

**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

**RESPONDING MOTION RECORD OF DAVID BERRY
(Disclaimer of Agreement of Purchase and Sale)**

January 29, 2025

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AND TO: THE SERVICE LIST

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INDEX

TAB	DOCUMENT DESCRIPTION	PG NOS.
1.	Affidavit of David Berry, affirmed January 29, 2025	07 – 49
A.	Exhibit A ~ Agreement of Purchase and Sale, dated April 21, 2016	50 – 98
B.	Exhibit B ~ Amendment to Agreement of Purchase and Sale, dated May 15, 2017	99 – 109
C.	Exhibit C ~ United States Securities and Exchange Commission, Form 10-K, Yappn Corp., dated July 27, 2017	110 – 130
D.	Exhibit D ~ Email from C McCannell, dated August 7, 2024	131 – 135
E.	Exhibit E ~ Share Register Photographs	136 – 138
F.	Exhibit F ~ Agreement between D Beswick and D Berry re Unit 802, dated November 13, 2019	139 – 140

TAB	DOCUMENT DESCRIPTION	PG NOS.
G.	Exhibit G ~ Email from A Brown, dated April 16, 2020	141 – 158
H.	Exhibit H ~ Amendment to the Agreement of Purchase and Sale, dated April 13, 2020	159 – 160
I.	Exhibit I ~ Letter to J Renihan, dated September 12, 2024	161 – 166
J.	Exhibit J ~ Email Exchange with Mizrahi Developments re 128 Hazelton penthouse	167 – 180
K.	Exhibit K ~ Letter from A Brown, dated February 5, 2021	181 – 182
L.	Exhibit L ~ Google Maps Screen Capture	183 – 184
M.	Exhibit M ~ Invoice Rental Accommodation in Rosseau, ON	185 – 188
N.	Exhibit N ~ Royal Oak Lease Agreement, dated April 21, 2022	187 – 193
O.	Exhibit O ~ Woodbine Lease Agreement, dated August 14, 2022	194 – 226
P.	Exhibit P ~ Oro-Medonte Lease Agreement, dated September 6, 2023	227 – 231
Q.	Exhibit Q ~ Summary of Moving Expenses	232 – 238
R.	Exhibit R ~ Storage Receipts	239 – 263
S.	Exhibit S ~ Storage Payments	264 – 265
T.	Exhibit T ~ Quotation re Finishes	266 – 268
U.	Exhibit U ~ Invoice for Finishes	269 – 272
V.	Exhibit V ~ Bathtub's Packing List	273 – 274
W.	Exhibit W ~ Text message to Mr. Mizrahi	275 – 276
X.	Exhibit X ~ Email exchange, dated February 7 – 27, 2024	277 – 284
Y.	Exhibit Y ~ Audio Recording, dated March 8 2024	285 – 286
Z.	Exhibit Z ~ Audio Recording, dated May 2, 2024	287 – 288
AA.	Exhibit AA ~ Audio Recording, dated May 10, 2024	289 – 290
BB.	Exhibit BB ~ Audio Recording, dated May 29, 2024	291 – 292

TAB	DOCUMENT DESCRIPTION	PG NOS.
CC.	Exhibit CC ~ Audio Recording, dated May 30, 2024	293 – 294
DD.	Exhibit DD ~ Audio Recording, dated May 30, 2024	295 – 296
EE.	Exhibit EE ~ Audio Recording, dated June 5, 2024	297 – 298
FF.	Exhibit FF ~ Affidavit of R Hiscox, sworn February 23, 2024	299 – 318
GG.	Exhibit GG ~ Factum of CEI, dated April 26, 2024	319 – 345
HH.	Exhibit HH ~ Endorsement of J. Cavanagh, dated May 13, 2024	346 – 356
II.	Exhibit II ~ Loan Agreement, dated June 29, 2016	357 – 450
JJ.	Exhibit JJ ~ Term Sheet, dated June 6, 2016	451 – 459
KK.	Exhibit KK ~ Letter re Additional parking space, dated April 16, 2020	460 – 461
LL.	Exhibit LL ~ Supplementary Agreement, dated June 28, 2016	462 – 469
MM.	Exhibit MM ~ Hazelton Project Photos	470 – 475
NN.	Exhibit NN ~ Amending Agreement, dated October 12, 2021	476 – 481
OO.	Exhibit OO ~ Agreement of Purchase and Sale – Unit 1102, dated October 27, 2021	482 – 523
PP.	Exhibit PP ~ Agreement of Purchase and Sale – Unit 1103, dated October 27, 2021	524 – 565
QQ.	Exhibit QQ ~ Letter to D Trafford, dated October 22, 2024	566 – 572
RR.	Exhibit RR ~ Loan calculation	573 – 574
SS.	Exhibit SS ~ Letter to J Renihan, dated September 5, 2024	575 – 577
TT.	Exhibit TT ~ Letter to J Morse, dated September 9, 2024	578 – 580
UU.	Exhibit UU ~ Letter to J Renihan, dated September 19, 2024	581 – 586
VV.	Exhibit VV ~ Letter to J Renihan, dated October 22, 2024	587 – 592
WW.	Exhibit WW ~ Letter to M O'Brien, dated September 11, 2024	593 – 595
XX.	Exhibit XX ~ Letter to J Morse, dated September 13, 2024	596 – 598

TAB	DOCUMENT DESCRIPTION	PG NOS.
YY.	Exhibit YY ~ Expenses spreadsheet summary	599 - 609
2.	Affidavit of Justin Kersten, affirmed January 27, 2025	610 - 616
A.	Exhibit A ~ Construction Budget Reconciliation	617 – 618
B.	Exhibit B ~ Construction Costs per Original Design, per Wise Nadel	619 – 622
C.	Exhibit C ~ Construction Costs 9th Floor, as per Hudzon Cruze	623 – 625
D.	Exhibit D ~ 128 Hazelton Ave, Toronto - April 2016 Plan - Take-Off	626 – 632
E.	Exhibit E ~ 128 Hazelton Ave, Toronto - April 2016 Plan - Take-Off	633 – 639
F.	Exhibit F ~ Email exchange with J Keith	640 – 644
G.	Exhibit G ~ Email exchange with J Keith	645 - 647

TAB 1

**ONTARIO
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AFFIDAVIT OF DAVID BERRY

(Affirmed January 29, 2025
re: Motion to Disclaim APS)

I, **DAVID BERRY**, of the City of Toronto, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am the purchaser of Unit 901 at the Hazelton Project pursuant to the APS that
that is the subject of the motion returnable February 21, 2025 (all as defined below). As
such, I have knowledge of the matters set out herein. Where I rely on information
provided to me by others, I state the source of the information and believe it to be true.

2. I swear this Affidavit in opposition to the Receiver’s motion for an Order authorizing
it to disclaim the Agreement of Purchase and Sale dated August 16, 2019 (the “**APS**”)

between myself and Mizrahi (128 Hazelton) Inc. (“**Hazelton**”) in respect of Unit 901 of the condominium project located at 126 Hazelton Avenue and 128 Hazelton Avenue (“**Unit 901**” or the “**Unit**”), Toronto, Ontario (the “**Hazelton Project**”) and all agreements related thereto.

3. I have reviewed the Third Report of the Receiver dated January 10, 2025 (the “**Third Report**”) filed by KSV Restructuring Inc. (the “**Receiver**”) in its capacity as the Receiver and Manager of Hazelton and Mizrahi 128 Hazelton Retail Inc. The Third Report misstates material facts regarding my APS and the various “Side Agreements” (as defined by the Receiver) connected to the APS. In this affidavit, I have endeavoured to correct those facts. I note that the Receiver was not involved in any way with either the negotiations or the business involving the APS or any related agreements.

4. The Hazelton Project is a nine-storey, 20-unit luxury condominium development project. As set out in this affidavit, I purchased Unit 901 and I verily believe that I am entitled to have that transaction closed immediately as:

- (a) I had fully paid for Unit 901 prior to the commencement of these proceedings and/or there were no amounts owing for Unit 901 prior to the commencement of these proceedings;
- (b) Before the Receiver was appointed, I agreed to close on the Unit notwithstanding the state of the Unit or any deficiencies in the work contemplated under the APS; and

- (c) Before the Receiver was appointed, I had received repeated assurances from Constantine Enterprises Inc. (“**CEI**” or “**Co-owner**”), who is both the co-owner of Hazelton along with Mizrahi Developments Inc. (“**MDI**”) and the Applicant in these proceedings, that my APS would be honoured and that CEI just needed to wait until the Receiver was appointed before my Unit could be closed. The Co-owner expressly stated in its affidavit for the appointment of the Receiver that the existing APSs would be honoured and that the role of the Receiver was to sell the unsold units, which position was expressly relied upon by the Honourable Justice Cavanagh in his decision appointing the Receiver.

5. The Receiver has brought this motion to now disclaim my APS after I had been given, and relied upon, repeated representations and assurances by CEI and its agents that my APS would be honoured, which representations they repeated in sworn evidence filed in these proceedings. Neither CEI nor the Receiver have any basis to renege on the representations and commitments made to me to get my support at the outset of these proceedings.

6. Furthermore, and importantly, the Receiver’s position is premised on a misapprehension of what is required to close the APS. As explained in greater detail below, there is no need for the Receiver to undertake any further work contemplated by the APS; the APS can and should be closed on an as-is, where-is basis and I will be left with an unsecured claim in the estate for any deficiencies, and I will proceed to complete the Unit as I see fit. Neither the Receiver nor the Co-owner can justify the disclaimer or a refusal to close the transaction on the basis that Hazelton did not complete all of the work

contemplated by the APS. The Co-owner owns 50% of Hazelton and only became the senior secured creditor in an attempt to save the project – its first and primary role in this development is as Co-owner and not a third-party, arm’s-length lender. Allowing it to disclaim in this circumstance would allow the Co-owner to profit from its own failing to properly manage its own company and the development. The Co-owner should not be permitted to shift its losses onto me (whether associated with its position as a 50% owner of the project or from its later purchase of its’ companies’ distressed debt) under the guise of a “disclaimer” when the unit can simply be closed on an as-is, where-is basis, as I had agreed to do prior to the appointment of the Receiver.

7. Based on the Receiver’s Third Report, I am more than fully paid up to take the Unit on an as-is, where-is basis. The chart below reflects the various payments cited in the Receiver’s Third Report and shows that once the cost to complete the unit (as calculated in the Receiver’s Appraisal Report) is credited against the remaining balance, the unit is more than fully paid up.

Event	Price Impact
Original APS Price	\$13,250,000
Deposit (cash)	(1,250,000)
Deposit (Yappn Shares)	(2,000,000)
Assignment of Unit 802	(6,107,756)
Finishings Advance	(800,000)
Cost to Complete Unit (per Appraisal)	(3,215,000)
TOTAL OWING	\$(122,756)

8. For the reasons set out below, I respectfully ask that this Honourable Court to:

- (a) dismiss the motion; and
 - (b) direct the Receiver to forthwith close the APS and transfer Unit 901 to me on the basis that:
 - (i) the transfer shall be done on an as-is, where-is basis, with no obligation on the Receiver to incur any expense other than the normal and customary expenses a vendor would incur on the closing of a transaction;¹ and
 - (ii) any additional costs required with such closing will be paid for by me.
9. I have organized my affidavit into the following sections:
- (a) The Original APS;
 - (b) The Additional \$2 Million Share Advance;
 - (c) The Amounts Received by Hazelton Through the Assignment of Unit 802;
 - (d) Lack of Progress on Construction of Unit 901;
 - (e) CEI Repeatedly Assured Me that the APS Would be Honoured;
 - (f) CEI Confirmed the APS Would be Honoured in its Court Materials and After the Receivership Order was Granted; and

¹ In the alternative, in the event that the Receiver does not even have the funds for such costs, I will provide financing to the Receiver for such costs.

(g) The Ottawa Loan Guarantee.

A. The Original APS

10. On April 21, 2016, I entered into an agreement of purchase and sale for two units in the Hazelton Project, namely units 901 and 802 (the “**Original APS**”). My original plan was to combine the two units to create a single residential unit, as reflected at Schedule “A” to the Original APS. A copy of the Original APS is attached to this Affidavit at **Exhibit**

A.

11. The total purchase price for the two units was \$13,250,000. The Original APS provided that the price included certain finishings that would be obtained, paid for and installed by Hazelton. Those finishings were itemized at Schedule “B” to the Original APS.

12. Per the terms of the Original APS, I forwarded a deposit of \$2,650,000 to Hazelton.

13. Schedule “A” to the Original APS was a unit plan / sketch that set out the proposed unit plan.² Schedule “A” consists of two pages, the first representing the proposed rooftop level and the ninth floor level, and the second representing the proposed eighth floor level.

14. According to Schedule “A”, the total planned Suite Area of the combined unit was 6,947 square feet. Of this, the rooftop consisted of 165 square feet of indoor space, the ninth floor consisted of 3,844 square feet of indoor space (for a total indoor square footage of 4,009 square feet), and the eight floor part of the unit consisted of 2,938 square feet. Based on the measurements in Schedule “A”, the price per square foot of the combined indoor space for Unit 901 was \$1,907.30.

² Schedule A to Original APS, at **Exhibit A**, Responding Motion Record (“**RMR**”) Tab 1.

15. The Original APS was amended and supplemented on a series of occasions to: (a) provide for a further \$2,000,000 advance against the purchase price by way of a transfer of shares in Yappn Corp., which transfer was effected; (b) permit the assignment of Unit 802 to a different buyer and to revise the Unit 901 finishings; (c) add an additional parking space to Unit 901; and (d) reflect the fact that I was going to make further advance payments to facilitate the purchase of finishings that Hazelton was supposed to source and pay for under the Original APS. These amendments are discussed below in greater detail. Other agreements that also involved my APS, which conferred on me the ability to close on my Unit without having to advance any further funds, are discussed below in this affidavit beginning at paragraph 80. These agreements are all also discussed in detail below.

B. The Additional \$2 Million Share Advance

16. At the time I entered into the Original APS, I was a significant shareholder in a publicly traded company called Yappn Corp (“**Yappn**”), which was a company that specialized in providing translation services.

17. Shortly after entering into the APS, I came to an agreement with Hazelton that I would provide a further advance of \$2,000,000 which would be payable by way of Yappn shares (the “**Yappn Shares**”).³ This agreement was memorialized in an agreement dated April 28, 2016 (“**April 2016 Yappn Agreement**”). The April 2016 Yappn Agreement was later rescinded and in effect incorporated into the Original APS through an agreement

³ See Articles 2.1 and 2.3 of First Amended APS, dated May 15, 2017 **Exhibit B**, RMR Tab 1.

amending the Original APS dated May 15, 2017 (the “**First Amended APS**”).⁴ A copy of the First Amended APS concerning the Yappn Shares is attached as **Exhibit B**.

18. Pursuant to the First Amended APS, the Original APS was amended to provide that the purchase price was payable in part through the transfer of \$2,000,000 worth of share units in Yappn (just like the April 2016 Yappn Agreement), and that the share units were deemed to be an interest free advance by the Purchaser to the Vendor of \$2,000,000 against the Purchase Price.⁵

19. Under the First Amended APS, the Yappn Shares were to vest on or before October 31, 2018 (“**Vesting Date**”), at which time Hazelton would become the owner of record of the shares, and the shares would then be held in escrow pending closing or termination of the APS.⁶ Depending on the value of the Yappn Shares on the Vesting Date, the purchase price of the Original APS could increase by up to \$1 million or decrease by up to \$2 million (the “**Purchase Price Adjustment**”).⁷

20. Attached as **Exhibit C** is an excerpt from Yappn’s publicly filed Form 10-K dated July 27, 2017, for the year ended May 31, 2017.⁸ The 10-K lists “ITF Mizrahi (128 Hazelton) Inc.” as the beneficial owner of 8,954,934 shares, amounting to over 14% of the company.⁹

⁴ See Article 5.8 of First Amended APS, dated May 15, 2017, **Exhibit B**, RMR Tab 1.

⁵ See Articles 2.1 and 2.3 of First Amended APS, dated May 15, 2017, **Exhibit B**, RMR Tab 1.

⁶ See Article 4.1 of First Amended APS, dated May 15, 2017, **Exhibit B**, RMR Tab 1.

⁷ See Article 3.1 of First Amended APS, dated May 15, 2017, **Exhibit B**, RMR Tab 1.

⁸ United States Securities and Exchange Commission, Form 10-K, Yappn, dated July 27, 2017 for the fiscal year ended May 31, 2017 (the “**10-K**”), Part II, Item 12, Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters, attached hereto at **Exhibit C**, RMR Tab 1.

⁹ 10-K, page 56, **Exhibit C**, RMR Tab 1.

21. I have asked the former CFO of Yappn, Craig McCannell (“**Mr. McCannell**”), to confirm for me Hazelton’s holdings of Yappn shares. On August 7, 2024, he sent me an email attaching a photograph of a page of the Yappn shareholder register (which appears to have a print date of October 20, 2017), which listed Hazelton as the beneficial owner of 8,954,934 share units as of that date. Attached as **Exhibit D** is a copy of an email to me with a copy of the share register reflecting the issuance of the shares to Hazelton, including the number of shares and certification number. Attached as **Exhibit E** is a copy of the photos Mr. McCannell attached to his email to me. The information in the share registry accords with the company’s publicly filed 10-K referred to above.¹⁰

22. The number of shares that were transferred to Hazelton was calculated based upon the VWAP¹¹ formula set out in the First Amended APS, which accounted for the USD – CAD exchange rate given that Yappn was traded in USD on US exchanges.

23. By my best recollection, I delivered a notice of vesting by hand to Sam Mizrahi (“**Mr. Mizrahi**”) on or around September 1, 2017. The price of the shares at the time of vesting had not deviated sufficiently from the price at transfer to require an adjustment to the purchase price. At all times, Hazelton and I understood and operated according to the \$2,000,000 share deposit having been applied to the purchase price without having caused adjustment either up or down.

24. While I note that the Receiver has raised concern that the Yappn Shares no longer retain their value, that is simply a reflection of the risk taken by Hazelton as part of the

¹⁰ Email from Craig McCannell dated August 7, 2024, **Exhibit D** and **Exhibit E**, RMR Tab 1.

¹¹ “VWAP” refers to the Volume Weighted Average Price.

agreement, which stood to benefit from any rise in value that may have occurred while it was the registered owner of the shares.

C. The Assignment of Unit 802

25. By August 2019, no progress had been made on my Unit specifically, but the building was well under construction. By that time, the value of land in Toronto and luxury condos generally, and Unit 802 specifically, had increased considerably since I purchased Unit 802 in 2016. At that time, I was interested in realizing on some of this gain in value and decided to do so by revising the plans for my Unit by selling Unit 802 and keeping Unit 901.

26. In order to effect this plan, I began discussions with Hazelton, and later David Beswick (“**Mr. Beswick**”), who had already purchased Unit 801, which took up the other half of the eight floor. We discussed possibly assigning Unit 802 to Mr. Beswick so that he could combine Units 801 and 802 to create a whole-floor unit, while I would retain the entire ninth floor and the rooftop.

27. During my discussions with Hazelton about the assignment, it was agreed that the simplest and best way for me to effect my plan to realize the increase in value of Unit 802 was for me to sever Unit 802 from Unit 901 and then assign the APS for Unit 802 to the purchaser who was Mr. Beswick. To effect the severance and assignment in a manner that accounted for the increase in the value of Unit 802, I needed to allocate the original purchase price of \$13,250,000 between the two units in a manner that insured that I received the increase in value in Unit 802. During my discussions with Hazelton, it was determined that this would most easily be done by (i) setting the price in the new APS for

Unit 802 that Mr. Beswick would sign as the price that he and I negotiated; and (ii) then setting the purchase price that I would pay for Unit 901 as the difference between the price I had agreed to pay for both units under the First Amended APS (\$13,250,000) less the price set in the new APS for Unit 802. This would result in Hazelton receiving the price agreed to in the First Amended APS, and I would crystalize the increase in market value through the reduction of the purchase price that I would pay.

28. Hazelton required that it receive the commission of \$267,932 (plus HST) to agree to the severance.

29. In order to effect this plan, we had to first sever the two units, which required that each Unit 802 and Unit 901 would have their own new APS and the \$13,250,000 purchase price had to be allocated between the two units. Hazelton and I agreed on the following mechanism: (a) the original price in the new APS for Unit 802 would be my estimate of what Mr. Beswick would ultimately agree to pay; and (b) the original price in the new APS for Unit 901 would be set as the delta between that estimate and \$13,250,000. The new APSs were later amended to reflect the actual price Mr. Beswick agreed to pay for Unit 802, such that the combined purchase price to be paid to Hazelton between the two APSs would remain as \$13,250,000.

30. In order to achieve this, on August 16, 2019, the First Amended APS was terminated and replaced with two separate agreements of purchase and sale: a new APS for Unit 901 (the "**Updated Unit 901 APS**"),¹² and a Unit 802 APS (the "**Unit 802 APS**").

¹² Receiver's Motion Record, Appendix G to Receiver's Report, pp. 135.

31. The Updated Unit 901 APS provided an updated square footage for the ninth floor and rooftop, now reflecting 5068 sq ft (interior) and 2960 sq ft (exterior) at Schedule “A”, as well as an update to the inclusions, features and finishes for Unit 901 at Schedule “B”.

32. Mr. Beswick and I negotiated the price of the unit to be assigned for some time, and on November 13, 2019, I accepted an offer from Mr. Beswick for us to arrange the assignment on the basis of him purchasing Unit 802 for the per square foot price of \$2,234.00, and an amount on account of a repayment of my deposit on the Unit in three tranches (“**Beswick Offer**”). I located a copy of this agreement, which is attached as **Exhibit F**.¹³

33. In advance of the assignment, on or about April 13, 2020, Hazelton and I further amended the purchase price of Unit 901 and the yet to be assigned Unit 802 to reflect the unit price derived from the Beswick Offer. The square footage of Unit 802 as calculated at the time was 2,734 sq ft, which translated into a total price for Unit 802 of \$6,107,756.00.¹⁴ Thus, the price at which I was to obtain Unit 901 was adjusted to \$7,142,244.00, being the difference between the combined purchase price of \$13,2500,00 in the First Amended APS and the Unit 802 Assignment price of \$6,107,756.00. This price increase was memorialized in an amendment to my APS, attached as **Exhibit H**.

34. During these proceedings, my counsel advised the Receiver’s lawyer on September 12, 2024¹⁵, that—as of that time—my best recollection was that the

¹³ November 13, 2019 Agreement between David Beswick and David Berry re Unit 802 price, **Exhibit F**, RMR Tab 1.

¹⁴ April 16, 2020 email from Amanda Brown of Hazelton, attached as **Exhibit G**, RMR Tab 1.

¹⁵ A copy of this letter from my counsel is attached as **Exhibit I**, RMR, Tab 1.

adjustment of the purchase price for units 802 and 901 on April 13, 2020, was done primarily for tax purposes. Having now reviewed again the Beswick Offer and the related correspondence, I now recall that the price changes occurred to reflect the price at which Mr. Beswick was in fact prepared to pay for the unit versus the figure that I initially attributed to each unit pursuant to the mechanism described above.

35. On April 14, 2020, I assigned my interest in the Unit 802 APS to Mr. Beswick for the agreed upon price. Part of the deal involved the transfer of \$1,400,000 of my initial deposit under the Original APS, which he repaid to me in tranches. This left my deposit for the Updated Unit 901 APS as \$1,250,000.

D. Lack of Progress On Construction of Unit 901

36. When I decided to buy Unit 901 and make it my principal residence, I was excited and looking forward to the move to a Yorkville condo from my previous home in Toronto. As detailed above, I have invested significant capital and expenditures, and time and energy, to design and build Unit 901 into the home that I had dreamt it to be. Having invested over \$5 million into the Unit, it is a financially meaningful transaction.

37. Unfortunately, the construction and build-out of my Unit was repeatedly delayed. From 2020 through 2023, I asked Mr. Mizrahi on numerous occasions for updates about the status of my Unit. He provided me with an array of reasons for the delays and assured me repeatedly that the construction was on track within various renewed timelines. For example, in November 2020 I sent to MDI and my designers asking them to proceed with finishing the penthouse, and on February 5, 2021 I received a letter from Ms Brown requesting my complete Interior Design package as “the finishing of your suite is

imminent”. A copy of this email and a copy of this letter are each attached as **Exhibit J and K**. Based on the assurances that I received from Mr. Mizrahi, Ms. Brown, and MDI in 2020 and 2021, I sold my other home in Toronto in January 2022 on the basis that my Unit would be completed only a few months later. While I appreciate that the COVID-19 pandemic may have caused some delays (despite the fact that much construction work was exempted from lock-downs), there was no apparent reason why Unit 901 was not ready in mid-2022 as I had been assured. In fact, the building was complete in 2020, and I understood that a number of units were occupied in and around that time. Attached as **Exhibit L** is a copy of a screen shot from Google Maps showing the building as of June 2021.¹⁶ Accordingly, given that we had reduced the scope of the project through the assignment of Unit 802, I believed that we would close on Unit 901 in 2022.

38. As a result of delays in the closing of Unit 901 (including the delays caused by the Receiver’s and CEI’s refusal to close on the sale of Unit 901), up until October 2024, I had been living in a series of rental accommodations for approximately three years. My spouse and I opted to live in a series of rental accommodations as we thought that we would be able to move into Unit 901 in 2022, and then in 2023, and then in 2024, so we did not wish to enter into a more permanent living situation. Due to the delays in construction of Unit 901, we lived in four separate rental accommodations, until October 2024, costing us a total of approximately \$475,000:

¹⁶ Screenshot of the Hazelton Project as at June 2021, **Exhibit L**, RMR, Tab 1.

- (a) From January 28, 2022 until July 28, 2022, we lived in a rental accommodation in Rosseau, Ontario at a rate of \$18,000 per month, totalling \$90,000. A copy of this invoice is attached as **Exhibit M**;
- (b) From July 2022 until June 2023, we lived in a rental accommodation at Royal Oak, the total of which cost \$235,000. A copy of this lease is attached as **Exhibit N**;
- (c) From June 2023 until October 2023, we lived in a rental accommodation at Woodbine Ave. in Toronto, the total of which cost \$30,000. A copy of this lease is attached as **Exhibit O**;
- (d) From October 2023 to October 2024, we lived in a rental accommodation in Oro-Medonte, Ontario, at a rate of \$10, 000 per month, totalling \$120, 000. A copy of this lease is attached as **Exhibit P**.

39. In addition to the rental costs I incurred, I also I incurred additional expenses such as moving expenses between each of these rental accommodations and storage expenses for my belongings while awaiting the completion of Unit 901 totalling \$273, 000¹⁷, as well as other related expenses.¹⁸ A summary of my moving expenses is

¹⁷ A spreadsheet summary I prepared displaying what I spent is attached as **Exhibit YY**.

¹⁸ These expenses included but are not limited to approximately \$450, 000 (\$200, 000 of which I have already paid) on decorators responsible for decorating, drafting and designing the interiors of my Unit (named Maxine Tissenbaum and Trevor Kruse), approximately \$45, 000 to DBF for their Reconciliation (as defined in the Affidavit of Justin Kersten, affirmed on January 27, 2025) and approximately \$7, 000 per month to them for ongoing consultancy work regarding the construction of and finishings of my Unit, and engaging a separate valuator to do an a reconciliation for approximately \$25, 000.

attached as **Exhibit Q** and copies of storage space receipts and payments are attached as **Exhibit R** and **S**.

40. Finally, in mid-2022, after I had already sold my home, and notwithstanding any previous assurances that Unit 901 was nearly complete, Mr. Mizrahi informed me that the Hazelton Project was short on funds to complete the build-out of my Unit. I was shocked. He had provided me with repeated assurances that the project would be completed, and while I was aware of additional delays by that point in time, at no point did he advise me that Hazelton would not have sufficient funds to complete the build-out with the finishings.

41. In order to resolve this issue, I entered into an agreement regarding the finishings of Unit 901 dated October 2, 2022 (the “**Finishings Agreement**”), whereby I agreed to advance a payment of \$800,000 to fund the build-out of the finishings of my Unit.¹⁹ These monies were not paid on an accelerated basis for the purpose of funding Hazelton’s own operations – they were specifically an advance for the purpose of facilitating the completion of Unit 901 and were to only be used for such purposes. The Finishings Agreement specifically provided 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.”²⁰

42. In addition, I agreed to directly pay certain suppliers for various finishings (the “**Direct Supplier Payments**”) that were supposed to have been sourced and paid for by Hazelton as such finishings and work was included in the scope and revised purchase

¹⁹ Receiver’s Motion Record, Appendix J to Receiver’s Report, pp. 181-182.

²⁰ Finishings Agreement, RMR, Appendix J to Receiver’s Report, pp. 182.

price under the APS.²¹ I personally sourced and paid from these custom finishes from China, and they were delivered to the Hazelton Project, and continue to sit in Unit 901 until this day.

43. On November 7, 2022, I entered into an agreement with Hazelton by way of a new Statement of Critical Dates and Tarion Addendum (the “**Date Amendment**”). The Date Amendment changed the outside occupancy date for Unit 901 to December 29, 2023.²²

44. I have reviewed a copy of the affidavit of Justin Kersten (“**Mr. Kersten**”) of Den Bosch + Finchley (“**DBF**”) affirmed January 27, 2025. I agree with his calculations of the pricing adjustments resulting from change in the scope of the project due to the April 2020 assignment of Unit 802. As noted by Mr. Kersten, DBF calculated that the construction costs for Unit 901 were \$514,043.41 lower following the assignment than before.

E. CEI repeatedly Assured Me That The APS Would Be Honoured

45. Despite the delays and further accelerated payments that I made, Unit 901 was still not completed by January 2024.

46. On or about January 11, 2024, I received a phone from Robert Hiscox (“**Mr. Hiscox**”). Although I mostly dealt with Mr. Mizhari with respect to the Hazelton Project, I had been introduced to Mr. Hiscox and knew him to be representing one of the partners

²¹ These finishings included, but are not limited to, a 6ft stone bathtub, stone sinks, toilets, a bronze fireplace, and a bronze skylight. By way of example, attached as **Exhibit T** is a quotation from a supplier in China for a number of finishes including marble and brass finishes totalling \$97, 866, attached as **Exhibit U** is a an invoice from a supplier in China for finishes including an arch, a skylight, and a fireplace totalling \$120, 030, and attached as **Exhibit V** is a packing list for a bathtub I purchased from a Chinese supplier which cost roughly \$50, 000. These examples are examples but not the extent of custom finishes I paid for that were delivered to and remain in Unit 901 today.

²² Receiver’s Motion Record, Appendix K to Receiver’s Report, p. 184

of the Hazelton Project. During our call, Mr. Hiscox, on behalf of Hazleton, offered to simply close the transfer of Unit 901 on an as-is, where-is basis (“**As-is Where-is Offer**”) with the estimated cost to complete the unit could be deducted from the purchase price.

47. During this phone conversation, Mr. Hiscox did not advise me or make any comment about CEI planning to buy out secured debt of Hazelton’s senior secured lender, DUCA Credit Union (“**DUCA**”), such that it was considering or planning to purport to elevate itself from its position as 50% partner in the project to the senior secured lender, nor did he suggest that CEI was considering putting the Hazelton Project into receivership or any other insolvency proceeding. Mr. Hiscox also did not advise me that if I did not agree to close on an as-is, where is basis that CEI would directly or indirectly (through a restructuring process or through a receiver) seek to terminate my APS without returning the millions of dollars that I had already invested (through deposits, forgone loan repayments, the Finishings Agreement, Direct Supplier Payments in place of Hazelton, or otherwise).

48. Following this phone call, on or about January 11, 2024, Mr. Mizrahi sent me a text message reiterating the As-is Where-is Offer.²³

49. Having already paid amounts for Unit 901 to be completed and the build-out of the finishings completed (including through the Finishings Agreement and Direct Supplier Payments), I was frustrated that Mr. Mizrahi and Mr. Hiscox were now suggesting that I should just agree to take the Unit as-is, where-is and then pay again to have someone do

²³ A copy of Mizrahi’s text message reiterating the As-is Where-is Offer is attached at **Exhibit W**, RMR Tab 1.

the work that I had already paid Hazelton to do. I also thought that their estimate that it would cost an additional \$2.3 million to complete the unit was a low estimate, and the proposal would have made me even more out of pocket on the deal. Considering this and considering that Hazelton was obligated to complete the Unit (and they did not say that they could not complete the Unit), I did not accept the As-is Where-is Offer at the time. The As-is Where-is Offer did not have an expiry date, and when I communicated my acceptance of the As-is Where-is Offer to both Mr. Mizrahi and Mr. Hiscox on May 30, 2024, it had not been revoked.

50. On February 2, 2025, Mr. Mizhari reached out to me. During that conversation, he advised me that CEI had acquired the senior secured debt from DUCA.

51. In addition, I learned that CEI's office in the 128 Hazelton building had just been completed, was being furnished, and Mr. Mizrahi's office was nearly complete. This was extremely frustrating for me, as the Co-Owners of the building were prioritizing the build out of their own spaces over the build out of my Unit despite being jointly responsible for the delays experienced by unit holders and the financing of the project. CEI had taken out DUCA's debt, but to my knowledge it had not provided financing for the completion of my Unit. I had also advanced funds under the Finishing Agreement specifically ear marked for my Unit, which, to my knowledge, had not been used to advance my Unit.

52. I had sold my home in Toronto, spent millions on this Unit, and could not simply hope for the best. I had purchased Unit 901 in part because I understood that Edward Rogers ("**Mr. Rogers**"), the Chairman of Rogers Communications Inc. (**Rogers**), was a

principal of the Co-owner. I decided to try to contact Mr. Rogers through intermediaries to discuss the matter before escalating the matter.

53. On February 5, 2024, I reached out to a friend of mine, Nitin Kawale (**Mr. Kawale**), who I knew had connections with Mr. Rogers since Mr. Kawale was a former President of the Enterprise Business Unit at Rogers. In an email dated February 7, 2024, I laid out a synopsis of the progress that was made on my Unit at Hazelton from 2016 to 2024, and how I was disappointed in both Mr. Mizrahi and CEI. I explained that, at that time, I believed that I had no choice but to escalate the matter. I also explained that I had been contacted by a journalist who wanted me to provide information for an article. A copy of this email is attached as **Exhibit X**.

54. On February 7, 2024, Mr. Kawale forwarded my email to Michael Krstajic (**Mr. Krstajic**), a senior executive at Rogers who had previously worked for Mr. Kawale. He asked Mr. Krstajic to discuss the matter with Mr. Rogers so that the matter could be resolved quickly without legal escalation. A copy of this email is also attached to the email thread at **Exhibit X**.

55. Shortly thereafter, on or about February 9, 2024, Mr. Kawale spoke to me by phone and advised me that he had spoken to Mr. Krstajic. He advised me that Mr. Krstajic advised him that Mr. Krstajic had raised the issue, and that Mr. Kawale should tell me to “chill”, wait three weeks, and that Mr. Rogers was aware of the situation and he would do the right thing.

56. On or about February 25, 2025, I was advised by Mr. Mizrahi that CEI was going to seek the appointment of a receiver over the Hazelton Project.

57. About that time, I again reached out to Mr. Kawale and asked that he follow-up with Mr. Krstajic as I had not heard from CEI.

58. On February 27, 2024, Mr. Kawale followed up with Mr. Krstajic by email, and also copied Thomas Turner (**Mr. Turner**), another senior executive at Rogers. Mr. Turner responded, explaining that he had spoken to Mr. Rogers, and that he would speak to him “again” as Mr. Turner was “sure he [Mr. Rogers] thought it was handled”. That same day, Mr. Turner emailed Mr. Kawale, saying that Mr. Hiscox would reach out to me. A copy of this email chain is attached as **Exhibit X**.

59. When I next spoke to Mr. Hiscox on or about March 8, 2024, he stated that he was not happy that I “went over his head”. But we began to have more detailed discussions about Mr. Mizrahi’s actions and misconduct. Mr. Hiscox shared with me that CEI was bringing an application to appoint a receiver in respect of the Hazelton Project as a result of Mr. Mizrahi’s misconduct. He provided me with assurances that this step would be beneficial for me, that my APS would be honoured, and that I should just be patient.

60. During that phone call and others that followed, Mr. Hiscox advised me of the following:

- (a) **March 8, 2024** – Mr. Hiscox assured me that he was aligned with my interests, stating, in response to my asking him whose side he was on, that “I am on the side of the suckers who believed in the guy” [referring to Mr. Mizrahi]. Mr. Hiscox also told me that once the Receiver was appointed and a new developer was selected to complete the building that the building would be finished off and the Receiver would “close things out”.

- (b) **May 2, 2024** – I asked Mr. Hiscox what the plan was once the Receiver was appointed. Mr. Hiscox confirmed that the plan was to finish off the units and close on them, specifically stating that was the plan for “all the units”.
- (c) **May 10, 2024** – Mr. Hiscox stated that nothing could be done regarding my Unit until the Receiver was appointed, and that the Receiver would do everything “with the owners” [referring to those who had APSs]. Mr. Hiscox also again confirmed that my Unit was on the list with the other units to get finished off and closed.

61. Based on these various communications and phone calls with Mr. Hiscox and having been advised by Mr. Roger’s emissaries through Mr. Kawale that Mr. Hiscox was the person to deal with, I accepted and believed Mr. Hiscox’s assurances that the APSs would be honoured. Given the state of affairs, I relied upon and preferred CEI’s representations through Mr. Hiscox over any information from Mr. Mizrahi.

62. Attached as **Exhibits Y** to **EE** are copies of recordings that I took of my phone conversations with Mr. Hiscox. (These recordings were previously provided by my counsel to counsel for CEI on or about September 12, 2024.)

63. During this period, I was aware that Mr. Mizrahi was trying to oppose the receivership application and was trying to arrange alternative financing.

64. On May 30, 2025, I had a conversation with Mr. Mizrahi. He advised me that despite what I had been told by Mr. Hiscox, CEI was not going to honour my APS and that their plan was to have the Receiver appointed and to terminate my APS.

65. During that conversation, I told Mr. Mizrahi that I accepted the As-is Where-is Offer and (as described below) I confirmed that acceptance in writing by a text message to Mr. Mizrahi.²⁴ Mr. Mizrahi advised that I had to speak to Mr. Hiscox, as he was no longer had authority to transact for Hazelton.

66. Until that phone call, Mr. Mizrahi carried himself to be the principal of MDI and a director and officer of Hazelton with full control to manage, bind and speak on behalf of its projects, including the Hazelton Project. Furthermore, despite my direct dealings with Mr. Hiscox, before this call he never told me that Mr. Mizrahi did not have or would not have authority to represent or bind the Hazelton Project.

67. Given the work that I then understood needed to be done, the amounts that I had paid and would have to pay to complete Unit 901, I believed that I would lose money by accepting the As-is Where-is Offer. Nonetheless, given that Hazelton appeared to have simply not done any work on Unit 901 since I first spoke to Mr. Hiscox about the As-is Where-is Offer, having lost faith in Hazelton, and faced with some information that Mr. Hiscox might not have straight with me, I sent a text message to Mr. Mizrahi stating that I was accepting the As-is Where-is Offer and verbally communicating my acceptance to Mr. Hiscox in a phone conversation on or about May 30, 2024. A copy of the text message I sent to Mr. Mizrahi advising that I was accepting the is attached as **Exhibit W**.

²⁴ A copy of Mizrahi's text message reiterating the As-is Where-is Offer is attached at **Exhibit W**, RMR Tab 1.

