECT COMPARISON APPROACH (rounded): \$ 12,165,000 As if Complete. Please see addendum for As Is Value



RESIDENTIAL APPRAISAL REPORT

Client Reference:

File # 24100115A

HISTORY

SUBJECT SOLD WITHIN 3 YEARS OF EFFECTIVE DATE: YES NO DATE _____ SOURCE _____

SALE TRANSFER HISTORY: (minimum of three years) SALE PRICE _____

A search of TREB/Land Registry Services indicated that the subject has not sold or been listed for sale in the past 36 months.

SUBJECT LISTED WITHIN 1 YEAR OF EFFECTIVE DATE: YES NO LAST LIST PRICE _____ UNDER CONTRACT/AGREEMENT OF PURCHASE AND SALE YES NO OBTAINED YES NO

SUBJECT CURRENTLY LISTED YES NO CURRENT LIST PRICE _____ CURRENT/PENDING PURCHASE PRICE _____

AGREEMENTS FOR SALE, OPTIONS, LISTINGS OR MARKETING OF THE SUBJECT: (minimum of one year) **Please see above.**

EXPOSURE TIME

Exposure Time is the estimated length of time the property interest being appraised would have been offered on the market before the hypothetical consummation of a sale at the estimated value on the Effective Date of the appraisal. (CUSPAP)

Given current market conditions, a range of 15 to 60 days is considered indicative of reasonable exposure time assuming that the subject was listed on the open market at a reasonable and competitive asking price that reflects current market values. Setting a competitive, market-aligned price from the outset often helps in generating timely offers. Pricing a property above market value can lead to extended exposure times and stale listings.

RECONCILIATION AND FINAL VALUE

RECONCILIATION AND FINAL ESTIMATE OF VALUE

As the Subject Property is a Residential Condominium, the cost and income approaches to value are not germane to the valuation of the Subject. The Direct Comparison Approach which fully reflects the actions of buyers and sellers in the marketplace has been exclusively utilized in arriving at the Market Value conclusion for the Subject Property

UPON REVIEWING AND RECONCILING THE DATA, ANALYSES AND CONCLUSIONS OF EACH VALUATION APPROACH, THE MARKET VALUE OF THE INTEREST OF THE SUBJECT PROPERTY

AS AT October 18, 2024 (Effective Date of the Appraisal) **IS ESTIMATED AT \$** 12,165,000

COMPLETED ON October 25, 2024 (Date of Report) AS SET OUT ELSEWHERE IN THIS REPORT, THIS REPORT IS SUBJECT TO ASSUMPTIONS AND LIMITING CONDITIONS, THE VERIFICATION OF WHICH IS OUTSIDE THE SCOPE OF THIS REPORT

SCOPE

The scope of the appraisal encompasses the due diligence undertaken by the appraiser (consistent with the terms of reference from the client, the purpose and authorized use of the report) and the necessary research and analyses to prepare a report in accordance with the Canadian Uniform Standards of Professional Appraisal Practice (CUSPAP) of the Appraisal Institute of Canada. The following comments describe the extent of the process of collecting, confirming and reporting data and its analyses, describe relevant procedures and reasoning details supporting the analyses, and provide the reason for the exclusion of any usual valuation procedures.

The appraisal issue that is the focus of this engagement has been discussed and defined with the client, the work required to solve the issue planned, and the necessary market data acquired, analyzed and reconciled into an estimate of market value in a manner typically expected in a "form" report. The specific tasks and items necessary to complete this assignment include a summary of the following:

1. assembly and summary of relevant information pertaining to the property being appraised, including listings within one year and acquisition particulars if acquired within three years prior to the effective date of the appraisal;
2. **On-Site Inspection Exterior and Interior**
Source of interior information: **Observed by AIC Member**
3. assembly and summary of the pertinent economic and market data;
4. a summary of land use controls pertaining to the subject property;
5. a summary of "Highest and Best Use";
6. a discussion of the appraisal methodologies and procedures employed in arriving at the indications of value;
7. inclusion of photographs, maps, graphics and addendum/exhibits when deemed appropriate; and
8. reconciliation of the collected data into an estimate of market value at the effective date of the appraisal.

DEFINITION OF MARKET VALUE: The most probable price, as of a specified date, in cash, or in terms equivalent to cash, or in other precisely revealed terms, for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeable, and for self-interest, and assuming that neither is under undue duress. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: buyer and seller are typically motivated; both parties are well informed or well advised, and acting in what they consider their own best interests; a reasonable time is allowed for exposure in the open market; payment is made in terms of cash in Canadian dollars or in terms of financial arrangements comparable thereto; and the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

All data considered appropriate for inclusion in the appraisal is, to the best of our knowledge, factual. Due to the type of property being appraised and the nature of the appraisal issue, the findings have been conveyed in this "form" format. See Addenda.

The scope of this appraisal includes the assembly and analyses of relevant information pertaining to the property being appraised, including acquisition particulars if acquired within the past 3 years. An inspection of the subject property and surrounding area. Assembly and analysis of pertinent economic and market data. An indication of highest and best use. Summary of appraisal methodologies and procedures employed in arriving at indications of value. Inclusion of appropriate photographs, maps and exhibits. Reconciliation of collected data into an estimate of market value as of the effective date of appraisal.



RESIDENTIAL APPRAISAL REPORT

Client Reference:

File # 24100115A

ASSUMPTIONS, LIMITING CONDITIONS, DISCLAIMERS AND LIMITATIONS OF LIABILITY

The certification that appears in this report is subject to compliance with the Personal Information and Electronics Documents Act (PIPEDA), Canadian Uniform Standards of Professional Appraisal Practice ("CUSPAP") and the following conditions:


- This report is prepared only for the authorized client and authorized users specifically identified in this report and only for the specific use identified herein. No other person may rely on this report or any part of this report without first obtaining consent from the client and written authorization from the authors. Liability is expressly denied to any other person and, accordingly, no responsibility is accepted for any damage suffered by any other person as a result of decisions made or actions taken based on this report. Liability is expressly denied for any unauthorized user or for anyone who uses this report for any use not specifically identified in this report. Payment of the appraisal fee has no effect on liability. Reliance on this report without authorization or for an unauthorized use is unreasonable.
- Because market conditions, including economic, social and political factors, may change rapidly and, on occasion, without warning, this report cannot be relied upon as of any date other than the effective date specified in this report unless specifically authorized by the author(s).
- The author will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The property is appraised on the basis of it being under responsible ownership. No registry office search has been performed and the author assumes that the title is good and marketable and free and clear of all encumbrances. Matters of a legal nature, including confirming who holds legal title to the appraised property or any portion of the appraised property, are outside the scope of work and expertise of the appraiser. Any information regarding the identity of a property's owner or identifying the property owned by the appraiser is for informational purposes only and any reliance on such information is unreasonable. Any information provided by the appraiser does not constitute any title confirmation. Any information provided does not negate the need to retain a real estate lawyer, surveyor or other appropriate experts to verify matters of ownership and/or title.
- Verification of compliance with governmental regulations, bylaws or statutes is outside the scope of work and expertise of the appraiser. Any information provided by the appraiser is for informational purposes only and any reliance is unreasonable. Any information provided by the appraiser does not negate the need to retain an appropriately qualified professional to determine government regulation compliance.
- No survey of the property has been made. Any sketch in this report shows approximate dimensions and is included only to assist the reader of this report in visualizing the property. It is unreasonable to rely on this report as an alternative to a survey, and an accredited surveyor ought to be retained for such matters.
- This report is completed on the basis that testimony or appearance in court concerning this report is not required unless specific arrangements to do so have been made beforehand. Such arrangements will include, but not necessarily be limited to: adequate time to review the report and related data, and the provision of appropriate compensation.
- Unless otherwise stated in this report, the author has no knowledge of any hidden or unapparent conditions (including, but not limited to: its soils, physical structure, mechanical or other operating systems, foundation, etc.) of/on the subject property or of/on a neighbouring property that could affect the value of the subject property. It has been assumed that there are no such conditions. Any such conditions that were visibly apparent at the time of inspection or that became apparent during the normal research involved in completing the report have been noted in the report. This report should not be construed as an environmental audit or detailed property condition report, as such reporting is beyond the scope of this report and/or the qualifications of the author. The author makes no warranties or warranties, express or implied, regarding the condition of the property, and will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. The bearing capacity of the soil is assumed to be adequate.
- The author is not qualified to comment on detrimental environmental, chemical or biological conditions that may affect the market value of the property appraised, including but not limited to pollution or contamination of land, buildings, water, groundwater or air which may include but are not limited to moulds and mildews or the conditions that may give rise to either. Any such conditions that were visibly apparent at the time of inspection or that became apparent during the normal research involved in completing the report have been noted in the report. It is an assumption of this report that the property complies with all regulatory requirements concerning environmental, chemical and biological matters, and it is assumed that the property is free of any detrimental environmental, chemical and biological conditions that may affect the market value of the property appraised. If a party relying on this report requires information about or an assessment of detrimental environmental, chemical or biological conditions that may impact the value conclusion herein, that party is advised to retain an expert qualified in such matters. The author expressly denies any legal liability related to the effect of detrimental environmental, chemical or biological matters on the market value of the property.
- The analyses set out in this report relied on written and verbal information obtained from a variety of sources the author considered reliable. Unless otherwise stated herein, the author did not verify client-supplied information, which the author believed to be correct.
- The term "inspection" refers to observation only as defined by CUSPAP and reporting of the general material finishing and conditions observed for the purposes of a standard appraisal inspection. The inspection scope of work includes the identification of marketable characteristics/amenities offered for comparison and valuation purposes only.
- The opinions of value and other conclusions contained herein assume satisfactory completion of any work remaining to be completed in a good and workmanlike manner. Further inspection may be required to confirm completion of such work. The author has not confirmed that all mandatory building inspections have been completed to date, nor has the availability/issuance of an occupancy permit been confirmed. The author has not evaluated the quality of construction, workmanship or materials. It should be clearly understood that this visual inspection does not imply compliance with any building code requirements as this is beyond the professional expertise of the author.
- The contents of this report are confidential and will not be disclosed by the author to any party except as provided for by the provisions of the CUSPAP and/or when properly entered into evidence of a duly qualified judicial or quasi-judicial body. The author acknowledges that the information collected herein is personal and confidential and shall not use or disclose the contents of this report except as provided for in the provisions of the CUSPAP and in accordance with the author's privacy policy. The client agrees that in accepting this report, it shall maintain the confidentiality and privacy of any personal information contained herein and shall comply in all material respects with the contents of the author's privacy policy and in accordance with the PIPEDA.
- The author has agreed to enter into the assignment as requested by the client named in this report for the use specified by the client, which is stated in this report. The client has agreed that the performance of this report and the format are appropriate for the intended use.
- This report, its content and all attachments/addendums and their content are the property of the author. The client, authorized users and any appraisal facilitator are prohibited, strictly forbidden, and no permission is expressly or implicitly granted or deemed to be granted, to modify, alter, merge, publish (in whole or in part) screen scrape, database scrape, exploit, reproduce, decompile, reassemble or participate in any other activity intended to separate, collect, store, reorganize, scan, copy, manipulate electronically, digitally, manually or by any other means whatsoever this appraisal report, addendum, all attachments and the data contained within for any commercial, or other, use.
- If transmitted electronically, this report will have been digitally signed and secured with personal passwords to lock the appraisal file. Due to the possibility of digital modification, only originally signed reports and those reports sent directly by the author can be reasonably relied upon.
- This report form is the property of the Appraisal Institute of Canada (AIC) and for use only by AIC members in good standing. Use by any other person is a violation of AIC copyright.
- Where the intended use of this report is for financing or mortgage lending or mortgage insurance, it is a condition of reliance on this report that the authorized user has or will conduct lending, underwriting and insurance underwriting and rigorous due diligence in accordance with the standards of a reasonable and prudent lender or insurer, including but not limited to ensuring the borrower's demonstrated willingness and capacity to service debt obligations on a timely basis, and to conduct loan underwriting or insuring due diligence similar to the standards set out by the Office of the Superintendent of Financial Institutions (OSFI), even when not otherwise required by law. Liability is expressly denied to those that do not meet this condition. Any reliance on this report without satisfaction of this condition is unreasonable.

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct;
- The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions and are my impartial and unbiased professional analyses, opinions and conclusions;
- I have no past, present or prospective interest in the property that is the subject of this report and no personal and/or professional interest or conflict with respect to the parties involved with this assignment.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment;
- My engagement in and compensation is not contingent upon developing or reporting predetermined results, the amount of value estimate, a conclusion favouring the client, or the occurrence of a subsequent event.
- My analyses, opinions and conclusions were developed, and this report has been prepared, in conformity with the CUSPAP.
- I have the knowledge and experience to complete this assignment competently, and where applicable this report is co-signed in compliance with CUSPAP;
- No one has provided professional assistance to the members(s) signing this report;
 The following individual provided the following professional assistance:
- As of the date of this report the undersigned has fulfilled the requirements of the AIC's Continuing Professional Development Program.
- The undersigned is a member/are all members in good standing of the Appraisal Institute of Canada. Where applicable this report is co-signed in compliance with CUSPAP. Where a report bears two signatures, both the signing appraiser and co-signing appraiser assume full responsibility for this report.

CERTIFICATION

PROPERTY IDENTIFICATION
 ADDRESS: 128 Hazelton Avenue #901 CITY: Toronto PROVINCE: Ont. POSTAL CODE: M5R 1J3
 LEGAL DESCRIPTION: TSCP 2967 LEVEL 9 UNIT 1- parking and locker descriptions were unavailable
 BASED UPON THE DATA ANALYSES AND CONCLUSIONS CONTAINED HEREIN, THE MARKET VALUE OF THE INTEREST IN THE PROPERTY DESCRIBED.
 AS AT October 18, 2024 (Effective Date of the appraisal) IS ESTIMATED AT \$ 12,165,000 As if Complete
 AS SET OUT ELSEWHERE IN THIS REPORT, THIS REPORT IS SUBJECT TO CERTAIN ASSUMPTIONS AND LIMITING CONDITIONS, THE VERIFICATION OF WHICH IS OUTSIDE THE SCOPE OF THIS REPORT.

SIGNATURE:  AIC CO-SIGNER: _____ (if applicable) _____
 NAME: Heather Markoff CRA P.App NAME: _____
 AIC DESIGNATION/STATUS: AIC Candidate Member P.App., CRA P.App., AAI Membership #: 902209 AIC DESIGNATION/STATUS: P.App., CRA P.App., AAI Membership #: _____
 DATE OF REPORT October 25, 2024 DATE OF INSPECTION: October 18, 2024 DATE OF REPORT: _____ DATE OF INSPECTION: _____
 SOURCE OF DIGITAL SIGNATURE SECURITY: _____ For this appraisal to be valid, an original or a password protected digital signature is required.
 ATTACHMENTS AND ADDENDA: ADDITIONAL SALES EXTRAORDINARY ITEMS NARRATIVE PHOTOGRAPHS BUILDING SKETCH MARKET RENT
 MAPS COST APPROACH INCOME APPROACH SCOPE OF WORK PROGRESS INSPECTION _____

Borrower: Not Applicable

File No.: 24100115A

Property Address: 128 Hazelton Avenue #901

Case No.:

City: Toronto

Province: Ont.

Postal Code: M5R 1J3

Lender: KSV Advisory Inc.

Analysis of the Three Comparable Sales

The subject is one of only 20 residential units in its development, occupies the entire ninth floor and enjoys private elevator access. The appraiser was unable to locate sales of directly comparable units in the subject building or in competing buildings in the immediate area. The sales used are the only recent sales that reflect a similar caliber that would be considered viable alternatives, offering a reliable basis for comparison. As sales data is so limited, this constrains the appraisers ability to adjust for every feature. The sales used are considered to have overall similar utility and would be appealing to potential purchasers in this segment of the market.

Sale 1 is a smaller unit located in a similar boutique building (1 of 19 units) just south of the subject. This unit includes three parking spaces and has been custom finished with hardwood flooring, decorative ceilings, stone counter tops and accents, custom wine storage room, and includes a large partially covered terrace.

Sales 2 and 3 are located in the Four Seasons development and would be considered a competing alternative to the subject as this is also a high-end building located in the Yorkville area and also provides full concierge service.

Sale 2 is a smaller unit with two parking spaces. This unit has been redesigned and renovated and features quality finishes such as hardwood flooring, custom wall accents and marble counter tops and high-end appliances.

Sale 3 also includes two parking spaces and has been renovated. The unit features private elevator access and finishes such as hardwood flooring and renovated bathrooms and kitchen with stone counter tops and high-end appliances.

Time Adjustment Commentary

The reader should be cognizant that the subject is located in a prime development in a high-end neighborhood. The "Upper End" of residential properties does not necessarily adhere to market trends, but rather participates when a desired property is offered on the open market. This purchaser group is willing to be very competitive in negotiating a deal regardless of market conditions at the time of the offering. That being said, TREB Statistics show an insignificant decrease in the average sale price of residential condominiums in the central MLS districts since April, May and June of 2024 and it is the opinion of the appraiser that time adjustments were not warranted. See statistics below.

**Time Adjustments
All MLS Toronto CENTRAL Districts
Condominium Apartments
Cumulative Monthly Average Price**

Month	2023	Variance%	2024	Variance%
January	\$779,441	1.4	\$762,600	3.7
February	\$784,411	0.8	\$771,824	2.4
March	\$785,509	0.6	\$776,829	1.8
April	\$791,527	-0.1	\$792,594	-0.3
May	\$804,743	-1.8	\$800,605	-1.3
June	\$809,348	-2.3	\$803,014	-1.5
July	\$809,348	-2.3	\$801,660	-1.4
August	\$803,560	-1.6	\$794,057	-0.4
September	\$801,018	-1.3	\$790,583*	0.0
October	\$799,721	-1.1		
November	\$797,233	-0.8		
December	\$795,377	-0.6		

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Source: TREB Market Watch

* Note: Variance has been calculated utilizing September 2024 Cumulative Monthly Average Price

Further Analysis on Sales Activity in the Subject Development

There are currently two available listings in the subject building showing KSV Restructuring Inc. as Receiver and Manager of Mizrahi (128 Hazelton) Inc. as the seller.