68. When I spoke with Mr. Hiscox on May 30, 2024, I repeatedly advised him that I was accepting the As-is Where-is Offer and wanted to close on Unit 901 right away. During this call, I was adamant that I intended to close on Unit 901 immediately.

69. During that call, Mr. Hiscox also stated that I could not now close on Unit 901 and I would have to wait until a receiver was appointed before taking any further steps with respect to closing. However, during that call and another on the same day, Mr. Hiscox also told me that Mr. Mizrahi and CEI had closed on units 304 and 402 in Hazelton. He told me that despite the fact that units 304 and 402 had closed, CEI (not Hazelton) would “not be closing” on any other units on the basis that there were issues with other the closing of other units, and he suggested that that closing my Unit would disrupt the appointment of a receiver. It has never been explained to me by Hazelton, CEI or Mr. Hiscox how any of the excuses made by Mr. Hiscox to not close on my Unit before the appointment of a receiver were true, such as how the closing of Unit 901 would interfere with the appointment of a receiver, or why issues with the closing of other units impacted the closing of my Unit on an as-is where-is basis.

70. Mr. Hiscox also advised me that the only way to close on Unit 901 before the receivership was to amend my APS and that he was not amenable to amending the APS until after the Receiver was appointed, at which point an amendment could be made. He reiterated numerous times on this call that an amendment could be done once the Receiver was appointed, and that the closing of the Unit could only move forward with such plans once the Receiver was appointed.

71. During my calls with Mr. Hiscox on May 30, 2025, he also repeatedly urged me to take no action in opposing the Receivership Application, assuring me that my APS would be honoured once the Receiver was appointed.

72. In reliance upon these repeated representations, assurances and statements from Mr. Hiscox, and given the fact that I was told by Mr. Rogers' representatives that I could deal with Mr. Hiscox, I believed that I could trust what Mr. Hiscox told me over Mr. Mizrahi, and I relied on his representations.

F. CEI Confirmed The APS Would Be Honoured In Its Court Materials and After the Order Was Granted

73. On June 4, 2024, four days after my conversation with Mr. Hiscox on May 30, 2024, Justice Cavanagh granted the Co-Owner's application for the appointment of the Receiver over Hazelton.

74. The following day, on June 5, 2024, I spoke with Mr. Hiscox by phone and once again told Mr. Hiscox that I wanted to close on Unit 901 further to my acceptance of the As-is Where-is Offer and asked when we can move forward and close on the Unit now that the Receiver was appointed, and Mr. Hiscox said that we needed to wait a few weeks to get things fully operating and running. He did not say at that time that the matter was out of CEI's hands, control or influence, or that the Receiver had the only say and full control in the matter. Rather, he simply said that the matter of the closing of the APSs would have to wait until the appropriate time. Again, based on the assurances that I had received that I should be dealing with Mr. Hiscox, I relied upon his representations to me.

75. I received further comfort about Mr. Hiscox's representations to me when I reviewed a copy of the Court materials that the Co-owner filed in support of its application for the appointment of the Receiver.

76. Mr. Hiscox, on behalf of the Co-owner, swore an affidavit in support of the Receivership Application (the "**Hiscox Affidavit**"). In that affidavit, he testified that the Receiver would take steps to complete the sale of units that were subject to an APS, which would include my Unit. In particular, at paragraph 57 of the Hiscox Affidavit, attached as **Exhibit FF** (without all exhibits), Mr. Hiscox (and hence CEI) testified as follows:²⁵

57. CEI's intention is for the receiver to take steps to complete the sale of units already subject to agreements of purchase and sale, to facilitate the final phase of construction of the Hazelton Project required for completion of units where necessary, and to facilitate the marketing and sale - 18 - of the remaining condominium units in order to realize on the value of the Property and repay creditors. [emphasis added]

77. CEI made a similar representation in their factum in arguing that the appointment of the Receiver was just and convenient at paragraph 59. It argued that "the appointment of the Receiver will: (a) **allow for the completion of the sale of units already subject to agreements of purchase and sale**" and "(b) facilitate the final phase of construction of the Hazelton Project required for completion of units where necessary".²⁶ [emphasis added]. A copy of CEI's factum is attached as **Exhibit GG**.

²⁵ Hiscox Affidavit, para 57, **Exhibit FF**, RMR Tab 1.

²⁶ CEI Factum dated April 26, 2024, at para 59, **Exhibit GG**, RMR Tab 1.

78. In his endorsement granting the Receivership Order (the “**Endorsement**”), Justice Cavanagh twice expressly referred to Mr. Hiscox’s evidence that the Receiver was to honour and close the APSs. At paragraphs 23 and 44, his Honour directly references this evidence when he notes that “CEI’s intention is for the Receiver to take steps to complete the sale of units already subject to agreements of purchase and sale”. A copy of the Endorsement is attached as **Exhibit HH**.

79. On June 21, 2024, I met with Mr. Hiscox at CEI’s office. During this meeting I expressed my relief to Mr. Hiscox that my Unit was now in a position to be completed. In response, Mr. Hiscox then advised that things may have changed due to the appointment of the Receiver, who was in charge and would be deciding what is best for the Hazelton Project. During the discussion, Mr. Hiscox asked if I intended to live in the Unit, and I told him that I did, and that I had sold my house some years prior in anticipation of moving into the building. He told me that the market value of my Unit was approximately \$2,800 per square foot, but I am benefitting from an \$1,100 per square foot purchase price. I reiterated that I accepted the As-is Where-is Offer, but Mr. Hiscox rejected the possibility of closing on that basis.

G. The Ottawa Loan Guarantee

i. The Wellington Loans and Unit 901 Guarantee

80. In addition to the matters referred to above, I am entitled to close on Unit 901 without any further payment due to the impact of the agreements that I made with Hazelton in June 2016 in relation to a different development project located at 1451 Wellington St. Ottawa, Ontario (the “**Wellington Project**”).

81. After I had entered into the Original APS, I agreed to lend \$10 million to MDI, as financing for the Wellington Project.

82. Specifically, I entered into a loan agreement dated effective June 29, 2016, with MDI, Mr. Mizrahi and Mizrahi Development Group (1451 Wellington) Inc. (“**Wellington Inc.**”) (collectively, the “**Mizrahi Parties**”) (the “**Loan Agreement**”). A copy of the Loan Agreement is attached as **Exhibit II**, and a copy of the related Term Sheet dated June 6, 2016, is attached as **Exhibit JJ**.

83. Pursuant to the Loan Agreement, I advanced two loan facilities to MDI: one for \$4,000,000 (**Loan Facility No. 1**), and another for \$6,000,000 (**Loan Facility No. 2**), both accruing interest at a rate of 14.0% per annum, compounded annually (both loan facilities together, the “**Loans**”). The purpose of the Loan was to finance the Wellington Project.

84. Pursuant to section 5 of the Loan Agreement,²⁷ the Loans were secured by, among other things: (i) two promissory notes executed by the Borrower; (ii) a General Security Agreement to be registered under the *Personal Property Security Act* (Ontario); (iii) an assignment of contracts relating to the Wellington Project; (iv) a personal guarantee from Mr. Mizrahi; and (v) a warrant relating to the net profits of the Wellington Project.

85. The Loan Agreement also provided that MDI and Mr. Mizrahi agreed to provide me with an additional parking spot at the Hazelton Project, bringing my total number of parking spots to four.²⁸ My right to the additional parking space was later confirmed to me by letter as received on April 16, 2020, from MDI, Mr. Mizrahi, Hazelton and

²⁷ Loan Agreement dated June 29, 2016, Article 5, **Exhibit II**, RMR Tab 1.

²⁸ Loan Agreement dated June 29, 2016, Article 15.1, **Exhibit II**, RMR Tab 1.

Wellington, in which they confirmed that I was to receive four parking spaces at the Hazelton Project – one more than provided for in the 901 APS.²⁹ A copy of the confirmation of my additional parking spot that amended the 901 APS is attached as **Exhibit KK**.

86. Article 3.6 of the Loan Agreement addresses how that agreement intersects with my purchase of Unit 901. That section provides that in the event the final closing of Unit 901 occurred before the Loans were both repaid, Mr. Mizrahi would unconditionally pay Hazelton any and all amounts that remained outstanding from me in respect of Unit 901 as a bridge loan (a “**Bridge Payment**”) up to a maximum amount equal to the amount of principal remaining outstanding under Loan Facility No. 2 plus all accrued interest under the Loans.³⁰

87. In order to give effect to the arrangements contemplated by Article 3.6, a Supplementary Agreement dated June 28, 2016 (the “**Supplementary Agreement**”) was entered into among Mr. Mizrahi, Hazelton, and myself contemporaneously with the execution of the Loan Agreement. A copy of the Supplementary Agreement is attached at **Exhibit LL**.

88. The Supplementary Agreement contained a “Payments Postponed” provision that directly impacts what I have to pay to close on Unit 901. Under that provision, Hazelton agreed that if the Loans were not repaid and amounts were due and owing, I would not be required to make any additional payments in order to close on my Unit at the Hazelton

²⁹ Letter from Mr. Mizrahi Re Parking dated April 16, 2020, **Exhibit KK**, RMR Tab 1.

³⁰ Loan Agreement dated June 29, 2016, Article 3.6, **Exhibit II**, RMR Tab 1.

Project, and Hazelton would close on my Unit even if Mr. Mizrahi did not provide the funds for the Bridge Payment or personal guarantee as contemplated by the agreements. The provision reads in its entirety:³¹

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.

89. The Supplementary Agreement provided explicitly that it would remain in force and effect and would *only* terminate upon repayment to me of "all amounts due and owing pursuant to Loan Facility #1 and Loan Facility #2".³²

90. Section 6.8 of the Supplementary Agreement provides that it "shall be interpreted and enforce in accordance with its terms notwithstanding any "entire agreement" or similar clause which was contained in any Loan Transaction document"³³ and "may be amended, modified or supplemented only by a written agreement signed by each party hereto."³⁴

91. The Loans have not been repaid.

92. Mr. Mizrahi entered into the Supplementary Agreement in his personal capacity and signed the agreement on behalf of Hazelton as its President (and director and

³¹ Supplementary Agreement, June 28, 2016, Article 5, **Exhibit LL**, RMR Tab 1.

³² Supplementary Agreement, June 28, 2016, Article 6.7, **Exhibit LL**, RMR Tab 1.

³³ Supplementary Agreement, June 28, 2016, Article 6.8, **Exhibit LL**, RMR Tab 1.

³⁴ Supplementary Agreement, June 28, 2016, Article 6.1, **Exhibit LL**, RMR Tab 1.

officer).³⁵ Mr. Mizrahi carried himself before me as having the authority to enter into agreements on behalf of and bind Hazelton. The Hazelton Project was presented as being developed by Mr. Mizrahi (as can be seen from the photos attached as **Exhibit MM**).

93. As pointed out in the Third Report, on the signing page of the Supplementary Agreement, there is a handwritten notation that states “As a representative of Mizrahi Developments I acknowledge this is the only copy of supplementary agreement” which was written by Joshua Lax (“**Mr. Lax**”), the Vice President of Development of MDI.³⁶ In its Third Report, the Receiver suggests that there was something untoward or mischievous behind this note. My recollection does not accord with that suggestion at all.

94. When we signed the Supplementary Agreement we were in the lobby of a building at 133 Hazelton Avenue, Toronto, and the other handwritten note on the signature page was by the witness to the agreement, who was the concierge at 133 Hazelton.³⁷ As I recall, we only had one copy of the Supplementary Agreement to sign, and Mr. Lax’s notation signified that this signed version was the final and official copy, and made clear that each party would not maintain an original of the agreement and that the parties were content that there be only one original with the other receiving a copy (this would prevent someone from making an issue of the fact that I only had a copy, and not an original, of the agreement). Once signed, copies of the Supplementary Agreement were made and provided to the Parties to the agreement. In addition, I recall there being several draft versions and iterations of the Supplementary Agreement that had been exchanged during

³⁵ Supplementary Agreement, June 18, 2016, Page 9, **Exhibit LL**, RMR Tab 1.

³⁶ Supplementary Agreement, June 18, 2016, Page 9, **Exhibit LL**, RMR Tab 1.

³⁷ Supplementary Agreement, June 18, 2016, Page 9, **Exhibit LL**, RMR Tab 1.

the course of negotiations, and there were various revisions that had been made by the Parties prior to finalizing the version that was formally signed and entered into. Mr. Lax's notation also brought clarity as to which was the final version.

95. I am troubled by the suggestion that this notation indicated some untoward intention. I was not aware of any intention to conceal the Supplementary Agreement from CEI. At that time, I had no reason to suspect that Mr. Mizrahi was engaged in any misconduct, whether toward CEI or anyone else. I certainly would not have purchased the unit at Hazelton and then shortly thereafter agree to provide the Loans if I had any such concerns.

96. The Supplementary Agreement has not been amended, and it remains in force and effect. As detailed below, both Loans remain outstanding.

ii. The Amending Agreement to the Loan Agreement

97. On or around October 12, 2021, MDI, Wellington Inc., Mr. Mizrahi and myself entered into an Amending Agreement to the Loan Agreement from June 29, 2016 (the "**Amending Agreement**"), pursuant to which the parties acknowledged that the Loan had matured and the amounts owing under the Loan plus any other indebtedness owing in connection to the Loan would be paid through a series payments to satisfy the amounts remaining to be owed.³⁸ A copy of the Amending Agreement is attached at **Exhibit NN**.

98. Under the Amending Agreement, the amounts under the Loan were to be accounted for and repaid as follows:

³⁸ Amending Agreement, October 12, 2021, Article 2(c), **Exhibit NN**, RMR Tab 1.

- (a) recognizing a prior payment of \$4,000,000 as being attributable to the interest and principal of Loan Facility No. 1;
- (b) corporate shares in 2659100 Ontario Inc. valued at \$7,257,575.87 were to be assigned to me; and
- (c) I would receive a purchase price reduction on two units in the Wellington Project, being Units 1102 and 1103 (“**Wellington Units**”), which were to close within eighteen (18) months of the execution of the Amending Agreement.³⁹ The price of Unit 1102 was \$3,643,375,⁴⁰ and the price for Unit 1103 was \$4,554,300.⁴¹

99. A copy of my executed APS for Unit 1102 is attached at **Exhibit OO**, and a copy of my executed APS for Unit 1103 is attached at **Exhibit PP**.

100. However, the Amending Agreement provided that if the Wellington Units did not close within eighteen (18) months of execution of the APS for those units, then interest at the 14% shall accrue again starting on the day following the eighteen (18) month anniversary of execution of the APS and accrue until registration of the Wellington Project and closing of the Wellington Units occurs.⁴²

³⁹ Amending Agreement, October 12, 2021, Article 2(c)(iii), **Exhibit NN**, RMR Tab 1.

⁴⁰ Agreement of Purchase and Sale, Unit 1102, 1451 Wellington Street, October 27, 2021, Article 1, **Exhibit OO**, RMR Tab 1.

⁴¹ Agreement of Purchase and Sale, Unit 1103, 1451 Wellington Street, October 27, 2021. Article 1, **Exhibit PP**, RMR Tab 1.

⁴² Amending Agreement, October 12, 2021, Article 2(c)(iii), **Exhibit NN**, RMR Tab 1.

101. The two APS were executed on October 27, 2021. The Wellington Units remain unregistered, and we have not closed the sale of those units.

102. Accordingly, pursuant to the Amending Agreement, since the sale of the Wellington Units did not close within 18 months (being April 2023), and still have not closed, the Loan continues to be outstanding and owing, and interest on the Loan recommenced and continues to accrue.⁴³

103. Not all of the payments and credits contemplated under the Amending Agreement were to be applied against the outstanding balance of the Loans since the Amending Agreement also addresses damages that I suffered as a result of the Mizrahi Parties having sold units over which I had a right to purchase. The Loan Agreement granted me an option to purchase the entire penthouse of the Wellington Project.⁴⁴ Unbeknownst to me, subsequent to the execution of the Loan Agreement, the Mizrahi Parties divided the penthouse floors into four separate units and sold two of the units, being Units 1101 and 1104. To resolve the issue of the loss that I suffered, it was agreed that I would receive a \$2,566,200 credit to use at the development at One Bloor Street West, Toronto, Ontario (the “**One Credit**”).⁴⁵ The One Credit was not provided as a repayment towards the Loans and does not impact the amounts outstanding under the Loans.

104. Article 3 of the Amending Agreement provides that, unless as stipulated in the Amending Agreement, “the terms of the Loan Agreement are in all other respects ratified

⁴³ Amending Agreement, October 12, 2021, Article 2(c)(iii), **Exhibit NN**, RMR Tab 1.

⁴⁴ Amending Agreement, October 12, 2021, Article 2(c)(iv), **Exhibit NN**, RMR Tab 1.

⁴⁵ Amending Agreement, October 12, 2021, Article 2(c)(iv), **Exhibit NN**, RMR Tab 1. The credit represented the difference that I would have been able to realize had I taken possession of Units 1101 and 1104 and sold them myself at the prices that they were sold for by MDI.

and confirmed and remain in full force and effect unamended”.⁴⁶ The Amending Agreement stated that the Bridge Payment provision of the Loan Agreement, being Article 3.6 of the Loan Agreement, was to be deleted.⁴⁷

105. Nothing in the Amending Agreement extinguished the Payments Postponed provision of the Supplementary Agreement discussed above, which provided that if any amounts remained outstanding on the Loans the closing of Unit 901 would occur without my having to make additional payments, notwithstanding any amounts that may remain owing. Further, the Amending Agreement amended the Loan Agreement, not the Supplementary Agreement, which could only be amended in writing by a “written agreement signed by each party” to the Supplementary Agreement, which included Hazelton.⁴⁸

106. At all material times up to present day, the Payments Postponed provision of the Supplementary Agreement has been in full force and effect.

iii. The Loan Remains Unpaid and Amounts Remain Owing

107. As mentioned above, the Loan remains due and owing, and neither Loan Facility No. 1 nor Loan Facility No. 2 have been repaid.

108. In or about October 2024, insolvency proceedings under the *Companies' Creditors Arrangement Act* were commenced in respect of the Wellington Project. In the context of

⁴⁶ Amending Agreement, October 12, 2021, Article 3, **Exhibit NN**, RMR Tab 1.

⁴⁷ Amending Agreement, October 12, 2021, Article 2(e), **Exhibit NN**, RMR Tab 1.

⁴⁸ Supplementary Agreement, June 28, 2016, Article **Exhibit LL**, RMR Tab 1.

those proceedings, my counsel sent a letter to Mr. Mizrahi's lawyers, attached as **Exhibit QQ**, in which my counsel set out the calculation of the amounts owing under the Loans, accounting for both the various repayments that had been made over the years and the adjustments agreed to under the Amending Agreement.⁴⁹ That calculation is as follows:

- (a) Interest of 14% began accruing on June 29, 2016, through to October 12, 2021. As at November 4, 2019, the interest and principal owing on Loan Facility No. 1 was \$6,217,126.89.
- (b) On November 4, 2019, a cash payment was made in the amount of \$4,000,000. Pursuant to the terms of the Loan Agreement and the Amending Agreement, this payment exclusively was attributed to the interest that was accruing on Loan Facility No. 1 and the principal of Loan Facility No. 1. This payment brought the balance remaining on Loan Facility No. 1 to \$2,217,126.89.
- (c) The Amending Agreement provided for partial payment of Loan through a transfer of outstanding shares in 2659100 Ontario Inc. ("**Thrive Shares**"), which were valued at \$7,257,575.87.
- (d) The Amending Agreement made no comment on how the Thrive Shares were to be applied to the Loan, and therefore, section 3.5 of the Loan Agreement which provides that interest is to be paid off first, followed by

⁴⁹ Letter from Michael O'Brien to David Trafford, dated October 22, 2024, **Exhibit QQ**, RMR Tab 1.

principal, dictated that the value of the Thrive Shares was to be applied to the interest of both Loan Facility No. 1 and Loan Facility No. 2.

- (e) After the value of the shares were attributed to the interest owed on the Loans, there was \$506,697.19 left to pay down the principal remaining on Loan Facility No. 1.
- (f) The Amending Agreement paused the accrual of interest on the Loan and provided for a purchase price reduction for the Wellington Units (as mentioned above for Units 1102 and 1103, valued at \$3,643,375 and \$4,554,300 respectively). Had they closed within the prescribed time period under the Amending Agreement, the Loan would be retired. However, they did not close within the prescribed timeframe and the accrual of interest recommenced on April 26, 2023.
- (g) No payments have been made since this time, and Loan Facility No. 1 and Loan Facility No. 2 remain unpaid and accruing interest. As of January 27, 2025, the amount outstanding under the \$9,813,728.92.

109. A calculation of the current outstanding amount under the Loan is attached as **Exhibit RR**.⁵⁰

iv. The Confidentiality Provisions and Disclosure of the Agreements

110. On the same day I entered into the Loan Agreement and the Supplementary Agreement, I entered into a **Confidentiality Agreement** that provided that, subject to

⁵⁰ This calculation was prepared by my counsel, Tyr LLP, **Exhibit RR**, RMR, Tab 1.

several exceptions, if I disclosed the existence of the Supplementary Agreement “by delivering a signed copy of the Supplementary Agreement to any third parties who were not otherwise aware of the Supplementary Agreement”, then I would lose my right to repayment of the Loan.⁵¹ The exceptions included: (a) delivering a copy of the Supplementary Agreement to my accountant, lawyers, and other advisors; (b) disclosing the terms or a copy of the Supplementary Agreement to anyone with the consent of Mr. Mizrahi; (c) disclosing the terms or a copy of the Supplementary Agreement pursuant to a Court Order or as required by law; or (d) disclosing the terms or a copy of the Supplementary Agreement in connection with the enforcement of the Supplementary Agreement or the Loan Agreement. A copy of the Confidentiality Agreement is attached as **Exhibit LL**.

111. In its Third Report, the Receiver takes issue with the Confidentiality Agreement. While the Receiver appears to cast its concern as relating to Mr. Mizrahi, I have significant concern that it is distorting or not considering what my understanding of the Confidentiality Agreement was. I never understood the Confidentiality Agreement to be a tool to allow Mr. Mizrahi to hide the Supplementary Agreement (or any of our dealings) from CEI (a 50% owner of Hazelton), Mr. Hiscox (a director of Hazelton), or any other director or officer of Hazelton appointed by CEI or otherwise. It provides that I was not permitted to deliver a signed copy of the Supplementary Agreement to any “**third party**” that was not otherwise aware of the Supplementary Agreement. As a signatory of the Supplementary

⁵¹ Confidentiality Agreement, dated June 28, 2016, section 1, **Exhibit LL**, RMR Tab 1.

Agreement, Hazelton always had the agreement and any director of Hazelton was entitled to it.

112. I am concerned that the Receiver, or the Co-owner through the Receiver, is directly or indirectly attempting to fault me for the Co-Owners mismanagement of Hazelton. All of my dealings with Mr. Mizrahi's projects were with Mr. Mizrahi or others at MDI. There was never any indication that he did not have full authority and control over those entities, or that there was anyone else that I should, or could, negotiate and discuss any business matters with.

113. In its Third Report, the Receiver states that the Co-owner was not aware of the Supplementary Agreement until September 19, 2024. The Receiver seems to be insinuating that I intentionally withheld disclosure of the agreement from the Co-owner. That is not true.

114. After I had learned that Hazelton was heading towards receivership, I engaged legal counsel. Mr. Mizrahi, through his counsel, advised my prior counsel that the Loan Agreement could not be disclosed as a result of the Confidentiality Agreement and threatened to take action against me if it was disclosed. After I retained my current counsel, the following occurred:

- (a) On September 5, 2024, my counsel wrote to the Receiver's counsel informing them that they had carriage of the matter, and that I would oppose any attempt to disclaim the APS.⁵² My counsel also informed the Receiver

⁵² Letter to Norton Rose Fulbright dated September 19, 2024, **Exhibit SS**, RMR Tab 1

that they would be preparing a response to the Receiver's letter from July 26 2024, including a number of documents that the Receiver had not previously reviewed. A copy of this letter from my counsel is attached as **Exhibit SS**.

- (b) On September 9, 2025, Tyr LLP sent a letter to Mr. Mizrahi's counsel dated taking the position that there was no prohibition on me disclosing the agreements and enforcing my rights. That correspondence is attached as **Exhibit TT**.⁵³
- (c) On September 12, 2024, Tyr LLP again wrote to the Receiver's counsel, responding to the issues raised in the Receiver's letter to my former counsel, John Leslie, dated July 25, 2024.⁵⁴ This letter explained my position that I was misled as to the Co-owner's intention in appointing the Receiver (as discussed above), that I had accepted the As-is, Where-Is Offer, the various applicable agreements, and informing the Receiver's counsel that there was at least one other document (i.e., the Supplementary Agreement) that impacted my interest in Unit 901 that had attendant confidentiality considerations. A copy of this letter from my counsel is attached as **Exhibit I**.
- (d) Tyr LLP thereafter engaged in a series of correspondence to Mr. Mizrahi's counsel to put him on notice of my intention to disclose the Supplementary

⁵³ Letter to J. Morse dated September 9, 2024, **Exhibit TT**, RMR Tab 1.

⁵⁴ Letter to Norton Rose Fulbright dated September 12, 2024, **Exhibit I**, RMR Tab 1

Agreement and related agreements to the Receiver and confirmed that he would not object in the circumstances.⁵⁵

115. On September 19, 2024, once I was satisfied that I had adequately address the legal threats Mr. Mizrahi regarding disclosure of documents, Tyr LLP wrote to counsel for the Receiver disclosing and producing the relevant agreements, and my position with respect to those documents on this motion.⁵⁶ Tyr LLP also provided copies of the relevant agreements that we understood the Receiver did not have via a secure ShareFile link. This letter is attached as **Exhibit UU**.

116. On October 22, 2024, following further discussions with the Receiver, Tyr LLP wrote another letter to the Receiver responding to the Receiver's request for supplemental documentation in relation to the Loan Agreement, including documents related to the security place in favour of me in relation to the Loan Agreement, including: (a) Loan Promissory Notes; (b) a personal guarantee of Mr. Mizrahi; (c) a Guarantee of Wellington Inc.; (d) a warrant; and (e) General Security Agreements. A copy of this letter from and covering email is attached as **Exhibit VV**.

⁵⁵ Emails and letters dated September 9, 2024, September 11, 2024 and September 13, 2024, **Exhibit TT** and **Exhibits** and **XX**, respectively, RMR Tab 1.

⁵⁶ Letter to Norton Rose Fulbright dated September 19, 2024, **Exhibit UU**, RMR Tab 1.

AFFIRMED BEFORE ME by video conference by David Berry at the City of Toronto, in the Province of Ontario, before me on January 29, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



Nick Morrow
Commissioner for Taking Affidavits
(or as may be)

DAVID BERRY

This is **Exhibit "A"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

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 April, 2016

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

- (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 ONHWPAA 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;

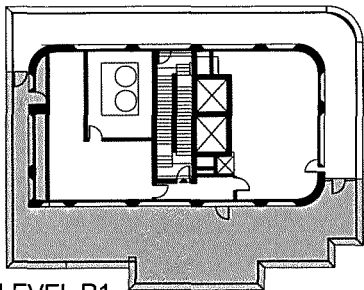
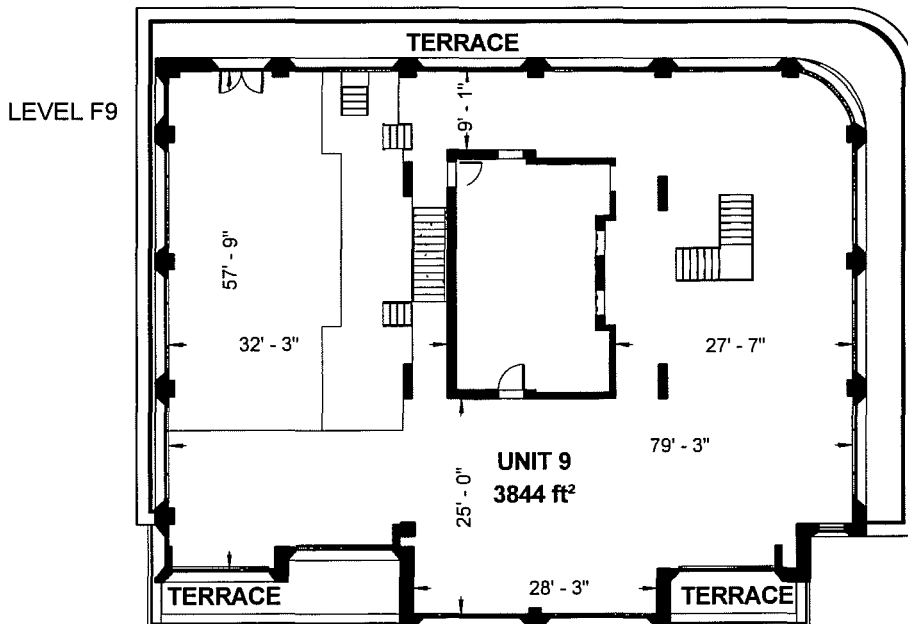
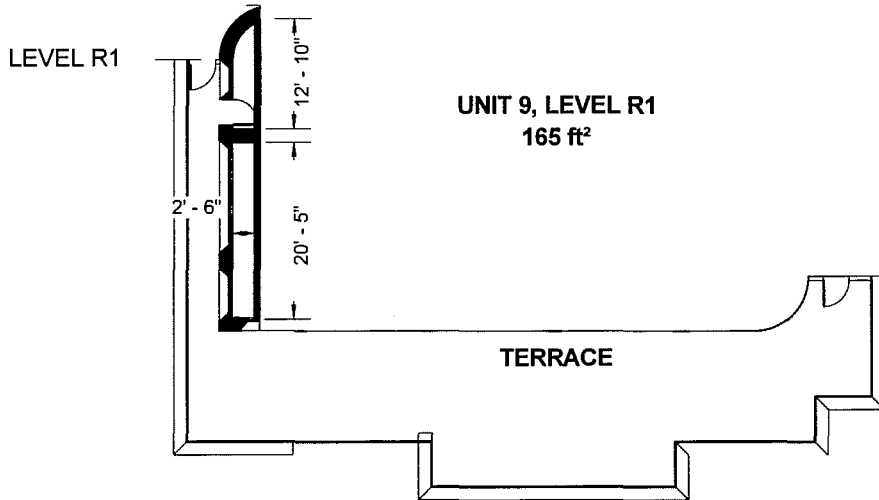
- (e) any financial institution(s) providing (or wishing to provide) mortgage financing, banking and/or other financial or related services to the Purchaser and/or members of the Purchaser's family, with respect to the Unit, including without limitation, the Vendor's construction lender(s), the quantity 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

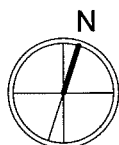
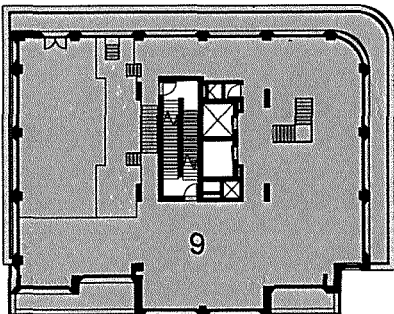
Level 9 , Legal Unit No UNIT 1



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 balcony areas, subject to change E. & O.E.



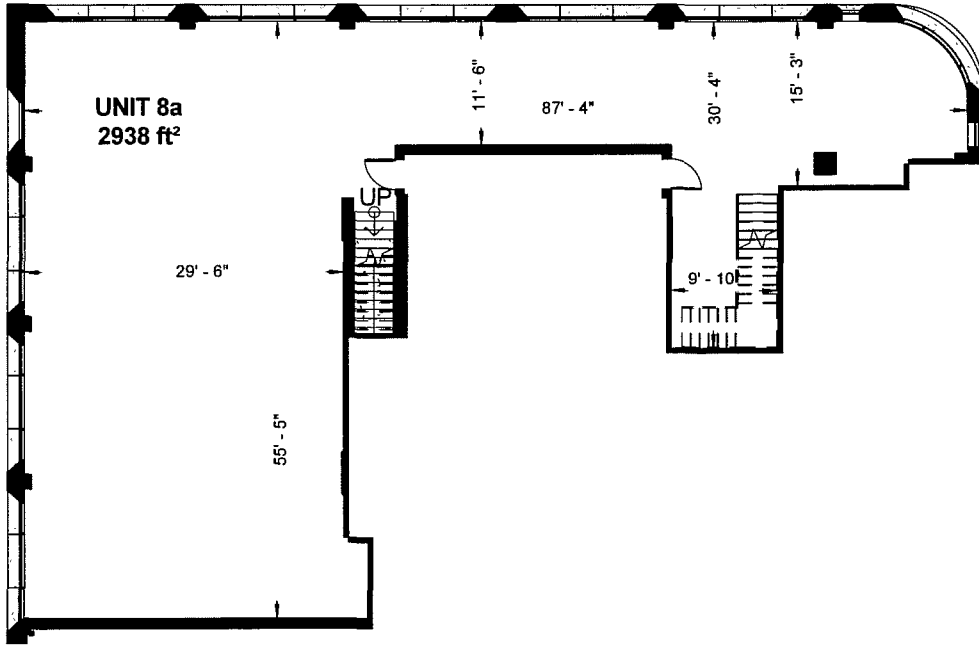
[Signature]
Purchaser Acknowledgement

April 21/16
Date

SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE

SKETCH

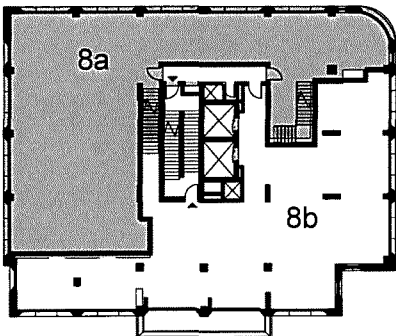
Level 8 , Legal Unit No UNIT 1



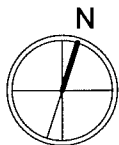
SUITE AREA: 6947 ft²

*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



Purchaser Acknowledgement

Date

A handwritten signature in black ink, positioned above the 'Purchaser Acknowledgement' line.

April 21/16

SCHEDULE "B" TO THE AGREEMENT OF PURCHASE AND SALE

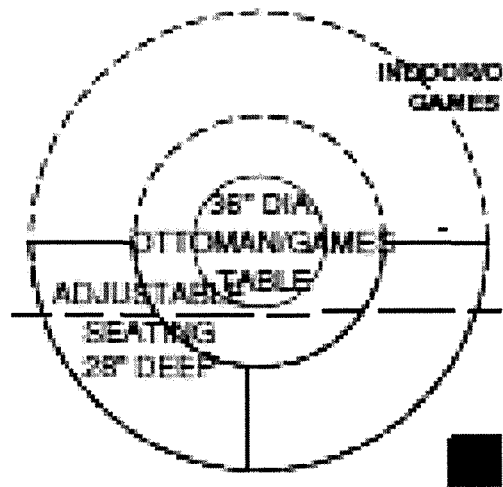
INCLUSIONS, FEATURES AND FINISHES

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
 - Bultin 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
 - **BUILTIN 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 ½" 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 OTOMAN 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

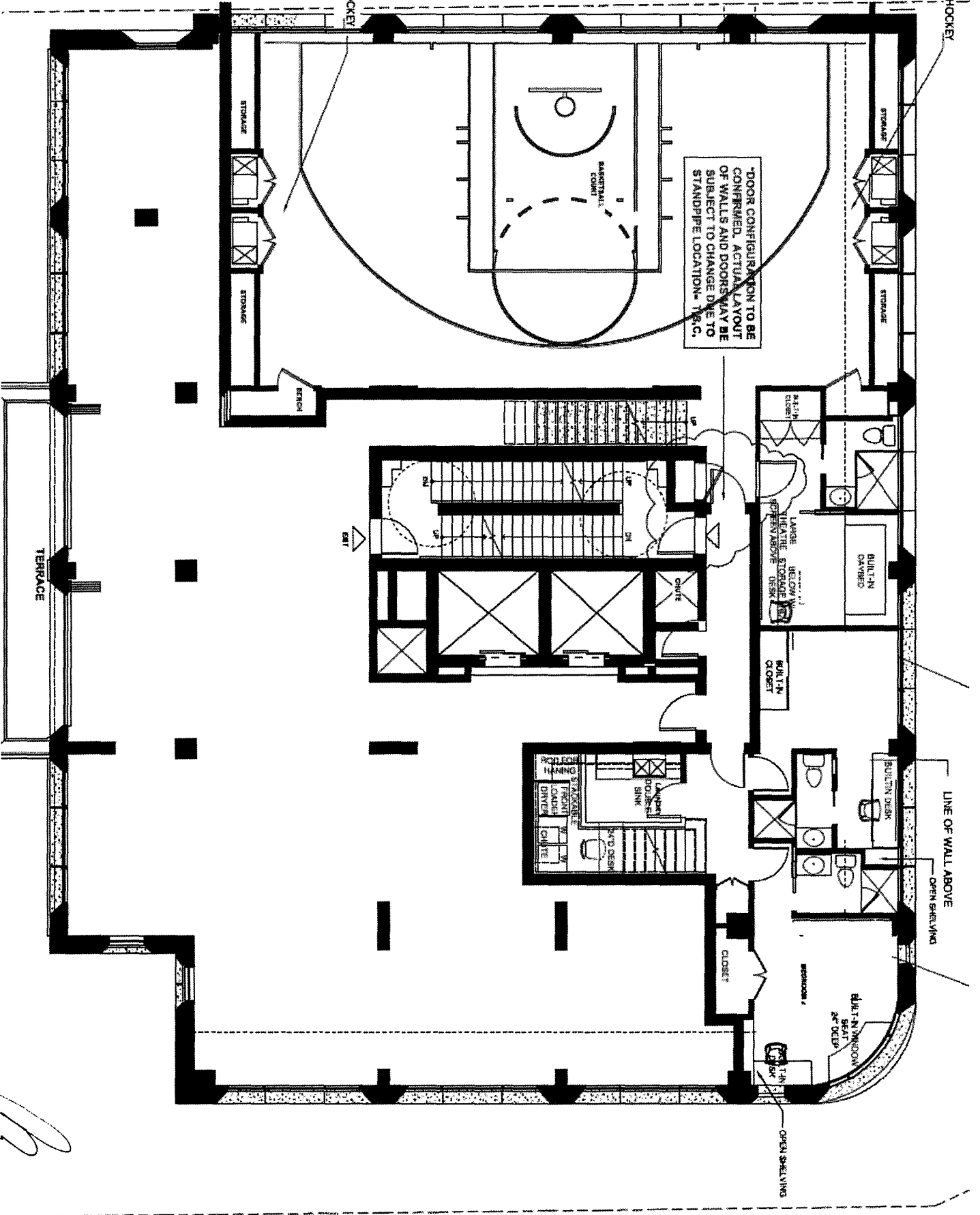


- 9th FLOOR WEST TERRACE
 - BUILT IN HOT TUB TO VENDORS SPECIFICATIONS WITH CUSTOM AUTOMATIC COVER
- R1
 - BUILT IN LAP POOL TO VENDORS SPECIFICATIONS
- WINDOW TREATMENTS – VENDOR TO INCLUDE EITHER AUTOMATIC SHADES OR SELF TINTING WINDOWS PER THE VENDORS STANDARD SPECIFICATION THROUGHOUT FLOORS 8 & 9
- 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

B

ADJUSTABLE SOCCER/HOCKEY NETS

ADJUSTABLE SOCCER/HOCKEY NETS



Handwritten signature or initials

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 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 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

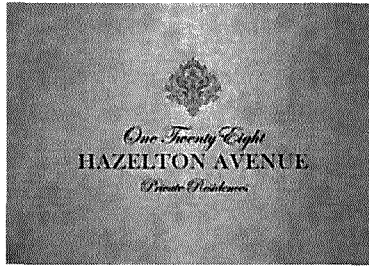
SCHEDULE 'F'**EXCLUSIVE USE PORTIONS OF THE COMMON ELEMENTS**

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

Property 126 and 128 Hazelton Avenue

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

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 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:

(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.

the 29th day of March, 2018.