801-128 Hazelton Avenue is currently listed for sale as of July 2, 2024 for \$8,325,000 (\$2,237 per square foot). This is a 3,721 square foot unit that includes two underground parking spaces and one locker.

802-128 Hazelton Avenue is currently listed for sale as of July 2, 2024 for \$6,300,000 (\$2,199 per square foot). This is a 2,865 square foot unit that includes two underground parking spaces and one locker.

The only sales in the subject building are as follows:

403-128 Hazelton Avenue is 1,488 square feet and include one underground parking space and one locker and sold for 2,450,000 (\$1,647 psf) on July 30, 2024

401-128 Hazelton Avenue is 685 square feet and includes one underground parking space and one locker sold for \$1,160,000 (\$1,693 per square foot) on July 18, 2023.

502-128 Hazelton Avenue is 3,287 square feet and includes two underground parking space and one locker sold for \$6,075,000 (\$1,848 per square foot) on August 25, 2022.

601-128 Hazelton Avenue is 3,048 square feet and includes two underground parking space and one locker sold for \$6,500,000 (\$2,133 per square foot) on February 17, 2022.

The reader should also note that 203-133 Hazelton Avenue sold for \$3,450,000 (\$2,337 psf) on May 15, 2024. This is a 1,476 square foot unit located in a similar building developed by the same builder in the immediate area. This is a corner unit with a terrace.

Analysis on Sales Activity in the Subject Area

There are currently 9 available listings of condominium apartments units located in the Yorkville area that are listed above \$8,000,000 and they are as follows (Not including unit 801 in the subject building, listed above):

1700-155 Cumberland Street is currently listed for sale as of August 6, 2024 for \$29,000,000 (\$4,365 per square foot). This is a 6,644 square foot unit that includes four underground parking spaces.

5202-50 Yorkville Avenue is currently listed for sale as of September 9, 2024 for \$18,800,000 (\$3,794 per square foot). This is a 4,955 square foot unit that includes three underground parking spaces.

4001-50 Yorkville Avenue is currently listed for sale as of September 11, 2024 for \$8,695,000 (\$3,025 per square foot). This is a 2,874 square foot unit that includes three underground parking spaces.

3801-200 Cumberland Street is currently listed for sale as of September 25, 2024 for \$17,800,000 (\$4,437 per square foot). This is a 4,012 square foot unit that includes six underground parking spaces.

703-118 Yorkville Avenue is currently listed for sale as of September 4, 2024 for \$14,800,000 (\$2,368 per square foot). This is a 6,250 square foot unit that includes four underground parking spaces.

601-118 Yorkville Avenue is currently listed for sale as of June 1, 2024 for \$14,800,000 (\$1,776 per square foot). This is a 5,206 square foot unit that includes six underground parking spaces.

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PH2A- 88 Davenport Road is currently listed for sale as of June 17, 2024 for \$8,980,000 (\$2,406 per square foot). This is a 4,124 square foot unit that includes two underground parking spaces.

1501-206 Bloor Street West is currently listed for sale as of May 22, 2024 for \$9,249,000 (\$2,100 per square foot). This is a 4,276 square foot unit that includes two underground parking spaces.

The asking Price per Square foot of these listings range from \$1,776 to \$4,365.

Sales of Single Underground Parking Spaces

There have been two publicly traded sales of single underground parking spaces in Yorkville proper since January 2023. They sold for \$115,000 (at 18 Yorkville Avenue) and \$157,000 (at 188-200 Cumberland Street), respectively.

The appraiser elected to apply a \$100,000 adjustment for the additional parking space on sales 2 and 3 as this is the price single parking spaces have been trading for in the subject building, as per the client.

'AS IS' MARKET VALUE

The appraiser has been instructed to provide the 'as is' market value of the subject property. As of the date of inspection the subject unit was only at the framing stage of construction. The appraiser was unable to locate current sales activity which are in a partially complete state of construction at time of sale.

Thus, the 'as is' market value has been estimated utilizing the following steps:

- 1) Estimate the subject's current 'as if complete' market value.
- 2) Estimate total cost to complete, including an allowance for risk and profit.
- 3) Deduct total cost to complete from the 'as if complete' market value to arrive at the subject's current 'AS IS' market value.

The appraiser was provided with a budget/ quote from Gillam to complete the unit with high end finishes. The quote did not list the specific finishes or give a breakdown of the items left to complete. As relayed to the appraiser, it is assumed that finishes will be of high quality and are expected to meet or exceed the standard typically found in comparable properties currently available for purchase in the immediate area. It is also assumed that the quote provided to the appraiser is correct and accurate. The total cost according to the quote is \$3,215,500 and it is assumed this is plus HST.

This report is based on the assumption that the work will be completed with high quality materials and exceptional workmanship. Should any of these assumptions be proven to be inaccurate for any reason whatsoever, we reserve the right to readdress this appraisal report as it may impact the market value conclusion contained herein.

Based on the above, the subject's current 'AS IS ' market value may be calculated as follows:

'As if Complete'		\$12,165,000
Less: Cost to complete (estimate)	\$3,215,000 (rounded)	
Risk and Profit (10%)	\$1,265,000	
Total Costs		\$4,480,000
Indicated 'AS IS' Market Value		\$7,685,000 (rounded)

'AS IS' Market Value \$7,685,000, Rounded

Definition of "As If Complete Value

The reader should be cognizant that the "as if complete value" is a hypothetical value based on the assumption that the subject property would have been 100% complete based on the described features at the time of preparing the appraisal

Borrower: Not Applicable

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report.

Additional Scope of Appraisal Items

Type of Analysis The approaches as applied to our report were investigated as to their relevance to this assignment, including a review of market data necessary to properly apply these approaches. In this regard the Direct Comparison approach has been applied and later reconciled to a final estimate of value.

Data Research: Publications produced by TREB and MPAC provided information on applicable land use controls. Sources of market evidence included, as appropriate, the local real estate board, Land Title Office transactions – including those reported by Data Systems and local assessors, and real estate agents, vendors and purchasers active in the market. Title has not been searched in this assignment.

Audits and Technical Investigations: We did not complete technical investigations such as:

- Detailed inspections or engineering review of the structure, roof or mechanical systems;
- An environmental review of the property;
- A site or building survey;
- Investigations into the bearing qualities of the soils; or
- Audits of financial and legal arrangements

Verification of Third Party Information: The analysis set out in this report relied on written and verbal information obtained from a variety of sources we considered reliable. Unless otherwise stated herein, we did not verify client-supplied information, which we believed to be correct. The mandate for the appraisal did not require a report prepared to the standard appropriate for court purposes or for arbitration, so we did not fully document or confirm by reference to primary sources all information herein.

MANDATORY CLAUSES

Appraisal Institute of Canada ©- Effective December, 2018

ASSUMPTIONS, LIMITING CONDITIONS, DISCLAIMERS AND LIMITATIONS OF LIABILITY

The certification that appears in this report is subject to compliance with the Personal Information and Electronics Documents Act (PIPEDA), Canadian Uniform Standards of Professional Appraisal Practice (“CUSPAP”) and the following conditions:

This report is prepared only for the client and authorized users specifically identified in this report and only for the specific use identified herein. No other person may rely on this report or any part of this report without first obtaining consent from the client and written authorization from the authors. Liability is expressly denied to any other person and, accordingly, no responsibility is accepted for any damage suffered by any other person as a result of decisions made or actions taken based on this report. Liability is expressly denied for any unauthorized user or for anyone who uses this report for any use not specifically identified in this report. Payment of the appraisal fee has no effect on liability. Reliance on this report without authorization or for an unauthorized use is unreasonable.

Because market conditions, including economic, social and political factors, may change rapidly and, on occasion, without warning, this report cannot be relied upon as of any date other than the effective date specified in this report unless specifically authorized by the author.

The author will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The property is appraised on the basis of it being under responsible ownership. No registry office search has been performed and the author assumes that the title is good and marketable and free and clear of all encumbrances. Matters of a legal nature, including confirming who holds legal title to the appraised property or any portion of the appraised property, are

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outside the scope of work and expertise of the appraiser. Any information regarding the identity of a property's owner or identifying the property owned by the listed client and/or applicant provided by the appraiser is for informational purposes only and any reliance on such information is unreasonable. Any information provided by the appraiser does not constitute any title confirmation. Any information provided does not negate the need to retain a real estate lawyer, surveyor or other appropriate experts to verify matters of ownership and/or title.

Verification of compliance with governmental regulations, bylaws or statutes is outside the scope of work and expertise of the appraiser. Any information provided by the appraiser is for informational purposes only and any reliance is unreasonable. Any information provided by the appraiser does not negate the need to retain an appropriately qualified professional to determine government regulation compliance.

No survey of the property has been made. Any sketch in this report shows approximate dimensions and is included only to assist the reader of this report in visualizing the property. It is unreasonable to rely on this report as an alternative to a survey, and an accredited surveyor ought to be retained for such matters.

This report is completed on the basis that testimony or appearance in court concerning this report is not required unless specific arrangements to do so have been made beforehand. Such arrangements will include, but not necessarily be limited to: adequate time to review the report and related data, and the provision of appropriate compensation

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Personal Information Protection and Electronic Documents Act (PIPEDA)

On the date of inspection, the dwelling was vacant and free of any personal chattels or property. Thus, the interior photographs included in this report would be in compliance with the Act.