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

PURCHASER David Berry

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

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:

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

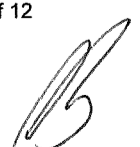
- (a) The Vendor warrants to the Purchaser that, if Occupancy is delayed beyond the Firm Occupancy Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 4 and 5), then the Vendor shall compensate the Purchaser up to a total amount of \$7,500, which amount 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.

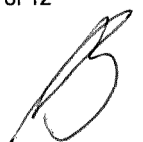
11. Refund of Monies Paid on Termination

- (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.



This is **Exhibit "B"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

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 is **Exhibit "C"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 10-K

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended May 31, 2017

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number: **000-55082**

YAPPN CORP.

(Exact name of registrant as specified in its charter)

Delaware	27-3848069
State or other jurisdiction of Incorporation or organization	(I.R.S. Employer Identification No.)
1001 Avenue of the Americas, 11th Floor New York, NY	10018
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: 888-859-4441

Securities registered pursuant to Section 12(b) of the Act: **None.**

Securities registered pursuant to section 12(g) of the Act:
Common Stock, \$0.001 Par Value

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	<input type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-Accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input checked="" type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Act). Yes No

As of November 30, 2016, the last day of registrant's second fiscal quarter, the aggregate market value of the registrant's common stock, \$0.001 par value, held by non-affiliates, computed by reference to the closing sale price of the common stock reported on the OTCQB as of November 30, 2016, was approximately \$1,041,225. For purposes of the above statement only, all directors, executive officers and 10% shareholders are assumed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for other purposes.

As of July 27, 2017, there were 49,277,248 shares of the registrant's common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE: None

YAPPN CORP.
INDEX TO ANNUAL REPORT ON FORM 10-K
Fiscal Year Ended May 31, 2017

Page

PART I

Item 1. Business.	1
Item 1A. Risk Factors.	7
Item 1B. Unresolved Staff Comments.	16
Item 2. Properties.	16
Item 3. Legal Proceedings.	16
Item 4. Mine Safety Disclosures.	16

PART II

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.	17
Item 6. Selected Financial Data.	21
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.	21
Item 7A. Quantitative and Qualitative Disclosures About Market Risk.	29
Item 8. Financial Statements and Supplementary Data.	29
Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.	29
Item 9A. Controls and Procedures.	29
Item 9B. Other Information.	30

PART III

Item 10. Directors, Executive Officers, and Corporate Governance.	31
Item 11. Executive Compensation.	36
Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.	38
Item 13. Certain Relationships and Related Transactions, and Director Independence.	41
Item 14. Principal Accountant Fees and Services.	41
Item 15. Exhibits, Consolidated Financial Statement Schedules.	F-1

[Certification Pursuant To Section 302 \(A\) Of The Sarbanes-Oxley Act Of 2002](#)

[Certification Pursuant To 18 U.S.C. Section 1350 As Adopted Pursuant To Section 906 Of The Sarbanes-Oxley Act Of 2002](#)

PART III**Item 10. Directors, Executive Officers and Corporate Governance.****Directors and Executive Officers**

All of our directors hold office until the next annual meeting of stockholders and until their successors have been elected and qualified or until their earlier resignation or removal unless his or her office is earlier vacated in accordance with our bylaws or he or she becomes disqualified to act as a director. Our officers shall hold office until the meeting of the Board of Directors following the next annual meeting of stockholders and until his successor has been elected and qualified or until his earlier resignation or removal. The Board of Directors may remove any officer for cause or without cause.

Our executive officers and directors and their respective ages as of the date of this Annual Report are as follows:

Name	Age	Position Held
Ed Karthaus	58	Chief Executive Officer and Director
Craig McCannell	40	Chief Financial Officer
Anthony R. Pearlman	55	Chief Technology Officer
David Berry	52	Director
C. Kent Jespersen	71	Chairman of the Board and Director
Carrie Stone	60	Director
Tracie Crook	52	Director
David Fleck	57	Director
Luis Vazquez Senties	69	Director

The following is a brief account of the education and business experience of each director, executive officer and key employee during at least the past five years, indicating each person's principal occupation during the period, and the name and principal business of the organization by which he or she was employed, and including other directorships held in reporting companies.

Ed Karthaus, Chief Executive Officer and Director. Ed Karthaus has more than 30 years of experience in the technology, financial services and telecommunications industries. He was previously the COO of Teneda Inc. and has held senior executive leadership roles at Prophix Software Inc., D+H, Filogix LP and NCR Canada. He has served on the Board of Directors of the Research, Innovation and Commercialization Centre (RIC Centre) and remains an Advisor today. Ed began his career with Xerox Canada and Oracle Canada.

Craig McCannell, Chief Financial Officer. Mr. McCannell, 40, is the Chief Financial Officer of Yappn Corp. and the former CFO of Entertainment Media Inc. from July 2013 to November 2016 and the Director of Finance of Entertainment Media, Inc. from January 2012 to July 2013. Mr. McCannell served as an account executive for Robert Half Management Resources in 2011 and previously as a Senior Manager in the Assurance practice for Ernst & Young LLP as part of an 11 year tenure.

Anthony R. Pearlman, Chief Technology Officer. Mr. Pearlman, 55, is a seasoned technology expert with over 25 years of experience providing high-tech services and solutions including all facets of technology and business development, combined with an extensive relationship network and global technology market knowledge to Government, Public, and Private Organizations. Mr. Pearlman was the President of Enghouse Systems Limited (TSX: ESL) for six years, where he was responsible for the operational management of a global software development company serving the needs of multiple verticals with a diversified offering of enterprise software and service solutions. Prior to working for Enghouse, Mr. Pearlman was the CIO for Valu-net Corporation for six years and was responsible for the operational management of one of the first leading edge eCommerce development companies in North America.

Steven Taylor, Former Chief Sales Officer. Mr. Taylor, 48 has over 23 years of experience in driving profitable growth in Advertising, Digital Media and Software as a Service (SaaS). Prior to joining Yappn, Mr. Taylor was the CEO of Resolver Inc. from 2002 until 2015 when the company was sold to Klass Capital. During his tenure at Resolver, Mr. Taylor oversaw all aspects of the business including Sales, Marketing, Technology, M&A, Finance and Investor Relations. Prior to Resolver, Mr. Taylor was an instrumental part of Cyberplex's growth in revenue from \$1 Million to almost \$40 Million over a five-year period. He speaks extensively at conferences on various topics including growing SaaS businesses, corporate governance and the translation technology solutions and industry. Mr. Taylor resigned from his position as Yappn's Chief Sales Officer on July 13, 2017.

David Berry, Director. David Berry, 52 obtained a BSc honours in mathematics from Queen's University, an MBA in Finance and Accounting from Rotman School of Management as well as a CFA and a CA. After leaving Ernst & Young LLP in 1995, David moved to Scotia McLeod. He ran the preferred share department from 1997 – 2005 and built it from a department that made virtually no money and had very little market share to the biggest profit center at Scotia Bank and a market share of 70%, numbers never seen before in Canada. He became the highest paid trader on Bay Street for this period. Since leaving Scotia he has been managing his personal portfolio, a portion of which he uses in a merchant bank type capacity financing companies that have great potential but have poor means to finance.

C. Kent Jespersen, Chairman. Kent Jespersen, 71, has extensive and diverse international experience in government, business, and executive leadership. He has diverse governance experience in a number of industries. He has held numerous leadership positions in national and international non-profit organizations. Mr. Jespersen is also a Chairman and Director of Seven Generations Ltd. and Chairman and Director of Iskander Energy Corp. Mr. Jespersen holds a Bachelor of Science in Education and a Master of Science in Education from the University of Oregon.

Carrie Stone, Director. Carrie Stone, 60, is President of cStone & Associates, an international executive search firm, performing senior executive and board assignments since 2003. She advises companies and boards on complex business issues and strategies for talent acquisition, pay for performance, transition, and succession planning. Ms. Stone served as a venture partner with Enterprise Partners Venture Capital, a \$1.1B venture fund investing in disruptive technologies and biotechnology. Prior CEO leadership and senior executive experience includes building high growth consumer products and retail business with the Walt Disney Company and JCrew. Ms. Stone is a member of the corporate directors forum, serving on the director of the year nominating committee. Ms. Stone was named to the Agenda Compensation 100, identifying the 100 top candidates to serve on compensation committees. Ms. Stone co-founded the San Diego Women Corporate Directors Chapter in 2013. She serves on the Executive Committee. She is an 18 year Member of Young Presidents' Organization/World President's Organization including serving on the International Board Of Directors, International Forum Committee Chair, Compensation And Diversity Committees, and, Committee Leadership of 8 Global Leadership Conferences. Ms. Stone Holds a B.S. From the University Of Vermont, attended Stanford University Law School Director's College, and Harvard Business School's Executive Education, Compensation Committees.

David Fleck, Director. Mr. Fleck, 57, has had a 27 year career in the financial services industry starting as an investment banker with Merrill Lynch Canada in 1986. In 1989 he joined the Institutional Equity team at Burns Fry Ltd. and remained with the firm after it was bought out by the Bank of Montreal in 1994. A few years later he became Global Co-Head of the Equity Group at the bank. In 2008, David retired from BMO Capital Markets and started an interesting career path in the midst of a global financial crisis. In 2009 he became president of an international quantitatively based money manager called Mapleridge Capital. In 2011 he accepted the position of President and CEO of Macquarie Capital Markets Canada, a full service capital markets business. David is currently a partner at Delaney Capital Management, a Canadian based money management firm with approximately \$2 billion in assets under management. David is a board member of Alamos Gold Inc. as well as Kew Media Group Inc. and has served as a director of a number of Canadian based charities. He is currently Vice-Chair of Souleppper Theatre Company and a board member of the Art Gallery of Ontario Foundation. He received his MBA from INSEAD and recently completed the Institute of Corporate Directors program at the Rotman School of Management.

Luis Vazquez-Senties, Director. Mr. Vazquez-Sentias, 69, Luis is the founder and Chairman of the Board of Directors of Diavaz since 1982 to date. Diavaz is a 100% Mexican business partnership made up by several basic business units jointly created through strategic and business alliances. The activities of DIAVAZ are related to the Mexican energy industry, ranging from oil and gas exploration and production, its process, transportation, storage until its final consumption. He has been and still is an advisor of several national and international companies, all of them related to the energy industry. Luis Vázquez actively participates in a wide variety of Chambers, Associations, as well as Professional and Entrepreneurial Organizations. Eng. Vázquez is former president and current member of Mexico's Chapter of the World Energy Council, as well as of the Mexican Natural Gas Association. Luis Vázquez is a chemical engineer; he graduated from Ryerson University in Toronto, Canada.

Tracie Crook, Director. Tracie Crook, 52, is the Chief Operating Officer of McCarthy Tétrault LLP. Prior to that she was President and CEO of the ResMor Trust Company, a federally regulated mortgage provider, Director of Business Management for the TSX Group and Director of Management and Outsourcing with Sprint Canada. A Certified Director, Tracie currently sits on the advisory board of Intapp Inc., Women of Influence, and a former Board member of the Ontario Public Service Employees' Union, the Housing Services Inc., and the GMAC Residential Funding of Canada Limited and The Fraser Institute. Ms. Crook holds a Master of Science from Central Michigan University, a Bachelor of Business Administration from Ferris State University and has taken executive courses at Harvard Business School, the Massachusetts Institute of Technology (MIT) and Queen's University.

Family Relationships

There are currently no family relationships between any of the members of our Board of Directors or our executive officers.

Conflicts of Interest

Members of our management are associated with other firms involved in a range of business activities. Consequently, there are potential inherent conflicts of interest in their acting as officers and directors of our company. Although the officers and directors are engaged in other business activities, we anticipate they will devote an important amount of time to our affairs.

Our officers and directors are now and may in the future become shareholders, officers or directors of other companies, which may be formed for the purpose of engaging in business activities similar to ours. Accordingly, additional direct conflicts of interest may arise in the future with respect to such individuals acting on behalf of us or other entities. Moreover, additional conflicts of interest may arise with respect to opportunities which come to the attention of such individuals in the performance of their duties or otherwise. Currently, we do not have a right of first refusal pertaining to opportunities that come to their attention and may relate to our business operations.

Our officers and directors are, so long as they are our officers or directors, subject to the restriction that all opportunities contemplated by our plan of operation which come to their attention, either in the performance of their duties or in any other manner, will be considered opportunities of, and be made available to us and the companies that they are affiliated with on an equal basis. A breach of this requirement will be a breach of the fiduciary duties of the officer or director. If we or the companies with which the officers and directors are affiliated both desire to take advantage of an opportunity, then said officers and directors would abstain from negotiating and voting upon the opportunity. However, all directors may still individually take advantage of opportunities if we should decline to do so. Except as set forth above, we have not adopted any other conflict of interest policy with respect to such transactions.

Involvement in Certain Legal Proceedings

117

None of the following events have occurred during the past ten years and are material to an evaluation of the ability or integrity of any director or officer of the Company:

1. A petition under the Federal bankruptcy laws or any state insolvency law was filed by or against, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of such person, or any partnership in which he was a general partner at or within two years before the time of such filing, or any corporation or business association of which he was an executive officer at or within two years before the time of such filing;

2. Such person was convicted in a criminal proceeding or is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses);
3. Such person was the subject of any order, judgment, or decree, not subsequently reversed, suspended or vacated, of any court of competent jurisdiction, permanently or temporarily enjoining him from, or otherwise limiting, the following activities:
 - a. Acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the Commodity Futures Trading Commission, or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an affiliated person, director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;
 - b. Engaging in any type of business practice; or
 - c. Engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with any violation of Federal or State securities laws or Federal commodities laws;
4. Such person was the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any Federal or State authority barring, suspending or otherwise limiting for more than 60 days the right of such person to engage in any activity described in paragraph (f)(3)(i) of this section, or to be associated with persons engaged in any such activity;
5. Such person was found by a court of competent jurisdiction in a civil action or by the Commission to have violated any Federal or State securities law, and the judgment in such civil action or finding by the Commission has not been subsequently reversed, suspended, or vacated;
6. Such person was found by a court of competent jurisdiction in a civil action or by the Commodity Futures Trading Commission to have violated any Federal commodities law, and the judgment in such civil action or finding by the Commodity Futures Trading Commission has not been subsequently reversed, suspended or vacated;
7. Such person was the subject of, or a party to, any Federal or State judicial or administrative order, judgment, decree, or finding, not subsequently reversed, suspended or vacated, relating to an alleged violation of:
 - a. Any Federal or State securities or commodities law or regulation; or
 - b. Any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or
 - c. Any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity; or
8. Such person was the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Exchange Act (15 U.S.C. 78c(a)(26))), any registered entity (as defined in Section 1(a)(29) of the Commodity Exchange Act (7 U.S.C. 1(a)(29))), or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member.

Meetings and Committees of the Board of Directors

Our Board of Directors held 5 formal meetings during the year ended May 31, 2017.

The Board of Directors has a separately designated standing Audit Committee established in accordance with Section 3(a)(58)(A) of the Exchange Act. The members of our Audit Committee are David Fleck, who serves as Chairperson of the Audit Committee, Tracie Crook and C. Kent Jespersen. Our Board of Directors has determined that Mr. Fleck qualifies as a “financial expert” as that term is defined in the rules of the SEC implementing requirements of the SARBANES-OXLEY Act of 2002. The Audit Committee meets four (4) times per year.

The Board of Directors has a separately designated Compensation Committee.

The members of our Compensation Committee are Carrie Stone, who serves as Chairperson of the Compensation Committee, David Berry and C. Kent Jespersen.

The Board of Directors is responsible for all other committee activity, outside the Audit Committee and Compensation Committee.

We believe that the Board of Directors through its meetings can perform all of the duties and responsibilities which might be contemplated by additional committees. As our business expands we anticipate forming other committees.

Board Leadership Structure and Role in Risk Oversight

Our Board of Directors is primarily responsible for overseeing our risk management processes. The Board of Directors receives and reviews periodic reports from management, auditors, legal counsel, and others, as considered appropriate regarding our company’s assessment of risks. The Board of Directors focuses on the most significant risks facing our company and our company’s general risk management strategy, and also ensures that risks undertaken by our company are consistent with the Board’s appetite for risk. While the Board oversees our company, our company’s management is responsible for day-to-day risk management processes. We believe this division of responsibilities is the most effective approach for addressing the risks facing our company and that our Board leadership structure supports this approach.

Material Changes to the Procedures by which Security Holders May Recommend Nominees to the Board of Directors

Except as may be provided in our bylaws, we do not have in place any procedures by which security holders may recommend nominees to the Board of Directors.

Section 16(a) Beneficial Ownership Reporting Compliance

Section 16(a) of the Exchange Act requires our directors, executive officers, and persons who own more than 10% of our common stock to file reports of ownership and changes in ownership of our common stock with the SEC. Based on the information available to us during the year ended May 31, 2017, we believe that all applicable Section 16(a) filing requirements were met on a timely basis.

Code of Ethics

As part of our system of corporate governance, our Board of Directors has adopted a Code of Ethics and Conduct that is specifically applicable to our Chief Executive Officer and senior financial officers. If we make substantive amendments to the Code of Ethics and Conduct or grant any waiver, including any implicit waiver, we will disclose the nature of such amendment or waiver on our website or in a report on Form 8-K within four days of such amendment or waiver.

Item 11. Executive Compensation.**Summary Compensation Table**

The following table sets forth certain compensation information for: (i) the person who served as the Chief Executive Officer of Yappn Corp during the year ended May 31, 2017, regardless of the compensation level, and (ii) each of our other executive officers, serving as an executive officer whose total compensation exceeded \$100,000 at any time during 2017. The foregoing persons are collectively referred to in this prospectus as the “Named Executive Officers.” Compensation information is shown for the years ended May 31, 2017 and May 31, 2016:

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Option Awards (1) (\$)	Non-Equity Incentive Plan Comp (\$)	Non-Qualified Deferred Comp Earnings (\$)	All Other Comp (\$)	Totals (1) (\$)
Ed Karthaus, CEO	2017	170,139	0	0	233,880	0	0	11,343	415,362
	2016	47,633	0	0	193,006	0	0	3,176	243,815
Anthony R. Pearlman, CTO	2017	160,000	0	0	125,306	0	0	12,000	297,306
	2016	66,667	0	0	131,041	0	0	5,000	202,708
Steven Tylor, CSO ⁽²⁾	2017	136,111	0	0	116,940	0	0	5,444	258,495
	2016	27,425	0	0	96,503	0	0	1,097	125,025
Craig McCannell, CFO	2017	160,000	0	0	125,306	0	0	12,000	297,306
	2016	160,000	0	0	131,041	0	0	12,000	303,041

(1) The values in the “Option Awards” and included within the “Total” columns above do not represent a cash payment of any kind related to the “Option Awards”. Rather these values represent the calculated Binomial lattice model theoretical value of granted options. It is important to note that these granted options may or may not ever be exercised. Whether granted options are exercised or not will be based primarily, but not singularly, on the Company’s future stock price and whether the granted options become “in-the-money”. If these granted options are unexercised and expire, the cash value or benefit to the above noted individuals is \$nil.

(2) Resigned position on July 13, 2017

Employment Agreements

On September 1, 2014 we entered into an employment agreement with Craig McCannell, our CFO, which has an indefinite term. Under the terms of this agreement, Mr. McCannell will continue to serve as our Chief Financial Officer. Mr. McCannell will receive a base salary of \$160,000 per year in the first year of the agreement, subject to future increases in base salary as well as options that vest over time. Mr. McCannell will be entitled to certain bonus payments based on the revenue of the Company and standard expense reimbursements and benefits.

On January 1, 2016 we entered into an employment arrangement with Anthony R. Pearlman, our CTO, finalized by agreement on March 30, 2016 which has an indefinite term. Under the terms of this agreement, Mr. Pearlman will continue to serve as our Chief Technology Officer. Mr. Pearlman will receive a base salary of \$160,000 per year in the first year of the agreement, subject to future increases in base salary as well as options that vest over time. Mr. Pearlman will be entitled to certain bonus payments based on the revenue of the Company and standard expense reimbursements and benefits.

121

On February 22, 2016, we entered into an employment agreement with Edward Karthaus, our CEO, which has an indefinite term. Under the terms of this agreement, Mr. Karthaus will continue to serve as our Chief Executive Officer. Mr. Karthaus will receive a base salary of \$225,000 CAD per year in the first year of the agreement, subject to future increases in base salary as well as options that vest over time. Mr. Karthaus will be entitled to certain bonus payments based on the revenue of the Company and standard expense reimbursements and benefits.

On March 21, 2016, we entered into an employment agreement with Steve Taylor, our CSO, which has an indefinite term. Under the terms of this agreement, Mr. Taylor will continue to serve as our Chief Sales Officer. Mr. Taylor will receive a base salary of \$180,000 CAD per year in the first year of the agreement, subject to future increases in base salary as well as options that vest over time. Mr. Taylor will be entitled to certain bonus payments based on the revenue of the Company and standard expense reimbursements and benefits. Mr. Taylor resigned from his position as Yappn's Chief Sales Officer on July 13, 2017.

Outstanding Equity Awards as of May 31, 2017

Outstanding stock options granted to Named Executive Officers (“NEO’s”) and Directors as at May 31, 2017 are as follows:

Name	Option Awards			
	No. of Securities Underlying Unexercised Options Exercisable (#)	No. of Securities Underlying Unexercised Options Unexercisable (#)	Option Exercise Price (\$)	Option Expiration Date
Edward Karthaus	1,500,000	1,500,000	\$ 0.25	March 21, 2021
Craig McCannell	60,000	-	\$ 0.25	August 14, 2019
Craig McCannell	100,000	-	\$ 0.25	March 2, 2020
Craig McCannell	750,000	750,000	\$ 0.25	March 21, 2021
David Berry	112,500	337,500	\$ 0.25	August 25, 2021
C. Kent Jespersen	225,000	675,000	\$ 0.25	August 25, 2021
Carrie Stone	125,000	375,000	\$ 0.25	August 25, 2021
Tracie Crook	112,500	337,500	\$ 0.25	August 25, 2021
David Fleck	112,500	337,500	\$ 0.25	August 25, 2021
Luis Vazquez-Senties	112,500	337,500	\$ 0.25	August 25, 2021

The Company has no stock appreciation rights.

Options Exercises and Stocks Vested

None

Grants of Plan-Based Awards

None.

Non-Qualified Deferred Compensation

None.

Golden Parachute Compensation

None.

Compensation of Directors

Directors who provide services to the Company in other capacities have been previously reported under “Summary Compensation”. The following table summarizes compensation paid to or earned by our directors who are not Named Executive Officers for their service as directors of our company during the fiscal year ended May 31, 2017.

Name	Fees	Stock Awards	Option Awards (1)	Non-Equity Incentive Plan Compensation	Change in	All other Compensation	Total (1)
	Earned or Paid in Cash (\$)				Pension Value and Nonqualified Deferred Compensation Earnings (\$)		
David Berry	0	0	52,135	0	0	0	52,135
C. Kent Jespersen	0	0	104,269	0	0	0	104,269
Carrie Stone	0	0	57,927	0	0	0	57,927
Tracie Crook	0	0	52,135	0	0	0	52,135
David Fleck	0	0	52,135	0	0	0	52,135
Luis Vazquez Senties	0	0	52,135	0	0	0	52,135

- (1) The values in the “Option Awards” and included within the “Total” columns above do not represent a cash payment of any kind. Rather these values represent the calculated Binomial lattice model theoretical value of granted options. It is important to note that these granted options may or may not ever be exercised. Whether granted options are exercised or not will be based primarily, but not singularly, on the Company’s future stock price and whether the granted options become “in-the-money”. If these granted options are unexercised and expire, the cash value or benefit to the above noted individuals is \$nil.

On March 21, 2016, the Board of Directors passed a resolution for a contingent common stock award in line with the metrics used in the CEO’s targets for additional bonus compensation. The award would see the members of the Board of Directors as well as the Advisory Board receive common shares for the Company reaching revenue milestones. Per the resolution, 500,000 common shares for each member of the Board of Directors and 250,000 for each Advisory Board member would be issued when the following milestones are met: (i) \$3.5 million in new revenue generated and realized within 12 months of the start date of the CEO which was February 22, 2016 and minimum of 5 new recurring revenue contracts being signed within 12 months of the start date; or (ii) \$5 million of new revenue generated and realized within 24 months of the start date and minimum of 5 new recurring revenue contracts being signed within 12 months of the start date. As of February 22, 2017 (the 12 months since the CEO start date of February 22, 2016), milestone in (i) was not met.

Directors are permitted to receive fixed fees and other compensation for their services as Directors. The Board of Directors has the authority to fix the compensation of Directors. No amounts have been paid to, or accrued to, Directors in such capacity.

Since our incorporation on November 3, 2010 and until May 31, 2017, we have not paid any cash compensation to our Directors in consideration for their services rendered to our Company in their capacity as such. Directors have been granted stock options and the contingent stock award noted above.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

The following tables set forth certain information as of July 21, 2017 regarding the beneficial ownership of our common stock, based on an aggregate of 63,215,740 shares of common stock consisting of (a) 49,277,248 shares of common stock issued and outstanding and (b) 13,938,492 issuable upon the conversion of securities, by (i) each executive officer and director; (ii) all of our executive officers and directors as a group; and (iii) each person or entity who, to our knowledge, owns more than 5% of our common stock.

Beneficial ownership is determined in accordance with the rules of the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities and include ordinary shares issuable upon the exercise of stock options that are immediately exercisable or exercisable within 60 days. Except as otherwise indicated, all persons listed below have sole voting and investment power with respect to the shares beneficially

owned by them, subject to applicable community property laws. The information is not necessarily indicative of beneficial ownership for any other purpose.

Unless otherwise indicated in the footnotes to the following table, each person named in the table has sole voting and investment power and that person's address is c/o Yappn Corp., 1001 Avenue of the Americas, 11th Floor, New York, NY 10018.

Name of Beneficial Owner	Number of Shares Beneficially Owned (1)	Percentage Beneficially Owned (1)
<i>5% Owners</i>		
ITF Mizrahi (128 Hazelton) Inc. (2)	8,954,934	14.17%
Array Capital Corporation (3)	5,268,076	8.33%
2541843 Ontario Inc. (4)	4,812,500	7.61%
Relouw Family 2004 Discretionary Trust (5)	3,572,543	5.65%
<i>Officers and Directors</i>		
Edward Karthaus (6)	1,500,000	2.37%
Anthony R. Pearlman (7)	910,000	1.44%
Craig McCannell (8)	910,000	1.44%
Luis Vazquez-Senties (9)	7,640,193	12.09%
C. Kent Jespersen (10)	1,518,200	2.40%
David Berry (11)	858,354	1.36%
Carrie Stone (12)	516,667	0.82%
Tracie Crook (13)	315,000	0.50%
David Fleck (14)	1,561,632	2.47%
All executive officers and directors as a group (ten persons) (15)	15,730,046	24.88%

- (1) Shares of common stock beneficially owned and the respective percentages of beneficial ownership of common stock assumes the exercise of all options, warrants and other securities convertible into common stock beneficially owned by such person or entity currently exercisable or exercisable within 60 days July 21, 2017. In computing the number of shares beneficially owned and the percentage ownership, shares of common stock that may be acquired within 60 days of July 21, 2017 pursuant to the exercise of options, warrants or convertible notes are deemed to be outstanding for that person. Such shares, however, are not deemed outstanding for the purpose of computing the percentage ownership of any other person.
- (2) Consists of 8,954,934 shares of common stock held by ITF Mizrahi (128 Hazelton) Inc. ITF Mizrahi (128 Hazelton) Inc. is controlled by Sam Mizrahi and has an address of 320 Bay Street Suite 1600 Toronto Ontario M5H 4A6
- (3) Consists of 4,601,409 shares of common stock and 666,667 beneficially owned shares of common stock underlying convertible securities held by Array Capital Corporation. Array Capital Corporation is controlled by Benny Lau and has an address of 1370 Don Mills Road, Suite 300, Toronto Ontario M3B 3N7
- (4) Consists of 4,812,500 shares of common stock held by 2541843 Ontario Inc. 2541843 Ontario Inc. is controlled by S. Wayne Parsons and has an address of 4575 Blakie Road, London Ontario N6L 1P8
- (5) Consists of 3,572,543 shares of common stock held by Relouw Family 2004 Discretionary Trust. Relouw Family 2004 Discretionary Trust is controlled by Anthony Relouw and has an address of c/o Exacon Inc. 254 Thames Road East, Exeter Ontario, N0M 1S3
- (6) Consists solely of beneficially owned shares of common stock underlying convertible securities.
- (7) Consists solely of beneficially owned shares of common stock underlying convertible securities.
- (8) Consists solely of beneficially owned shares of common stock underlying convertible securities.
- (9) Consists of 800,000 shares of common stock and 6,840,193 beneficially owned shares of common stock underlying convertible securities.
- (10) Consists of 768,200 shares of common stock and 750,000 beneficially owned shares of common stock underlying convertible securities

- (11) Consists of 450,021 shares of common stock and 408,333 beneficially owned shares of common stock underlying convertible securities.
- (12) Consists of 200,000 shares of common stock and 316,667 beneficially owned shares of common stock underlying convertible securities.
- (13) Consists of 40,000 shares of common stock and 275,000 beneficially owned shares of common stock underlying convertible securities
- (14) Consists of 200,000 shares of common stock and 1,361,632 beneficially owned shares of common stock underlying convertible securities.
- (15) Consists of an aggregate of 2,685,321 shares of common stock and 13,271,825 beneficially owned shares of common stock underlying convertible securities.

Description of Securities

In March 2013, we filed an amended and restated certificate of incorporation to increase the Company's authorized capital stock to 200,000,000 shares of common stock, par value \$0.0001 per share and 50,000,000 shares of preferred stock, par value \$0.0001 per share

On December 31, 2014, we filed an amended and restated certificate of incorporation to increase the Company's authorized number of common shares to 400,000,000 shares of common stock, par value \$0.0001 per share.

The following statements relating to the capital stock set forth the material terms of our securities; however, reference is made to the more detailed provisions of, and such statements are qualified in their entirety by reference to, the Certificate of Incorporation, amendment to the Certificate of Incorporation and the By-laws.

Common stock

The holders of our Common Stock are entitled to one vote per share on all matters to be voted on by our stockholders, including the election of directors. Our stockholders are not entitled to cumulative voting rights, and, accordingly, the holders of a majority of the shares voting for the election of directors can elect the entire Board of Directors if they choose to do so and, in that event, the holders of the remaining shares will not be able to elect any person to our Board of Directors.

The holders of the Company's Common Stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by the Board of Directors, in its discretion, from funds legally available there for and subject to prior dividend rights of holders of any shares of our Preferred Stock which may be outstanding. Upon the Company's liquidation, dissolution or winding up, subject to prior liquidation rights of the holders of our Preferred Stock, if any, the holders of our Common Stock are entitled to receive on a pro rata basis our remaining assets available for distribution. Holders of the Company's Common Stock have no preemptive or other subscription rights and there are no conversion rights or redemption or sinking fund provisions with respect to such shares. All outstanding shares of the Company's Common Stock are fully paid and not liable to further calls or assessment by the Company.

Preferred Stock

The Company is authorized to issue 50,000,000 shares of preferred stock, par value \$0.0001. The designations, rights, and preferences of such preferred stock are to be determined by the Board of Directors. Subsequently, 10,000,000 shares were designated as Series A Preferred Stock. The Series A Preferred Stock collectively has liquidation preference and the right to convert to one share of common stock for each share of preferred stock.

As of July 27, 2017, we have no Series A Convertible Preferred Stock issued and outstanding.

Dividends

Dividends, if any, will be contingent upon our revenues and earnings, if any, capital requirements and financial conditions. The payment of dividends, if any, will be within the discretion of our Board of Directors. We presently intend to retain all earnings, if any, for use in its business operations and accordingly, the Board of Directors does not anticipate declaring any dividends prior to a business combination.

Indemnification of directors and officers

Under the Delaware General Corporation Law, we can indemnify our directors and officers against liabilities they may incur in such capacities, including liabilities under the Securities Act of 1933, as amended (the "Securities Act"). Our amended and restated articles of incorporation provide that, pursuant to Delaware law, our directors shall not be liable for monetary damages for breach of the directors' fiduciary duty of care to us and our stockholders. This provision in the articles of incorporation does not eliminate the duty of care, and in appropriate circumstances equitable remedies such as injunctive or other forms of non-monetary relief will remain available under Delaware law. In addition, each director will continue to be subject to liability for breach of the director's duty of loyalty to us or our stockholders, for acts or omissions not in good faith or involving intentional misconduct or knowing violations of law, for any transaction from which the director directly or indirectly derived an improper personal benefit, and for payment of dividends or approval of stock repurchases or redemptions that are unlawful under Delaware law. The provision also does not affect a director's responsibilities under any other law, such as the federal securities laws or state or federal environmental laws.

Our bylaws, as amended, provide for the indemnification of our directors and officers to the fullest extent permitted by the Delaware General Corporation Law. We are not, however, required to indemnify any director or officer in connection with any (a) willful misconduct, (b) willful neglect, or (c) gross negligence toward or on behalf of us in the performance of his or her duties as a director or officer. We are required to advance, prior to the final disposition of any proceeding, promptly on request, all expenses incurred by any director or officer in connection with that proceeding on receipt of any undertaking by or on behalf of that director or officer to repay those amounts if it should be determined ultimately that he or she is not entitled to be indemnified under our bylaws or otherwise.

We have been advised that, in the opinion of the SEC, any indemnification for liabilities arising under the Securities Act of 1933 is against public policy, as expressed in the Securities Act, and is, therefore, unenforceable.

Amendment of our Bylaws

Our bylaws may be adopted, amended or repealed by the affirmative vote of a majority of our outstanding shares. Subject to applicable law, our bylaws also may be adopted, amended or repealed by our Board of Directors.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

None of our executive officers serves on the Board of Directors or compensation committee of another company that has any executive officer serving on our Board of Directors (or Board of Directors acting as the Compensation Committee).

No person who served on our Board of Directors (or Board of Directors acting as the Compensation Committee) had any relationship requiring disclosure under Item 404 of Regulation S-K.

Review, approval or ratification of transactions with related persons

Our Board of Directors is responsible to approve all related party transactions. We have not adopted written policies and procedures specifically for related person transactions.

Director Independence

Mr. C. Kent Jespersen, Ms. Carrie Stone, Ms. Tracie Crook, Mr. Luis Vazquez-Senties and Mr. David Fleck were each deemed to be an “independent director”, as that term is defined by the listing standards of the national exchanges and SEC rules.

Item 14. Principal Accounting Fees and Services.

Fees paid to the Company’s current principal accountant, MNP, LLP, were as follows:

	Year Ended May 31, 2017	Year Ended May 31, 2016
Audit fees (1)	\$ 53,500	64,200
Audit related fees (2)	\$ 55,105	67,677
Tax fees (3)	\$ 22,836	3,852
All other fees (4)	\$ -	-

(1) Audit Fees

The aggregate fees billed by our principal accountant, MNP, LLP, for the May 31, 2017 and May 31, 2016 audit of our annual financial statements and other fees that are normally provided by the accountant in connection with statutory and regulatory filings or engagements for the fiscal years ended May 31, 2017 and May 31, 2016.

(2) Audit-Related Fees

The aggregate fees billed by our principal accountants for assurance and advisory services that were related to the performance of the audit or review of our financial statements for the fiscal years ended May 31, 2017 and May 31, 2016.

(3) Tax Fees

The aggregate fees billed for professional services rendered by our principal accountants for tax compliance, tax advice, tax planning and tax preparation for the fiscal years ended May 31, 2017 and May 31, 2016.

(4) All Other Fees

The aggregate fees billed for products and services provided by our principal accountants for the fiscal years ended May 31, 2017 and May 31, 2016, other than for audit fees and tax fees.

Pre-Approval Policies and Procedures

The Audit Committee pre-approves all audit and non-audit services performed by the Company's auditor and the fees to be paid in connection with such services in order to assure that the provision of such services does not impair the auditor's independence.

This is **Exhibit “D”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N" and "M".

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

From: Craig McCannell <craigamccannell@gmail.com>
Date: August 7, 2024 at 5:31:32 PM EDT
To: David Berry <dberry@winterberryinvestments.com>
Subject: Re:

Hi Dave, These are the shots of the main Share register with Lynn's sign off that these were mailed to recipients. The second page shows Mizrahi's issue date on the list and that they are in trust with Chitiz Pathak. The # of shares/cert number are there as described in a prior e-mail.

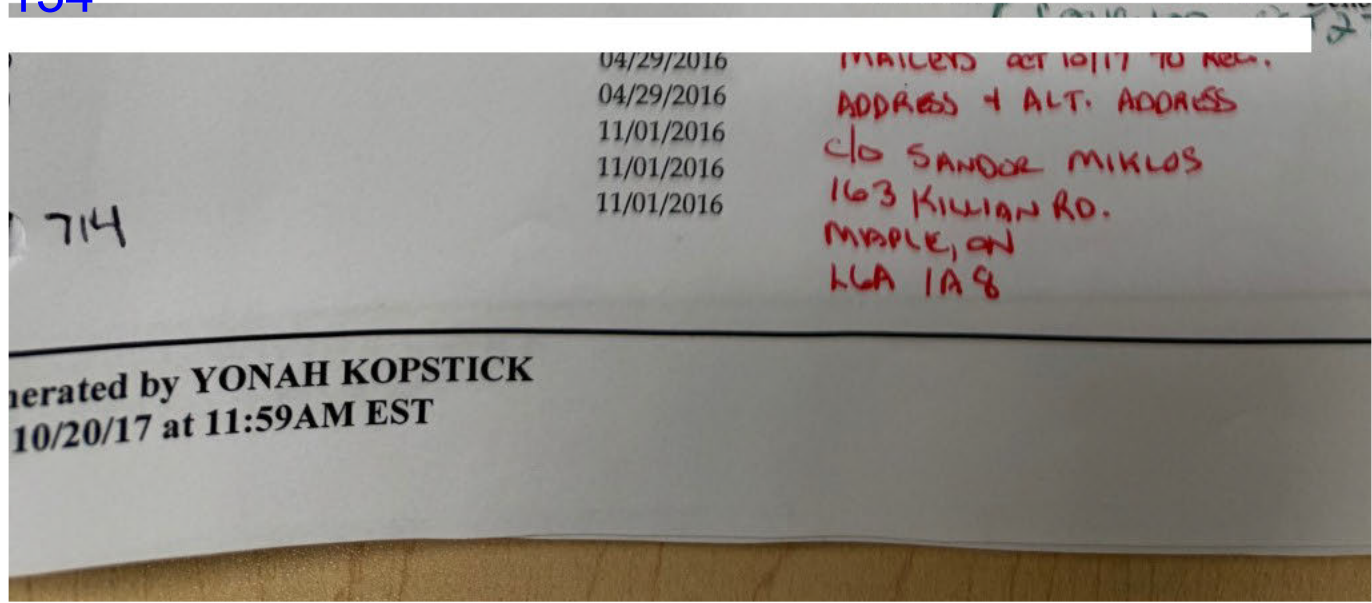
Thanks
Craig

DETAILED HOLDER LIST
WORLDWIDE STOCK TRANSFER, LLC
 Effective: 10/20/17

MA
TO
O

Issue: YAPPN CORP.