EXTRAORDINARY ITEMS ADDENDUM

Reference:

File # 24100115A

EXTRAORDINARY ASSUMPTIONS & EXTRAORDINARY LIMITING CONDITIONS

An extraordinary assumption is a hypothesis, either supposed or unconfirmed, which if not true, could alter the appraiser's opinions and conclusions.

Unless otherwise stated in this report, the appraiser has no knowledge of any hidden or unapparent conditions of the property (including, but not limited to, its soils, physical structure, mechanical or other operating systems, its foundation, etc.) or adverse environmental conditions (on it or a neighbouring property, including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable. It has been assumed that there are no such conditions unless they were observed at the time of inspection or became apparent during the normal research involved in completing the appraisal.

This report should not be construed as an environmental audit or detailed property condition report, as such reporting is beyond the scope of this report and/or the qualifications of the appraiser. The author makes no guarantees or warranties, express or implied, regarding the condition of the property, and will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. The bearing capacity of the soil is assumed to be adequate.

The appraiser is not qualified to comment on environmental issues that may affect the market value of the property appraised, including but not limited to pollution or contamination of land, buildings, water, groundwater or air. Unless expressly stated, the property is assumed to be free and clear of pollutants and contaminants, including but not limited to moulds or mildews or the conditions that might give rise to either, and in compliance with all regulatory environmental requirements, government or otherwise, and free of any environmental condition, past, present or future, that might affect the market value of the property appraised. If the party relying on this report requires information about environmental issues then that party is cautioned to retain an expert qualified in such issues. The author of this report expressly deny any legal liability relating to the effect of environmental issues on the market value of the subject property.

This report must be relied on in its entirety. The contents and/or no parts thereof of this report shall be extracted, reformatted or conveyed to any person, third party or entity, without the written consent and approval of the author of this report, particularly as to value conclusions, the identify of the appraiser/firm to which the appraiser is connected, or any reference to the AIC, AIC Ontario, or the appraiser's designation. Further, the appraiser assumes no obligation, no liability or accountability to any third party, and this report cannot be used for any purpose, other than stated within this appraisal report.

As per the client, the subject unit includes three parking spaces and one locker. As the appraiser is unable to confirm ownership of the parking spaces or the locker, the appraiser has assumed that this information is true and accurate. Should this assumption be proven to be inaccurate for any reason whatsoever, we reserve the right to readdress this appraisal report as it may impact the market value conclusion contained herein.

HYPOTHETICAL CONDITIONS

Hypothetical conditions may be used when they are required for legal purpose, for purposes of reasonable analyses or for purposes of comparison. Common hypothetical conditions include proposed improvements, completed repairs, rezoning, or municipal services. For every Hypothetical Condition, an Extraordinary Assumption is required. Following is a description of each hypothetical condition applied to this report, the rationale for its use and its effect on the result of the assignment.

By accepting this report, the authorized client or the authorized user accepts that:

1. The hypothetical condition and assumptions identified in this report have not been independently verified or are items that are assumed to be true as part of this assignment, and
2. This report may not be reasonably relied on as proof that any of the hypothetical conditions or assumptions are true and accurate or that they will be true and accurate at any point in the future, and
3. In the event that any hypothetical condition or assumption in this report is discovered not to be true and accurate, it may impact the estimate of market value provided in this report. The author(s) disclaims any liability arising from any hypothetical condition(s) or assumptions not being true and accurate as at the date of this report or in the future.

This appraisal report has been completed under the Hypothetical Condition that construction is complete as of the date of valuation, when actually, construction of the subject unit has been halted. The indicated value is the market value of the subject upon completion of the construction program as per plans and information provided to the appraiser by the client which, is assumed to be correct and accurate. The indicated value is the market value based on current market conditions as of the effective date of appraisal. Should market conditions and market values change due to unforeseen influences, prior to the completion of construction, the appraiser shall be released from this report. The client is aware that, as the degree of departure from a full appraisal report increases, there is a corresponding decrease in the level of reliability of the report, resulting in a higher level of risk for the user of the report. It is acknowledged by both parties that a subsequent physical inspection of the subject property and/or a more in depth investigation may result in a different market value conclusion.

EXTRAORDINARY ITEMS ADDENDUM

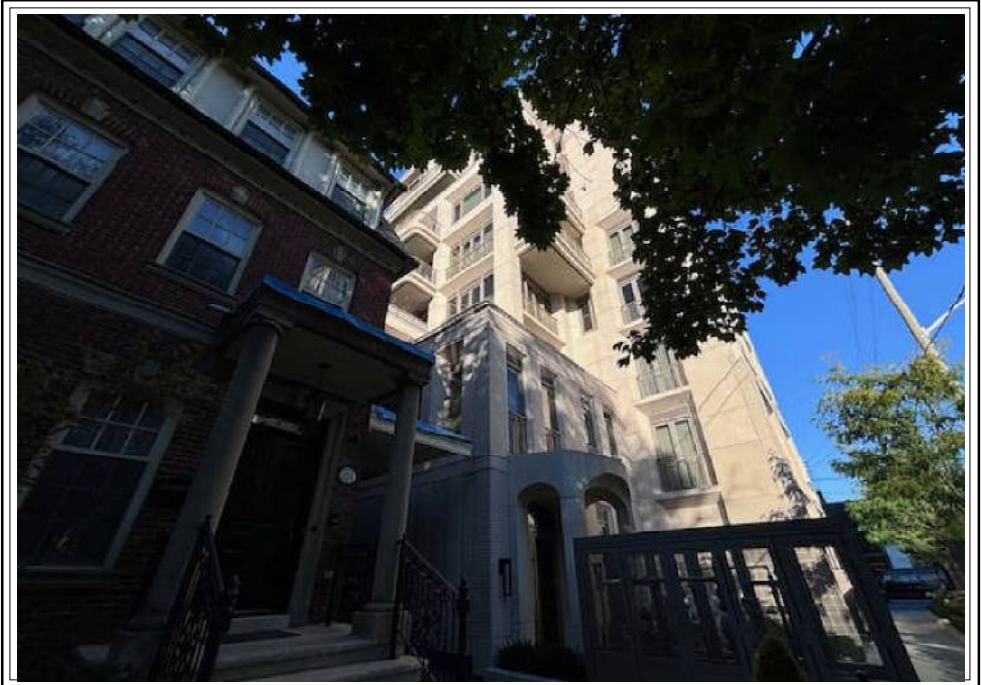


Borrower: Not Applicable	File No.: 24100115A
Property Address: 128 Hazelton Avenue #901	Case No.:
City: Toronto	Prov.: Ont. P.C.: M5R 1J3
Lender: KSV Advisory Inc.	

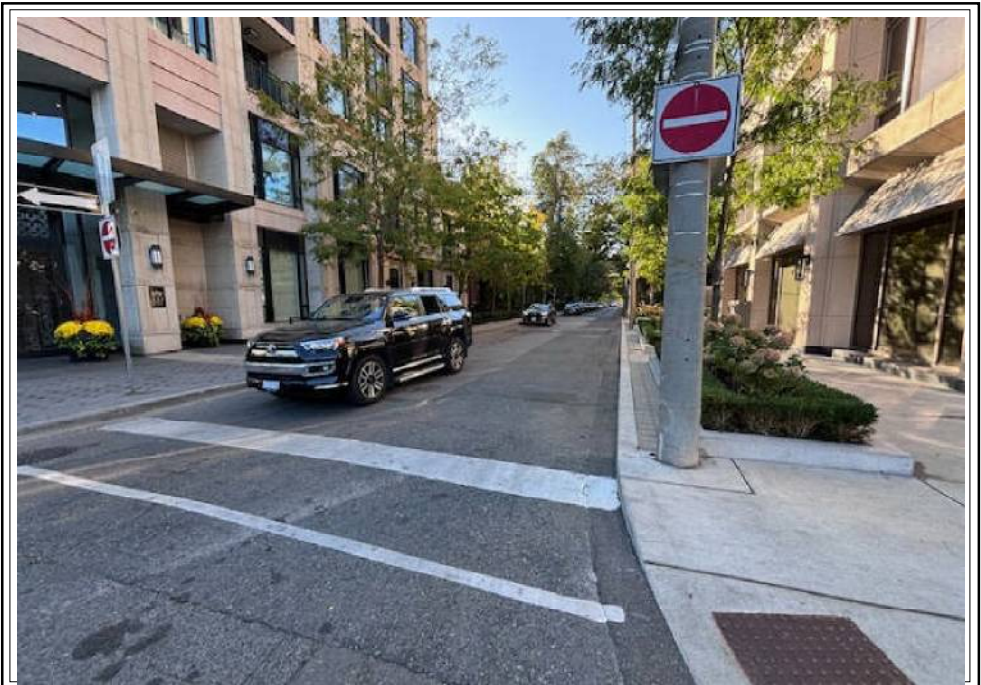


**FRONT VIEW OF
SUBJECT PROPERTY**

Appraised Date: October 18, 2024
Appraised Value: \$ 12,165,000



**REAR VIEW OF
SUBJECT PROPERTY**



STREET SCENE

Borrower: Not Applicable	File No.: 24100115A
Property Address: 128 Hazelton Avenue #901	Case No.:
City: Toronto	Prov.: Ont. P.C.: M5R 1J3
Lender: KSV Advisory Inc.	