Account/TIN	Name & Address	Issuer Abbrev.:YAPPN	Ticker:YAPPN
104	2541843 ONTARIO INC.		
Certificate # / Book	Issue Date	Cancel Date	Den
783			
810	04/24/2017		
812	04/24/2017		
	05/24/2017	MAILED OCT 10/17	
17	556253 ONTARIO INC.		
Certificate # / Book	Issue Date	Cancel Date	Den
536			
537	04/29/2016		
718	04/29/2016		
719	11/02/2016		
720	11/02/2016		
	11/02/2016	MAILED OCT 10/17 TO ADDRESS ON FILE & ALT ADDRESS: 3109-4011 BRICKSTONE MA MISSISSAUGA, ON L5B 0J7	
62	LORNE ABRAMS		
Certificate # / Book	Issue Date	Cancel Date	Den
675			
	09/23/2016	MAILED OCT 10/17	
60	ARRAY CAPITAL CORPORATION		
Certificate # / Book	Issue Date	Cancel Date	Den
653			
	08/31/2016	MAILED OCT 10/17	
67	ARRAY CAPITAL INC.		
Certificate # / Book	Issue Date	Cancel Date	Den
54			
	11/15/2016	MAILED OCT 10/17	
37	AMIR BEM		
Certificate # / Book	Issue Date	Cancel Date	Den
8			
9	04/29/2016		
9	04/29/2016		
9	11/01/2016		
0	11/01/2016		
1	11/01/2016		
		MAILED OCT 10/17 TO REG. ADDRESS & POA SIMON YAKUBOWICZ	
8	BEXPORT VENTURES LIMITED		
Certificate # / Book	Issue Date	Cancel Date	Den
		ORIG UK ADDRESS	



04/29/2016
04/29/2016
11/01/2016
11/01/2016
11/01/2016

MAILERS act 10/17 to new.
ADDRESS + ALT. ADDRESS
C/O SANDOR MIKLOS
163 KILLIAN RD.
MAPLE, ON
L6A 1A8

714

Generated by YONAH KOPSTICK
10/20/17 at 11:59AM EST

Certificate # / Book	Issue Date	Cancel Date	Denomination	Restricted
777	04/24/2017	MAILED OCT 10/17	683,966 683,966 *	STOP

84 GLEN COOKE 240,151

Certificate # / Book	Issue Date	Cancel Date	Denomination	Restricted
789	04/24/2017	MAILED OCT 10/17	102,922	STOP
790	04/24/2017		137,229	STOP
			240,151 *	

52 CRAIG LEIGH CUSTOM HOMES LTD. 336,650

Certificate # / Book	Issue Date	Cancel Date	Denomination	Restricted
655	08/31/2016	MAILED OCT 10/17	311,967	STOP
759	11/15/2016		24,683	STOP
			336,650 *	

86 THOMAS FAIRFULL 27,446

Certificate # / Book	Issue Date	Cancel Date	Denomination	Restricted
792	04/24/2017	MAILED OCT 10/17	27,446	STOP
			27,446 *	

16 G & M PARSONS SERVICES INC. 2,500

Certificate # / Book	Issue Date	Cancel Date	Denomination	Restricted
502	10/26/2015	MAILED OCT 10/17	2,500 2,500 *	Restricted

Generated by YONAH KOPSTICK
On 10/20/17 at 11:59AM EST

This is **Exhibit "E"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N" and a long horizontal stroke at the end.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

137

DETAILED HOLDER LIST
WORLDWIDE STOCK TRANSFER, LLC
 Effective: 10/20/17

MAILING COMPLETED
 TO ALL RECIPIENTS
 OCT 10/17

J. Cummins

Issue: YAPPN CORP.

Issuer Abbrev.: YPPN
 Ticker: YPPN

Cusip: 98484T204

Account/TIN	Name & Address	Issue Date	Cancel Date	Denomination	Restricted	Shares Held
104	2541843 ONTARIO INC.					4,812,500
Certificate # / Book						
783		04/24/2017		194,342	STOP	
810		04/24/2017		3,118,158	STOP	
812		05/24/2017	MAILED OCT 10/17	1,500,000	STOP	
17	556253 ONTARIO INC.			4,812,500 *		81,848
Certificate # / Book						
536		04/29/2016		16,370	STOP	
537		04/29/2016		16,370	STOP	
718		11/02/2016	MAILED OCT 10/17	16,369		
719		11/02/2016	TO ADDRESS ON FILE & ALT	16,369		
720		11/02/2016	ADDRESS: 3109-4011 BRICKSTONE MEWS MISSISSAUGA, ON L5B 0J7	16,370		
62	LORNE ABRAMS			81,848 *		400,000
Certificate # / Book						
675		09/23/2016	MAILED OCT 10/17	400,000	STOP	
				400,000 *		
Certificate # / Book						
653		08/31/2016	MAILED OCT 10/17	4,561,409	STOP	
				4,561,409 *		
Certificate # / Book						
67	ARRAY CAPITAL INC.					40,000
Certificate # / Book						
54		11/15/2016	MAILED OCT 10/17	40,000	STOP	
				40,000 *		
Certificate # / Book						
37	AMIR BEM					201,019
Certificate # / Book						
98		04/29/2016		40,204	STOP	
99		04/29/2016	MAILED OCT 10/17	40,204	STOP	
99		11/01/2016	TO REG. ADDRESS & POA	40,203		
00		11/01/2016	SIMON	40,204		
01		11/01/2016	YAKUBOWICZ	40,204		
				201,019 *		
Certificate # / Book						
8	BEXPORT VENTURES LIMITED					185,528
Certificate # / Book						
714		04/29/2016	ORIG UK ADDRESS RETURNED OCT 27/17	37,106	STOP	
		04/29/2016	MAILED OCT 10/17 TO REG.	37,106	STOP	
		11/01/2016	ADDRESS + ALT. ADDRESS	37,105		
		11/01/2016	C/O SANDOR MIKLOS	37,105		
		11/01/2016	163 KILLIAN RD. MAPLE, ON L6A 1A8	37,106		
				185,528 *		

138

DETAILED HOLDER LIST
WORLDWIDE STOCK TRANSFER, LLC
 Effective: 10/20/17

Issue: YAPPN CORP.

Issuer Abbrev.: YPPN
 Ticker: YPPN

Cusip: 98484T204

Account/TIN	Name & Address	Issue Date	Cancel Date	Denomination	Restricted	Shares Held
57	CHANGE1 LTD.					200,000
Certificate # / Book		Issue Date	Cancel Date	Denomination	Restricted	
661		08/31/2016	MAILED OCT 10/17	200,000	STOP	
				200,000 *		
51	CHARLESTON DEVELOPMENT LIMITED					112,034
Certificate # / Book		Issue Date	Cancel Date	Denomination	Restricted	
654		08/31/2016	MAILED OCT 10/17	111,967	STOP	
756		11/15/2016	RETURNED AS MOVED OCT 24/17	67	STOP	
				112,034 *		
13	CHESTNUT HILL CAPITAL LLC					4,000
Certificate # / Book		Issue Date	Cancel Date	Denomination	Restricted	
RS.202		10/02/2015	MAILED OCT 10/17	4,000	STOP	
				4,000 *		
105	CHITZPATHAK LLP IITF MIZRAHI (128 HAZELTON) INC.					8,954,934
Certificate # / Book		Issue Date	Cancel Date	Denomination	Restricted	
811		04/28/2017	MAILED OCT 10/17	8,954,934	STOP	
				8,954,934 *		
	CRAIG COMBE					683,966
Certificate # / Book		Issue Date	Cancel Date	Denomination	Restricted	
777		04/24/2017	MAILED OCT 10/17	683,966	STOP	
				683,966 *		
84	GLEN COOKE					240,151
Certificate # / Book		Issue Date	Cancel Date	Denomination	Restricted	
789		04/24/2017	MAILED OCT 10/17	102,922	STOP	
790		04/24/2017		137,229	STOP	
				240,151 *		
52	CRAIG LEIGH CUSTOM HOMES LTD.					336,650
Certificate # / Book		Issue Date	Cancel Date	Denomination	Restricted	
655		08/31/2016	MAILED OCT 10/17	311,967	STOP	
759		11/15/2016		24,683	STOP	
				336,650 *		
86	THOMAS FAIRFULL					27,446
Certificate # / Book		Issue Date	Cancel Date	Denomination	Restricted	
792		04/24/2017	MAILED OCT 10/17	27,446	STOP	
				27,446 *		
16	G & M PARSONS SERVICES INC.					2,500
Certificate # / Book		Issue Date	Cancel Date	Denomination	Restricted	
502		10/26/2015	MAILED OCT 10/17	2,500		
				2,500 *		

This is **Exhibit "F"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

November 13, 2019

To: David Berry

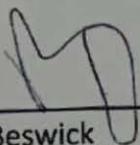
From: David Beswick

Re: Suite 802, 128 Hazelton Avenue

Further to our ongoing negotiations for the assignment of suite 802 at 128 Hazelton, I wish to make you an offer of \$2,234.00 per square foot for the space, paying deposits 1/3 on signing, 1/3 in 90 days, and 1/3 in 180 days.

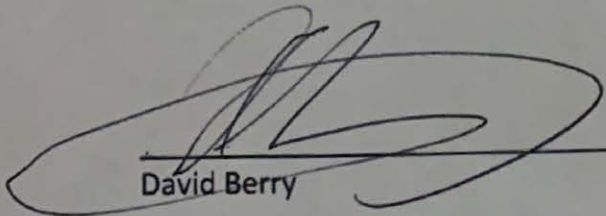
If you accept my offer, kindly acknowledge and agree and we can move forward with finalizing the assignment agreement.

Thank you,



David Beswick

Acknowledged and Agreed to by David Berry on November , 2019.



David Berry

This is **Exhibit "G"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

From: Rosetta Ting
To: ["David Berry"](#)
Cc: [Michael Pasternack](#)
Subject: RE: Hazelton Parking Units
Date: April-17-20 8:03:00 PM
Attachments: [image001.png](#)

Dave,

Those price amendments came from you and Beswick. Amanda said you told her to set 802 to \$6,107,756 (hence a straight assignment with no profit to you; all you are getting is the deposit back minus the processing fee) and therefore the price of 901 increased to \$7,142,244 to keep the 802 + 901 equal to \$13,250,000. Amanda said she had a call with you a few months back on this – I suggest you give her a call on the business terms.

Thank you,



Rosetta Ting

Lawyer

rting@dsavocats.ca

Tel: +1 647 477-7317 #405

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From: David Berry <davidmmberry@rogers.com>
Sent: Friday, April 17, 2020 7:48 PM
To: Rosetta Ting <RTing@dsavocats.ca>
Cc: Michael Pasternack <MPasternack@dsavocats.ca>
Subject: Re: Hazelton Parking Units

I don't understand the price amendments. How could 9th floor which is double my 8th floor in square footage be more in price originally than my 9th floor

Approximate square footage is as follows

9th. 5800
8th. 2700

On Apr 17, 2020, at 6:32 PM, Rosetta Ting <RTing@dsavocats.ca> wrote:

Dave,

Great, thank you. If you have no further questions, please find attached for execution:

1. 901 Price Amendment from \$6,250,000 to \$7,142,244;
2. 802 Price Amendment from \$7M to \$6,107,756;
3. Assignment of 802 to Beswick (at \$6,107,756);
4. Acknowledgment that the Mutual Release and Termination of the combined 901/802 agreement is still in good standing. The mutual release agreement signed last year is attached for your reference – it was conditional on this assignment being done by Aug 2019 and as we know the deal with Beswick was not finalized by him until two days ago, so the attached Acknowledgment recognizes that the release is still effective.

I have a letter from Sam confirming 4 parking space.

Thank you,

<image001.png>

<image004.jpg>

Rosetta Ting

Lawyer

rting@dsavocats.ca

Tel: +1 647 477-7317 #405

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From: David Berry <davidmmberry@rogers.com>
Sent: Friday, April 17, 2020 2:39 PM
To: Rosetta Ting <RTing@dsavocats.ca>
Cc: Michael Pasternack <MPasternack@dsavocats.ca>; Dlop Yousif <dlopyousif@gmail.com>
Subject: Re: Hazelton Parking Units

Yes

On Apr 17, 2020, at 12:58 PM, Rosetta Ting <RTing@dsavocats.ca> wrote:

Dave: Besides the below estimated numbers subject to adjustments, are you agreeable with the assignment as described? Beswick falls into your shoes as the buyer for 802 and besides paying you back the deposit (minus processing fee), he pays the vendor the balance of the purchase price.

We are waiting for Amanda to provide confirmation re: parking spots.

Dee: Further to my email to you this morning, please find attached the 901 and 802 documents as requested. Attached is also the 901 square footage. 802 is 2734 sf.

Thank you,

<image001.png>

<image005.jpg>

Rosetta Ting

Lawyer

rting@dsavocats.ca

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From: Rosetta Ting
Sent: Thursday, April 16, 2020 10:11 PM
To: David Berry <davidmberry@rogers.com>
Cc: Michael Pasternack <MPasternack@dsavocats.ca>
Subject: RE: Hazelton Parking Units

Dave,

Amending your numbers slightly:

<i>initial cost of 802 & 901</i>	13 250 000
<i>down payment of 802 & 901</i>	(2 650 000)
<i>8th floor assign</i>	(6 107 756)
<i>return of down payment (20% of 8th fl price)</i>	1 400 000
<i>final payment before adjustment</i>	5 892 244
<i>yappn adjustment</i>	(2 000 000)
<i>final adjusted payment</i>	3 892 244

Then yes, there is no bump up for the 802 assignment, and based on Amanda's number below for 901 (not accounting for Processing Fee):

Amended cost	7 142 244
Deposit	(1 250 000)
Yappn	(2 000 000)
Balance subject to usual adjustments	3 892 244 (same as yours)

Thank you,

<image001.png>

<image004.jpg>

Rosetta Ting

Lawyer

rting@dsavocats.ca

Tel: +1 647 477-7317 #405

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From: David Berry <davidmmberry@rogers.com>
Sent: Thursday, April 16, 2020 9:04 PM
To: Rosetta Ting <RTing@dsavocats.ca>
Cc: Michael Pasternack <MPasternack@dsavocats.ca>
Subject: Re: Hazelton Parking Units

I don't think you are getting it. I have basically sold the 8th floor for 6.1 mil.

so when everything closes my payment at the end on the 9th floor is lower 6.1 mil.

initial cost	13 250 000
down payment	(2.625 000)
8th floor sale	(6 100 000)
return of down payment (20% of 8th fl price)	1 200 000
final payment before adjustment	5 725 000
yappn adjustment	(1 000 000)
final adjusted payment	4 725 000

On Thursday, April 16, 2020, 07:17:53 p.m. EDT, Rosetta Ting <rting@dsavocats.ca> wrote:

Dave,

My understanding from the documents from Amanda is that she is trying to amend the price of 802 from \$7M to \$6,107,756, and 901 from \$6,250,000 to \$7,142,244 because Beswick is paying \$6,107,756 for 802. How much profit do are you looking to make on this assignment?

For example only, if you're looking for a \$2M profit, then for this to happen the 802's price has to be amended to \$4,107,756 (from \$7M) so that \$4,107,756 is payable to Mizrahi on closing, and \$2M profit payable to you on closing (Beswick's lawyer should be sending us an assignment agreement with \$2M payable to you in addition to the assignment agreement of \$4,107,756 with Mizrahi). You are selling the contract, not the condo.

This means that 901 has to have an amended price of \$9,142,244 (from \$6,250,000) in order to keep the price of \$13,250,000 with Mizrahi.

Thank you,

<image001.png>

<image004.jpg>

Rosetta Ting

Lawyer

rting@dsavocats.ca

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From: David Berry <davidmmberry@rogers.com>
Sent: Thursday, April 16, 2020 5:07 PM
To: Rosetta Ting <RTing@dsavocats.ca>
Cc: Michael Pasternack <MPasternack@dsavocats.ca>
Subject: Re: Hazelton Parking Units

Call me please

On Apr 16, 2020, at 3:36 PM, Rosetta Ting
<RTing@dsavocats.ca> wrote:

Dave,

Per Amanda's email below, the prices reflect the original

prices you agreed for 901 and 802, and now the price you set with Beswick for 802. Besides the deposit back for 802 to you, Beswick pays Mizrahi the balance of 802's price and the price attributed to 901 went up.

Regards,

<image001.png>

<image003.jpg>

Rosetta Ting
Lawyer
rting@dsavocats.ca

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From: Amanda Brown <amanda@mizrahidevelopments.ca>
Sent: Thursday, April 16, 2020 3:09 PM
To: Rosetta Ting <RTing@dsavocats.ca>
Cc: David Berry <davidmmberry@rogers.com>
Subject: Re: Hazelton Parking Units

Hi Rosetta,

The price on 802 decreased to match the terms agreed to by Dave with David Beswick.

Please see attached document between the two, confirming the price per square foot. The agreed upon price for 802 was \$2234 psf and the suite is 2734 sqft, which equals \$6,107,756.00.

Accordingly, the price for 901 had to increase by \$892,244.00, in order for both suites to equal the original purchase price of the 2 storey unit.

As you may recall, the prices put on both Suite 901 and 802 in August were decided by Dave, and the new price is reflective of his agreement with Dave Beswick.

I did have a call with Dave about this in early March and did confirm this with him, to lower the price of 802 to match his agreement with Dave Beswick.

I can look into current market value for 901.

As discussed over the phone the letter regarding parking will be revised to reflect the 3 signatures you requested.

Thank you for creating the simple acknowledgment, it is fine in the form you presented.

Please have Dave execute the two amendments, the acknowledgment, and the assignment and return to me for countersignature.

Thank you,

Amanda

On Thu, Apr 16, 2020 at 1:47 PM Rosetta Ting
<RTing@dsavocats.ca> wrote:

Amanda,

1. Why did 802 price decrease by \$892,244 from \$7M to \$6,107,756; and 901 increase by the same amount from \$6,250,000 to \$7,142,244?
2. What is Dave Berry's net gain on the assignment?
3. What is the current market value of 901?

Many thanks,

<image001.png>

<image004.jpg>

Rosetta Ting
Lawyer
rting@dsavocats.ca

Tel: +1 647 477-7317 #405

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From: Amanda Brown <amanda@mizrahidevelopments.ca>

Sent: Thursday, April 16, 2020 1:35 PM

To: Rosetta Ting <RTing@dsavocats.ca>

Cc: David Berry <davidmmberry@rogers.com>

Subject: Re: Hazelton Parking Units

Thanks, Rosetta.

I will be back to you shortly.

On Thu, Apr 16, 2020 at 12:29 PM Rosetta Ting <RTing@dsavocats.ca> wrote:

Amanda,

While I await for your reply below, please find attached the simplest of acknowledgements.

Thank you,

<image001.png>

<image004.jpg>

Rosetta Ting
Lawyer
rting@dsavocats.ca

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From: Rosetta Ting
Sent: Thursday, April 16, 2020 11:03 AM
To: 'Amanda Brown'
<amanda@mizrahidevelopments.ca>; David Berry
<davidmmberry@rogers.com>
Subject: RE: Hazelton Parking Units

Amanda,

I am going to draft a quick acknowledgement for #1 and 2 below right now.

I absolutely need something from you for #3 to consolidate and state that there are 4 parking spaces in total that are separately "walled"/self-contained with garage door opener. Please refer to the language in the document attached to the email that I previously sent you attached.

Thank you,

<image001.png>

<image004.jpg>

Rosetta Ting
Lawyer
rting@dsavocats.ca

Tel: +1 647 477-7317 #405

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8 King Street East, Suite 1804

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From: Amanda Brown

<amanda@mizrahidevelopments.ca>

Sent: Thursday, April 16, 2020 8:54 AM

To: David Berry <davidmberry@rogers.com>; Rosetta Ting <RTing@dsavocats.ca>

Subject: Re: Hazelton Parking Units

Thanks, Dave.

Hi Rosetta,

I hope you are well during these unimaginable times!

1. Yes, the mutual release is still in good standing.

2. Yes, the 1.25 million deposit is attributed to Suite 901

3. Suite 901, under the APS from August 2019, has 3 parking spaces, which was the number of spaces in the original APS with Mizrahi (128 Hazelton) Inc. The additional space is referred to in another agreement with another entity, and that space "lives" there.

I do not have a word doc for the final document, as the changes that were made by Beswick's lawyer, which only impact his client, were done by him. The only other changes that were incorporated in the document were the agreed upon terms by Dave and Beswick.

Rosetta, I would like to jump on a call with you to review any questions you have so we can wrap this up asap for Dave. We can do a page flip together and go over the document. It is substantially the same as the one you vetted and approved in August. Beswick's lawyer added some terms that govern his clients portion of the transaction and the only other changes are the terms Dave agreed to with Beswick.

Let me know what works for you. I look forward to speaking with you!

Thanks,

Amanda

On Wed, Apr 15, 2020 at 6:59 PM David Berry
<davidmberry@rogers.com> wrote:

Just copying in Amanda.

Amanda — could you please get the requested materials to Rosetta for her review?

Thank you.

Dave

On Apr 15, 2020, at 6:25 PM, Rosetta Ting <RTing@dsavocats.ca> wrote:

Dave,

In addition to the Word version of the Assignment, please also ask Amanda to send me the following:

1. Acknowledgement that the Mutual Release and Termination agreement is still in good standing despite the original intention to have everything signed by Aug 29, 2019.
2. That \$1.25M of the deposit is transferred to 901.
3. That 901 has 4 self contained parking spaces.

Please have her send me all of these by tomorrow and I will call you tomorrow.

Thank you, and stay safe.

<image001.png>

<image004.jpg>

Rosetta Ting
Lawyer
rting@dsavocats.ca

Tel: +1 647 477-7317 #405

DS Lawyers Canada LLP
8 King Street East, Suite 1804

Toronto, Ontario, M5C 1B5 - Canada
Tel: +1 647 477-7317 | Fax: +1 416 214-1374

Montréal-Québec-Toronto-Vancouver-Ottawa-Paris-
Lyon-Bordeaux-Lille-Bruxelles-Milan-La Réunion-
Barcelone-Madrid-Stuttgart-Buenos Aires-Santiago-
Lima-Dakar-Beijing-Shanghai-Guangzhou-Singapour-
Ho Chi Minh Ville

www.dsavocats.ca

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Amanda Brown
Vice President, Operations
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T. 416.922.4200 ext.4250
F. 1.866.300.0219
E. Amanda@MizrahiDevelopments.ca
www.MizrahiDevelopments.ca

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<Beswick letter re 802 (2).jpg>

<901 Schedule A.pdf>

<Executed Docs.zip>

<06 2020-04-13 - Suite 901 - Amendment.pdf>

<05 2020-04-13 - Suite 802 - Amendment.pdf>

<03 802 Assignment (executed by Beswick) v2b.pdf.PDF>

<07 Ack re Mutual Release_4645-3_04-16-20.pdf>

<16-08-2019-128 Hazelton-Mutual Release and Termination-901802.pdf>

This is **Exhibit "H"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N" and "M".

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

**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

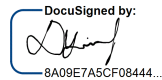
- **Purchase Price: SEVEN MILLION ONE HUNDRED FORTY TWO THOUSAND TWO HUNDRED FORTY FOUR DOLLARS (\$7,142,244.00)**

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.

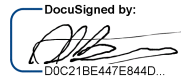
SIGNED, SEALED AND DELIVERED
in the presence of

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.



This is **Exhibit "I"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

September 12, 2024

DELIVERED VIA EMAIL

James Renihan
Norton Rose Fulbright
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7
Email: James.renihan@nortonrosefulbright.com
Fax: 416-216-1944

Dear Mr. Renihan:

Re: Mizrahi (128 Hazelton) Inc. / David Berry

This letter responds to the items raised in your letter to Mr. Leslie dated July 26, 2024.

As noted in our letter of September 5, 2024, Mr. Berry will oppose any attempt to disclaim his APS for Unit 901 or attempt to sell that property and reserves his rights in that regard.

The Receiver's Mandate to Complete the Sale of Unit 901 to David Berry

From a factual perspective, throughout 2024, Mr. Berry understood from Robert Hiscox, a director and officer of both the debtor Mizrahi (128 Hazelton) Inc. ("**Hazelton**") and creditor Constantine Enterprises Inc. ("**CEI**") that CEI's intention in appointing the Receiver was to complete the sale of the units that were already subject to agreements of purchase and sale.

This point was made clear in Robert Hiscox's affidavit filed in support of CEI's application to appoint the Receiver, when he expressly testified that that was indeed to purpose of the receivership proceedings:

CEI's intention is for the receiver to take steps to complete the sale of units already subject to agreements of purchase and sale, to facilitate the final phase of construction of the Hazelton Project required for completion of units where necessary, and to facilitate the marketing and sale of the remaining condominium units in order to

realize on the value of the Property and repay creditors.¹ [emphasis added]

Justice Cavanagh cited CEI's intention at paragraph 23 of his May 13, 2024, endorsement explaining his decision to grant the order appointing the Receiver. Moreover, Justice Cavanah expressly cited that purpose again when setting out his reasons for finding that it was just and convenient for KSV to be appointed as Receiver provided at paragraph 44 of his reasons:

The appointment of a receiver will (a) allow for the completion of the sale of units already subject to agreements of purchase and sale, (b) facilitate the final phase of construction of the Hazelton project required for completion of units where necessary, (c) facilitate the marketing and sale of the remaining Hazelton Project units in order to realize value of the Property and repay creditors, and (d) preserve the value of the Property and allow for its realization in a transparent manner in the interests of all stakeholders.² [emphasis added]

The fact that it was CEI's intention that the receiver complete the sale of units that were subject to APS, and that this was to be done in the Receivership was also represented to Mr. Berry prior the appointment of the Receiver. Specifically, during the course of the application to appoint the Receiver, Mr. Hiscox, who was (and still is) a director and officer of both Hazelton and CEI, made multiple representations to Mr. Berry to reassure him that his APS for Unit 901 would be honoured within the receivership proceedings. The dates on which these representations were made are set out in Mr. Leslie's letters of July 8 and 16, 2024. A summary of these representations are set out in Mr. Leslie's July 16, 2024 letter as well as a letter that our office sent to CEI's counsel on September 4, 2024. For your records, we enclose a copy of our September 4, 2024 letter along with the other documents referred to in this letter. We also have copies of audio recordings of the conversations between Mr. Berry and Mr. Hiscox during which these representations were made. We will make copies of these recordings available to the Receiver upon request.

We provide the following further context regarding Hazelton's offer to close on Mr. Berry's unit and reduce the purchase price by the estimated finishing cost. On January 11, 2024,

¹ Affidavit of Robert Hiscox dated February 23, 2024, Exhibit "A" at para 57. See also the factum of the Applicant CEI, dated April 26, 2024, at para 43.

² Constantine Enterprises Inc. v Sam M LP Inc. et al, *and related matter*. May 13, 2024 Endorsement of Justice Cavanagh, at para. 44.

Mr. Mizrahi, while a Director and Officer of Hazelton, offered on behalf of Hazelton that it would close the APS with Mr. Berry before the unit was finished on the basis that the purchase price would be reduced by the estimated cost to finish the unit, Hazelton would not complete the finishings as per the contract, the APS would close and Mr. Berry would then manage the completion of the finishings himself after closing (“Offer”). Mr. Hiscox reiterated the Offer to Mr. Berry by telephone in or around the same timeframe (as described in Mr. Leslie’s July 8 letter). The Offer remained outstanding and was at no time revoked. Mr. Berry communicated his acceptance of the Offer to Mr. Mizrahi in writing on May 30, 2024, and on the same day told Mr. Hiscox that he sought to accept the Offer. Mr. Hiscox advised Mr. Berry that the Court was appointing the Receiver and the Offer could not be accepted in the circumstances because it required amendment. It is not clear from the material we have reviewed whether Mr. Hiscox advised the Receiver that our client accepted the Offer (or attempted to accept the Offer) on May 30, 2024, and whether Mr. Hiscox asked the Receiver to make the necessary amendments so that our client could close on his APS. Please provide the Receiver’s information as to whether this information was relayed to the Receiver. For your records, we enclose a copy of the written exchange between Mr. Mizrahi and Mr. Berry in respect of Hazelton’s Offer.

Governing Agreements

With the exception of the note below, Mr. Berry understands the following documents to govern the purchase of Unit 901:

Date	Agreement
April 21, 2016	Agreement of Purchase and Sale for Unit 901
April 28, 2016	Amendment to Agreement of Purchase and Sale for Unit 901
May 15, 2017	Amendment to Agreement to Purchase and Sale for Unit 901
August 16, 2019	Amendment to Agreement to Purchase and Sale for Unit 901
April 13, 2020	Amendment relating to Purchase Price ³
April 14, 2020	Assignment Agreement regarding Unit 802
October 2, 2022	Agreement / Invoice related to finishes and extras
November 7, 2022	Revised Tarion Forms

³ There is a related agreement amending the purchase price of the previously assigned Unit 802, entitled Amendment to the Agreement of Purchase and Sale, dated April 13, 2020.

January 11, 2024; May 30, 2024	Text exchange re Hazelton Offer to close less finishing deductions
-----------------------------------	--

To the extent that we have included documents in the above list that are not referred to in your July 26 letter, we are providing them (along with all other enclosures referred to in this letter) by way of a secure link that will be shared with you.

There is at least one other document of which Mr. Berry is aware that impacts his interest in Unit 901. There are confidentiality considerations attached to this document. Mr. Berry believes that he is obliged to disclose this document to the Receiver as it is relevant to his interest in Unit 901. He intends to do so and is in the process of putting the other parties to the document on notice of Mr. Berry's intention to provide this document to the Receiver. If these parties provide facts that change Mr. Berry's view that the document requires disclosure, we will advise; if not, Mr. Berry may need to take steps to ensure that the document is provided to the Receiver over the objections of other parties. We will deliver a further communication on this issue shortly.

Payments Made

Based on the records reviewed to date, Mr. Berry believes that the information regarding the \$450,000 advanced for the \$800,000 finishing advance that you have described in your letter is accurate. If Mr. Berry identifies further documentation in respect of the \$750,000 loan described in Mr. Leslie's July 8 and 16 letters and your July 26 letter, against which \$350,000 may have been applied to Unit 901, we will advise you and provide the documents.

Areas of Investigation

We note that as of April 28, 2017, Mr. Berry was no longer the owner of record of the Yappn shares, which on that date transferred from Mr. Berry to Chitiz Pathak LLP in trust for Mizrahi (128 Hazelton) Inc. We respond to your specific questions as follows (the responses are in **bolded text** below):

1. What was the VWAP as of May 15, 2017? **\$0.086149 USD (\$0.118024518 CAD).**
2. When did Yappn Shares vest? **To the best of Mr. Berry's knowledge, the Yappn Shares vested on September 1, 2017.**
3. What was the VWAP as of the vesting date? **The applicable VWAP for September 1, 2017 was 0.123998517 USD.**

4. Was the VWAP as of the vesting date low enough to trigger the \$1M increase in the unit purchase price? **No.**
5. Why there is an earlier amendment dated, April 16, 2016? **The prior amendment was dated April 28, 2016, and initially introduced the payment of \$2 million of Yappn shares towards the purchase price. Clause 5.8 of the May 15, 2017 Amending Agreement provides that that agreement cancelled and superseded all prior agreements regarding the same subject matter and rescinded in its entirety the April 28, 2016 Agreement (notwithstanding that Clause 5.8 of the May 15, 2017 Amending Agreement cites the prior amending agreement as being dated April 28, 2017, rather than 2016).**
6. Why did Hazelton and Mr. Berry agree to increase the purchase price of 901 in April 2020? **This was related to the assignment of unit 802, which purchase price was adjusted in the inverse. As Mr. Berry recalls, the adjustment was made primarily for tax purposes.**

As stated, Mr. Berry will oppose any attempt to disclaim his APS or to sell his Unit. We trust the above provides sufficient information for the Receiver to revisit its position in this regard. We will be in touch shortly with respect to the additional governing agreement to which we have made reference.

We will be pleased to discuss this matter and to work with you and the Receiver towards a viable solution for all parties.

Your very truly,



Michael O'Brien

cc: Jason Wadden, Nick Morrow, *Tyr LLP*
Jennifer Stam, *Norton Rose Fulbright Canada LLP*
John Picone, *Cassels Brock & Blackwell LLP*

Encl.

This is **Exhibit “J”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)



From: David Berry davidmmberry@rogers.com

Subject: 128 Hazelton penthouse

Date: November 19, 2020 at 1:43 PM

To: Maxine Tissenbaum mt.id@rogers.com, Trevor Kruse trevor@hudsonkruse.com, Joshua Lax josh@mizrahidevelopments.ca, Sam Mizrahi sam@mizrahicorp.com

Please proceed with finishing penthouse of 128 Hazelton to Maxine and trevors design and layout

Please keep them up to date on every detail.

Thanks

Dave



From: Sam Mizrahi sam@mizrahicorp.com

Subject: Re: 128 Hazelton penthouse

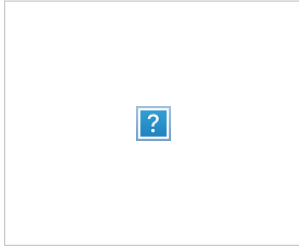
Date: November 19, 2020 at 1:46 PM

To: David Berry davidmberry@rogers.com, Amanda Brown amanda@mizrahidevelopments.ca

Cc: Maxine Tissenbaum mt.id@rogers.com, Trevor Kruse trevor@hudsonkruse.com, Joshua Lax josh@mizrahidevelopments.ca

Copying in Amanda on your direction David.

Sincerely,



Sam Mizrahi

President

[125 Hazelton Avenue](#)

[Toronto, Ontario M5R 2E4](#)

T. [416.487.9863](#)

C. [416.818.5288](#)

F. [1.416.440.0006](#)

Sam@MizrahiCorp.com

www.MizrahiCorp.com

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On Nov 19, 2020, at 1:43 PM, David Berry <davidmberry@rogers.com> wrote:

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Please keep them up to date on every detail.

Thanks

Dave

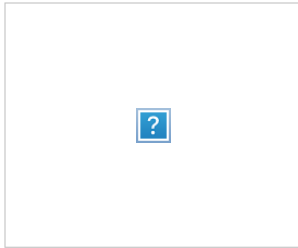
From: Amanda Brown amanda@mizrahidevelopments.ca
Subject: Re: 128 Hazelton penthouse
Date: November 19, 2020 at 2:18 PM
To: Sam Mizrahi sam@mizrahicorp.com
Cc: David Berry davidmberry@rogers.com, Maxine Tissenbaum mt.id@rogers.com, Trevor Kruse trevor@hudsonkruse.com, Joshua Lax josh@mizrahidevelopments.ca

Thanks, Sam.

Maxine, we will require your full ID package for this suite by December 14, 2020.

On Thu, Nov 19, 2020 at 1:46 PM Sam Mizrahi <sam@mizrahicorp.com> wrote:
 Copying in Amanda on your direction David.

Sincerely,



Sam Mizrahi

President

125 Hazelton Avenue
 Toronto, Ontario M5R 2E4

T. [416.487.9863](tel:416.487.9863)

C. [416.818.5288](tel:416.818.5288)

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Thanks

Dave

--



Amanda Brown

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From: Maxine Tissenbaum mt.id@rogers.com
Subject: Re: 128 Hazelton penthouse
Date: November 20, 2020 at 11:11 AM
To: Amanda Brown amanda@mizrahidevelopments.ca
Cc: Sam Mizrahi sam@mizrahicorp.com, David Berry davidmberry@rogers.com, Trevor Kruse trevor@hudsonkruse.com, Joshua Lax josh@mizrahidevelopments.ca

Hi Amanda

Hope all is well. David would like to set up a conference call. Monday would work- could you please give us some times that you and Josh would be available and I will try to co- ordinate with David and Trevor as well. Thanks so much!

Best,
 Maxine

On Nov 19, 2020, at 2:18 PM, Amanda Brown <amanda@mizrahidevelopments.ca> wrote:

Thanks, Sam.

Maxine, we will require your full ID package for this suite by December 14, 2020.

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 Copying in Amanda on your direction David.

Sincerely,



Sam Mizrahi

President

125 Hazelton Avenue

Toronto, Ontario M5R 2E4

T. [416.487.9863](tel:416.487.9863)

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Thanks

Dave



Building Futures.

Amanda Brown

Vice President, Operations

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From: Amanda Brown amanda@mizrahidevelopments.ca
Subject: Re: 128 Hazelton penthouse
Date: November 20, 2020 at 11:31 AM
To: Josh Lax josh@mizrahidevelopments.ca
Cc: Maxine Tissenbaum mt.id@rogers.com, Sam Mizrahi sam@mizrahicorp.com, davidmmberry@rogers.com, Trevor Kruse trevor@hudsonkruse.com

I am available on Tuesday from 2-3pm.

On Fri, Nov 20, 2020 at 11:18 AM Josh Lax <josh@mizrahidevelopments.ca> wrote:
 Maxine,

I'm jammed on Monday, but can do Tuesday 12-1, 2-3, or 4-5.



Joshua Lax
 Vice President, Development

125 Hazelton Avenue
 Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4270

C. 416.400.1852

F. 1.866.300.0219

E. Josh@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

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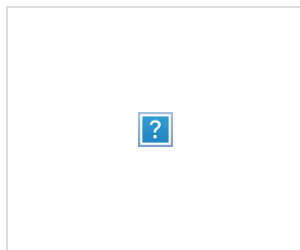
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Maxine, we will require your full ID package for this suite by December 14, 2020.

On Thu, Nov 19, 2020 at 1:46 PM Sam Mizrahi <sam@mizrahicorp.com> wrote:
 Copying in Amanda on your direction David.

Sincerely,



Sam Mizrahi

President

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C. [416.818.5288](tel:416.818.5288)

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Please keep them up to date on every detail

Please keep them up to date on every detail.

Thanks

Dave



Building Futures.

Amanda Brown
Vice President, Operations

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Toronto, Ontario M5R 2E4

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F. [1.866.300.0219](tel:1.866.300.0219)

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From: David Berry davidmmberry@rogers.com
Subject: Fwd: 128 Hazelton penthouse
Date: February 5, 2021 at 4:39 PM
To: David Berry davidmmberry@rogers.com

Begin forwarded message:

From: Amanda Brown <amanda@mizrahidevelopments.ca>
Date: November 19, 2020 at 2:18:09 PM EST
To: Sam Mizrahi <sam@mizrahicorp.com>
Cc: David Berry <davidmmberry@rogers.com>, Maxine Tissenbaum <mt.id@rogers.com>, Trevor Kruse <trevor@hudsonkruse.com>, Joshua Lax <josh@mizrahidevelopments.ca>
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T. [416.487.9863](tel:416.487.9863)

C. [416.818.5288](tel:416.818.5288)

F. [1.416.440.0006](tel:1.416.440.0006)

Sam@MizrahiCorp.com

www.MizrahiCorp.com

CONFIDENTIALITY NOTICE: All information contained herein is for the exclusive confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this message in error, please notify the sender immediately and promptly delete this message and all its attachments from your computer systems.

On Nov 19, 2020, at 1:43 PM, David Berry <davidmmberry@rogers.com> wrote:

Please proceed with finishing penthouse of 128 Hazelton to Maxine and trevors design and layout

Please keep them up to date on every detail.

Thanks

Dave



Amanda Brown
 Vice President, Operations

125 Hazelton Avenue
 Toronto, Ontario M5R 2E4

T. [416.922.4200](tel:416.922.4200) ext.4250

F. [1.866.300.0219](tel:1.866.300.0219)

E. Amanda@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

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intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this message in error, please notify the sender immediately and promptly delete this message and all its attachments from your computer system.



From: David Berry davidmmberry@rogers.com
Subject: Fwd: 128 Hazelton penthouse
Date: February 5, 2021 at 4:55 PM
To: Maxine Tissenbaum mt.id@rogers.com, Trevor Kruse trevor@hudsonkruse.com

Trevor and Maxine. See below email from Amanda. The ID was supposed to be done dec 14 2020. This notice was given to you on nov 19 2020. It now must be completed by feb 20. There's no more leeway. Mizrahi has been more then patient here.

I have paid over 100 k so far and all I have seen is a couple of skrtches in rough the most significant of which was very close to the one I sent awhile back for the games room. It is not reasonable to claim delays were necessary because of the fire door issue. That was a minor change. It's pretty clear that this job was not a priority up to this point in time but it now has to become one. I would urge you both to please make it so. I am at risk with Mizrahi now of them being able to fine me with delay costs.

I will make myself available for either of you whenever you need me as I have done so to this point.

Thanks

Dave

Begin forwarded message:

From: David Berry <davidmmberry@rogers.com>
Date: February 5, 2021 at 4:39:58 PM EST
To: David Berry <davidmmberry@rogers.com>
Subject: Fwd: 128 Hazelton penthouse

Begin forwarded message:

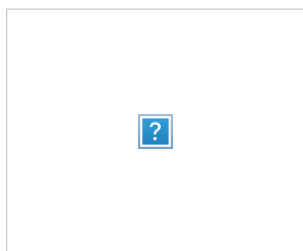
From: Amanda Brown <amanda@mizrahidevelopments.ca>
Date: November 19, 2020 at 2:18:09 PM EST
To: Sam Mizrahi <sam@mizrahicorp.com>
Cc: David Berry <davidmmberry@rogers.com>, Maxine Tissenbaum <mt.id@rogers.com>, Trevor Kruse <trevor@hudsonkruse.com>, Joshua Lax <josh@mizrahidevelopments.ca>
Subject: Re: 128 Hazelton penthouse

Thanks, Sam.

Maxine, we will require your full ID package for this suite by December 14, 2020.

On Thu, Nov 19, 2020 at 1:46 PM Sam Mizrahi <sam@mizrahicorp.com> wrote:
 Copying in Amanda on your direction David.

Sincerely,



Sam Mizrahi
President
 125 Hazelton Avenue
 Toronto, Ontario M5R 2E4
 T. [416.487.9863](tel:416.487.9863)
 C. [416.818.5288](tel:416.818.5288)
 F. [1.416.440.0006](tel:1.416.440.0006)
Sam@MizrahiCorp.com
www.MizrahiCorp.com

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Please proceed with finishing penthouse of 128 Hazelton to Maxine and trevors design and layout

Please keep them up to date on every detail.

Thanks



Dave



Amanda Brown
Vice President, Operations

125 Hazelton Avenue
Toronto, Ontario M5R 2E4

T. 416.922.4200 ext.4250

F. 1.866.300.0219

E. Amanda@MizrahiDevelopments.ca

www.MizrahiDevelopments.ca

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This is **Exhibit “K”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N" and "M".

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)



February 5, 2021

David Berry
124 Park Road
Toronto, Ontario
M4W 2N7

DELIVERED VIA EMAIL

Dear Mr. Berry,

Re: Berry purchase from Mizrahi (128 Hazelton) Inc., Level 9, Unit 01

As construction of 128 Hazelton is nearing completion, the finishing of your suite is imminent.

Your interior designer has recently provided a partition plan of your unit that has been circulated for comments and coordination with the project's architect.

We understand that your designer is currently working on finalizing the full Interior Design package for your suite.

Please ensure that your interior designer submits your complete Interior Design package by February 20, 2021.

Sincerely,

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

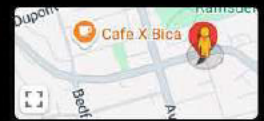
Amanda Brown
Vice President, Operations

This is **Exhibit "L"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow", written in a cursive style.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)



This is **Exhibit “M”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)



90 Joseph Street, Box 268
Port Carling, ON P0B 1J0
705 706-7900
www.jaynescottages.com
HST #830090783

Arrival Date:	01/19/2021	David Berry
Departure Date:	06/24/2022	, ON
Check-In Time:	04:00 PM	Canada
Check-Out Time:	10:00 AM	

Rental Charges					
Date	Nts	Description	Rate	Tax	Total
01/19/2021 - 01/26/2021	7	Just Beachy - Weekly	\$6,500.00	\$0.00	\$6,500.00
01/26/2021 - 02/02/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
02/02/2021 - 02/09/2021	7	Just Beachy - Weekly	\$6,500.00	\$0.00	\$6,500.00
02/09/2021 - 02/16/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
02/16/2021 - 02/23/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
02/23/2021 - 03/02/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
03/02/2021 - 03/09/2021	7	Just Beachy - Weekly	\$6,500.00	\$0.00	\$6,500.00
03/09/2021 - 03/16/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
03/16/2021 - 03/23/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
03/23/2021 - 03/30/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
03/30/2021 - 04/06/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
04/06/2021 - 04/13/2021	7	Just Beachy - Weekly	\$6,500.00	\$0.00	\$6,500.00
04/13/2021 - 04/20/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
04/20/2021 - 04/27/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
04/27/2021 - 05/04/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
05/04/2021 - 05/11/2021	7	Just Beachy - Weekly	\$6,500.00	\$0.00	\$6,500.00
05/11/2021 - 05/18/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
05/18/2021 - 05/25/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
05/25/2021 - 06/01/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
06/01/2021 - 06/08/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
06/08/2021 - 06/15/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
06/15/2021 - 06/22/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
06/22/2021 - 06/29/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
06/29/2021 - 07/06/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
07/06/2021 - 07/13/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
07/13/2021 - 07/20/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
07/20/2021 - 07/27/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
07/27/2021 - 08/03/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
08/03/2021 - 08/10/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
08/10/2021 - 08/17/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
08/17/2021 - 08/24/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00

08/24/2021 - 08/31/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
08/31/2021 - 09/07/2021	7	Just Beachy - Weekly	\$60,000.00	\$0.00	\$60,000.00
09/07/2021 - 09/14/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
09/14/2021 - 09/21/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
09/21/2021 - 09/28/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
09/28/2021 - 10/05/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
10/05/2021 - 10/12/2021	7	Just Beachy - Weekly	\$60,000.00	\$0.00	\$60,000.00
10/12/2021 - 10/19/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
10/19/2021 - 10/26/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
10/26/2021 - 11/02/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
11/02/2021 - 11/09/2021	7	Just Beachy - Weekly	\$60,000.00	\$0.00	\$60,000.00
11/09/2021 - 11/16/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
11/16/2021 - 11/23/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
11/23/2021 - 11/30/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
11/30/2021 - 12/07/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
12/07/2021 - 12/14/2021	7	Just Beachy - Weekly	\$60,000.00	\$0.00	\$60,000.00
12/14/2021 - 12/21/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
12/21/2021 - 12/28/2021	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
12/28/2021 - 01/04/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
01/04/2022 - 01/11/2022	7	Just Beachy - Weekly	\$6,500.00	\$0.00	\$6,500.00
01/11/2022 - 01/18/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
01/18/2022 - 01/25/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
01/25/2022 - 02/01/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
02/01/2022 - 02/08/2022	7	Just Beachy - Weekly	\$6,500.00	\$0.00	\$6,500.00
02/08/2022 - 02/15/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
02/15/2022 - 02/22/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
02/22/2022 - 03/01/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
03/01/2022 - 03/08/2022	7	Just Beachy - Weekly	\$6,500.00	\$0.00	\$6,500.00
03/08/2022 - 03/15/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
03/15/2022 - 03/22/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
03/22/2022 - 03/29/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
03/29/2022 - 04/05/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
04/05/2022 - 04/12/2022	7	Just Beachy - Weekly	\$6,500.00	\$0.00	\$6,500.00
04/12/2022 - 04/19/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
04/19/2022 - 04/26/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
04/26/2022 - 05/03/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
05/03/2022 - 05/10/2022	7	Just Beachy - Weekly	\$6,500.00	\$0.00	\$6,500.00
05/10/2022 - 05/17/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
05/17/2022 - 05/24/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
05/24/2022 - 05/31/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
05/31/2022 - 06/07/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
06/07/2022 - 06/14/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
06/14/2022 - 06/21/2022	7	Just Beachy - Weekly	\$0.00	\$0.00	\$0.00
06/21/2022	1	Just Beachy - Nightly	\$0.00	\$0.00	\$0.00
06/22/2022	1	Just Beachy - Nightly	\$0.00	\$0.00	\$0.00
06/23/2022	1	Just Beachy - Nightly	\$0.00	\$0.00	\$0.00
		HST inclusive (if applicable)	\$0.00	\$0.00	\$0.00

Turnover Cleaning Fee	\$595.00	\$0.00	\$595.00
Wire Transfer Fee	\$51.00	\$0.00	\$51.00
Turnover Cleaning Fee Credit	\$-595.00	\$0.00	\$-595.00
VISA/MC Transaction Fee	\$2,400.00	\$0.00	\$2,400.00

521	\$307,451.00	\$0.00	\$307,451.00
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Account Summary

Date	Description	Debits(+) Credits(-)	Charges
12/07/2020	Rental Charges	\$307,451.00	\$307,451.00
01/05/2021	Payment Received (Bank Transfer)	+ \$56,267.00	\$251,184.00
03/01/2021	Payment Received (Bank Transfer)	+ \$56,267.00	\$194,917.00
08/04/2021	Payment Received (Bank Transfer)	+ \$22,000.00	\$172,917.00
08/06/2021	Payment Received (Bank Transfer)	+ \$90,517.00	\$82,400.00
09/11/2021	Payment Received (Credit Card)	+ \$82,400.00	\$0.00

REMAINING BALANCE

\$0.00

Cancellation Policy

Cancellation Policy by Agency - If the Cottage Property is for any reason not rentable prior to commencement of the Rental Period then the Guest Agreement will be null and void and all Advance Deposits will be refunded to the Guest's credit card within 7 days of cancellation. No additional refund or damages will be paid to the Guest or Guests. **Cancellation Policy by Guest -** Guest may cancel the agreement before 150 days prior to the start of the rental period, the deposit will be returned less a fee of \$2000 per week of reservation if rental is under \$20,000 per week. For rentals at \$20,000 and over, the cancellation fee is \$4000/week of rental. If the Guest cancels the agreement 61 to 149 days prior to the start of the rental all deposits will be forfeited. If the Guest cancels the agreement less than 60 days before the start of the rental agreement the Guest is responsible for the full amount of the rent and is not entitled to any refund. **Cancellation Policy on Concierge Services -** Full refund on deposits made 31 days or more prior to arrival. For cancellation of concierge service for arrivals less than 31 days away, all deposits will be forfeited.

This is **Exhibit "N"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

190



Agreement to Lease Residential

Form 400

for use in the Province of Ontario

This Agreement to Lease (Agreement) dated this 21 day of April, 20 22

TENANT: David Berry
(Full legal names of all Tenants)

LANDLORD: Matthew Macausland and Naomi MacRae
(Full legal name of Landlord)

ADDRESS OF LANDLORD: 3421 Crescent Harbour Innisfil
(Legal address for the purpose of receiving notices)

The Tenant hereby offers to lease from the Landlord the premises as described herein on the terms and subject to the conditions as set out in this Agreement. For the purposes of this Agreement "Tenant" includes lessee and "Landlord" includes lessor.

1. PREMISES: Having inspected the premises and provided the present tenant vacates, I/we, the Tenant hereby offer to lease, premises known as:
26 Royal Oak Barrie

2. TERM OF LEASE: The lease shall be for a term of See Schedule "A" commencing July 7 2022

3. RENT: The Tenant will pay to the said Landlord monthly and every month during the said term of the lease the sum of Dollars (CDN\$)..... payable in advance on the See Schedule "A" day of each and every month during the currency of the said term. First and last months' rent to be paid in advance upon completion or date of occupancy, whichever comes first.

4. DEPOSIT AND PREPAID RENT: The Tenant delivers as otherwise described in this Agreement
(Herewith/Upon acceptance/as otherwise described in this Agreement)
by negotiable cheque payable to Matthew MacAusland "Deposit Holder"
in the amount of Dollars (CDN\$).....
as a deposit to be held in trust as security for the faithful performance by the Tenant of all terms, covenants and conditions of the Agreement and to be applied by the Landlord against the and month's rent. If the Agreement is not accepted, the deposit is to be returned to the Tenant without interest or deduction.

For the purposes of this Agreement, "Upon Acceptance" shall mean that the Tenant is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

5. USE: The Tenant and Landlord agree that unless otherwise agreed to herein, only the Tenant named above and any person named in a Rental Application completed prior to this Agreement will occupy the premises.

Premises to be used only for:
Single Family Residential

6. SERVICES AND COSTS: The cost of the following services applicable to the premises shall be paid as follows:

	LANDLORD	TENANT		LANDLORD	TENANT
Gas	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cable TV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Oil	<input type="checkbox"/>	<input type="checkbox"/>	Condominium/Cooperative fees	<input type="checkbox"/>	<input type="checkbox"/>
Electricity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Garbage Removal	<input type="checkbox"/>	<input type="checkbox"/>
Hot water heater rental	<input type="checkbox"/>	<input type="checkbox"/>	Other:	<input type="checkbox"/>	<input type="checkbox"/>
Water and Sewerage Charges	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other:	<input type="checkbox"/>	<input type="checkbox"/>

The Landlord will pay the property taxes, but if the Tenant is assessed as a Separate School Supporter, Tenant will pay to the Landlord a sum sufficient to cover the excess of the Separate School Tax over the Public School Tax, if any, for a full calendar year, said sum to be estimated on the tax rate for the current year, and to be payable in equal monthly installments in addition to the above mentioned rental, provided however, that the full amount shall become due and be payable on demand on the Tenant.

INITIALS OF TENANT(S):

INITIALS OF LANDLORD(S):

191

7. **PARKING:**
3 Car Garage

8. **ADDITIONAL TERMS:**

9. **SCHEDULES:** The schedules attached hereto shall form an integral part of this Agreement to Lease and consist of: **Schedule(s) A**

10. **IRREVOCABILITY:** This offer shall be irrevocable by _____ until _____ on the _____ day of _____, 20_____ after which time if not accepted, this Agreement shall be null and void and all monies paid thereon shall be returned to the Tenant without interest or deduction.

11. **NOTICES:** The Landlord hereby appoints the Listing Brokerage as agent for the Landlord for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Tenant's Brokerage) has entered into a representation agreement with the Tenant, the Tenant hereby appoints the Tenant's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Landlord and the Tenant (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Tenant or the Landlord for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: _____ (For delivery of Documents to Landlord) FAX No.: _____ (For delivery of Documents to Tenant)

Email Address: _____ (For delivery of Documents to Landlord) Email Address: _____ (For delivery of Documents to Tenant)

12. **EXECUTION OF LEASE:** The Lease shall be drawn by the Landlord on the standard form of lease as prescribed by the *Residential Tenancies Act, 2006*, as amended from time to time, and shall include the provisions as contained herein and in any attached schedule, and shall be executed by both parties before possession of the premises is given. The Landlord shall provide the Tenant with information relating to the rights and responsibilities of the Tenant and information on the role of the Landlord and Tenant Board and how to contact the Board. (Information For New Tenants as made available by the Landlord and Tenant Board and available at www.ltb.gov.on.ca)

13. **LANDLORD AND TENANT ACKNOWLEDGMENT:** The Landlord and Tenant acknowledge and agree that a standard form of lease as prescribed by the *Residential Tenancies Act, 2006*, as amended from time to time is required.

14. **ACCESS:** The Landlord shall have the right, at reasonable times to enter and show the demised premises to prospective tenants, purchasers or others. The Landlord or anyone on the Landlord's behalf shall also have the right, at reasonable times, to enter and inspect the demised premises.

15. **INSURANCE:** The Tenant agrees to obtain and keep in full force and effect during the entire period of the tenancy and any renewal thereof, at the Tenant's sole cost and expense, fire and property damage and public liability insurance in an amount equal to that which a reasonably prudent Tenant would consider adequate. The Tenant agrees to provide the Landlord, upon demand at any time, proof that said insurance is in full force and effect and to notify the Landlord in writing in the event that such insurance is cancelled or otherwise terminated.

16. **RESIDENCY:** The Landlord shall forthwith notify the Tenant in writing in the event the Landlord is, at the time of entering into this Agreement, or, becomes during the term of the tenancy, a non-resident of Canada as defined under the Income Tax Act, RSC 1985, c.1 (ITA) as amended from time to time, and in such event the Landlord and Tenant agree to comply with the tax withholding provisions of the ITA.

17. **USE AND DISTRIBUTION OF PERSONAL INFORMATION:** The Tenant consents to the collection, use and disclosure of the Tenant's personal information by the Landlord and/or agent of the Landlord, from time to time, for the purpose of determining the creditworthiness of the Tenant for the leasing, selling or financing of the premises or the real property, or making such other use of the personal information as the Landlord and/or agent of the Landlord deems appropriate.

18. **CONFLICT OR DISCREPANCY:** If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between Landlord and Tenant. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.

19. **FAMILY LAW ACT:** Landlord warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless the spouse of the Landlord has executed the consent hereinafter provided.

20. **CONSUMER REPORTS:** The Tenant is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.

21. **ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act, 2000*, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.

INITIALS OF TENANT(S): 

INITIALS OF LANDLORD(S): 

192

22. **BINDING AGREEMENT:** This Agreement and acceptance thereof shall constitute a binding agreement by the parties to enter into the Lease of the Premises and to abide by the terms and conditions herein contained.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) (Tenant or Authorized Representative) David Berry (Seal) (Date)
(Witness) (Tenant or Authorized Representative) (Seal) (Date)
(Witness) (Guarantor) (Seal) (Date)

We/I the Landlord hereby accept the above offer, and agree that the commission together with applicable HST (and any other tax as may hereafter be applicable) may be deducted from the deposit and further agree to pay any remaining balance of commission forthwith.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

(Witness) (Landlord or Authorized Representative) Matthew Macauland and Naomi Macrae (Seal) (Date) 2022-04-27
(Witness) (Landlord or Authorized Representative) (Seal) (Date)

SPOUSAL CONSENT: The undersigned spouse of the Landlord hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness) (Spouse) (Seal) (Date)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally acceptance by all parties at this day of....., 20..... (a.m./p.m.)

(Signature of Landlord or Tenant)

INFORMATION ON BROKERAGE(S)
Listing Brokerage (Tel.No.)
(Salesperson/Broker/Broker of Record Name)
Co-op/Tenant Brokerage (Tel.No.)
(Salesperson/Broker/Broker of Record Name)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement to Lease and I authorize the Brokerage to forward a copy to my lawyer.

DocuSigned by: 2022-04-27
(Landlord) AE946F89ECA449B... (Date)
(Landlord) (Date)
Address for Service (Tel. No.)
Landlord's Lawyer (Tel. No.)
Address
Email
(Tel. No.) (Fax. No.)

I acknowledge receipt of my signed copy of this accepted Agreement to Lease and I authorize the Brokerage to forward a copy to my lawyer.

2022-05-01
(Tenant) David Berry (Date)
(Tenant) (Date)
Address for Service (Tel. No.)
Tenant's Lawyer (Tel. No.)
Address
Email
(Tel. No.) (Fax. No.)

FOR OFFICE USE ONLY COMMISSION TRUST AGREEMENT
To: Co-operating Brokerage shown on the foregoing Agreement to Lease:
In consideration for the Co-operating Brokerage procuring the foregoing Agreement to Lease, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.
DATED as of the date and time of the acceptance of the foregoing Agreement to Lease. Acknowledged by:
(Authorized to bind the Listing Brokerage) (Authorized to bind the Co-operating Brokerage)

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193



Schedule A Agreement to Lease - Residential

Form 400

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement to Lease between:

TENANT: David Berry....., and

LANDLORD: Matthew Macausland and Naomi MacRae.....

for the lease of 26 Royal Oak Barrie.....

..... dated the 21 day of April, 2022

As per agreement between Landlord and Tenant:

17 Months for \$235,000.00, to be paid in 3 payments. Tenant agrees to allow the Landlord to re lease during their tenancy for a period of 8 weeks unless otherwise agreed upon.

Prepaid Rent as per agreement between Landlord and Tenant of \$100,000.00 for the first 7 months rent.

Tenant covenants to:

- (a) maintain the premises in a good state of cleanliness and repair during the term of the Lease,
- (b) return the premises (including appliances) to the Landlord upon termination of the Lease in good condition. Tenant shall be liable for any damage to the premises caused during the term of the Lease,
- (c) pay for all electrical and utility service at the premises during the term of the Lease, including, but not limited to heating, hydro, water, water tank rental, cable T.V. and telephone,
- (d) carry sufficient fire, theft and water damage insurance coverage for his personal contents. (Tenant package insurance policy covering liability and contents). Tenant will provide Landlord with a copy of the policy prior to closing,
- (e) leave the premises in a clean and "broom swept" condition upon termination of the tenancy and any extension thereof,
- (f) be responsible for damages and repairs (premises and appliances) not caused by normal wear and tear and to promptly notify the Lessor of all and any such damages and repairs,
- (g) not paint or redecorate any part of the premises, change the locks, nor make any structural changes without the written consent of the Lessor,
- (h) allow the Property to be shown to prospective Tenants, 48 hours notice, with a cap of 2 per month, with any additional showings at tenant approval *NB*
- (i) pay the full cost of those repairs or damages caused by the Tenant or his guests' negligence or willful damages,
- (j) not do anything on the premises for which the insurance premium may be increased, and agrees to hold the Lessor harmless from damages of any kind, and liability from injury to anyone whomever, regardless of fault during this Lease Agreement or extension thereof,
- (k) refrain from the doing of any act in the premises which would in any way create a risk of fire or result in an increase in the amount of fire insurance covering the premises and/or contents and further, not to bring or store anything whatsoever therein which would have a like or similar resulting in.

The Landlord allows the Tenant to use the Walk-In closet and the Pantry for their own personal use/property and allow them to install a lock on both for when the property is being sub leased.

The Landlord will give the Tenant a minimum of 45 days notice for rental option as pre discussed.

In the event that the Landlord does not rent during the summer months the Tenant agrees to allow them to use the given and agreed on time during off season times excluding summer months.

This form must be initialed by all parties to the Agreement to Lease.

INITIALS OF TENANT(S):

NB

INITIALS OF LANDLORD(S):

DS
Matthew MacRae

This is **Exhibit "O"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N".

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

195



Rental Application Residential



Form 410

for use in the Province of Ontario

I/We hereby make application to rent 86 Woodbine Ave Toronto M4L2A2
from the first day of September 2022 at a monthly rental of \$ 5,400.00
to become due and payable in advance on the day of each and every month during my tenancy.

1. Applicant #1 David Berry Date of birth SIN No. (Optional)
152067-088 President Winterberry investments inc
Drivers License No Occupation

2. Applicant #2 Date of birth SIN No. (Optional).....
Drivers License No Occupation

3. Other Occupants: Name Relationship Age
Name Relationship Age
Name Relationship Age

Do you have any pets? Yes If so, describe Small dog
Why are you vacating your present place of residence? Sold

APPLICANT #1 LAST TWO PLACES OF RESIDENCE
124 park road toronto ontario m4w2n7
Present Address

2002 2022
From To

David berry
Name of Landlord
4165009080
Telephone:

236 old forest hill road toronto
Prior Address

137 silvertip road Canmore Alberta
From To

2003-2020
Name of Landlord
David berry
Telephone:

APPLICANT #1 PRESENT EMPLOYMENT
CONFIDENTIAL

Employer
CONFIDENTIAL

Business address
CONFIDENTIAL

Business telephone
CONFIDENTIAL

Position held
CONFIDENTIAL

Length of employment
CONFIDENTIAL

Name of supervisor
CONFIDENTIAL

Current salary range: Monthly \$

APPLICANT #2 LAST TWO PLACES OF RESIDENCE
Present Address

From To

Name of Landlord
Telephone:

Prior Address

From To

Name of Landlord
Telephone:

APPLICANT #2 PRESENT EMPLOYMENT

Employer

Business address

Business telephone

Position held

Length of employment

Name of supervisor

Current salary range: Monthly \$

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196

APPLICANT #1 PRIOR EMPLOYMENT

CONFIDENTIAL

Employer
Business address
Business telephone
Position held
Length of employment
Name of supervisor
Salary range: \$

APPLICANT #2 PRIOR EMPLOYMENT

Employer
Business address
Business telephone
Position held
Length of employment
Name of supervisor
Salary range: \$

Name of Bank **Branch** **Address**
Chequing Account # Savings Account #

FINANCIAL OBLIGATIONS

Payments to Amount: \$
Payments to Amount: \$

PERSONAL REFERENCES

Name **Address**
Telephone: **Length of Acquaintance** **Occupation**
Name **Address**
Telephone: **Length of Acquaintance** **Occupation**

AUTOMOBILE(S)

Make **Model** **Year** **Licence No**
Make **Model** **Year** **Licence No**

The Applicant consents to the collection, use and disclosure of the Applicant's personal information by the Landlord and/or agent of the Landlord, from time to time, for the purpose of determining the creditworthiness of the Applicant for the leasing, selling or financing of the premises or the real property, or making such other use of the personal information as the Landlord and/or agent of the Landlord deems appropriate.

The Applicant represents that all statements made above are true and correct. **The Applicant is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this rental.** The Applicant authorizes the verification of the information contained in this application and information obtained from personal references. This application is not a Rental or Lease Agreement. In the event that this application is not accepted, any deposit submitted by the Applicant shall be returned.

DocuSigned by:  8/14/2022 | 3:11 PM PDT
Signature of Applicant #1 **David Berry** (Date) (Signature of Applicant #2) (Date)
Telephone: 4165009080 Telephone:
Email Address: dberry@winterberryinvestments.com Email Address:

197



Agreement to Lease Residential



Form 400

for use in the Province of Ontario

This Agreement to Lease (Agreement) dated this 14 day of August, 2022

TENANT: WinterBerry Investments Inc.
(Full legal names of all Tenants)

LANDLORD: Deborah Barr
(Full legal name of Landlord)

ADDRESS OF LANDLORD: _____
(Legal address for the purpose of receiving notices)

The Tenant hereby offers to lease from the Landlord the premises as described herein on the terms and subject to the conditions as set out in this Agreement. For the purposes of this Agreement "Tenant" includes lessee and "Landlord" includes lessor.

1. PREMISES: Having inspected the premises and provided the present tenant vacates, I/we, the Tenant hereby offer to lease, premises known as:
86 Woodbine Ave Toronto M4L2A2
Spetember

2. TERM OF LEASE: The lease shall be for a term of 1 year commencing _____

3. RENT: The Tenant will pay to the said Landlord monthly and every month during the said term of the lease the sum of _____
Five Thousand Four Hundred Dollars (CDN\$) 5,400.00
first
payable in advance on the _____ day of each and every month during the currency of the said term. First and last months' rent to be paid in advance upon completion or date of occupancy, whichever comes first.

4. DEPOSIT AND PREPAID RENT: The Tenant delivers _____ upon acceptance
(Herewith/Upon acceptance/as otherwise described in this Agreement)
by negotiable cheque payable to _____ KELLER WILLIAMS ADVANTAGE REALTY, BROKERAGE "Deposit Holder"
in the amount of _____ Ten Thousand Eight Hundred Dollars (CDN\$) 10,800.00
as a deposit to be held in trust as security for the faithful performance by the Tenant of all terms, covenants and conditions of the Agreement and to be applied by the Landlord against the _____ first and _____ last month's rent. If the Agreement is not accepted, the deposit is to be returned to the Tenant without interest or deduction.

For the purposes of this Agreement, "Upon Acceptance" shall mean that the Tenant is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

5. USE: The Tenant and Landlord agree that unless otherwise agreed to herein, only the Tenant named above and any person named in a Rental Application completed prior to this Agreement will occupy the premises.

Premises to be used only for:
Residential Use

6. SERVICES AND COSTS: The cost of the following services applicable to the premises shall be paid as follows:

	LANDLORD	TENANT		LANDLORD	TENANT
Gas	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cable TV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Oil	<input type="checkbox"/>	<input type="checkbox"/>	Condominium/Cooperative fees	<input type="checkbox"/>	<input type="checkbox"/>
Electricity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Garbage Removal	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Hot water heater rental	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other: _____	<input type="checkbox"/>	<input type="checkbox"/>
Water and Sewerage Charges	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other: _____	<input type="checkbox"/>	<input type="checkbox"/>

The Landlord will pay the property taxes, but if the Tenant is assessed as a Separate School Supporter, Tenant will pay to the Landlord a sum sufficient to cover the excess of the Separate School Tax over the Public School Tax, if any, for a full calendar year, said sum to be estimated on the tax rate for the current year, and to be payable in equal monthly installments in addition to the above mentioned rental, provided however, that the full amount shall become due and be payable on demand on the Tenant.

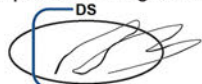
INITIALS OF TENANT(S): DS

INITIALS OF LANDLORD(S): DB

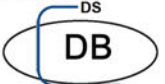
198

- 7. **PARKING:**
2 garage parking spaces included
- 8. **ADDITIONAL TERMS:**
Includes existing: fridge, stove top, oven, microwave, dishwasher, washer and dryer. Includes existing electrical light fixtures and window coverings.
- 9. **SCHEDULES:** The schedules attached hereto shall form an integral part of this Agreement to Lease and consist of: **Schedule(s) A**
A, B
- 10. **IRREVOCABILITY:** This offer shall be irrevocable by **Tenant** until **9:00pm** **16th**
(Landlord/Tenant) (a.m./p.m.)
August **22**
day of 20..... after which time if not accepted, this Agreement shall be null and void and all monies paid thereon shall be returned to the Tenant without interest or deduction.
- 11. **NOTICES:** The Landlord hereby appoints the Listing Brokerage as agent for the Landlord for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Tenant's Brokerage) has entered into a representation agreement with the Tenant, the Tenant hereby appoints the Tenant's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Landlord and the Tenant (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Tenant or the Landlord for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.
FAX No.: FAX No.:
(For delivery of Documents to Landlord) (For delivery of Documents to Tenant)
Email Address: **barbcatbest@gmail.com** Email Address: **tristinthompson@live.com**
(For delivery of Documents to Landlord) (For delivery of Documents to Tenant)
- 12. **EXECUTION OF LEASE:** The Lease shall be drawn by the Landlord on the standard form of lease as prescribed by the *Residential Tenancies Act, 2006*, as amended from time to time, and shall include the provisions as contained herein and in any attached schedule, and shall be executed by both parties before possession of the premises is given. The Landlord shall provide the Tenant with information relating to the rights and responsibilities of the Tenant and information on the role of the Landlord and Tenant Board and how to contact the Board. (Information For New Tenants as made available by the Landlord and Tenant Board and available at www.ltb.gov.on.ca)
- 13. **LANDLORD AND TENANT ACKNOWLEDGMENT:** The Landlord and Tenant acknowledge and agree that a standard form of lease as prescribed by the *Residential Tenancies Act, 2006*, as amended from time to time is required.
- 14. **ACCESS:** The Landlord shall have the right, at reasonable times to enter and show the demised premises to prospective tenants, purchasers or others. The Landlord or anyone on the Landlord's behalf shall also have the right, at reasonable times, to enter and inspect the demised premises.
- 15. **INSURANCE:** The Tenant agrees to obtain and keep in full force and effect during the entire period of the tenancy and any renewal thereof, at the Tenant's sole cost and expense, fire and property damage and public liability insurance in an amount equal to that which a reasonably prudent Tenant would consider adequate. The Tenant agrees to provide the Landlord, upon demand at any time, proof that said insurance is in full force and effect and to notify the Landlord in writing in the event that such insurance is cancelled or otherwise terminated.
- 16. **RESIDENCY:** The Landlord shall forthwith notify the Tenant in writing in the event the Landlord is, at the time of entering into this Agreement, or, becomes during the term of the tenancy, a non-resident of Canada as defined under the Income Tax Act, RSC 1985, c.1 (ITA) as amended from time to time, and in such event the Landlord and Tenant agree to comply with the tax withholding provisions of the ITA.
- 17. **USE AND DISTRIBUTION OF PERSONAL INFORMATION:** The Tenant consents to the collection, use and disclosure of the Tenant's personal information by the Landlord and/or agent of the Landlord, from time to time, for the purpose of determining the creditworthiness of the Tenant for the leasing, selling or financing of the premises or the real property, or making such other use of the personal information as the Landlord and/or agent of the Landlord deems appropriate.
- 18. **CONFLICT OR DISCREPANCY:** If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between Landlord and Tenant. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.
- 19. **FAMILY LAW ACT:** Landlord warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless the spouse of the Landlord has executed the consent hereinafter provided.
- 20. **CONSUMER REPORTS:** The Tenant is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 21. **ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act, 2000*, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.

INITIALS OF TENANT(S):



INITIALS OF LANDLORD(S):



199

22. **BINDING AGREEMENT:** This Agreement and acceptance thereof shall constitute a binding agreement by the parties to enter into the Lease of the Premises and to abide by the terms and conditions herein contained.

SIGNED, SEALED AND DELIVERED in the presence of:

I, **DEBORAH BARR**, in WITNESS whereof I have hereunto set my hand and seal:

(Witness) **DEBORAH BARR** 8/14/2022 | 3:11 PM PDT
 (Tenant or Authorized Representative) (Seal) (Date)
 (Witness) **WinterBerry Investments Inc.**
 (Tenant or Authorized Representative) (Seal) (Date)
 (Witness) (Guarantor) (Seal) (Date)

We/I the Landlord hereby accept the above offer, and agree that the commission together with applicable HST (and any other tax as may hereafter be applicable) may be deducted from the deposit and further agree to pay any remaining balance of commission forthwith.

SIGNED, SEALED AND DELIVERED in the presence of:

I, **DEBORAH BARR**, in WITNESS whereof I have hereunto set my hand and seal:

(Witness) **DEBORAH BARR** 8/15/2022 | 1:25 PM PDT
 (Landlord or Authorized Representative) (Seal) (Date)
 (Witness) (Landlord or Authorized Representative) (Seal) (Date)

SPOUSAL CONSENT: The undersigned spouse of the landlord hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness) (Spouse) (Seal) (Date)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed

and written was finally acceptance by all parties at **4:00pm** this **15th** **August**, 20**22**
 (a.m./p.m.) (Signature of Landlord or Tenant) **DEBORAH BARR**

INFORMATION ON BROKERAGE(S)		
Listing Brokerage	KELLER WILLIAMS ADVANTAGE REALTY, BROKERAGE	416-465-4545
	BARBARA BEST	(Tel.No.)
	(Salesperson/Broker/Broker of Record Name)	
Coop/Tenant Brokerage	KELLER WILLIAMS ADVANTAGE REALTY	(416) 465-4545
	TRISTIN THOMPSON	(Tel.No.)
	(Salesperson/Broker/Broker of Record Name)	

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement to Lease and I authorize the Brokerage to forward a copy to my lawyer.

DEBORAH BARR 8/15/2022 | 1:25 PM PDT
 (Landlord) (Date)
 (Landlord) (Date)
 Address for Service
 (Tel. No.)
 Landlord's Lawyer
 Address
 Email
 (Tel. No.) (Fax. No.)

I acknowledge receipt of my signed copy of this accepted Agreement to Lease and I authorize the Brokerage to forward a copy to my lawyer.

DEBORAH BARR 8/16/2022 | 11:55 AM PDT
 (Tenant) (Date)
 (Tenant) (Date)
 Address for Service
 (Tel. No.)
 Tenant's Lawyer
 Address
 Email
 (Tel. No.) (Fax. No.)

FOR OFFICE USE ONLY		COMMISSION TRUST AGREEMENT	
To: Co-operating Brokerage shown on the foregoing Agreement to Lease:			
In consideration for the Co-operating Brokerage procuring the foregoing Agreement to Lease, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.			
DATE Signed by	the date and time of the acceptance of the foregoing Agreement to Lease.	Acknowledged by:	DocuSigned by:
Barbara Best		Tristin Thompson	
(Authorized to bind the Listing Brokerage)	Barbara Best	(Authorized to bind the Co-operating Brokerage)	Tristin Thompson

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200



Schedule A Agreement to Lease - Residential

Form 400

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement to Lease between:

TENANT: WinterBerry Investments Inc., and

LANDLORD: Deborah Barr

for the lease of 86 Woodbine Ave Toronto

ON M4L2A2 dated the 14 day of August, 2022

Please see attached Schedule A

This form must be initialed by all parties to the Agreement to Lease.

INITIALS OF TENANT(S):

DS

INITIALS OF LANDLORD(S):

DS
DB

201



Confirmation of Co-operation and Representation Buyer/Seller



Form 320
for use in the Province of Ontario

BUYER: WinterBerry Investments Inc.

SELLER: Deborah Barr

For the transaction on the property known as: 86 Woodbine Ave Toronto ON M4L2A2

DEFINITIONS AND INTERPRETATIONS: For the purposes of this Confirmation of Co-operation and Representation: "Seller" includes a vendor, a landlord, lessor or a prospective seller, vendor, landlord or lessor and "Buyer" includes a purchaser, tenant, lessee or a prospective buyer, purchaser, tenant or lessee and "sale" includes a lease, and "Agreement of Purchase and Sale" includes an Agreement to Lease. Commission shall be deemed to include other remuneration.

The following information is confirmed by the undersigned salesperson/broker representatives of the Brokerage(s). If a Co-operating Brokerage is involved in the transaction, the brokerages agree to co-operate, in consideration of, and on the terms and conditions as set out below.

DECLARATION OF INSURANCE: The undersigned salesperson/broker representative(s) of the Brokerage(s) hereby declare that he/she is insured as required by the Real Estate and Business Brokers Act, 2002, (REBBA).

1. LISTING BROKERAGE

- a) The Listing Brokerage represents the interests of the Seller in this transaction. It is further understood and agreed that:
 - 1) The Listing Brokerage is not representing or providing Customer Service to the Buyer.
(If the Buyer is working with a Co-operating Brokerage, Section 3 is to be completed by Co-operating Brokerage)
 - 2) The Listing Brokerage is providing Customer Service to the Buyer.
- b) **MULTIPLE REPRESENTATION:** The Listing Brokerage has entered into a Buyer Representation Agreement with the Buyer and represents the interests of the Seller and the Buyer, with their consent, for this transaction. The Listing Brokerage must be impartial and equally protect the interests of the Seller and the Buyer in this transaction. The Listing Brokerage has a duty of full disclosure to both the Seller and the Buyer, including a requirement to disclose all factual information about the property known to the Listing Brokerage. However, the Listing Brokerage shall not disclose:
 - That the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
 - That the Buyer may or will pay more than the offered price, unless otherwise instructed in writing by the Buyer;
 - The motivation of or personal information about the Seller or Buyer, unless otherwise instructed in writing by the party to which the information applies, or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
 - The price the Buyer should offer or the price the Seller should accept;
 - And; the Listing Brokerage shall not disclose to the Buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the property will be disclosed to both Seller and Buyer to assist them to come to their own conclusions.