COMPARABLE SALE #1

36 Hazelton Avenue #5B
 Toronto, Ont. M5R 2E2
 Sale Date: May 15, 2024
 Sale Price: \$ 9,150,000/ \$:



COMPARABLE SALE #2

50 Yorkville Avenue #4501
 Toronto, Ont. M5R 0A3
 Sale Date: June 21, 2024
 Sale Price: \$ 8,400,000/ \$:



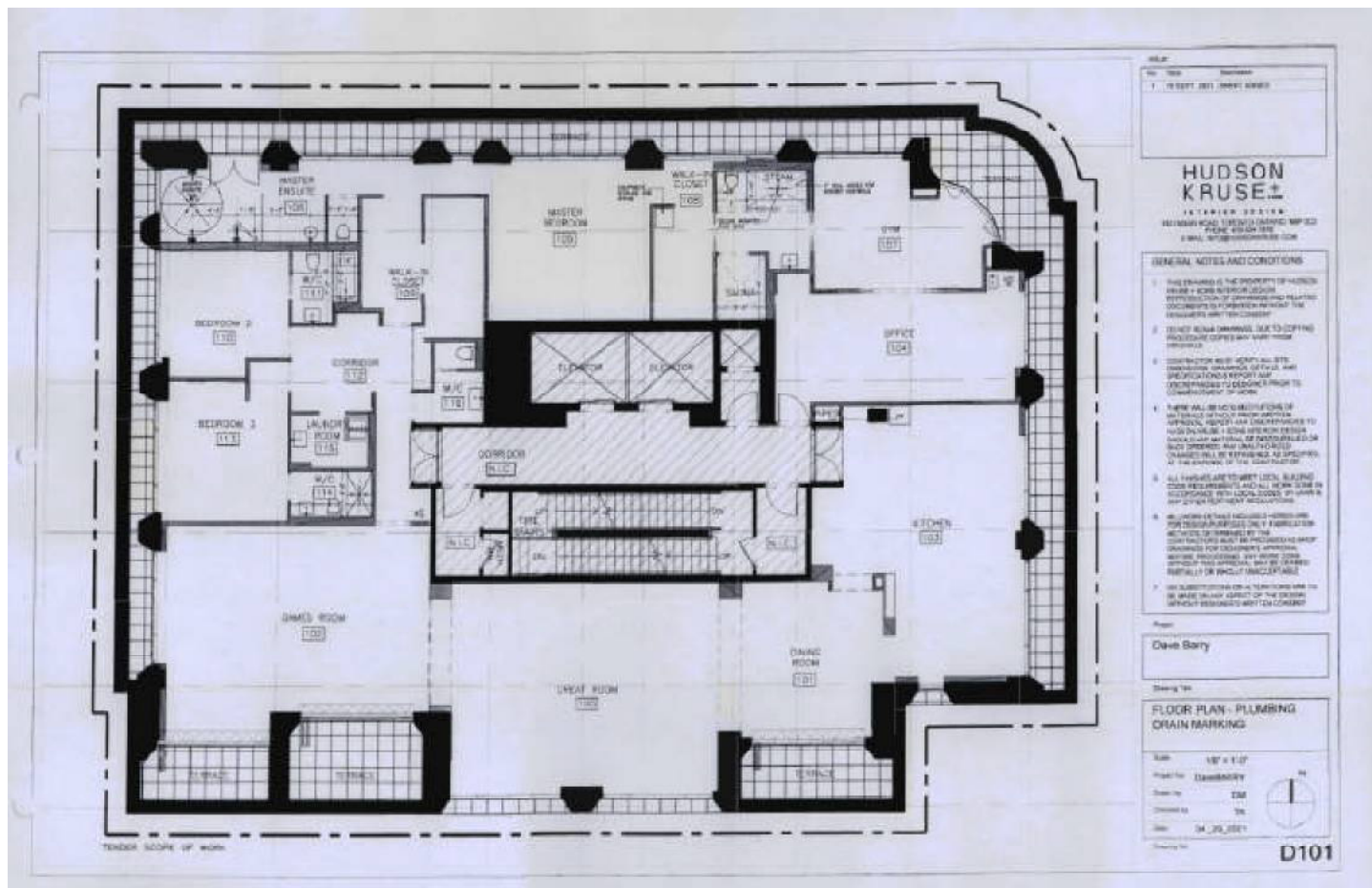
COMPARABLE SALE #3

50 Yorkville Avenue #4303
 Toronto, Ont. M5R 0A3
 Sale Date: April 23, 2024
 Sale Price: \$ 9,775,000/ \$:

FLOORPLAN

Borrower: Not Applicable
Property Address: 128 Hazelton Avenue #901
City: Toronto
Lender: KSV Advisory Inc.

File No.: 24100115A
Case No.:
Prov.: Ont. P.C.: M5R 1J3



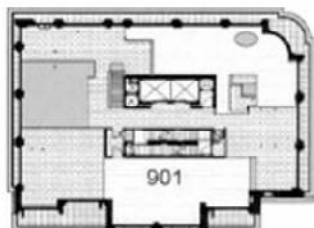
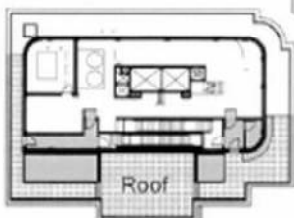
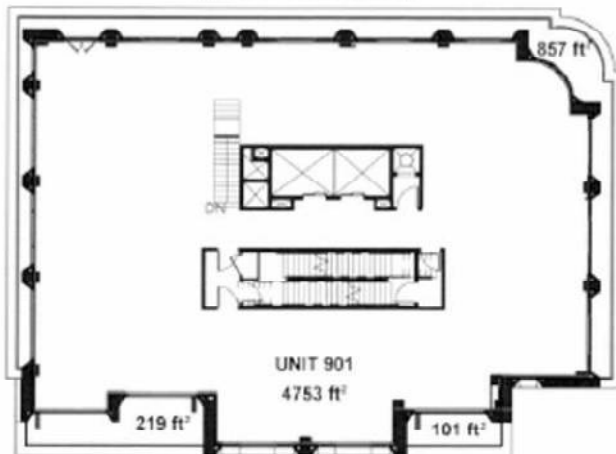
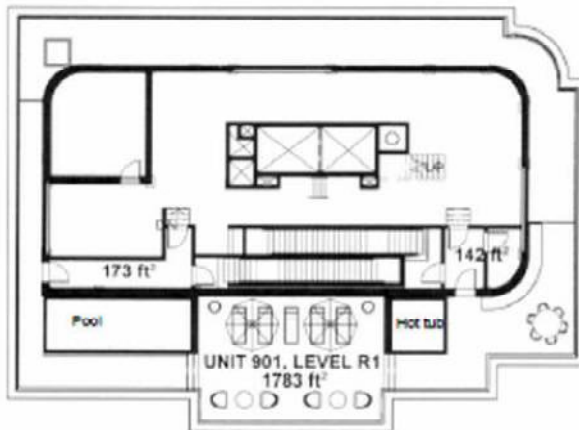
FLOORPLAN

Borrower: Not Applicable	File No.: 24100115A
Property Address: 128 Hazelton Avenue #901	Case No.:
City: Toronto	Prov.: Ont. P.C.: M5R 1J3
Lender: KSV Advisory Inc.	

SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE

SKETCH

Level 9, Legal Unit No UNIT 1



SUITE AREA INT (9th & R1): 5068 ft²
SUITE AREA EXT (9th & R1): 2960 ft²

*AREAS TO BE VERIFIED BY
KRCMAR SURVEYORS LTD.