Additional comments and/or disclosures by Listing Brokerage: (e.g. The Listing Brokerage represents more than one Buyer offering on this property.)

2. PROPERTY SOLD BY BUYER BROKERAGE – PROPERTY NOT LISTED

- The Brokeragerepresent the Buyer and the property is not listed with any real estate brokerage. The Brokerage will be paid (does/does not)
 - by the Seller in accordance with a Seller Customer Service Agreement
- or: by the Buyer directly

Additional comments and/or disclosures by Buyer Brokerage: (e.g. The Buyer Brokerage represents more than one Buyer offering on this property.)

INITIALS OF BUYER(S)/SELLER(S)/BROKERAGE REPRESENTATIVE(S) (Where applicable)


DS

BUYER

DS

CO-OPERATING/BUYER BROKERAGE

DS

SELLER

DS

LISTING BROKERAGE

202

3. Co-operating Brokerage completes Section 3 and Listing Brokerage completes Section 1.

CO-OPERATING BROKERAGE- REPRESENTATION:

- a) [] The Co-operating Brokerage represents the interests of the Buyer in this transaction.
b) [] The Co-operating Brokerage is providing Customer Service to the Buyer in this transaction.
c) [] The Co-operating Brokerage is not representing the Buyer and has not entered into an agreement to provide customer service(s) to the Buyer.

CO-OPERATING BROKERAGE- COMMISSION:

- a) [X] The Listing Brokerage will pay the Co-operating Brokerage the commission as indicated in the MLS® information for the property
1/2 month's rent + HST to be paid from the amount paid by the Seller to the Listing Brokerage.
(Commission As Indicated In MLS® Information)
b) [] The Co-operating Brokerage will be paid as follows:

Additional comments and/or disclosures by Co-operating Brokerage: (e.g., The Co-operating Brokerage represents more than one Buyer offering on this property.)

Commission will be payable as described above, plus applicable taxes.

COMMISSION TRUST AGREEMENT: If the above Co-operating Brokerage is receiving payment of commission from the Listing Brokerage, then the agreement between Listing Brokerage and Co-operating Brokerage further includes a Commission Trust Agreement, the consideration for which is the Co-operating Brokerage procuring an offer for a trade of the property, acceptable to the Seller.

SIGNED BY THE BROKER/SALESPERSON REPRESENTATIVE(S) OF THE BROKERAGE(S) (Where applicable)

KELLER WILLIAMS ADVANTAGE REALTY
(Name of Co-operating/Buyer Brokerage)
1238 QUEEN ST EAST UNIT B TORONTO ON M4L1C3
Tel: (416) 465-4545 Fax: (416) 465-4533
Tristin Thompson 8/14/2022 | 5:45 PM PDT
Authorized to bind the Co-operating/Buyer Brokerage (Date)
TRISTIN THOMPSON
(Print Name of Salesperson/Broker/Broker of Record)

KELLER WILLIAMS ADVANTAGE REALTY, BROKERAGE
(Name of Listing Brokerage)
1238 Queen St East Unit B Toronto ON M4L1C3
Tel: 416-465-4545 Fax: 416-465-4533
Barbara Best 8/16/2022 | 11:04 AM EDT
Authorized to bind the Listing Brokerage (Date)
BARBARA BEST
(Print Name of Salesperson/Broker/Broker of Record)

CONSENT FOR MULTIPLE REPRESENTATION (To be completed only if the Brokerage represents more than one client for the transaction)

The Buyer/Seller consent with their initials to their Brokerage representing more than one client for this transaction.

BUYER'S INITIALS (Signature)

SELLER'S INITIALS (Signature)

ACKNOWLEDGEMENT

I have received, read, and understand the above information.
DocuSigned by:
Signature of Buyer: [Signature] 8/14/2022 | 3:11 PM PDT
WinterBerry Investments Inc.
(Print Name of Buyer)

DocuSigned by:
Signature of Seller: DEBORAH BARR 8/15/2022 | 1:25 PM PDT
Deborah Barr
(Print Name of Seller)

203



Schedule A Agreement to Lease - Residential



Form 401

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement to Lease between:

TENANT: WinterBerry Investments Inc. _____, and
Deborah Barr

LANDLORD: _____

for the lease of 86 Woodbine Ave, Toronto, ON, M4L 2A2


dated the 14th day of August, 2022

1. The Tenant shall not assign this agreement or sublet the property without the express written approval of the Landlord.
2. The Tenant acknowledges and agrees that any breach of this agreement will result in the forfeiture of the deposit paid hereunder. The term Breach of this Agreement shall include but is not limited to any failure to comply with the terms and conditions of this Agreement. In the event that the Tenant wishes to terminate the lease before the end of the said lease term, it shall be Tenant's sole responsibility to find a replacement tenant. Furthermore, the replacement tenant must be approved in writing by the Landlord, such approval to be at the Landlord's sole, absolute and unfettered discretion.
4. The Tenant warrants and represents that the Tenant will not smoke in the suite and will ensure that all guests will not be allowed to smoke in the suite, hallways and other common area.
5. Upon the expiry of the lease, the Tenant shall not give less than sixty (60) days written notice to the Landlord of his intention to terminate or extend the lease.
6. The Tenant(s) shall, as its own expense, obtain and maintain as would a prudent tenant "all-risk" property insurance in respect of the Tenant's contents and personal effects in the Premises as well as comprehensive general liability insurance in an amount not less than One [1] Million Dollars and any other insurance coverage for the Premises as would a prudent tenant of similar premises. Tenant(s) agrees to be responsible for the payment of any and all insurance premiums, therefore. The insurance policy shall contain a waiver of subrogation in favour of the Landlord. Tenant agrees to provide a copy of the insurance certificate to the Landlord before commencement of the Lease. KEYS WILL NOT BE RELEASED WITHOUT A COPY OF THE TENANT'S INSURANCE POLICY.
7. The Landlord represents and warrants that the fixtures/appliances/furniture as listed in this Agreement will be in working order at the commencement of the lease term. Tenant agrees to maintain said appliances in a state of ordinary cleanliness at the Tenant's cost.
8. Both parties agree that other than in case of emergency, in the event that any repair is required during the term of the Lease, the Tenant should obtain the Landlord's written consent prior to ordering or conducting any repair. The Tenant further agrees to pay for the cost of any minor repair up to Fifty (\$50.00) dollars per incident. The Landlord agrees to pay for the balance of the cost of any minor repair in excess of Fifty (\$50.00) dollars. The Tenant further agrees to pay the full cost of all repairs and/or damages caused by the Tenant's negligence or willful misconduct.
9. The Tenant agrees to perform minor maintenance of the premises at his own expense, such as (but not limited to) replacing burnt out light bulbs, replacing fuses and replacing rubber washers of water faucets
10. The Tenant agrees not to make any decorating changes to the premises without the express written consent of the Landlord or his authorized agent.

This form must be initialed by all parties to the Agreement to Lease.

INITIALS OF TENANTS: 

INITIALS OF LANDLORD(S): 

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204



Schedule A Agreement to Lease - Residential

Form 401

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement to Lease between:

TENANT: WinterBerry Investment Inc., and

LANDLORD: DEBORAH BARR

for the lease of 86 Woodbine Ave Toronto, ON, M4L 2A2

dated the 14th day of August, 20 22

11. SHOULD THIS APPLY AS PART OF THE LEASE AGREEMENT, The Tenant agrees to pay the cost of hydro, and all other required utilities, including any and all setup charges/fees etc. incurred when transferring the services to the Tenant's name. The Tenant further agrees to provide confirmation from the utility company to the Landlord on or before the date of possession that the services have been transferred to the Tenant. No keys will be released prior to the Landlord receiving the confirmation.

12. FURTHER TO CLAUSE 11: The Tenant agrees that the Landlord will have the right to request proof of payment of the monthly hydro, and utilities bill. Such proof shall be provided by the Tenant within five (5) days of request by Landlord of same. In the event that the Tenant is delinquent in payment of the hydro bill, the Landlord will have the right to use the Key deposit paid hereunder to make the payment on behalf of the tenant. Tenant will then be responsible to provide a replacement deposit payment for the Key, plus an administrative fee of \$100.00 to the Landlord.

13. The Tenant represents and warrants that during the term of this Agreement to Lease, the use of the premises will not be for the growth or manufacturing of any illegal substances or conducting any illegal activities.

14. For convenience, the Tenant agrees to provide the Landlord with Ten [10] post-dated cheques or sign a Pre-Authorized Debit Payment form in advance for the balance of the rent payable hereunder with the acceptance of this Agreement. In the event that any of the Tenant's post-dated cheques are not honoured when presented for payment to the bank or trust company on which they are drawn, the Tenant shall pay the Landlord for each returned cheque a sum of \$100.00 as liquidated damages to cover the Landlord's administration cost and not as a penalty or fine and an interest of 2% monthly will be applied towards any outstanding amount starting from the following day the rent is due.

15. The Landlord agrees to provide, at his expense Two (2) unit keys, if applicable to the Tenant on the date of occupancy. Tenant agrees to provide to the Landlord a Two Hundred Fifty (\$250.00) Dollar key deposit. The key deposit will be refunded to the Tenant at the end of the lease provided that all keys are returned to the Landlord and are in working order.

16. The Tenant understands that the Landlord will maintain a key to the premises during the term of the lease or any extension thereof and if the locks need to be changed at any time, the Tenant must obtain prior written approval from the Landlord and the Condominium Corporation.

18. The Tenant agrees to maintain the unit in a proper state of repair and cleanliness and shall return to the Landlord in the same condition as received, save and except normal wear and tear. The Tenant shall have the unit professionally cleaned at the end of the lease, and the Landlord and/or property management will inspect the unit with the Tenant. In the event that the unit returned is not in the same state as it was given to the Tenant, the Tenant will be responsible for paying the Landlord to have it professionally cleaned.

19. Prior to the Tenant taking possession of the premises, the parties agree to execute the Provincial Government's mandated Residential Tenancy Agreement.

20. The Tenant shall have the right to have a small dog on the residing at 86 Woodbine Ave. For the right to have pet on the Premises the Landlord shall charge a fee of \$500 that is refundable unless there are damages related to the pet. The Tenant is responsible for all damage that any pet causes, regardless of ownership of said pet and agrees to restore the premises to its original condition at their expense.

This form must be initialed by all parties to the Agreement to Lease.

INITIALS OF TENANTS:

INITIALS OF LANDLORD(S):

Schedule B

Agreement of Purchase and Sale or Agreement to Lease



THE FOLLOWING TERMS ARE INTERCHANGEABLE: "Agreement of Purchase and Sale" as "Agreement to Lease"
"Seller" as "Landlord"
"Buyer" as "Tenant"

This Schedule is attached to and forms part of the Agreement of Purchase and Sale or Agreement to Lease between:

BUYER, WinterBerry Investments Inc., and

SELLER, Deborah Barr

for the property known as 86 Woodbine Ave, Toronto, ON, M4L 2A2

dated the 14th day of August, 2022

The Parties to this Agreement of Purchase and Sale or Agreement to Lease, hereby acknowledge and agree:

That the types of representation as defined in the REBBA 2002 (and/or the TRESA 2020) were explained prior to the execution of this Offer, and the Confirmation of Cooperation & Representation was completed prior to the Offer being signed by the Buyer and reviewed and signed by the Seller.

That no information provided by Keller Williams Advantage, Brokerage, is to be construed as expert legal, financial, tax, building condition, zoning, construction, environmental or other professional advice and that the Parties have been advised to consult with any such professional advisors prior to signing this Agreement.

That all of the measurements and information provided by Keller Williams Advantage, Brokerage, in the MLS listing, feature sheet, floor plans, survey, pre-sale home inspection reports and/or any other marketing materials have been obtained through sources deemed reliable; however, they have been provided for general information purposes only and as such, Keller Williams Advantage, Brokerage, does not warrant their accuracy, nor make any representations or warranties regarding the contents of same. Reliance upon any and all information contained in these materials is at the Buyer's risk and as such the Buyer is advised to verify any measurements or information upon which he or she is relying.

That the Brokerages represent and warrant that they have fully complied with the FINTRAC requirements for customer/client identification and have such information on file and available for inspection.

That the Deposit Holder shall place the deposit in its interest bearing real estate trust account, which earns interest at the rate of composite prime less 2.80 %, and the Deposit Holder shall pay any interest it earns or receives on the deposit to the beneficial owner of the trust money, provided the amount of the interest that the Deposit Holder earns or receives on the deposit is equal to or greater than the administration fee of \$75.00. In the event that the composite prime rate is less than 2.80%, no interest will be earned on the deposit or paid to the beneficial owner of the trust money. The interest will be paid up to the completion of this transaction. The parties to this Agreement of Purchase and Sale/Agreement to Lease, hereby acknowledge and agree that the Deposit Holder shall be entitled to retain any interest earned or retained on the deposit, which is less than \$75.00. Furthermore, the parties hereto agree that any interest cheques issued by the deposit holder that are not cashed within six (6) months following completion of this transaction shall be forfeited to the Deposit Holder. If interest is requested, please provide a Social Insurance Number (SIN) and address for delivery.

That in the event of a Mutual Release or for Excess Funds, the deposit will be returned after the full bank clearing period. The period will start the next banking day after receipt and deposit of the deposit funds. For bank drafts and wire transfer, the period is FIVE (5) banking days, for others, the period is FIFTEEN (15) banking days.

That there is an Ontario Land Transfer Tax (LTT). If the property is purchased in the City of Toronto, there is an additional municipal LTT in the amalgamated City of Toronto.

That the term "Banking or Business Days" shall mean any day, other than Saturday, Sunday, or statutory holiday in the province of Ontario or the country of Canada.

This form must be initialed by all parties to the Agreement.

INITIALS OF BUYER(S): DS

INITIALS OF SELLER(S): DS
DB

Schedule B

Agreement of Purchase and Sale or Agreement to Lease



THE FOLLOWING TERMS ARE INTERCHANGEABLE: "Agreement of Purchase and Sale" as "Agreement to Lease"
"Seller" as "Landlord"
"Buyer" as "Tenant"

This Schedule is attached to and forms part of the Agreement of Purchase and Sale or Agreement to Lease between:

BUYER, WinterBerry Investments Inc., and

SELLER, Deborah Barr

for the property known as 86 Woodbine Ave, Toronto, ON, M4L 2A2

dated the 14th day of August, 2022

The Parties to this Agreement of Purchase and Sale or Agreement to Lease, hereby acknowledge and agree:

That visits for the Buyer, to be accompanied by their Realtor, shall be limited to one hour unless otherwise agreed upon, and that such visits will only take place when there are no conditions outstanding for the transaction.

That it may be a requirement of the Buyer's lender to have an appraiser access the subject property (including the dwelling and any outbuildings, as may be required) prior to closing. The Seller covenants and agrees to provide access for such purposes and this is in addition to the buyer visits specified.

That the Seller warrants to the best of their knowledge and belief the property has not been used for the production of any illegal substances.

That all drapery tracks, existing broodloom, bathroom mirrors, shelves, and cabinets fastened by nails, adhesive, screw-nails, or other similar fastening devices now on the property are included in the purchase price, unless previously excluded in this Agreement of Purchase and Sale.

That the use of electronic signatures is permitted, pursuant to the Electronic Commerce Act 2000, S.O. 2000, c17 as amended from time to time, with respect to this Agreement and any other documents respecting this transaction,

That upon completion the Seller shall ensure that the premises of the property, both inside and outside, and any outbuildings, are in a clean and broom swept condition.

That upon completion the Seller shall provide any keys to the property by leaving them in a lockbox or other secured device on the property accessible to the Buyer. Provided further that upon completion the Seller's lawyer shall provide to the Buyer's lawyer the device code required to access the said lockbox or other secured device.

That both the Listing Brokerage and the Co-operating Brokerage (including without limitation, any Sales Representative or Broker employed therein) have the consent of the Seller and the Buyer to discuss and advertise the sale or lease of the property, including the sale or lease price and any other terms of the Agreement of Purchase and Sale or Agreement to Lease. Such conversations or promotion shall not include the mention of the names of the Seller or the Buyer. This consent to advertise is effective after the time of waiver or expiration of all rights of termination or fulfillment of all conditions. Consent is for advertising or marketing purposes, in any form whatsoever and is without expiration.

This form must be initialed by all parties to the Agreement.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

207



Buyer Representation Agreement Authority for Purchase or Lease



Form 300

for use in the Province of Ontario

This is an Exclusive Buyer Representation Agreement Authority for Purchase or Lease

BETWEEN:

BROKERAGE: **KELLER WILLIAMS ADVANTAGE REALTY** (the "Brokerage"),

ADDRESS: **1238 QUEEN ST EAST UNIT B**

..... **TORONTO** **ON** **M4L1C3** Tel. No. **(416) 465-4545** Fax. No. **(416) 465-4533**

AND

BUYER: **WinterBerry Investments Inc.** (the "Buyer"),

ADDRESS: Street Number Street Name

MUNICIPALITY: **POSTAL CODE:**

The Buyer hereby gives the Brokerage the **exclusive and irrevocable authority** to act as the Buyer's agent

commencing at **9:00** on the **14** day of **August** , 20.. **22**,
(a.m./p.m.)
X

and expiring at **11:59 p.m.** on the **15** day of **October** , 20.. **22** (Expiry Date),

{ Buyer acknowledges that the time period for this Agreement is negotiable between the Buyer and the Brokerage, however, in accordance with the Real Estate and Business Brokers Act, 2002, (REBBA) **if the time period for this Agreement exceeds six months, the Brokerage must obtain the Buyer's initials.** }

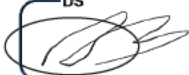

(Buyer's Initials)

for the purpose of locating a real property meeting the following general description:

Property Type (Use): **Single Family Residential Rental**

Geographic Location: **Toronto**


The Buyer hereby warrants that the Buyer is not a party to a representation agreement with any other registered real estate brokerage for the purchase or lease of a real property of the general description indicated above.


(Buyer's Initials)

- 1. DEFINITIONS AND INTERPRETATIONS:** For the purposes of this Agreement ("Authority" or "Agreement"):
"Buyer" includes purchaser, tenant and lessee, a "seller" includes a vendor, landlord and lessor or a prospective seller, vendor, landlord and lessor and a "real estate board" includes a real estate association. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised, and a lease includes any rental agreement, sub-lease or renewal of a lease. Commission shall be deemed to include other remuneration. This Agreement shall be read with all changes of gender or number required by the context. For purposes of this Agreement, Buyer shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the property.
- 2. COMMISSION:** In consideration of the Brokerage undertaking to assist the Buyer, the Buyer agrees to pay commission to the Brokerage as follows: If, during the currency of this Agreement, the Buyer enters into an agreement to purchase or lease a real property of the general description indicated above, the Buyer agrees the Brokerage is entitled to receive and retain any commission offered by a listing brokerage or by the seller. The Buyer understands that the amount of commission offered by a listing brokerage or by the seller may be greater or less than the commission stated below. The Buyer understands that the Brokerage will inform the Buyer of the amount of commission to be paid to the Brokerage by the listing brokerage or the seller at the earliest practical opportunity. The Buyer acknowledges that the payment of any commission by the listing brokerage or the seller will not make the Brokerage either the agent or sub-agent of the listing brokerage or the seller.

INITIALS OF BROKERAGE: 

INITIALS OF BUYER(S): 

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If, during the currency of this Agreement, the Buyer enters into an agreement to purchase any property of the general description indicated above, the Buyer agrees that the Brokerage is entitled to be paid a commission of N/A % of the sale price of the property or N/A or for a lease, a commission of 1/2 month's rent + HST

The Buyer agrees to pay directly to the Brokerage any deficiency between this amount and the amount, if any, to be paid to the Brokerage by a listing brokerage or by the seller. The Buyer understands that if the Brokerage is not to be paid any commission by a listing brokerage or by the seller, the Buyer will pay the Brokerage the full amount of commission indicated above.

The Buyer agrees to pay the Brokerage such commission if the Buyer enters into an agreement within 90 days after the expiration of this Agreement (Holdover Period) to purchase or lease any real property shown or introduced to the Buyer from any source whatsoever during the term of this Agreement, provided, however, that if the Buyer enters into a new buyer representation agreement with another registered real estate brokerage after the expiration of this Agreement, the Buyer's liability to pay commission to the Brokerage shall be reduced by the amount paid to the other brokerage under the new agreement.

The Buyer agrees to pay such commission as described above even if a transaction contemplated by an agreement to purchase or lease agreed to or accepted by the Buyer or anyone on the Buyer's behalf is not completed, if such non-completion is owing or attributable to the Buyer's default or neglect. Said commission, plus any applicable taxes, shall be payable on the date set for completion of the purchase of the property or, in the case of a lease or tenancy, the earlier of the date of occupancy by the tenant or the date set for commencement of the lease or tenancy. All amounts set out as commission are to be paid plus applicable taxes on such commission.

This Agreement applies for the purchase or lease of one real property. Notwithstanding the foregoing, in the event that the Buyer leases a property, this agreement remains in force as set out herein for the purchase of the leased property or a property of the general description indicated above. The leasing of a property by the Buyer does not terminate this Agreement with respect to the purchase of a property.

3. REPRESENTATION: The Buyer acknowledges that the Brokerage has provided the Buyer with written information explaining agency relationships, including information on Seller Representation, Sub-Agency, Buyer Representation, Multiple Representation and Customer Service. The Brokerage shall assist the Buyer in locating a real property of the general description indicated above and shall represent the Buyer in an endeavour to procure the acceptance of an agreement to purchase or lease such a property.

The Buyer acknowledges that the Buyer may not be shown or offered all properties that may be of interest to the Buyer. The Buyer hereby agrees that the terms of any buyer's offer or agreement to purchase or lease the property will not be disclosed to any other buyer. The Buyer further acknowledges that the Brokerage may be entering into buyer representation agreements with other buyers who may be interested in the same or similar properties that the Buyer may be interested in buying or leasing and the Buyer hereby consents to the Brokerage entering into buyer representation agreements with other buyers who may be interested in the same or similar properties without any claim by the Buyer of conflict of interest. The Buyer hereby appoints the Brokerage as agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase or lease a property negotiated by the Brokerage.

MULTIPLE REPRESENTATION: The Buyer hereby acknowledges that the Brokerage may be entering into listing agreements with sellers of properties the Buyer may be interested in buying or leasing. In the event that the Brokerage has entered into or enters into a listing agreement with the seller of a property the Buyer may be interested in buying or leasing, the Brokerage will obtain the Buyer's written consent to represent both the Buyer and the seller for the transaction at the earliest practicable opportunity and in all cases prior to any offer to purchase or lease being submitted or presented.

The Buyer understands and acknowledges that the Brokerage must be impartial when representing both the Buyer and the seller and equally protect the interests of the Buyer and the seller in the transaction. The Buyer understands and acknowledges that when representing both the Buyer and the seller, the Brokerage shall have a duty of full disclosure to both the Buyer and the seller, including a requirement to disclose all factual information about the property known to the Brokerage.

However, The Buyer further understands and acknowledges that the Brokerage shall not disclose:

- that the seller may or will accept less than the listed price, unless otherwise instructed in writing by the seller;
- that the Buyer may or will pay more than the offered price, unless otherwise instructed in writing by the Buyer;
- the motivation of or personal information about the Buyer or seller, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the Buyer should offer or the price the seller should accept; and
- the Brokerage shall not disclose to the Buyer the terms of any other offer.

However, it is understood that factual market information about comparable properties and information known to the Brokerage concerning potential uses for the property will be disclosed to both Buyer and seller to assist them to come to their own conclusions.

Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be entitled or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.

MULTIPLE REPRESENTATION AND CUSTOMER SERVICE: The Buyer understands and agrees that the Brokerage also provides representation and customer service to other buyers and sellers. If the Brokerage represents or provides customer service to more than one seller or buyer for the same trade, the Brokerage shall, in writing, at the earliest practicable opportunity and before any offer is made, inform all sellers and buyers of the nature of the Brokerage's relationship to each seller and buyer.

4. REFERRAL OF PROPERTIES: The Buyer agrees that during the currency of this Buyer Representation Agreement the Buyer will act in good faith and work exclusively with the Brokerage for the purchase or lease of a real property of the general description indicated above. The Buyer agrees that, during the currency of this Agreement, the Buyer shall advise the Brokerage immediately of any property of interest to the Buyer that came to the Buyer's attention from any source whatsoever, and all offers to purchase or lease submitted by the Buyer shall be submitted through the Brokerage to the seller. If the Buyer arranges a valid agreement to purchase or lease any property of the general description indicated above that came to the attention of the Buyer during the currency of this Agreement and the Buyer arranges said agreement during the currency of this Agreement or within the Holdover Period after expiration of this Agreement, the Buyer agrees to pay the Brokerage the amount of commission set out above in Paragraph 2 of this Agreement, payable within (5) days following the Brokerage's written demand therefor.

INITIALS OF BROKERAGE: DS TT

INITIALS OF BUYER(S): DS [Signature]

- 5. **INDEMNIFICATION:** The Brokerage and representatives of the Brokerage are trained in dealing in real estate but are not qualified in determining the physical condition of the land or any improvements thereon. The Buyer agrees that the Brokerage and representatives of the Brokerage will not be liable for any defects, whether latent or patent, to the land or improvements thereon. All information supplied by the seller or landlord or the listing brokerage may not have been verified and is not warranted by the Brokerage as being accurate and will be relied on by the Buyer at the Buyer's own risk. The Buyer acknowledges having been advised to make their own enquiries to confirm the condition of the property.
- 6. **FINDERS FEE:** The Buyer acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Buyer consents to any such benefit being received and retained by the Brokerage in addition to the commission as described above.
- 7. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 8. **USE AND DISTRIBUTION OF INFORMATION:** The Buyer consents to the collection, use and disclosure of personal information by the Brokerage for such purposes that relate to the real estate services provided by the Brokerage to the Buyer including, but not limited to: locating, assessing and qualifying properties for the Buyer; advertising on behalf of the Buyer; providing information as needed to third parties retained by the Buyer to assist in a transaction (e.g. financial institutions, building inspectors, etc...); and such other use of the Buyer's information as is consistent with the services provided by the Brokerage in connection with the purchase or prospective purchase of the property.

The Buyer agrees that the sale and related information regarding any property purchased by the Buyer through the Brokerage may be retained and disclosed by the Brokerage and/or real estate board(s) (if the property is an MLS® Listing) for reporting, appraisal and statistical purposes and for such other use of the information as the Brokerage and/or board deems appropriate in connection with the listing, marketing and selling of real estate, including conducting comparative market analyses.

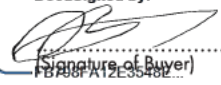
The Buyer acknowledges that the information, personal or otherwise ("information"), provided to the real estate board or association may be stored on databases located outside of Canada, in which case the information would be subject to the laws of the jurisdiction in which the information is located.

- 9. **CONFLICT OR DISCREPANCY:** If there is any conflict or discrepancy between any provision added to this Agreement and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any provisions added to this Agreement, shall constitute the entire Agreement between the Buyer and the Brokerage. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein.
- 10. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.
- 11. **ELECTRONIC COMMUNICATION:** This Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Buyer by electronic means shall be deemed to confirm the Buyer has retained a true copy of the Agreement.
- 12. **ELECTRONIC SIGNATURES:** If this Agreement has been signed with an electronic signature the parties hereto consent and agree to the use of such electronic signature with respect to this Agreement pursuant to the *Electronic Commerce Act, 2000, S.O. 2000, c17* as amended from time to time.
- 13. **SCHEDULE(S):**..... **A, B** attached hereto form(s) part of this Agreement.

THE BROKERAGE AGREES TO REPRESENT THE BUYER IN LOCATING A REAL PROPERTY OF THE GENERAL DESCRIPTION INDICATED ABOVE IN AN ENDEAVOUR TO OBTAIN THE ACCEPTANCE OF AN AGREEMENT TO PURCHASE OR LEASE A PROPERTY ON TERMS SATISFACTORY TO THE BUYER.

DocuSigned by: *Tristin Thompson* 8/17/2022 | 7:54 AM PDT **TRISTIN THOMPSON**
 (Authorized to bind the Brokerage) (Date) (Name of Person Signing)

THIS AGREEMENT HAS BEEN READ AND FULLY UNDERSTOOD BY ME, I ACCEPT THE TERMS OF THIS AGREEMENT AND I ACKNOWLEDGE ON THIS DATE I HAVE SIGNED UNDER SEAL. Any representations contained herein are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:
 DocuSigned by:  8/16/2022 | 11:55 AM PDT
 (Signature of Buyer) **WinterBerry Investments Inc.** (Seal) (Date) (Tel. No.)
 (Signature of Buyer) (Seal) (Date) (Tel. No.)

DECLARATION OF INSURANCE

The Salesperson/Broker/Broker of Record **TRISTIN THOMPSON**
 (Name of Salesperson/Broker/Broker of Record)
 hereby declares that he/she is insured as required by REBBA.
 DocuSigned by: *Tristin Thompson*
 (Signature(s) of Salesperson/Broker/Broker of Record) **Tristin Thompson**

ACKNOWLEDGEMENT
The Buyer(s) hereby acknowledge that the Buyer(s) fully understand the terms of this Agreement and have received a copy of this Agreement

DocuSigned by: on the 16th day of August, 20 22 8/16/2022 | 11:55 AM PDT
 (Signature of Buyer) **WinterBerry Investments Inc.** (Date)
 (Signature of Buyer) (Date)

Form 810

for use in the Province of Ontario

The REALTOR® Consumer Relationship

In Ontario, the real estate profession is governed by the Real Estate and Business Brokers Act, 2002, and Associated Regulations (REBBA 2002 or Act), administered by the Real Estate Council of Ontario (RECO). All Ontario REALTORS® are registered under the Act and governed by its provisions. REBBA 2002 is consumer protection legislation, regulating the conduct of real estate brokerages and their salespeople/brokers. The Act provides consumer protection in the form of deposit insurance and requires every salesperson/broker to carry errors & omission (E&O) insurance.

When you choose to use the services of a REALTOR®, it is important to understand that this individual works on behalf of a real estate brokerage, usually a company. The brokerage is operated by a Broker of Record, who has the ultimate responsibility for the employees registered with the brokerage. When you sign a contract, it is with the brokerage, not with the salesperson/broker employee.

The Act also requires that the brokerage (usually through its REALTORS®) explain the types of service alternatives available to consumers and the services the brokerage will be providing. The brokerage must document the relationship being created between the brokerage and the consumer, and submit it to the consumer for his/her approval and signature. The most common relationships are "client" and "customer", but other options may be available in the marketplace.

Client

A "client" relationship creates the highest form of obligation for a REALTOR® to a consumer. The brokerage and its salespeople/brokers have a fiduciary (legal) relationship with the client and represent the interests of the client in a real estate transaction. The REALTOR® will establish this relationship with the use of a representation agreement, called a Listing Agreement with the seller and a Buyer Representation Agreement with the buyer. The agreement contains an explanation of the services the brokerage will be providing, the fee arrangement for those services, the obligations the client will have under the agreement, and the expiry date of the agreement. Ensure that you have read and fully understand any such agreement before you sign the document.

Once a brokerage and a consumer enter into a client relationship, the brokerage must protect the interests of the client and do what is best for the client. A brokerage must strive for the benefit of the client and must not disclose a client's confidential information to others. Under the Act, the brokerage must also make reasonable efforts to determine any material facts relating to the transaction that would be of interest to the client and must inform the client of those facts. Although they are representing the interests of their client, they must still treat all parties to the transaction with fairness, honesty, and integrity.

Customer

A buyer or seller may not wish to be under contract as a client with the brokerage but would rather be treated as a customer. A REALTOR® is obligated to treat every person in a real estate transaction with honesty, fairness, and integrity, but unlike a client, provides a customer with a restricted level of service. Services provided to a customer may include showing the property or properties, taking customer direction to draft an offer and present the customer offer etc. Brokerages use a Customer Service Agreement to document the services they are providing to a buyer or seller customer.

Under the Act, the REALTOR® has disclosure obligations to a customer and must disclose material facts known to the brokerage that relate to the transaction.

What Happens When...

Buyer(s) and the seller(s) are sometimes under contract with the same brokerage when properties are being shown or an offer is being contemplated. There can also be instances when there is more than one offer on a property and more than one buyer and seller are under a representation agreement with the same brokerage. This situation is referred to as multiple representation. Under the Act, the REALTORS® and their brokerage must make sure all buyers, sellers, and their REALTORS® confirm in writing that they acknowledge, understand, and consent to the situation before their offer is made. REALTORS® typically use what is called a Confirmation of Co-operation and Representation form to document this situation.

Offer negotiations may become stressful, so if you have any questions when reference is made to multiple representation or multiple offers, please ask your REALTOR® for an explanation.

Critical Information

REALTORS® are obligated to disclose facts that may affect a buying or selling decision. It may be difficult for a REALTOR® to judge what facts are important. They also may not be in a position to know a fact. You should communicate to your REALTOR® what information and facts about a property are important to you in making a buying or selling decision, and document this information to avoid any misunderstandings and/or unpleasant surprises.

Similarly, services that are important to you and are to be performed by the brokerage, or promises that have been made to you, should be documented in your contract with the brokerage and its salesperson/broker.

To ensure the best possible real estate experience, make sure all your questions are answered by your REALTOR®. You should read and understand every contract before you finalize it.

Acknowledgement by: WinterBerry Investments Inc.

(Names)

I/we have read, understand, and have received a copy of Working with a REALTOR®

Sellers: As seller(s), I/we understand that

_____ (Name of Brokerage)

(initial one) _____
Is representing my interests, to be documented in a separate written agency representation agreement, and I understand the brokerage may represent and/or provide customer service to other sellers and buyers.

_____ Is not representing my interests, to be documented in a separate written customer service agreement, but will act in a fair, ethical and professional manner.

(Signature) _____ (Date)

(Signature) _____ (Date)

Buyers: As buyer(s), I/we understand that

_____ **Keller Williams Advantage Realty, Brokerage** _____

_____ (Name of Brokerage)

(initial one) DS _____
Is representing my interests, to be documented in a separate written agency representation agreement, and I understand the brokerage may represent and/or provide customer service to other buyers and sellers.

_____ Is not representing my interests, to be documented in a separate written customer service agreement, but will act in a fair, ethical and professional manner.

DocuSigned by: _____ 8/16/2022 | 11:55 AM PDT

(Signature) WinterBerry Investments Inc. (Date)

(Signature) _____ (Date)

Please note that Federal legislation requires REALTORS® to verify the identity of sellers and buyers with whom they are working. For the purposes of this information, the term "seller" can be interpreted as "landlord" and "buyer" can mean "tenant." This form is for information only and is not a contract.

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Residential Tenancy Agreement (Standard Form of Lease)

Note

This tenancy agreement (or lease) is required for tenancies entered into on **March 1, 2021 or later**. It does not apply to care homes, sites in mobile home parks and land lease communities, most social housing, certain other special tenancies or co-operative housing (see Part A of General Information).

Residential tenancies in Ontario are governed by the *Residential Tenancies Act, 2006*. This agreement cannot take away a right or responsibility under the *Residential Tenancies Act, 2006*.

Under the Ontario *Human Rights Code*, everyone has the right to equal treatment in housing without discrimination or harassment.

All sections of this agreement are mandatory and cannot be changed.

1. Parties to the Agreement

Residential Tenancy Agreement between:

Landlord(s)

Landlord's Legal Name Deborah Barr

Note:

See Part B in General Information

and Tenant(s)

Last Name	Berry	First Name	David
Last Name		First Name	
Last Name		First Name	
Last Name		First Name	

2. Rental Unit

The landlord will rent to the tenant the rental unit at:

Unit (e.g., unit 1 or basement unit)	Street Number	Street Name	Postal Code
	86	woodbine Ave	M4L 2A2
City/Town	Province		
Toronto	Ontario		

Number of vehicle parking spaces and description (e.g., indoor/outdoor, location)

2 car garage parking

The rental unit is a unit in a condominium.

Yes No

If yes, the tenant agrees to comply with the condominium declaration, by-laws and rules, as provided by the landlord.

212

3. Contact Information**Address for Giving Notices or Documents to the Landlord**

Unit	Street Number	Street Name	PO Box
City/Town		Province	Postal Code/ZIP Code

Both the landlord and tenant agree to receive notices and documents by email, where allowed by the Landlord and Tenant Board's Rules of Procedure.

Yes No

If yes, provide email addresses:

David Berry dberry@winterberryinvestments.com

The landlord is providing phone and/or email contact information for emergencies or day-to-day communications:

Yes No

If yes, provide information:

Deborah Barr dbarr@verywell.ca

Note:

See Part B and E in General Information

4. Term of Tenancy Agreement

This tenancy starts on: 2022/09/01
Date (yyyy/mm/dd)

This tenancy agreement is for: (select an option below and fill in details as needed)

a fixed length of time ending on: 2023/08/31
Date (yyyy/mm/dd)

a monthly tenancy

other (such as daily, weekly, please specify): _____

Note:

The tenant does not have to move out at the end of the term. See Parts C and D in General Information.

5. Rent

a) Rent is to be paid on the first (e.g., first, second, last) day of each (select one):

Month

Other (e.g., weekly) _____

b) The tenant will pay the following rent:

Base rent for the rental unit	\$5,400.00
Parking (if applicable)	_____
Other services and utilities (specify if applicable):	_____
_____	_____
_____	_____
_____	_____
Total Rent (Lawful Rent)	\$5,400.00

213

This is the lawful rent for the unit, subject to any rent increases allowed under the *Residential Tenancies Act, 2006*. For example, the landlord and tenant may agree to a seasonal rent increase for additional services of air conditioning or a block heater plug-in. This amount does not include any rent discounts (see Section 7 and Part G in General Information).

c) Rent is payable to:

Deborah Barr

d) Rent will be paid using the following methods:

E Transfer - dbarr@verywell.ca

Note:

The tenant cannot be required to pay rent by post-dated cheques or automatic payments, but can choose to do so.

e) If the first rental period (e.g., month) is a partial period, the tenant will pay a partial rent of \$ _____ on _____ . This partial rent covers the rental of the unit from _____ to _____ .
Date (yyyy/mm/dd) Date (yyyy/mm/dd) Date (yyyy/mm/dd)

f) If the tenant's cheque is returned because of non-sufficient funds (NSF), the tenant will have to pay the landlord's administration charge of \$ 20.00 plus any NSF charges made by the landlord's bank.

Note:

The landlord's administration charge for an NSF cheque cannot be more than \$20.00

6. Services and Utilities

The following services are included in the lawful rent for the rental unit, as specified:

- | | | |
|--------------------------|---|---|
| Gas | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Air conditioning | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No |
| Additional storage space | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| On-Site Laundry | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No <input type="checkbox"/> No Charge <input type="checkbox"/> Pay Per use |
| Guest Parking | <input type="checkbox"/> Yes | <input type="checkbox"/> No <input type="checkbox"/> No Charge <input type="checkbox"/> Pay Per use |
| Other _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Other _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Other _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Other _____ | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

Provide details about services or list any additional services if needed (if necessary add additional pages):

The following utilities are the responsibility of:

Electricity Landlord Tenant

Heat Landlord Tenant

Water Landlord Tenant

If the tenant is responsible for any utilities, provide details of the arrangement, e.g. tenant sets up account with and pays the utility provider, tenant pays a portion of the utility costs (if necessary add additional pages):

7. Rent Discounts

Select one:

There is no rent discount.

or

The lawful rent will be discounted as follows:

Provide description of rent discount (if necessary add additional pages):

Note:

See Part G in General Information for what types of discounts are allowed.

8. Rent Deposit

Select one:

A rent deposit is not required.

or

The tenant will pay a rent deposit of \$ 5,400.00. This can only be applied to the rent for the last rental period of the tenancy.

Note:

This amount cannot be more than one month's rent or the rent for one rental period (e.g., one week in a weekly tenancy), whichever is less. This cannot be used as a damage deposit. The landlord must pay the tenant interest on the rent deposit every year. See Part H in General Information.

215

9. Key Deposit

Select one:

A key deposit is not required.

or

The tenant will pay a refundable key deposit of \$ 250.00 to cover the cost of replacing the keys, remote entry devices or cards if they are not returned to the landlord at the end of the tenancy.

If a refundable key deposit is required, provide description and number of keys, access cards and remote entry devices:

Note:

The key deposit cannot be more than the expected replacement cost. See Part H in General Information.

10. Smoking

Under provincial law, smoking is not allowed in any indoor common areas of the building. The tenant agrees to these additional rules on smoking:

Select one:

None

or

Smoking rules

Provide description of smoking rules (if necessary add additional pages):

Note:

In making and enforcing smoking rules, the landlord must follow the Ontario *Human Rights Code*. See Parts M and S in General Information.

11. Tenant's Insurance

Select one:

There are no tenant insurance requirements.

or

The tenant must have liability insurance at all times. If the landlord asks for proof of coverage, the tenant must provide it. It is up to the tenant to get contents insurance if they want it.

12. Changes to the Rental Unit

The tenant may install decorative items, such as pictures or window coverings. This is subject to any reasonable restrictions set out in the additional terms under Section 15.

The tenant cannot make other changes to the rental unit without the landlord's permission.

13. Maintenance and Repairs

The landlord must keep the rental unit and property in good repair and comply with all health, safety and maintenance standards.

The tenant must repair or pay for any undue damage to the rental unit or property caused by the wilful or negligent conduct of the tenant, the tenant's guest or another person who lives in the rental unit.

The tenant is responsible for ordinary cleanliness of the rental unit, except for any cleaning the landlord agreed to do.

Note:

See Part J in General Information.

14. Assignment and Subletting

The tenant may assign or sublet the rental unit to another person only with the consent of the landlord. The landlord cannot arbitrarily or unreasonably withhold consent to a sublet or potential assignee.

Note:

There are additional rules if the tenant wants to assign or sublet the rental unit. See Part P in General Information.

15. Additional Terms

Landlords and tenants can agree to additional terms. Examples may include terms that:

- Require the landlord to make changes to the unit before the tenant moves in, and
- Provide rules for use of common spaces and/or amenities.

These additional terms should be written in plain language and clearly set out what the landlord or tenant must or must not do to comply with the term. If typed, the additional terms should be in a font size that is at least 10 points.

An additional term cannot take away a right or responsibility under the *Residential Tenancies Act, 2006*.

If a term conflicts with the *Residential Tenancies Act, 2006* or any other terms set out in this form, the term is void (not valid or legally binding) and it cannot be enforced. Some examples of void and unenforceable terms include those that:

- Do not allow pets (however, the landlord can require the tenant to comply with condominium rules, which may prohibit certain pets),
- Do not allow guests, roommates, any additional occupants,
- Require the tenant to pay deposits, fees or penalties that are not permitted under the *Residential Tenancies Act 2006* (e.g., damage or pet deposits, interest on rent arrears), and
- Require the tenant to pay for all or part of the repairs that are the responsibility of the landlord.

See General Information for more details.

The landlord and tenant may want to get legal advice before agreeing to any additional terms.

Select one:

There are no additional terms.

or

This tenancy agreement includes an attachment with additional terms that the landlord and tenant agreed to.

16. Changes to this Agreement

After this agreement is signed, it can be changed only if the landlord and tenant agree to the changes in writing.

Note:

The *Residential Tenancies Act, 2006* allows some rent increases and requires some rent reductions without agreement between the landlord and tenant. See Part I in General Information.

17. Signatures


By signing this agreement, the landlord(s) and the tenant(s) agree to follow its terms. The landlord(s) or tenant(s) can sign this lease electronically if they both agree.

Unless otherwise agreed in the additional terms under Section 15, if there is more than one tenant, each tenant is responsible for all tenant obligations under this agreement, including the full amount of rent.

Landlord(s):

Name	Signature	Date (yyyy/mm/dd)
Deborah Barr		
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)

Tenant(s):

Name	Signature	Date (yyyy/mm/dd)
David Berry		8/16/2022 11:55 AM PDT
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)

Note:

All of the landlords and tenants listed on the first page in Section 1 (Parties to the Agreement) must sign here. The landlord must give a copy of this agreement to the tenant within 21 days after the tenant signs it.

This Appendix sets out basic information for landlords and tenants. It is not intended as legal advice, and it is not an official interpretation of the *Residential Tenancies Act, 2006* (the Act). Please refer to the Act for the specific rules.

The Landlord and Tenant Board also provides information about landlords' and tenants' rights and responsibilities under the Act.

Landlord and Tenant Board:

Toll free: 1-888-332-3234

Toronto area: 416-645-8080

TTY: Bell Relay Service at 1-800-855-0511

Website: www.tribunalsontario.ca/ltb/

A. When to Use This Form

This form (standard form of lease) must be used for most residential tenancy agreements (leases).

This form should **not** be used for:

- care homes,
- sites in mobile home parks or land lease communities,
- social and supportive housing that is exempt from the rent increase guideline (see the regulation under the Act for specific exemptions),
- member units in co-operative housing, and
- any other accommodation that is exempt from the Act (see Section 5 of the Act).

B. Change of Landlord

A new landlord has the same rights and duties as the previous landlord. A new landlord must follow all the terms of this agreement unless the tenant and new landlord agree to other terms. A new landlord should provide the tenant with their legal name and address.

C. Renewing a Tenancy Agreement (Part V of the Act)

If the landlord and tenant agree that the tenancy will last for a specific period of time, this is called a fixed term tenancy. This is because both the start and end date are set out in the tenancy agreement.

The end of an agreement does not mean the tenant has to move out or sign a renewal or new agreement in order to stay. The rules of the agreement will still apply and the tenant still has the right to stay:

- as a monthly tenant, if the agreement was for a fixed term or monthly tenancy,
- as a weekly tenant, if the agreement was for a weekly tenancy, or
- as a daily tenant, if the agreement was for a daily tenancy.

The landlord and tenant can also agree to renew the agreement for another fixed term or enter into a new agreement. In any case, changes to the rent must follow the rules under the Act (see Part I below for further information).

D. Ending the Tenancy (Part V of the Act)

The landlord or tenant must follow the rules of the Act when ending a tenancy.

When the tenant can end the tenancy

The tenant can end a tenancy by giving the landlord proper notice using the appropriate Landlord and Tenant Board form. They must give:

- at least 60 days' notice if they have a monthly or fixed term tenancy, or
- at least 28 days' notice if they have a daily or weekly tenancy.

For a fixed term tenancy, the notice cannot be effective before the last day of the fixed term. For a monthly or weekly tenancy, the notice must be effective on the last day of a rental period (e.g. month or week).

In certain situations, a tenant who has experienced sexual or domestic violence can give 28 days' notice to end the tenancy at any time, even if the tenant has a fixed term agreement (e.g., one year agreement). They must use the notice form approved by the Landlord and Tenant Board.

When the landlord can end the tenancy

The landlord can only give the tenant notice to end the tenancy in certain situations. These situations are set out in the Act. The landlord cannot evict the tenant unless the landlord follows the proper rules. These rules are set out in the Act. In most cases, the landlord must give proper notice to end the tenancy using the right form. Forms are available on the Landlord and Tenant Board's website.

If the landlord gives a tenant notice to end the tenancy, the tenant does not have to move out.

The landlord can give the tenant notice to end the tenancy in certain situations where the tenant is at fault. Examples include:

- tenant does not pay the full rent when it is due,
- tenant causes damage to the rental unit or building, and
- tenant substantially interferes with the reasonable enjoyment of other tenants or the landlord.

The landlord may also give notice to end a tenancy in certain situations that are not the tenant's fault, but only at the end of the term or rental period. In these cases, landlords must still give proper notice, and tenants may be entitled to compensation and/or the right to return to the unit. Examples include:

- landlord or purchaser needs the unit for themselves, an immediate family member, or caregiver, and
- landlord needs to do extensive repairs or renovations that require a building permit and vacant possession of the unit.

If the tenant does not move out, the landlord must apply to the Landlord and Tenant Board in order to evict the tenant. The Landlord and Tenant Board will hold a hearing and decide if the tenancy should end. Both the landlord and the tenant can come to the hearing and explain their side to the Landlord and Tenant Board. If the Landlord and Tenant Board orders an eviction, the eviction order can only be enforced by the Sheriff (Court Enforcement Officer).

It is an offence for the landlord to evict a tenant without following this process. If convicted, the landlord could face a fine of up to \$50,000 (for an individual) or \$250,000 (for a corporation).

If the Landlord and Tenant agree to end the tenancy

The tenant and landlord can agree to end a tenancy at any time by using the proper Landlord and Tenant Board form. Some landlords may ask the tenant to sign that form when signing the tenancy agreement (lease). In most cases, an agreement to end a tenancy signed at the beginning of the tenancy agreement is unenforceable and the tenant does not have to move out.

There is more information on how to end a tenancy and reasons for eviction in the Act and in brochures on the Landlord and Tenant Board website.

E. Giving Notices and Documents (Part XII of the Act)

The landlord and tenant have to deliver some official notices and other documents in writing. These notices and documents can be:

- hand delivered,
- left in a mail box or a place where mail is ordinarily delivered, or
- mailed (this will count as delivered five days after mailing).

There are also other ways to serve notices and documents. For more information, contact the Landlord and Tenant Board or see the Rules of Practice on its website.

F. Rent and Rent Receipts (Part VII of the Act)

Rent is the amount the tenant pays to the landlord to occupy the rental unit and receive services or facilities agreed to in this agreement.

The tenant must pay their rent on time. If they do not, the landlord can give them notice to end the tenancy.

If the tenant asks for a receipt for rent or any payment or deposit, the landlord must give them one for free. This also applies to a former tenant who asks for a receipt within 12 months after the end of their tenancy.

G. Rent Discounts (Part VII of Act)

The landlord can offer the tenant a discount for paying rent on or before the date it is due. This discount can be up to two per cent of the lawful rent.

The landlord can also offer rent-free periods or discounts in one of three ways:

- Rent-free periods of up to three months within any 12-month period,
- A discount of up to one month's rent spread evenly over eight months, or
- A discount of up to two months' rent, with up to one month's rent spread evenly over the first seven months, and up to one month's rent discounted in one of the last five months.

These types of discounts must be agreed to in writing.

H. Deposits (Part VII of the Act)

The landlord can only collect a deposit for the last month's rent and a refundable key deposit. The tenant does not have to provide any other form of deposit, such as pet or damage deposits. If the tenant pays anything more, the tenant can apply to the Landlord and Tenant Board to get the money back.

Rent deposit (i.e. last month's rent): The landlord can require a rent deposit on or before the tenant enters into the tenancy agreement. The landlord must apply this money to the rent for the last period of the tenancy. The rent deposit must not be more than one month's rent or the rent for one rental period (e.g., one week in a weekly tenancy), whichever is less.

The landlord must pay the tenant interest on the rent deposit every year. If the rent increases after the tenant has paid a rent deposit, the landlord can require the tenant to top-up the rent deposit so that it is the same as the new rent. The landlord can use the interest on the rent deposit to top-up the rent deposit.

If the landlord is unable to let the tenant move into the rental unit, the landlord must return the deposit, unless the tenant agrees to rent a different unit.

Key deposit: If the landlord collects a deposit for key(s), remote entry devices or cards, the landlord must return the deposit when the tenant gives back their key(s) at the end of the tenancy.

The landlord can charge the tenant for additional keys that the tenant requests (for example, if the tenant wants an extra key or if the tenant has lost their key), but the charge cannot be more than actual cost of the keys. This is not a key deposit.

I. Rent Increases and Decreases (Part VII of the Act)

Normally, the landlord can increase the rent only once every 12 months. The landlord must use the proper Landlord and Tenant Board form and give the tenant at least 90 days' notice before the rent increase is to take effect.

Guideline Rent Increases

In most cases, the rent can be increased by no more than the rent increase guideline unless the Landlord and Tenant Board approves a rent increase above the guideline. The guideline for each year can be found on the Landlord and Tenant Board's website. Some newer units are not subject to the rent increase guideline, including:

- A unit in a new building, if no part of the building was occupied for residential purposes on or before November 15, 2018;
- A unit in a new addition to an existing building, if no part of the addition was occupied for residential purposes on or before November 15, 2018; and,
- A new second unit in an existing house, such as a basement apartment, that was created after November 15, 2018 and that meets the requirements set out in the Act.

Rent Increases above the Guideline

The landlord can apply to the Landlord and Tenant Board for approval to raise the rent by more than the rent increase guideline. Affected tenants can oppose this application at the Landlord and Tenant Board.

This kind of rent increase is called an above-guideline rent increase. The Landlord and Tenant Board can allow this kind of rent increase if:

- the landlord's municipal taxes and charges have increased significantly,
- the landlord has done major repairs or renovations, or
- the costs of external security services (i.e. not performed by the landlord's employees) have increased, or external security services are being provided for the first time.

The landlord and tenant can also agree to an above-guideline rent increase, if the landlord agrees to renovate or add a new service for the tenant. Certain rules apply.

Rent Reductions:

The landlord **must** reduce the rent if:

- the municipal property tax goes down by more than 2.49 per cent, or
- the rent was increased above the guideline to pay for repairs or renovations and the costs have been fully paid for (this only applies to tenants who were living in the unit when the above guideline rent increase happened).

The tenant can apply to the Landlord and Tenant Board to reduce their rent if:

- municipal property taxes or charges on the rental property go down,
- the landlord reduced or removed a service without reducing the rent, or
- the landlord did not keep a promise they made in an agreement for a rent increase above the guideline.

J. Maintenance and Repairs (Part III, IV, V and XIV of the Act)

The landlord must keep the rental unit and property in good repair and comply with all health, safety and maintenance standards. This includes the maintenance and repair of things that came with the unit, such as appliances, and of common areas, such as parking lots, elevators, and hallways.

The tenant must pay their rent, even if they have problems with the maintenance and repair of their unit or property. If the tenant is having a maintenance or repair problem, the tenant should let the landlord know. If needed, the tenant can apply to the Landlord and Tenant Board.

The tenant is responsible for any damage to the rental property caused by the tenant, the tenant's guest or another person who lives in the rental unit. This applies to any damage caused on purpose or by not being careful enough. This does not include damage that results from normal use of the rental unit over time ("wear and tear"). The landlord can apply to the Landlord and Tenant Board if the tenant has not repaired such damage.

The tenant is responsible for ordinary cleanliness of the rental unit, except for any cleaning the landlord agreed to do.

K. Vital Services (Part I and III of the Act)

"Vital services" are hot or cold water, fuel, electricity, gas and heat.

The landlord must ensure that a rental unit has heating equipment capable of maintaining a minimum temperature of 20° Celsius from September 1 to June 15. Some municipal by-laws may have stricter requirements.

The landlord cannot withhold or shut off the reasonable supply of a vital service, care service or food that the landlord must supply under the tenancy agreement. If a vital service is cut-off because the landlord failed to pay their bill, the landlord is considered to have withheld that service. However, if a vital service is cut-off or disconnected because the tenant failed to pay their own utility bill, the tenant cannot claim that the landlord withheld a vital service.

The landlord cannot deliberately interfere with the reasonable supply of any vital service, care service or food, whether or not the landlord is obligated to supply it under the tenancy agreement.

L. Harassment (Part III and IV of the Act)

It is against the law for the landlord (or anyone acting for the landlord, such as a superintendent or property manager) to harass the tenant, or for the tenant to harass the landlord. If the landlord or the tenant is experiencing harassment they can apply to the Landlord and Tenant Board.

M. Discrimination

If the landlord (or anyone acting for the landlord) discriminates against the tenant based on prohibited grounds of discrimination under the Ontario *Human Rights Code* (the *Code*), they may be violating the tenant's rights under the Code. The Landlord and Tenant Board may be able to consider discrimination if it relates to an application under the *Residential Tenancies Act, 2006*. In other situations, the tenant may have to take their case to the Human Rights Tribunal of Ontario.

N. Landlord's Entry into Rental Unit (Part III of the Act)

The tenant is entitled to reasonable enjoyment of the rental unit (e.g. quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance and exclusive use of the rental unit).

The landlord can enter the rental unit with 24 hours' written notice only for the following reasons:

- make repairs,
- inspect the unit to see if repairs are needed, if the inspection is reasonable,
- show the rental unit to a possible buyer, insurer or mortgage lender,
- let a real estate agent show the unit to a possible buyer,
- have a property inspection done before converting the residential building into a condominium, or
- for any reasonable purpose listed in the tenancy agreement.

The written notice must include the reason for the entry and state the date and time (between 8 a.m. and 8 p.m.) that the landlord will enter the unit. With proper notice, the landlord can enter the unit when the tenant is not at home.

The landlord does not need to give a notice to enter:

- in case of emergency,
- if the tenant consents to entry,
- if the tenancy agreement requires the landlord to clean the unit, or
- if the tenancy is coming to an end and the landlord wants to show the unit to a potential new tenant – the landlord can only show the unit between 8:00 a.m. and 8:00 p.m. and must make a reasonable effort to let the tenant know when this will happen.

O. Locks (Part III and IV of the Act)

The landlord cannot change the locks of the rental unit unless the landlord gives the new keys to the tenant. The tenant cannot change the locks of the rental unit without the consent of the landlord.

P. Assign or Sublet (Part VI of the Act)

The tenant may assign or sublet the rental unit to another person only with the consent of the landlord. The landlord cannot arbitrarily or unreasonably withhold consent to a potential assignee or sublet of the rental unit.

1. **Assignment:** In an **assignment**, the tenant transfers their right to occupy the rental unit to someone else. The new person takes the place of the tenant, and the tenancy agreement stays the same.
2. **Sublet:** A **sublet** occurs when the tenant moves out of the rental unit, lets another person (the 'sub-tenant') live there until a specified date, and can return to live in the unit before the tenancy ends. The tenancy agreement and the landlord-tenant relationship do not change.

A tenant who sublets a rental unit cannot:

- charge a higher rent than the landlord does for the rental unit,
- collect any additional fees for subletting the rental unit, or
- charge the sub-tenant for additional goods or services.

Q. Guests (Part III of the Act)

The landlord cannot stop tenants from having guests, require the tenant to notify the landlord or get the landlord's permission before having guests. The landlord cannot charge extra fees or raise the rent due to guests in the rental unit. However, the tenant is responsible for the behaviour of their guests.

The landlord cannot prevent the tenant from having a roommate, as long as municipal by-laws on occupancy standards are respected.

If a tenant rents their whole unit to someone else (e.g. short-term rental), this person is not a "guest". The tenant may have to get the landlord's permission.

R. Pets (Part III of the Act)

A tenancy agreement cannot prohibit animals in the rental unit or in or around the residential building.

There are some cases where the landlord can apply to the Landlord and Tenant Board to evict a tenant who has a pet. These are some common examples:

- the pet makes too much noise, damages the unit or causes other tenants to have allergic reactions,
- the breed or species is inherently dangerous, or
- the rules of the condominium corporation do not allow pets.

S. Smoking (Part V of the Act)

The Act does not discuss smoking in a rental unit. The landlord and tenant can use Section 10 of this lease to agree to either allow or prohibit smoking in the unit, and/or on the landlord's property.

Even if the lease doesn't prohibit smoking, the landlord may apply to the Landlord and Tenant Board to end the tenancy if the smoking:

- substantially interferes with reasonable enjoyment of the landlord or other tenants,
- causes undue damage,
- impairs safety, or
- substantially interferes with another lawful right, privilege or interest of the landlord.

If the tenant believes that other people smoking in their building affects their health or safety, contravenes maintenance standards, or substantially interferes with their reasonable enjoyment of the rental unit, they should discuss it with their landlord before contacting the Landlord and Tenant Board.

T. Smoke and Carbon Monoxide Alarms

The landlord must provide the rental unit with working smoke alarms and, where applicable, carbon monoxide alarms. The landlord is responsible for keeping smoke and carbon monoxide alarms in working condition, which includes replacing the batteries. The tenant must not disconnect or tamper with any smoke or carbon monoxide alarm and must notify the landlord immediately of any alarms not working properly.

U. Resolving Disputes

The landlord and tenant are required to follow the law. If they have problems or disagreements, the landlord and tenant should first discuss the issue and attempt to resolve it themselves. If the landlord or tenant feels that the other is not obeying the law, they may contact the Landlord and Tenant Board for information about their rights and responsibilities, including whether they may apply to the Landlord and Tenant Board to resolve the dispute.

224 Guide to the Standard Lease

A guide to the standard lease is available at the webpage below.

Una guía del contrato de arrendamiento estándar está a su disposición en la página web que se encuentra abajo.

Makikita sa webpage sa ibaba ang gabay sa pamantayang pagpapaupa.

Auf der unten genannten Webseite steht ein Leitfaden zum Standardmietvertrag zur Verfügung

Hướng dẫn về hợp đồng thuê nhà chuẩn có tại trang web bên dưới.

Przewodnik dotyczący standardowego najmu dostępny jest na poniższej stronie internetowej.

Руководство по стандартной аренде доступно на веб-странице ниже

Информацию щодо стандартного договору оренди можна знайти на вказаній нижче веб-сторінці.

Un ghid pentru închirierea- standard este disponibil pe pagina de mai jos.

Um guia para o contrato de arrendamento normalizado está disponível na página Web abaixo

您可在以下网页查看标准租约指南。

您可在以下網頁查看標準租約指南。

Μπορείτε να βρείτε έναν οδηγό για το τυπικό μισθωτήριο στον παρακάτω ιστότοπο.

표준 임대차 계약에 대한 안내는 아래 웹 페이지에 있습니다.

Una guida al contratto di locazione standard è disponibile nella pagina web sottostante.

دليل الإيجار القياسي متاح على صفحة الإنترنت أدناه

راهنمای اجارمنامه استاندارد در وبسایت زیر موجود است.

નીચે આપેલા વેબપેજ પર માનક લીઝ માટેની માર્ગદર્શિકા ઉપલબ્ધ છે.

मानक लीज के नियम नीचे दिए गए वेबपेज पर उपलब्ध है।

वेबसाइट पर दिए गए वेबपेज पर उपलब्ध है।

இயல்தரமான குத்தகைக்கான வழிகாட்டு முறைகள் கீழே உள்ள வலைப்பக்கத்தில் கொடுக்கப்பட்டுள்ளது

معیاری لیز سے متعلق گائیڈ نیچے ویب صفحہ پر دستیاب ہے۔

www.ontario.ca/standardlease

225

Schedule A

Buyer or Tenant Representation Agreement Authority for Purchase or Lease



THE FOLLOWING TERMS ARE INTERCHANGEABLE: "Agreement of Purchase and Sale" as "Agreement to Lease"
"Seller" as "Landlord"
"Buyer" as "Tenant"

This Schedule is attached to and forms part of the Buyer Representation Agreement or Tenant Representation Agreement between:

BROKERAGE: Keller Williams Advantage Realty, Brokerage, and

BUYER(S): WinterBerry Investments Inc.

dated the 8/16/2022 | 11:55 AM PDT, 2022

COVID-19 ACKNOWLEDGMENT AND AGREEMENT

This Schedule addresses the current State of Emergency in Ontario due to the COVID-19 pandemic. It is designed to protect all parties to the Buyer or Tenant Representation Agreement and specify responsibilities for each party.

REPRESENTING BROKERAGE

The Brokerage named in this Representation Agreement hereby acknowledges and agree:

- That prior to a property being viewed for an "in-person" showing or appointment it may be required that the Buyer's Realtor and the Buyer(s) may need to fill out forms related to COVID-19, and that such forms shall be promptly relayed upon receipt.
- That any information disclosed to or discovered by the Representing Brokerage related to potential exposure of any property visited by the Buyer to individuals who have been diagnosed as having COVID-19 will be communicated to the Buyer(s).

REALTOR(S)

The registered Realtor(s) with the Brokerage named in this Representation agreement, representing the buyers, namely Tristin Thompson

hereby acknowledge and agree:

- That I/We do not have any of the following symptoms associated with the COVID-19 virus: Cough, Fever, Difficulty Breathing.
- That to the best of our knowledge and belief, I/We have not been in contact with any person that has contracted COVID-19, nor have I/We been diagnosed as having COVID-19.
- That I/We have not travelled outside of Canada or been in close contact with anyone who has travelled outside of Canada in the last 14 days.
- That if I/we develop any of the symptoms associated with the COVID-19 virus: Cough, Fever, Difficulty Breathing; we will immediately self-isolate and not conduct any in-person activities or show properties to the Buyer(s) named in the Representation Agreement. Any activities related to the purchase or rental of a property that must be done in-person will be conducted by another Realtor registered with the Brokerage named in the Representation Agreement; who is not displaying any of the symptoms associated with the COVID-19 virus.
- That any information disclosed to or discovered by the registered Realtor listed above potential exposure of any property visited by the Buyer to individuals who have been diagnosed as having COVID-19 will be communicated to the Representing Brokerage and the Buyer(s).

DocuSigned by:
Tristin Thompson
AC673C53CA694CD...
Signature of Realtor

Signature of Realtor

This form must be initialed by all parties to the Agreement.

INITIALS OF BROKERAGE:

INITIALS OF BUYER(S):

226

Schedule A

Buyer or Tenant Representation Agreement Authority for Purchase or Lease



THE FOLLOWING TERMS ARE INTERCHANGEABLE: "Agreement of Purchase and Sale" as "Agreement to Lease"
"Seller" as "Landlord"
"Buyer" as "Tenant"

This Schedule is attached to and forms part of the Buyer Representation Agreement or Tenant Representation Agreement between:

BROKERAGE: Keller Williams Advantage Realty, Brokerage, and

BUYER(S): WinterBerry Investments Inc.

..... dated the day of 8/16/2022 | 11:55 AM PDT, 20.....

BUYER(S)

The Buyer(s) named in this Listing Agreement hereby acknowledge and agree:

- That I/We do not have any of the following symptoms associated with the COVID-19 virus: Cough, Fever, Difficulty Breathing.
- That to the best of our knowledge and belief, I/We have not been in contact with any person that has contracted COVID-19, nor have I/We been diagnosed as having COVID-19.
- That I/We have not travelled outside of Canada or been in close contact with anyone who has travelled outside of Canada in the last 14 days.
- That if I/we develop any of the symptoms associated with the COVID-19 virus: Cough, Fever, Difficulty Breathing; we will notify the Representing Brokerage and the Realtor(s) named herein.
- That any information disclosed to or discovered by myself/ourselves related to potential exposure to individuals who have been diagnosed as having COVID-19 will be communicated to the Representing Realtor(s) named herein.
- That the Representing Brokerage is making reasonable efforts to ensure the Buyer(s) are not being exposed to properties that have been exposed to individuals who have any of the symptoms associated with the COVID-19 virus.
- Notwithstanding the aforementioned, the Buyer(s) acknowledge and agree, that the Representing Brokerage has no other means of ensuring that the statements related to symptoms associated with the COVID-19 virus that are made by individuals who visit properties seen by the Buyer(s) are true and accurate, and as a result the Representing Brokerage shall stand released from any claim or claims associated with the contracting of COVID-19 as a result of an "in-person" showings or appointments.
- That the Representing Brokerage may, upon request, share this document as executed by me/us, with all Co-operating Brokerage(s) or Service Provider(s), in order to assure those parties of my/our state of health, to the best of my/our knowledge and belief, in regards to COVID-19, and to acknowledge my/our requirement to confirm their current state of health, to the best of their knowledge and belief, in regards to COVID-19, along with each respective party's agreement to adhere to the prescribed "in-person" showing/appointment procedures.
- That only the persons named in the Representation Agreement shall be present for the showing of a property.
- That I/We will sanitize our hands with either soap and water and/or hand sanitizer before entering a property.
- That if directed by my/our Realtor, I/We will wear a medical mask and/or latex or vinyl gloves for the showing of a property;
- That I/We will not wander away from the guided tour being conducted by the Realtor, and I/We will not touch anything in the household that I/We are viewing.
- That I/We will sanitize my/our hands with either soap and water and/or hand sanitizer upon leaving a property.
- That I/We acknowledge that I/We will be required to meet our Realtor at the property and that I/We will not be driven to the property by our Realtor.

This form must be initialed by all parties to the Agreement.

INITIALS OF BROKERAGE:

INITIALS OF BUYER(S):

This is **Exhibit "P"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

228



Agreement to Lease Residential

Form 400

for use in the Province of Ontario

This Agreement to Lease (Agreement) dated this 6 day of September, 2023

TENANT: David Berry
(Full legal names of all Tenants)

LANDLORD: Andrea Casa
(Full legal name of Landlord)

ADDRESS OF LANDLORD: _____
(Legal address for the purpose of receiving notices)

The Tenant hereby offers to lease from the Landlord the premises as described herein on the terms and subject to the conditions as set out in this Agreement. For the purposes of this Agreement "Tenant" includes lessee and "Landlord" includes lessor.

1. PREMISES: Having inspected the premises and provided the present tenant vacates, I/we, the Tenant hereby offer to lease, premises known as:
2389 Lakeshore Road Oro Medonte

2. TERM OF LEASE: The lease shall be for a term of 18 Months commencing October 31 2023

3. RENT: The Tenant will pay to the said Landlord monthly and every month during the said term of the lease the sum of _____
Ten Thousand Dollars (CDN\$) 10,000.00
payable in advance on the First day of each and every month during the currency of the said term. First and last months' rent to be paid in advance upon completion or date of occupancy, whichever comes first.

4. DEPOSIT AND PREPAID RENT: The Tenant delivers upon acceptance
(Herewith/Upon acceptance/as otherwise described in this Agreement)
by negotiable cheque payable to Andrea Casa "Deposit Holder"
in the amount of Thirty Thousand Dollars (CDN\$) 30,000.00
as a deposit to be held in trust as security for the faithful performance by the Tenant of all terms, covenants and conditions of the Agreement and to be applied by the Landlord against the First 3 Months and N/A month's rent. If the Agreement is not accepted, the deposit is to be returned to the Tenant without interest or deduction.

For the purposes of this Agreement, "Upon Acceptance" shall mean that the Tenant is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

5. USE: The Tenant and Landlord agree that unless otherwise agreed to herein, only the Tenant named above and any person named in a Rental Application completed prior to this Agreement will occupy the premises.

Premises to be used only for:
Single Family Residential

6. SERVICES AND COSTS: The cost of the following services applicable to the premises shall be paid as follows:

	LANDLORD	TENANT		LANDLORD	TENANT
Gas	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Cable TV	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Oil	<input type="checkbox"/>	<input type="checkbox"/>	Condominium/Cooperative fees	<input type="checkbox"/>	<input type="checkbox"/>
Electricity	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Garbage Removal	<input type="checkbox"/>	<input type="checkbox"/>
Hot water heater rental	<input type="checkbox"/>	<input type="checkbox"/>	Other:	<input type="checkbox"/>	<input type="checkbox"/>
Water and Sewerage Charges	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Other:	<input type="checkbox"/>	<input type="checkbox"/>

The Landlord will pay the property taxes, but if the Tenant is assessed as a Separate School Supporter, Tenant will pay to the Landlord a sum sufficient to cover the excess of the Separate School Tax over the Public School Tax, if any, for a full calendar year, said sum to be estimated on the tax rate for the current year, and to be payable in equal monthly installments in addition to the above mentioned rental, provided however, that the full amount shall become due and be payable on demand on the Tenant.

INITIALS OF TENANT(S):

INITIALS OF LANDLORD(S):

229

7. **PARKING:**
Owned Parking

8. **ADDITIONAL TERMS:**
N/A

9. **SCHEDULES:** The schedules attached hereto shall form an integral part of this Agreement to Lease and consist of: **Schedule(s) A**

10. **IRREVOCABILITY:** This offer shall be irrevocable by until on the
(Landlord/Tenant) (a.m./p.m.)
day of..... N/A 20..... after which time if not accepted, this Agreement shall be null and void and all monies paid thereon shall be returned to the Tenant without interest or deduction.

11. **NOTICES:** The Landlord hereby appoints the Listing Brokerage as agent for the Landlord for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Tenant's Brokerage) has entered into a representation agreement with the Tenant, the Tenant hereby appoints the Tenant's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Landlord and the Tenant (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Tenant or the Landlord for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: FAX No.:
(For delivery of Documents to Landlord) (For delivery of Documents to Tenant)

Email Address: Email Address:
(For delivery of Documents to Landlord) (For delivery of Documents to Tenant)

12. **EXECUTION OF LEASE:** The Lease shall be drawn by the Landlord on the standard form of lease as prescribed by the *Residential Tenancies Act, 2006*, as amended from time to time, and shall include the provisions as contained herein and in any attached schedule, and shall be executed by both parties before possession of the premises is given. The Landlord shall provide the Tenant with information relating to the rights and responsibilities of the Tenant and information on the role of the Landlord and Tenant Board and how to contact the Board. (Information For New Tenants as made available by the Landlord and Tenant Board and available at www.ltib.gov.on.ca)

13. **LANDLORD AND TENANT ACKNOWLEDGMENT:** The Landlord and Tenant acknowledge and agree that a standard form of lease as prescribed by the *Residential Tenancies Act, 2006*, as amended from time to time is required.

14. **ACCESS:** The Landlord shall have the right, at reasonable times to enter and show the demised premises to prospective tenants, purchasers or others. The Landlord or anyone on the Landlord's behalf shall also have the right, at reasonable times, to enter and inspect the demised premises.

15. **INSURANCE:** The Tenant agrees to obtain and keep in full force and effect during the entire period of the tenancy and any renewal thereof, at the Tenant's sole cost and expense, fire and property damage and public liability insurance in an amount equal to that which a reasonably prudent Tenant would consider adequate. The Tenant agrees to provide the Landlord, upon demand at any time, proof that said insurance is in full force and effect and to notify the Landlord in writing in the event that such insurance is cancelled or otherwise terminated.

16. **RESIDENCY:** The Landlord shall forthwith notify the Tenant in writing in the event the Landlord is, at the time of entering into this Agreement, or, becomes during the term of the tenancy, a non-resident of Canada as defined under the Income Tax Act, RSC 1985, c.1 (ITA) as amended from time to time, and in such event the Landlord and Tenant agree to comply with the tax withholding provisions of the ITA.

17. **USE AND DISTRIBUTION OF PERSONAL INFORMATION:** The Tenant consents to the collection, use and disclosure of the Tenant's personal information by the Landlord and/or agent of the Landlord, from time to time, for the purpose of determining the creditworthiness of the Tenant for the leasing, selling or financing of the premises or the real property, or making such other use of the personal information as the Landlord and/or agent of the Landlord deems appropriate.

18. **CONFLICT OR DISCREPANCY:** If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Agreement between Landlord and Tenant. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.

19. **FAMILY LAW ACT:** Landlord warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O. 1990 unless the spouse of the Landlord has executed the consent hereinafter provided.

20. **CONSUMER REPORTS:** The Tenant is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.

21. **ELECTRONIC SIGNATURES:** The parties hereto consent and agree to the use of electronic signatures pursuant to the *Electronic Commerce Act, 2000*, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.

INITIALS OF TENANT(S): 

INITIALS OF LANDLORD(S): 

230

22. **BINDING AGREEMENT:** This Agreement and acceptance thereof shall constitute a binding agreement by the parties to enter into the Lease of the Premises and to abide by the terms and conditions herein contained.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

2023-09-11

(Witness)

(Tenant or Authorized Representative) **David Berry**

(Seal) (Date)

(Witness)

(Tenant or Authorized Representative)

(Seal) (Date)

(Witness)

(Guarantor)

(Seal) (Date)

We/I the Landlord hereby accept the above offer, and agree that the commission together with applicable HST (and any other tax as may hereafter be applicable) may be deducted from the deposit and further agree to pay any remaining balance of commission forthwith.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)

(Landlord or Authorized Representative)

(Seal) (Date)

(Witness)

(Landlord or Authorized Representative)

(Seal) (Date)

SPOUSAL CONSENT: The undersigned spouse of the Landlord hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

(Witness)

(Spouse)

(Seal) (Date)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally acceptance by all parties at this day of....., 20..... (a.m./p.m.)

(Signature of Landlord or Tenant)

INFORMATION ON BROKERAGE(S)

Listing Brokerage (Tel.No.)

(Salesperson/Broker/Broker of Record Name)

Co-op/Tenant Brokerage (Tel.No.)

(Salesperson/Broker/Broker of Record Name)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement to Lease and I authorize the Brokerage to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement to Lease and I authorize the Brokerage to forward a copy to my lawyer.

(Landlord) Multiple Residential and Rental Market

(Date)

(Tenant) **David Berry**

(Date)

(Landlord)

(Date)

(Tenant)

(Date)

Address for Service

Address for Service

(Tel. No.)

(Tel. No.)

Landlord's Lawyer

Tenant's Lawyer

Address

Address

Email

Email

(Tel. No.)

(Fax. No.)

(Tel. No.)

(Fax. No.)

FOR OFFICE USE ONLY

COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement to Lease:

In consideration for the Co-operating Brokerage procuring the foregoing Agreement to Lease, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement to Lease.

Acknowledged by:

(Authorized to bind the Listing Brokerage)

(Authorized to bind the Co-operating Brokerage)

231



Schedule A Agreement to Lease - Residential

Form 400

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement to Lease between:

TENANT: David Berry, and

LANDLORD: Andrea Casa

for the lease of 2389 Lakeshore Road Oro Medonte

..... dated the 6 day of September, 2023

As per agreement between Landlord and Tenant:

Prepaid Rent as per agreement between Landlord and Tenant of \$30,000.00 for the first 3 months rent. The Tenant will pay in 3 Month Increments on First Day of the Month

Tenant covenants to:

- (a) maintain the premises in a good state of cleanliness and repair during the term of the Lease,
- (b) return the premises (including appliances) to the Landlord upon termination of the Lease in good condition. Tenant shall be liable for any damage to the premises caused during the term of the Lease,
- (c) pay for all electrical and utility service at the premises during the term of the Lease, including, but not limited to heating, hydro, water, water tank rental, cable T.V. and telephone,
- (d) carry sufficient fire, theft and water damage insurance coverage for his personal contents. (Tenant package insurance policy covering liability and contents). Tenant will provide Landlord with a copy of the policy prior to closing,
- (e) leave the premises in a clean and "broom swept" condition upon termination of the tenancy and any extension thereof,
- (f) be responsible for damages and repairs (premises and appliances) not caused by normal wear and tear and to promptly notify the Lessor of all and any such damages and repairs,
- (g) not paint or redecorate any part of the premises, change the locks, nor make any structural changes without the written consent of the Lessor,
- (h) allow the Property to be shown to prospective Tenants,
- (i) pay the full cost of those repairs or damages caused by the Tenant or his guests' negligence or willful damages,
- (j) not do anything on the premises for which the insurance premium may be increased, and agrees to hold the Lessor harmless from damages of any kind, and liability from injury to anyone whomever, regardless of fault during this Lease Agreement or extension thereof,
- (k) refrain from the doing of any act in the premises which would in any way create a risk of fire or result in an increase in the amount of fire insurance covering the premises and/or contents and further, not to bring or store anything whatsoever therein which would have a like or similar resulting in.