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

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



Purchaser Acknowledgement

Aug 16, 2019
Date

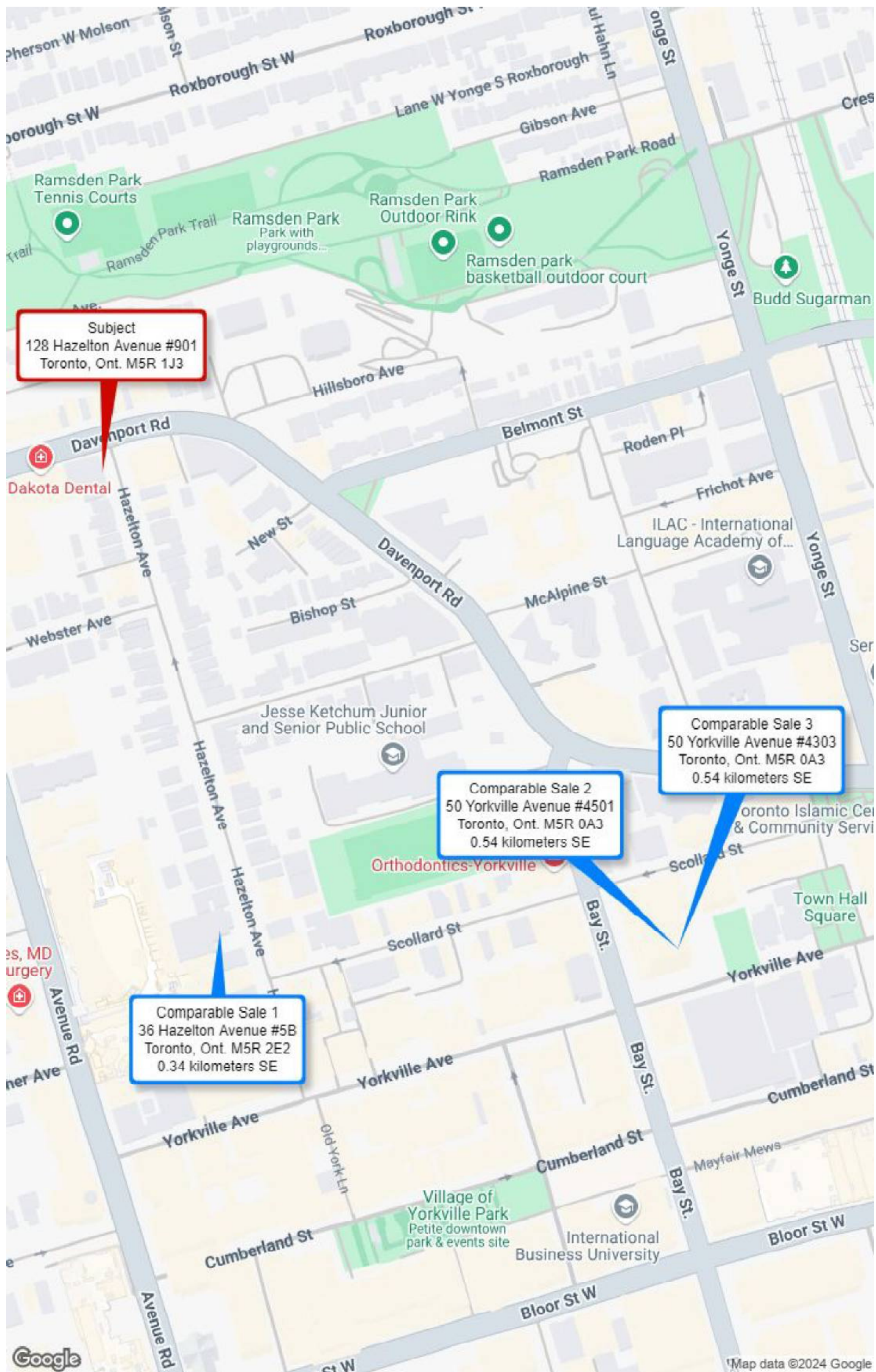


128 HAZELTON AVENUE
TORONTO, ONTARIO

UNIT 901 UPPER LEVEL AND R1

LOCATION MAP

Borrower: Not Applicable	File No.: 24100115A	
Property Address: 128 Hazelton Avenue #901	Case No.:	
City: Toronto	Prov.: Ont.	P.C.: M5R 1J3
Lender: KSV Advisory Inc.		



AERIAL MAP

Borrower: Not Applicable
Property Address: 128 Hazelton Avenue #901
City: Toronto
Lender: KSV Advisory Inc.

File No.: 24100115A
Case No.:
Prov.: Ont. P.C.: M5R 1J3



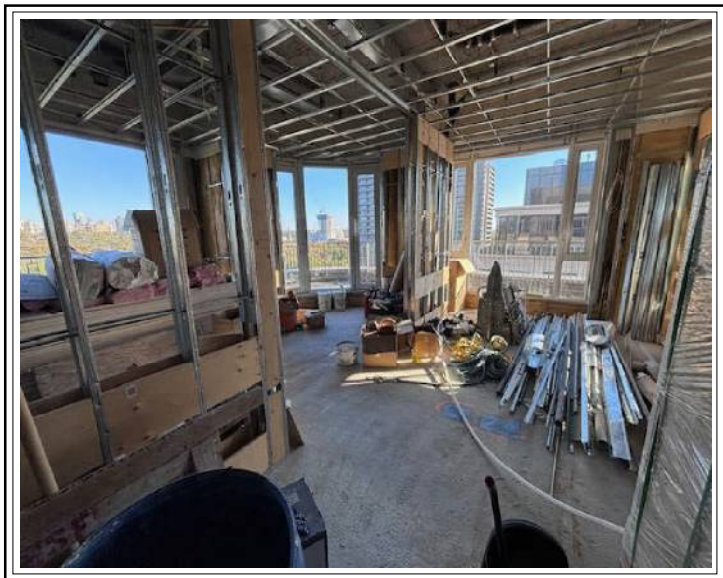
Subject
128 Hazelton Avenue #901
Toronto, Ont. M5R 1J3

INTERIOR PHOTOS

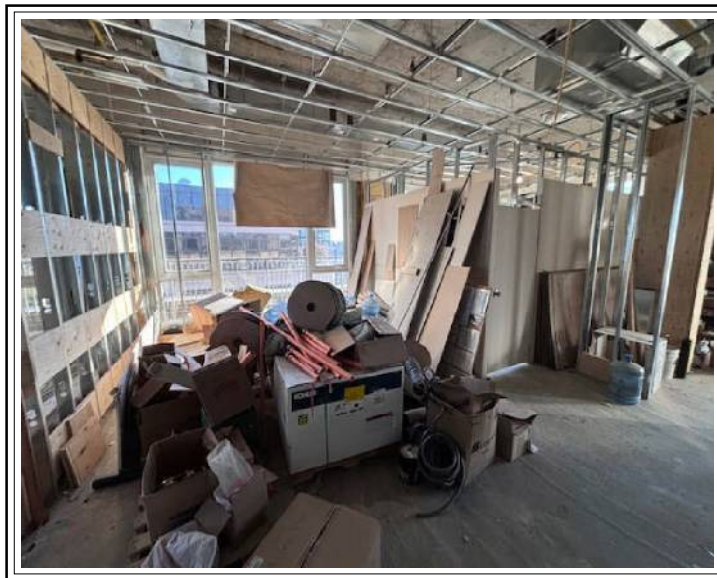
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Borrower: Not Applicable
Property Address: 128 Hazelton Avenue #901
City: Toronto
Lender: KSV Advisory Inc.

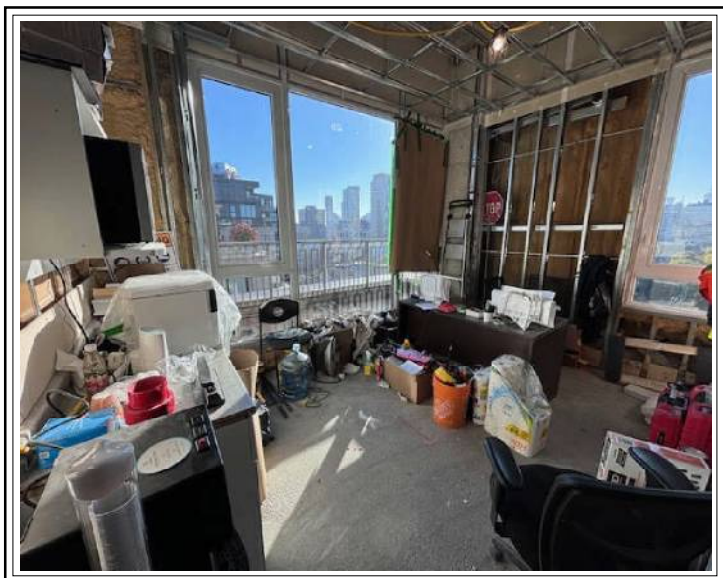
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Case No.:
Prov.: Ont. P.C.: M5R 1J3



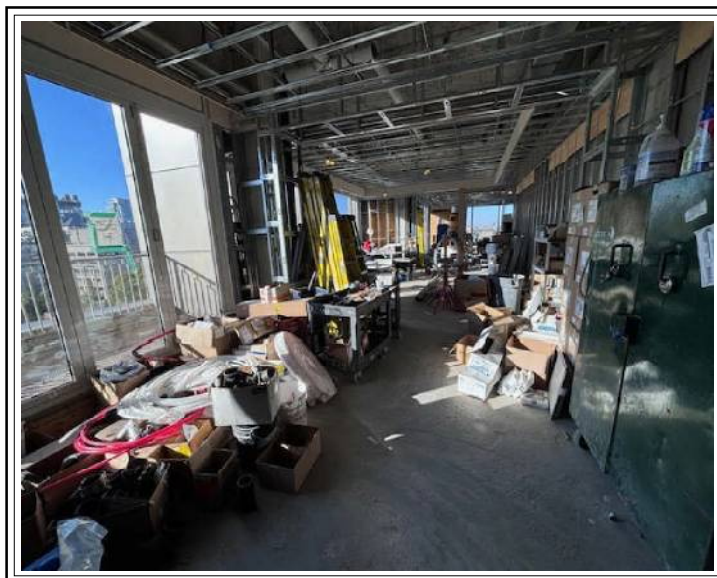
Interior



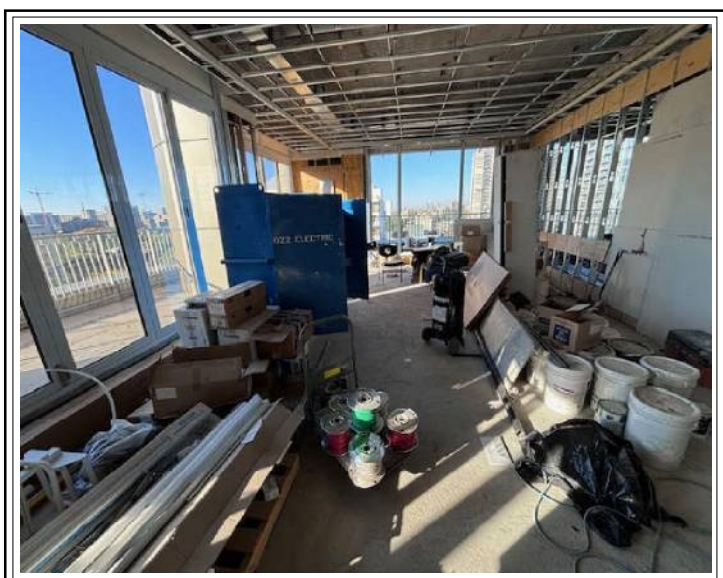
Interior



Interior



Interior



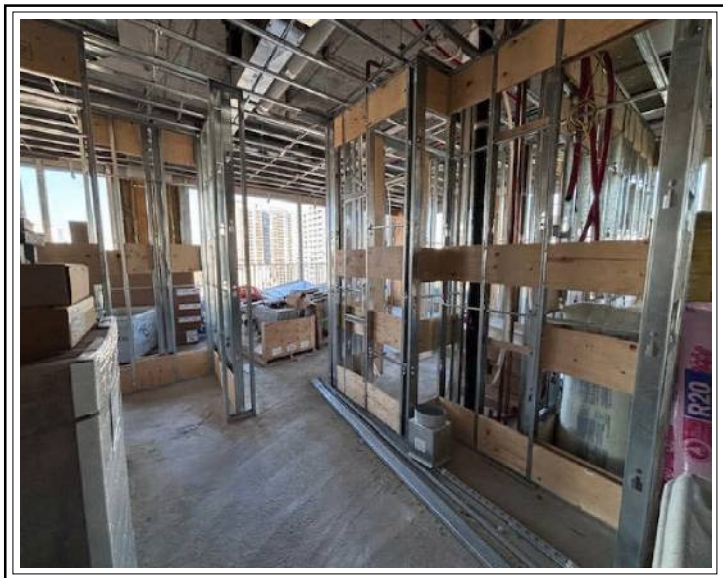
Interior



Interior

Borrower: Not Applicable
Property Address: 128 Hazelton Avenue #901
City: Toronto
Lender: KSV Advisory Inc.

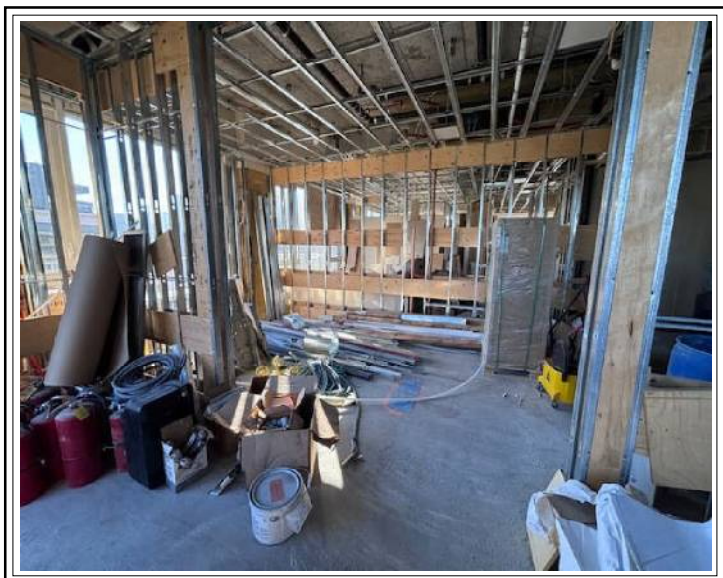
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Case No.:
Prov.: Ont. P.C.: M5R 1J3



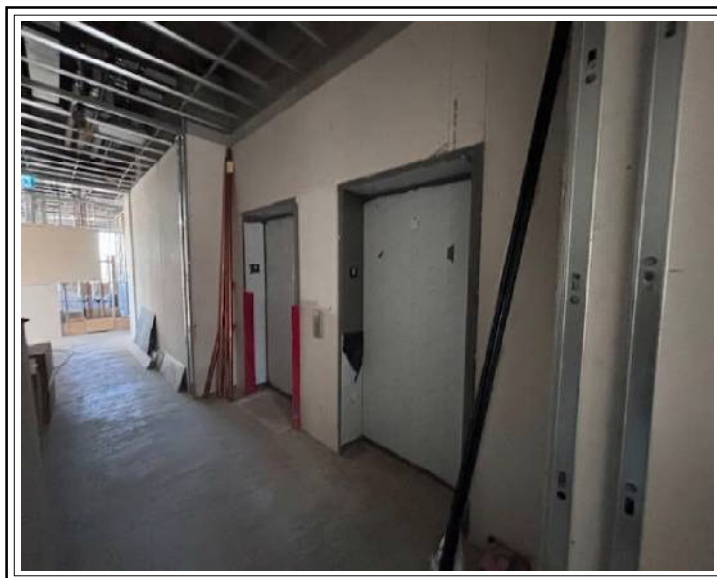
Interior



Interior



Interior



Interior
Direct Elevator Access



Balcony

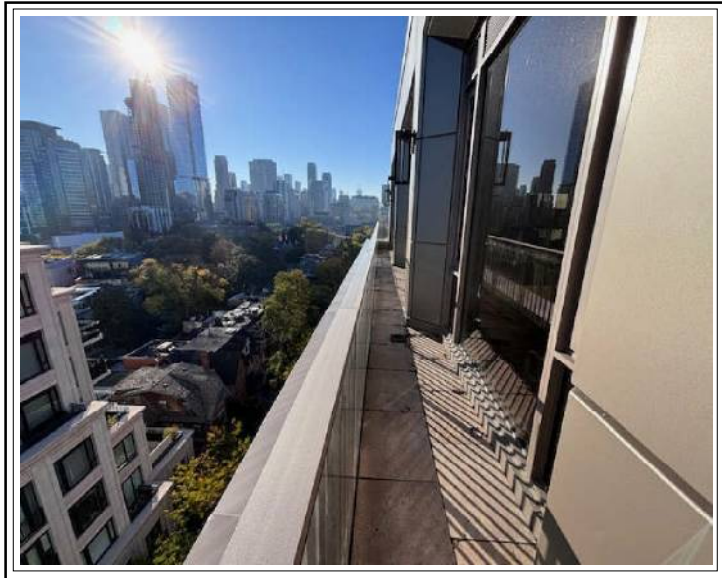


View facing North East

Borrower: Not Applicable	File No.: 24100115A
Property Address: 128 Hazelton Avenue #901	Case No.:
City: Toronto	Prov.: Ont.
Lender: KSV Advisory Inc.	P.C.: M5R 1J3



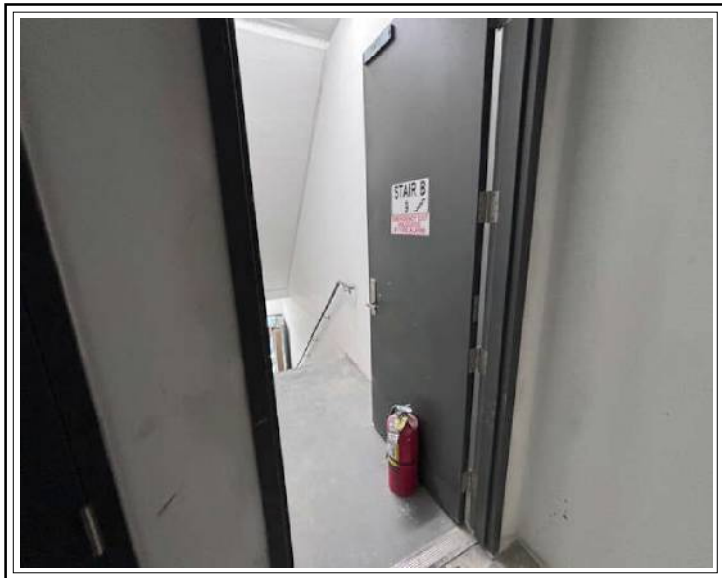
Balcony



Balcony



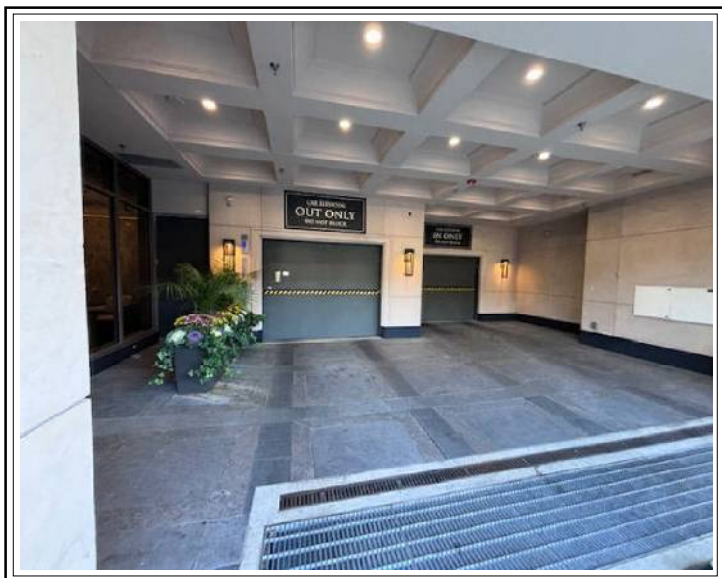
View facing South



Exit to Stairs



Balcony

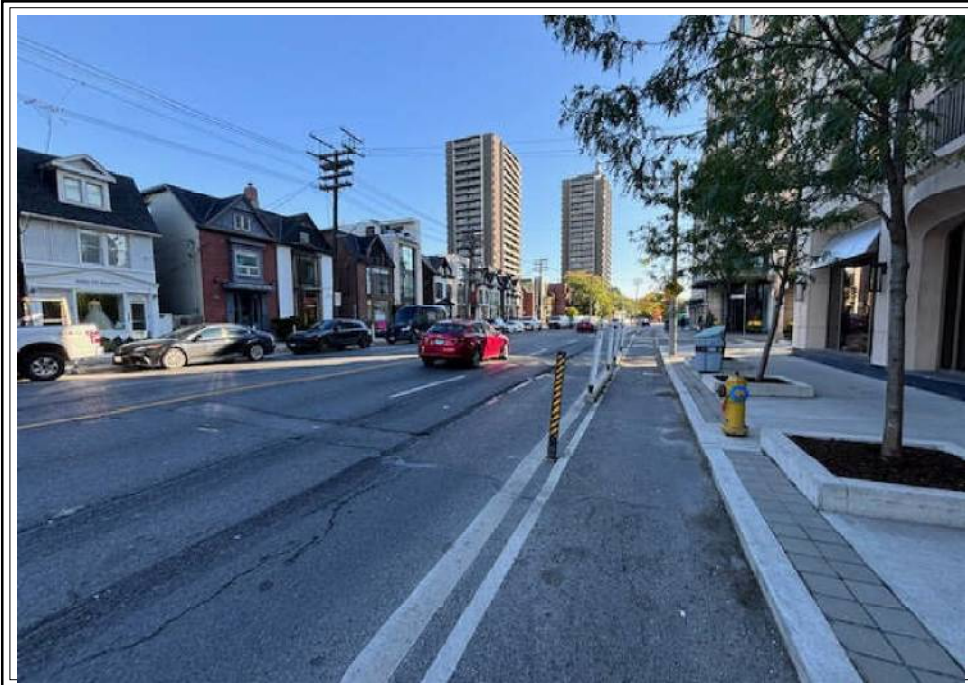


Other

Parking Garage Entrance located on the North side of the building

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Case No.:
Prov.: Ont. P.C.: M5R 1J3



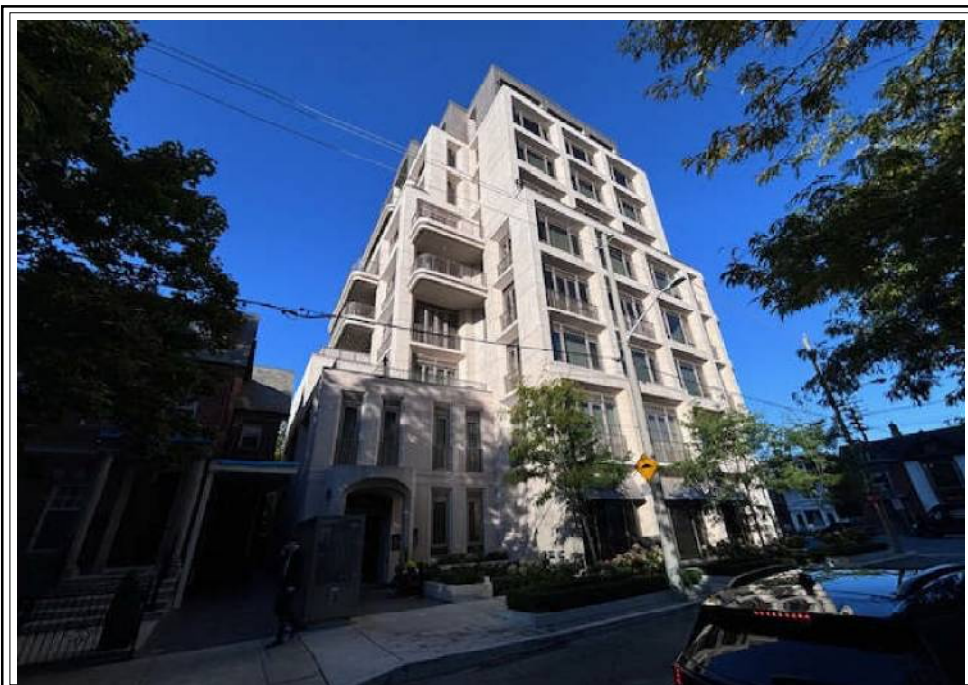
Other

Comment:
Street View facing East from Davenport
Road



Other

Comment:
Building Entrance from Hazelton Avenue



Other

Comment:
View of the subject building from
Hazelton Avenue

SCOPE OF THE APPRAISAL

The Scope of the Appraisal contains the necessary research and analysis to prepare a report in accordance with its intended use. The following are comments which describe the extent of the procedures used in the collection, confirmation and reporting of the information involved in preparing this report.

The following scope of work includes sections for all types of residential assignments. Please disregard those sections not relevant to the property being appraised.

The scope of work refers to the due diligence undertaken by the appraiser including the terms of reference from the client. The scope refers to the type of information researched and analysis applied. Scope includes, but is not limited to, the extent of inspection, research into physical and economic factors that could affect the property, data research, verification, and inspection of comparables and analysis applied.

This current appraisal complies with the Standards of the Appraisal Institute of Canada. We are competent in this type of appraisal analysis and have appraised this type of property previously.

Publications produced by the local authority provided information on applicable land use controls. Sources of market evidence included, as appropriate, the local real estate board, Land Title Office transactions - including those reported by local assessors, real estate agents, vendors and purchasers active in the market. Fidelity National Information Solutions (Teelapoint), Teranet (GeoWarehouse). Municipal Property Assessment Corporation (MPAC) and location municipalities provided information on the state of title.

We did no completed technical investigations such as : detailed inspections or engineering review of the structure, roof or mechanical systems; an environmental review of the property, a site of building survey; investigations into the bearing qualities of the soils; or audits of financial and legal arrangements concerning the leases, if any.

The analysis set out in this report relied on written and verbal information obtained from a variety of sources we considered reliable. Unless otherwise slated herein, we did not verify client-supplied information, which we believed to be correct. The mandate for the appraisal did not require a report prepared to the standard appropriate for court purposes or for arbitration, so we did not fully document or confirm by reference to primary sources all information herein.

The local municipality was not contacted to determine if the subject buildings have any municipal property standards work orders registered against them. The local fire department was not contacted to determine if the subject buildings comply with fire regulations. However, the estimate of market value contained in this report requires that the subject buildings are in compliance with the above regulations.

This appraisal provides an assessment of the market value of the subject buildings based on their general conditions and characteristics. This is not a report on the structural integrity of the buildings or whether any major repairs are required. The services of a structural engineer, professional contractor or licensed tradesman may be required to advise on these matters.

The market value for the land has been determined by using the comparison approach to value. The most relevant information has been selected from the market and analyzed to support the site value used in this report. This information is contained in the files of the appraiser at the above address.

The cost approach has been utilized as if it is a requirement of the form and requested by the client. While sometimes requested by lenders, the cost approach is not typically used by purchasers or vendors in the marketplace, particularly with respect to older homes. Further, there is little or no empirical evidence to support the rates of depreciation used in the approach other than that indicated by the comparable sales used in the comparison approach. Accordingly, the cost approach is not necessarily a reliable indicator of market value and the reader is warned not to rely on the value indicated in the cost approach in this report, nor to use it to determine the fire insurance to be placed on the property. If a cost approach has not been included in this report, the rationale is that the subject residence is not new and has a significant level of accrued depreciation, an estimate of which would be difficult to substantiate.

The income approach to value has not been used in this appraisal report, as the market does not view the subject property as one that lends itself to the criteria of an investment property.

The appraiser is not qualified to comment on environmental issues that may affect the market value of the property appraised, including but not limited to pollution or contamination of land, buildings, water, groundwater or air. Unless expressly stated, the property is assumed to be free and clear of pollutants and contaminants, including but not limited to moulds or mildew of the conditions that might give rise to either, and in compliance with all regulatory environmental requirements, government or otherwise, and free of any environmental condition, past, present or future, that might affect the market value of the property appraised. If the party relying on this report requires information about environmental issues then that party is cautioned to retain an expert qualified in such cases. We expressly deny any legal liability relating to the effect of environmental issues on the market value of the property appraised.

CONSTANTINE ENTERPRISES INC. -and-
Applicant

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

Respondents

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

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

Proceeding commenced at Toronto

**THIRD REPORT OF THE RECEIVER
DATED JANUARY 10, 2025**

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Fax: 416.216.3930

Lawyers for the Receiver

CONSTANTINE ENTERPRISES INC. -and-
Applicant

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

Respondents

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

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

Proceeding commenced at Toronto

**MOTION RECORD
(Disclaimer of Agreement of
Purchase and Sale)**

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Toronto, ON M5K 1E7

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Lawyers for the Receiver