The Tenant allows the Landlord to use the property for multiple weeks during the summer at a mutually agreed upon time and date. The Landlord agrees to use the property respectfully and give back to the tenant in the same condition it was given.

This form must be initialed by all parties to the Agreement to Lease.

INITIALS OF TENANT(S):

^{DS}

INITIALS OF LANDLORD(S):

This is **Exhibit “Q”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow", written in a cursive style.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

HUDSON MOVERS - FEES & CHARGES

DATE	INV NO.	AMT.	NOTES/DESC
Dec 23 2021	#0023836	\$1,728.90	Storage
Jan 13 2022	#0023852	\$2,356.05	Moving Fees Park Rd to storage
Jan 15 2022	#SB032229	\$186.45	Storage
Jan 25 2022	#0023853	\$47,572.44	Move from Park Rd to storage
Feb 15 2022	#SB032373	\$186.45	Storage
Feb 15 2022	#SB032374	\$519.80	Storage
Mar 1 2022	#SB032454	\$2,858.90	Storage
Mar 15 2022	#SB032534	\$186.45	Storage
Mar 15 2022	#SB32535	\$519.80	Storage
Apr 1 2022	#SB032601	\$2,858.90	Storage
Apr 15 2022	#SB032675	\$186.45	Storage
Apr 15 2022	#SB032676	\$519.80	Storage
May 1 2022	#SB032746	\$2,858.90	Storage
May 1 2022	#SB032747	\$1,524.94	Storage
May 15 2022	#SB032819	\$186.45	Storage
May 15 2022	#SB032820	\$519.80	Storage
June 1 2022	#SB032893	\$2,858.90	Storage
June 1 2022	#SB032894	\$1,524.94	Storage
June 7 2022	#0024112	\$6,554.51	Moving fees Coach house to storage
June 15 2022	#SB032967	\$519.80	Storage
July 1 2022	#SB033036	\$2,858.90	Storage
July 1 2022	#SB033037	\$1,524.94	Storage
July 1 2022	#SB033038	\$885.47	Storage
July 15 2022	#SB033106	\$186.45	Storage
July 15 2022	#SB033107	\$519.80	Storage
Aug 1 2022	#SB033174	\$2,858.90	Storage
Aug 1 2022	#SB033175	\$1,524.94	Storage
Aug 1 2022	#SB033176	\$885.47	Storage
Aug 15 2022	#SB033245	\$186.45	Storage
Aug 15 2022	#SB033246	\$519.80	Storage
Sept 13 2022	#0024294	\$13,831.20	Sort through contents at storage facility
Sept 15 2022	#SB033386	\$186.45	Storage
Sept 15 2022	#SB033387	\$519.80	Storage
Sept 23 2022	#0024314	\$4,227.61	Move charge storage to 3rd Line
Sept 29 2022	#0024320	\$10,225.09	Move charge from storage to Royal Oak and to Caplan
Oct 27 2022	#00243643	\$2,823.59	Move charge from storage to Royal Oak
Sept 28 2022	#0024317	\$6,744.69	Move from storage to Woodbine
Cct 28 2022	#0024367	\$1,271.25	Move from storage to Woodbine
Nov 14 2022	#0024386	\$2,793.93	Move charge from Park Rd couch/wicker furniture to 3rd line

CAL NICHOLS MOVERS & STORAGE 0763
O&O ROCKBRUNE BROS.
P.O. Box 416
BARRIE ON L4M 4T5
705-728-0811

STATEMENT/ÉTAT DE COMPTE

ACCOUNT NO./ N° DE COMPTE	STATEMENT DATE/ DATE DE COMPTE	PAGE
LERRY	2025/01/28	1

STATEMENT TO:/ÉTAT DE COMPTE À:	PLEASE REMIT TO: / S.V.P. PAYER À:
DAVID BERRY ATTN: DAVID 26 ROYAL OAK DRIVE BARRIE, ON	CAL NICHOLS MOVERS & STORAGE 0763 O&O ROCKBRUNE BROS. P.O. Box 416 BARRIE ON L4M 4T5 705-728-0811

OUR Records INDICATE THE FOLLOWING OUTSTANDING INVOICES
 NOS REGISTRES INDIQUENT QUE LES FACTURES SUIVANTES SONT IMPAYÉES

2% PER MONTH / 24% PER ANNUM INTEREST CHARGED
 INTÉRÊT CHARGÉ DE 2% PAR MOIS / 24% PAR AN

DATE	REFERENCE/RÉFÉRENCE	AMOUNT/MONTANT		
2023/05/29	0013905~ BERRY	5,734.75		
2023/06/14	0013905~ ****PAYMENT****	-5,734.75		
2024/10/17	AR003535 **ADJ: SB016255	.00		
2023/06/15	SB015646 BERRY, DAVID	672.35		
2023/06/16	SB015646 ****PAYMENT****	-672.35		
2023/07/15	SB015697 BERRY, DAVID	672.35		
2023/07/15	SB015697 ****PAYMENT****	-672.35		
2023/08/15	SB015733 BERRY, DAVID	672.35		
2023/08/15	SB015733 ****PAYMENT****	-672.35		
2023/09/15	SB015764 BERRY, DAVID	672.35		
2023/09/15	SB015764 ****PAYMENT****	-672.35		
2023/10/15	SB015808 BERRY, DAVID	672.35		
2023/10/16	SB015808 ****PAYMENT****	-672.35		
2023/11/15	SB015842 BERRY, DAVID	672.35		
2023/11/15	SB015842 ****PAYMENT****	-672.35		
2023/12/15	SB015890 BERRY, DAVID	672.35		
2023/12/15	SB015890 ****PAYMENT****	-672.35		
2024/01/15	SB015914 BERRY, DAVID	672.35		
2024/01/15	SB015914 ****PAYMENT****	-672.35		
2024/02/15	SB015966 BERRY, DAVID	672.35		
2024/02/15	SB015966 ****PAYMENT****	-672.35		
2024/03/15	SB015979 BERRY, DAVID	672.35		
2024/03/15	SB015979 ****PAYMENT****	-672.35		
2024/04/15	SB016026 BERRY, DAVID	672.35		
2024/04/15	SB016026 ****PAYMENT****	-672.35		
2024/05/15	SB016061 BERRY, DAVID	672.35		
2024/05/15	SB016061 ****PAYMENT****	-672.35		
2024/06/15	SB016095 BERRY, DAVID	672.35		
Continued on page 2...				
CURRENT/ COURANT	OVER 30 DAYS/ PLUS DE 30 JOURS	OVER 60 DAYS/ PLUS DE 60 JOURS	OVER 90 DAYS/ PLUS DE 90 JOURS	TOTAL

NOTE: - PAYMENT, PURCHASES AND RETURNS MADE
 AFTER THE DATES SHOWN ABOVE WILL APPEAR ON
 YOUR NEXT STATEMENT

N.B. - LES PAIEMENTS, ACHATS ET RENVOIS EFFECTUÉS
 APRÈS LA DATE CI-DESSOUS APPARAÎTRONT SUR
 VOTRE PROCHAIN ÉTAT DE COMPTE

CAL NICHOLS MOVERS & STORAGE 0763
O&O ROCKBRUNE BROS.
P.O. Box 416
BARRIE ON L4M 4T5
705-728-0811

STATEMENT/ÉTAT DE COMPTE

ACCOUNT NO./ N° DE COMPTE	STATEMENT DATE/ DATE DE COMPTE	PAGE
LERRY	2025/01/28	2

STATEMENT TO:/ÉTAT DE COMPTE À:

DAVID BERRY
 ATTN: DAVID
 26 ROYAL OAK DRIVE
 BARRIE, ON

PLEASE REMIT TO: / S.V.P. PAYER À:

CAL NICHOLS MOVERS & STORAGE 0763
 O&O ROCKBRUNE BROS.
 P.O. Box 416
 BARRIE ON L4M 4T5
 705-728-0811

OUR Records INDICATE THE FOLLOWING OUTSTANDING INVOICES
 NOS REGISTRES INDIQUENT QUE LES FACTURES SUIVANTES SONT IMPAYÉES

2% PER MONTH / 24% PER ANNUM INTEREST CHARGED
 INTÉRÊT CHARGÉ DE 2% PAR MOIS / 24% PAR AN

DATE	REFERENCE/RÉFÉRENCE	AMOUNT/MONTANT		
2024/06/15	SB016095 ****PAYMENT****	-672.35		
2024/07/15	SB016131 BERRY, DAVID	672.35		
2024/07/15	SB016131 ****PAYMENT****	-672.35		
2024/08/15	SB016175 BERRY, DAVID	672.35		
2024/08/15	SB016175 ****PAYMENT****	-672.35		
2024/09/15	SB016208 BERRY, DAVID	672.35		
2024/09/19	SB016208 ****PAYMENT****	-672.35		
CURRENT/ COURANT	OVER 30 DAYS/ PLUS DE 30 JOURS	OVER 60 DAYS/ PLUS DE 60 JOURS	OVER 90 DAYS/ PLUS DE 90 JOURS	TOTAL

NOTE: - PAYMENT, PURCHASES AND RETURNS MADE
 AFTER THE DATES SHOWN ABOVE WILL APPEAR ON
 YOUR NEXT STATEMENT

N.B. - LES PAIEMENTS, ACHATS ET RENVOIS EFFECTUÉS
 APRÈS LA DATE CI-DESSOUS APPARAÎTRONT SUR
 VOTRE PROCHAIN ÉTAT DE COMPTE

238



0645

250 Dunlop Street W.
Barrie, ON L4N 1B6

705 730 3932
scott@barriemoving.ca

Shippers Name: <u>DAVIS BARRY</u>		Phone #'s: <u>416 500 9080</u>	
From: <u>26 ROYAL OAK</u> <u>BARRIE</u>	To: <u>1454 ROBINSON</u> <u>TWISSILL</u>		
Load Date: <u>JUNE 2023</u>	Unload Date: <u>OCT 2024</u>		
Storage Info: <u>—</u>	Storage Placement: <u>—</u>		
Truck Size: <u>28</u>	Piano <input checked="" type="checkbox"/>	Hot Tub <u>SAUNA</u>	
Materials:			

Number of Men

Number of Hours

Price Per Hour

Truck/Fuel

SPECIAL INSTRUCTIONS:

26 ROYAL OAK

<u>JUNE 7, 2023</u>	<u>CRATE PIANO</u>	<u>\$1750.00</u>
<u>" 20, 2023</u>	<u>MOVE CONTENTS TO P10R466</u>	<u>\$3000.00</u>
	<u>SAUNA</u>	<u>\$1500.00</u>
<u>OCT 2024</u>	<u>RETURN & UNPACK PIANO</u>	<u>\$1950.00</u>

Customer agrees to all charges, posted above and explained by the driver, prior to move. Insurance obligation supplied by Barrie Specialized Moving is \$0.60 per pound per article. All customers with storage must supply own storage insurance.

Customer Signature

SUB TOTAL

\$8100.00

HST

INC.

TOTAL

\$8100.00

This is **Exhibit "R"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

Receipts: Sep 1, 2022 - Oct 16, 2024
January 28, 2025 3:53 PM

Access Storage - 62 Caplan Avenue 62 Caplan Avenue Barrie, ON L4N 9J2

Name (97)	Company	Date	Receipt#	Payment	Credit	Applied Refund	Total	Deleted	Email Source	Memo
Barry, David	WINTERBERRY INVESTMENTS	2022-09-29	159131	21.46	0.00	0.00	21.46		admin@winterberryinvestments.com	Payment Screen
Barry, David	WINTERBERRY INVESTMENTS	2022-09-29	159129	0.00	21.59	0.00	21.59		admin@winterberryinvestments.com	Payment Screen first cycle
free - Insurance										
Barry, David	WINTERBERRY INVESTMENTS	2022-09-29	159128	0.00	21.59	0.00	21.59		admin@winterberryinvestments.com	Payment Screen first cycle
free - Insurance										
Barry, David	WINTERBERRY INVESTMENTS	2022-09-29	159126	28.25	0.00	0.00	28.25		admin@winterberryinvestments.com	Website API
Barry, David	WINTERBERRY INVESTMENTS	2022-09-29	159124	28.25	0.00	0.00	28.25		admin@winterberryinvestments.com	Website API
Barry, David	WINTERBERRY INVESTMENTS	2022-10-03	159175	21.49	0.00	0.00	21.49		admin@winterberryinvestments.com	Offline Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2022-10-03	159174	21.49	0.00	0.00	21.49		admin@winterberryinvestments.com	Offline Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2022-10-27	159651	673.60	0.00	0.00	673.60		admin@winterberryinvestments.com	Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2022-11-01	159758	480.54	0.00	0.00	480.54		admin@winterberryinvestments.com	Call Center
Barry, David	WINTERBERRY INVESTMENTS	2022-11-24	160166	673.60	0.00	0.00	673.60		admin@winterberryinvestments.com	Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2022-11-25	160194	461.15	0.00	0.00	461.15		admin@winterberryinvestments.com	Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2022-12-22	160654	461.15	0.00	0.00	461.15		admin@winterberryinvestments.com	Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2022-12-22	160653	673.60	0.00	0.00	673.60		admin@winterberryinvestments.com	Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-01-19	161087	673.60	0.00	0.00	673.60		admin@winterberryinvestments.com	Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-01-21	161107	461.15	0.00	0.00	461.15		admin@winterberryinvestments.com	Call Center
Barry, David	WINTERBERRY INVESTMENTS	2023-02-16	161516	673.60	0.00	0.00	673.60		admin@winterberryinvestments.com	Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-02-17	161536	461.15	0.00	0.00	461.15		admin@winterberryinvestments.com	Payment Screen
Barry, David	WINTERBERRY INVESTMENTS	2023-03-16	162000	461.15	0.00	0.00	461.15		admin@winterberryinvestments.com	Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-03-16	161999	673.60	0.00	0.00	673.60		admin@winterberryinvestments.com	Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-04-19	162609	1,218.45	0.00	0.00	1,218.45		admin@winterberryinvestments.com	Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-05-05	162929	28.25	0.00	0.00	28.25		admin@winterberryinvestments.com	Payment Screen

Barry, David	WINTERBERRY INVESTMENTS	2023-05-05	162928	28.25	0.00	0.00	28.25	admin@winterberryinvestments.com Payment Screen
Barry, David	WINTERBERRY INVESTMENTS	2023-05-05	162927	0.00	641.94	0.00	641.94	admin@winterberryinvestments.com Payment Screen SL did
not apply discount of 100% off first cycle. LB								
Barry, David	WINTERBERRY INVESTMENTS	2023-05-05	162923	0.00	528.94	0.00	528.94	admin@winterberryinvestments.com Payment Screen SL did
not apply discount of 100% off first cycle. LB - Rent: MoveIn								
Barry, David	WINTERBERRY INVESTMENTS	2023-05-11	163026	1,168.65	0.00	0.00	1,168.65	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-05-24	163231	64.38	0.00	0.00	64.38	admin@winterberryinvestments.com Payment Screen
Barry, David	WINTERBERRY INVESTMENTS	2023-05-30	163394	49.71	0.00	0.00	49.71	admin@winterberryinvestments.com Payment Screen
Barry, David	WINTERBERRY INVESTMENTS	2023-05-30	163393	0.00	21.59	0.00	21.59	admin@winterberryinvestments.com Payment Screen first cycle
free - Insurance								
Barry, David	WINTERBERRY INVESTMENTS	2023-06-08	163554	1,168.65	0.00	0.00	1,168.65	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-06-19	163729	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-07-06	164105	1,168.65	0.00	0.00	1,168.65	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-07-17	164316	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-08-03	164674	1,168.65	0.00	0.00	1,168.65	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-08-14	164843	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-08-31	165229	1,168.65	0.00	0.00	1,168.65	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-09-11	165419	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-09-28	165755	1,168.65	0.00	0.00	1,168.65	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-10-03	165878	28.25	0.00	0.00	28.25	admin@winterberryinvestments.com Payment Screen
Barry, David	WINTERBERRY INVESTMENTS	2023-10-03	165877	0.00	575.29	0.00	575.29	admin@winterberryinvestments.com Payment Screen SL did
not apply discount. LB - Rent: MoveIn								
Barry, David	WINTERBERRY INVESTMENTS	2023-10-10	165951	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-10-26	166281	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-10-26	166280	495.05	0.00	0.00	495.05	admin@winterberryinvestments.com Autobill Credit Card



Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David Berry
26 Royal Oak Dr
Barrie

Ship To

David Berry
1454 Robinson Pl
Innisfil ON L9S 2W8

Invoice No: 515069

Date: 11/06/2024

Reference No: 107146

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Details: Delivery of approx 100 artworks from museumpros storage to Innisfil address. Unload at location and carry inside. No further unpacking or placement. Includes warehouse retrieval, loading, mileage, and unloading.

Description	Quantity	Rate	Amount
Local Delivery	1.00		1,195.00

Delivery of approx 100 artworks. Unload at location and carry inside. No further unpacking or placement. Includes warehouse retrieval, loading, mileage, and unloading.

Inclusions

For collection, delivery, installation, and all other onsite visits by museumpros staff:

- Cancellations less than 24hrs before scheduled booking are \$90+hst per scheduled crew member.
- Cancellations on the day of the booking are charged out at full rates.

We accept e-transfer (Canadian clients only), cheque, bank transfer, and credit card payment subject to the following conditions:

- museumpros charges a 3.5% credit card processing fee
- museumpros charges \$50.00 (per wire) for wire transfer payment(s)

Exclusions

- This rate does not include any declared value coverage. For \$75+hst you can add \$5000 of 'DVC' while in transit. Absent that, our legal liability is \$2.00/lb. For higher amount requests please ask for a no obligation quote.

SUB TOTAL: CAD\$ 1,195.00

TAX: CAD\$ 155.35

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 1,350.35

Deposit/Payment Received: 1,350.35

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 514572

Date: 10/01/2024

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 10/01/24-10/31/24

Description	Quantity	Rate	Amount
Storage Climate Controlled: 10/01/24-10/31/24	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 514225

Date: 09/01/2024

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 09/01/24-09/30/24

Description	Quantity	Rate	Amount
Storage Climate Controlled: 09/01/24-09/30/24	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 513965

Date: 08/01/2024

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 08/01/24-08/31/24

Description	Quantity	Rate	Amount
Storage Climate Controlled: 08/01/24-08/31/24	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 513684

Date: 07/01/2024

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 07/01/24-07/31/24

Description	Quantity	Rate	Amount
Storage Climate Controlled: 07/01/24-07/31/24	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 513413

Date: 06/01/2024

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 06/01/24-06/30/24

Description	Quantity	Rate	Amount
Storage Climate Controlled: 06/01/24-06/30/24	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 513175

Date: 05/01/2024

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 05/01/24-05/31/24

Description	Quantity	Rate	Amount
Storage Climate Controlled: 05/01/24-05/31/24	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 512876

Date: 04/01/2024

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 04/01/24-04/30/24

Description	Quantity	Rate	Amount
Storage Climate Controlled: 04/01/24-04/30/24	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 512642

Date: 03/01/2024

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 03/01/24-03/31/24

Description	Quantity	Rate	Amount
Storage Climate Controlled: 03/01/24-03/31/24	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 512388

Date: 02/01/2024

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 02/01/24-02/29/24

Description	Quantity	Rate	Amount
Storage Climate Controlled: 02/01/24-02/29/24	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 512089

Date: 01/01/2024

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 01/01/24-01/31/24

Description	Quantity	Rate	Amount
Storage Climate Controlled: 01/01/24-01/31/24	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 511841

Date: 12/01/2023

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 12/01/23-12/31/23

Description	Quantity	Rate	Amount
Storage Climate Controlled: 12/01/23-12/31/23	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 511523

Date: 11/01/2023

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 11/01/23-11/30/23

Description	Quantity	Rate	Amount
Storage Climate Controlled: 11/01/23-11/30/23	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 511207

Date: 10/01/2023

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 10/01/23-10/31/23

Description	Quantity	Rate	Amount
Storage Climate Controlled: 10/01/23-10/31/23	1.00	702.06	702.06

SUB TOTAL: CAD\$ 702.06

TAX: CAD\$ 91.27

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 793.33

Deposit/Payment Received: 793.33

Total Due: 0.00



Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David Berry
26 Royal Oak Dr
Barrie

Ship To

David Berry
530 Keele St
Toronto

Invoice No: 511089

Date: 09/05/2023

Reference No: 105341

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Details: Collection of 2 works from Restorart. Return to mpros storage. 2 person crew 1 hour.

Description	Quantity	Rate	Amount
Collection <i>Collection of 2 works from Restorart. Return to mpros storage. 2 person crew 1 hour.</i>	1.00		235.00
Conveyance Surcharge	1.00		55.00
Warehouse Entry <i>Warehouse handling in</i>	1.00		95.00
Packing Materials (Install/Move)	1.00		150.00

Inclusions

For collection, delivery, installation, and all other onsite visits by museumpros staff:

- Cancellations less than 24hrs before scheduled booking are \$90+hst per scheduled crew member.
- Cancellations on the day of the booking are charged out at full rates.

Exclusions

- This rate does not include any declared value coverage. For \$75+hst you can add \$5000 of 'DVC' while in transit. Absent that, our legal liability is \$2.00/lb. For higher amount requests please ask for a no obligation quote.

SUB TOTAL: CAD\$ 535.00

TAX: CAD\$ 69.55

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 604.55

Deposit/Payment Received: 604.55

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 510935

Date: 09/01/2023

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 09/01/23-09/30/23

Description	Quantity	Rate	Amount
Storage Climate Controlled: 09/01/23-09/30/23	1.00	610.53	610.53

SUB TOTAL: CAD\$ 610.53

TAX: CAD\$ 79.37

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 689.90

Deposit/Payment Received: 689.90

Total Due: 0.00



Storage Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

David
David Berry
26 Royal Oak Dr
Barrie

Invoice No: 510690

Date: 08/01/2023

Reference No:

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Storage Account

David Berry STG: 08/01/23-08/31/23

Description	Quantity	Rate	Amount
Storage Climate Controlled: 08/01/23-08/31/23	1.00	610.53	610.53

SUB TOTAL: CAD\$ 610.53

TAX: CAD\$ 79.37

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 689.90

Deposit/Payment Received: 689.90

Total Due: 0.00



Invoice

museumpros art services inc.

530 Keele Street, Unit 309

Toronto, ON, M6N 3C9

Ph: 416.588.0568

Since 1994

Bill To

Shane Lammie
26 Royal Oak Dr
Barrie

Ship To

Museumpros
Toronto

Invoice No: 510591

Date: 07/06/2023

Reference No: 104856

Account No: 105499

P.O. No:

Invoice Terms: On Invoice

Details: Collection, packing and storage of 102 works from 62 Caplan ave. on June 8, 2023, plus the collection of an additional two pieces which were delivered to Restorart

Description	Quantity	Rate	Amount
Collection <i>Collection of 30 works as per client list and additional 72 pieces from 62 Caplan ave.</i>	1.00		1,825.00
Packing Materials (Install/Move)	1.00	1,785.00	1,785.00
Packing Materials - Volume Discount <i>10% Volume Discount</i>	1.00	-178.50	-178.50
Conveyance Surcharge	1.00		215.00
Warehouse Entry <i>Warehouse handling in</i>	1.00	225.00	225.00
Storage Climate Controlled <i>Storage fee applies to the remainder of June and July. Monthly rate of \$610.53 plus HST for the storage of all listed artworks will apply beginning in August 2023.</i>	1.75	610.53	1,068.43
Declared Value Coverage <i>Declared value coverage for the amount of: \$620,720.00 while in transit and storage. Deductable of \$10,000. Insurance in effect for one calendar year beginning June 8, 2023, to be renewed annually. Warranted valuation to be proven to underwriter's satisfaction in the event of a claim. Valuation: Fair Market Value or Repair to Damage (whichever is less).</i>	1.00		5,106.12
Storage Handling <i>Wrapping and documentation of 102 artworks for storage</i>	1.00	3,000.00	3,000.00
Storage Handling - Volume Discount <i>10% volume discount</i>	1.00		-300.00

SUB TOTAL: CAD\$ 12,746.05

TAX: CAD\$ 1,656.99

museumpros art services inc. HST: 855627048RT0001

TOTAL: CAD\$ 14,403.04

Deposit/Payment Received: 14,403.04

Total Due: 0.00

Barry, David	WINTERBERRY INVESTMENTS	2023-11-06	166500	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-11-15	166667	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-11-23	166838	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-11-23	166837	495.05	0.00	0.00	495.05	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-12-04	167022	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-12-13	167156	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2023-12-21	167302	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-01-02	167466	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-01-02	167459	0.00	27.45	0.00	27.45	admin@winterberryinvestments.com Payment Screen office
was closed for last three days due to new year holidays - Late Fee: Current Period								
Barry, David	WINTERBERRY INVESTMENTS	2024-01-02	167458	0.00	22.45	0.00	22.45	admin@winterberryinvestments.com Payment Screen office
was closed for last three days due to new year holidays MM - Late Fee: Current Period								
Barry, David	WINTERBERRY INVESTMENTS	2024-01-10	167617	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-01-18	167743	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-01-26	167879	990.12	0.00	0.00	990.12	admin@winterberryinvestments.com Payment Screen
Barry, David	WINTERBERRY INVESTMENTS	2024-01-26	167877	0.00	41.90	0.00	41.90	admin@winterberryinvestments.com Payment Screen moved
out in error - should not have been charged late fee. LB - Late Fee #3								
Barry, David	WINTERBERRY INVESTMENTS	2024-01-26	167876	0.00	20.95	0.00	20.95	admin@winterberryinvestments.com Payment Screen moved
out in error - no late fee should have been charged. LB								
Barry, David	WINTERBERRY INVESTMENTS	2024-01-29	167888	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-02-07	168038	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-02-15	168171	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-02-16	168183	495.05	0.00	0.00	495.05	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS							

		2024-02-26	168319	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-03-06	168481	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-03-14	168599	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-03-16	168642	495.05	0.00	0.00	495.05	admin@winterberryinvestments.com Call Center
Barry, David	WINTERBERRY INVESTMENTS	2024-03-25	168757	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-04-03	168936	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-04-11	169096	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-04-17	169179	516.00	0.00	0.00	516.00	admin@winterberryinvestments.com Call Center
Barry, David	WINTERBERRY INVESTMENTS	2024-04-22	169247	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-05-01	169416	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-05-09	169565	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-05-10	169585	495.05	0.00	0.00	495.05	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-05-21	169724	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-05-21	169720	0.00	27.45	0.00	27.45	admin@winterberryinvestments.com Payment Screen Office
was Closed for Long Weekend. We Could not process the Payment. KR - Late Fee: Current Period								
Barry, David	WINTERBERRY INVESTMENTS	2024-05-21	169719	0.00	22.45	0.00	22.45	admin@winterberryinvestments.com Payment Screen Office
was Closed for Long Weekend. We Could not process the Payment. KR - Late Fee: Current Period								
Barry, David	WINTERBERRY INVESTMENTS	2024-05-29	169869	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-06-06	170020	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-06-07	170045	495.05	0.00	0.00	495.05	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-06-17	170185	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-06-26	170364	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-07-04	170515	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com

								Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-07-05	170531	495.05	0.00	0.00	495.05	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-07-15	170699	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-07-24	170852	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-08-01	170991	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-08-02	171030	495.05	0.00	0.00	495.05	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-08-12	171175	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-08-21	171331	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-08-29	171463	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-08-30	171500	495.05	0.00	0.00	495.05	admin@winterberryinvestments.com Payment Screen
Barry, David	WINTERBERRY INVESTMENTS	2024-09-09	171645	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-09-18	171802	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-09-26	171915	673.60	0.00	0.00	673.60	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-09-27	171956	495.05	0.00	0.00	495.05	admin@winterberryinvestments.com Payment Screen
Barry, David	WINTERBERRY INVESTMENTS	2024-10-07	172082	1,170.90	0.00	0.00	1,170.90	admin@winterberryinvestments.com Autobill Credit Card
Barry, David	WINTERBERRY INVESTMENTS	2024-10-16	172233	575.30	0.00	0.00	575.30	admin@winterberryinvestments.com Autobill Credit Card

This is **Exhibit "S"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N".

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

Stellar Art Services Incorporated
David Berry - Invoices and Received Payments
All Dates

DATE	TRANSACTION TYPE	MEMO/DESCRIPTION	#	AMOUNT
David Berry				
11-07-2022	Payment			16,017.75
18-05-2022	Invoice		3126-REVISED2	16,017.75
06-10-2022	Payment			16,534.73
31-08-2022	Invoice		3321	16,534.73

TOTAL INVOICED: \$32,552.48




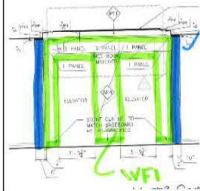
This is **Exhibit “T”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N".

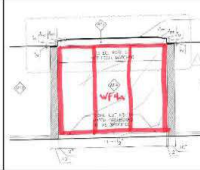
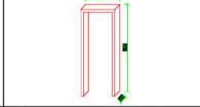

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

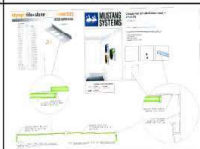
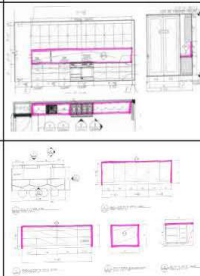
QUOTATION

No.	Positiomn	Item	Color	Size (mm)	Unit	Qty	Unit Price	Total Amount	Remark
1	foyer	floor	black gold marble		m ²	20.5	\$176	\$3,598	
2			brass inlay		m ²	2.1	\$2,526	\$5,304	
3		1740x2743 arch (213mm width)	blue gold marble	brass width 25mm (total 2 sets)	m ²	4	\$190	\$758	
4			brass		m ²	1.4	\$837	\$1,172	
5	elevator hall	surround wall of elevator	panda marble		m ²	6	\$276	\$1,656	

第 1 页, 共 6 页

No.	Positiomn	Item	Color	Size (mm)	Unit	Qty	Unit Price	Total Amount	Remark
6		opposite wall	panda marble		m ²	11.5	\$276	\$3,174	
7	elevator frame	1220x2440 (300mmwidth)	brass	2 sets	m ²	4.4	\$900	\$3,960	
8	great room	tiles	blue gold marble	6pcs of 934x1880	m ²	10	\$176	\$1,755	
9		fireplace wall	calacatta sintered stone		m ²	15	\$299	\$4,485	
10		wall	blue gold marble	1500*900	m ²	42.8	\$183	\$7,811	

第 2 页, 共 6 页

No.	Positiomn	Item	Color	Size (mm)	Unit	Qty	Unit Price	Total Amount	Remark
11	game room	ceiling	blue gold marble	500*900 composited with honeycomb	m ²	48	\$186	\$8,928	
12		floor	blue gold marble	1500*900	m ²	48	\$169	\$8,088	
13	kitchen	countertop and back splash	silk white sintered stone		m ²	7.1	\$276	\$1,960	
14		island	calacatta sintered stone		m ²	5.8	\$299	\$1,734	

No.	Positiomn	Item	Color	Size (mm)	Unit	Qty	Unit Price	Total Amount	Remark
15		wall	panda marble		m ²	26	\$253	\$6,578	
16	master bathroom	vantiy wood cabinet marble wall	panda marble	cabinert front door:635*710 side:60*710	m ²	1.44	\$393	\$566	
17		vanity slab with bottom slab	panda marble	1270*760*100	pc:8	2	\$952	\$1,904	
18		make-up desk	panda marble	desk top 760*610 with 30mm laminated edge	m ²	0.9	\$383	\$345	
19	hers	ceiling	panda marble	composited with honeycomb	m ²	3	\$265	\$795	
20	his	ceiling	black marquina marble	composited with honeycomb	m ²	5	\$150	\$750	

No.	Positiomn	Item	Color	Size (mm)	Unit	Qty	Unit Price	Total Amount	Remark
21	powder room	baseboard	green marble		m	9.3	\$73	\$674	
22		floor	green marble		m ²	4	\$241	\$964	
23		vanity	green marble		m ²	0.900	\$299	\$269	
24	arch	great room to game room 3228*2743 arch (586mm width)	blue gold marble	brass width 25mm	m ²	6.99	\$189	\$1,321	
25			brass		m ²	0.9	\$837	\$753	
26		great room to dining room 3920*2743 arcch (655mmwidth)	blue gold marble	brass width 25mm	m ²	7.8	\$189	\$1,474	
27			brass		m ²	1.06	\$837	\$887	
28		dining room to kitchen 4138*2743 arcch (655mmwidth)	blue gold marble	brass width 25mm	m ²	4.5	\$190	\$855	



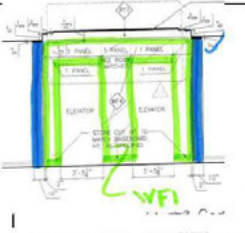
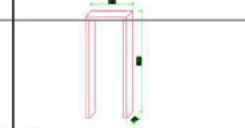


No.	Positiomn	Item	Color	Size (mm)	Unit	Qty	Unit Price	Total Amount	Remark
29		arch (472mm width)	brass		m ²	0.62	\$837	\$519	
30	skylight with glass		bronze+glass		set	1	\$9,168	\$9,168	
31	fireplace		bronze		set	1	\$15,660	\$15,660	
Total Amount:								\$97,866	


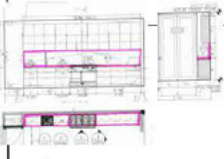
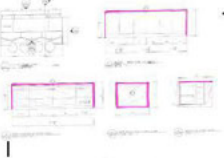
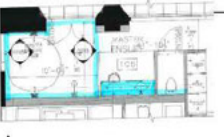




This is **Exhibit “U”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025





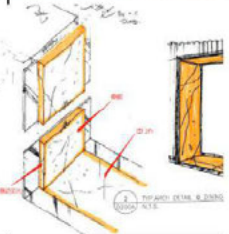
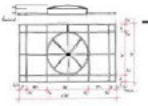

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

 XIAMEN RISING FORTUNE IMP.&EXP. CO., LTD.									
ADD: Room 301, No.7 of Xiangyu Building, Xinghe Road #14-1, Huli District, Xiamen Mob: 0086-13806031784 FAX: 0086-592-6039765 Email: rebecca@risingfortunetrading.com Web: www.risingfortunetrading.com									
PROFORMA INVOICE									
INV NO:MM002						DATE: 16-Feb-22			
Attn: C/o Mizrahi developments					Contact: David				
FROM XIAMEN, CHINA					TO: Canada				
Payment Terms: 50% deposit, balance before shipping					Delivery Time: around 45 days				
No.	Position	Item	Color	Size (mm)	Unit	Qty	Unit Price	Total Amount	Remark
1	foyer	floor	black gold marble		m ²	22.6	\$176	\$3,966	
2			brass inlay		m ²	2.1	\$2,526	\$5,304	
3		1740x2743 arch (213mm width)	blue gold marble	brass width 25mm (total 2 sets)	m ²	4.4	\$190	\$834	
4			brass		m ²	1.6	\$837	\$1,340	
5	elevator hall	surround wall of elevator	panda marble		m ²	6.6	\$276	\$1,822	
6									
7	elevator frame	1220x2440 (300mmwidth)	brass	2 sets	m ²	4.9	\$900	\$4,410	
8	great room	tiles	blue gold marble	6pcs of 934x1880	m ²	11	\$176	\$1,931	
9		fireplace wall	calacatta sintered stone		m ²	16.5	\$299	\$4,934	
10	game room	wall	blue gold marble	1500*900	m ²	47.1	\$183	\$8,596	
11		ceiling	blue gold marble	500*900 composited with honeycomb	m ²	52.8	\$186	\$9,821	
12		floor	blue gold marble	1500*900	m ²	52.8	\$169	\$8,897	

11	game room	ceiling	blue gold marble	500*900 composited with honeycomb	mf	52.8	\$186	\$9,821	
12		floor	blue gold marble	500*900 composited with honeycomb	mf	52.8	\$186	\$8,897	
13	kitchen	countertop and back splash	silk white sintered stone		mf	7.9	\$276	\$2,180	
14		island	calacatta sintered stone		mf	6.4	\$299	\$1,914	
15	master bathroom	wall	panda marble		mf	28.6	\$253	\$7,236	
16		vantiy wood cabinet marble wall	panda marble	cabinert front door:635*710 side:60*710	mf	1.6	\$393	\$629	
17		vanity slab with bottom slab	panda marble	1270*760*100	pcs	2	\$952	\$1,904	
18		make-up desk	panda marble	desk top 760*610 with 30mm laminated edge	mf	1	\$383	\$383	
19	hers	ceiling	panda marble	composited with honeycomb	mf	3.3	\$265	\$875	
20	his	ceiling	black marquina marble	composited with honeycomb	mf	5.5	\$150	\$825	
21	powder room	baseboard	green marble		m	10.3	\$73	\$747	
22		floor	green marble		mf	4.4	\$241	\$1,060	
23		vanity	green marble		mf	1.000	\$299	\$299	
24	arch	great room to game room 3228*2743 arch (586mm width)	blue gold marble	brass width 25mm	mf	7.7	\$189	\$1,455	
25			brass		mf	1	\$837	\$837	
26		great room to dining room 3920*2743 arch	blue gold marble	brass width 25mm	mf	8.6	\$189	\$1,625	

	bathroom								
17		vanity slab with bottom slab	panda marble	1270*760*100	pcs	2	\$952	\$1,904	
18		make-up desk	panda marble	desk top 760*610 with 20mm laminated edge	m ²	1	\$383	\$383	
19	hers	ceiling	panda marble	composited with honeycomb	m ²	3.3	\$265	\$875	
20	his	ceiling	black marquina marble	composited with honeycomb	m ²	5.5	\$150	\$825	
21	powder room	baseboard	green marble		m	10.3	\$73	\$747	
22		floor	green marble		m ²	4.4	\$241	\$1,060	
23		vanity	green marble		m ²	1.000	\$299	\$299	
24	arch	great room to game room 3228*2743 arch (586mm width)	blue gold marble	brass width 25mm	m ²	7.7	\$189	\$1,455	
25			brass		m ²	1	\$837	\$837	
26		great room to dining room 3920*2743 arch (655mmwidth)	blue gold marble	brass width 25mm	m ²	8.6	\$189	\$1,625	
27			brass		m ²	1.2	\$837	\$1,004	
28		dining room to kitchen 1138*2743arch (472mm width)	blue gold marble	brass width 25mm	m ²	5	\$190	\$950	
29		brass		m ²	0.7	\$837	\$586		
30	skylight with glass		bronze+glass		set	1	\$9,168	\$9,168	
31	fireplace		bronze		set	1	\$15,660	\$15,660	
Subtotal:								\$104,695	
(need to be confirmed before shipping)1x20GP container from Xiamen to Toronto port:								\$15,335	
Total Amount:								\$120,030	

BANK INFORMATIONS:

SWIFT: PCBCCNBSMX

Name: CHINA CONSTRUCTION BANK, XIAMEN BR.
Address: 9/F, CONSTRUCTION BANK BUILDING, NO.98 LUJIANG ROAD, XIAMEN, FUJIAN, CHINA

Beneficiary information:

A/C No: 35114523000220102934
Name: XIAMEN RISING FORTUNE IMPORT & EXPORT CO., LTD
ADD: ROOM 301, NO.7 OF XIANGYU BUILDING, XINGHU ROAD#14-1, HUII DISTRICT, XIAMEN
CONTACT: MOB: +86-13600911525

This is **Exhibit "V"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N" and "M".

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

XIAMEN RISING FORTUNE IMP&EXP CO.,LTD

Address: Room 301, No.7 of Xiangyu Building, Xinghu Road#14-1, Huli District, Xiamen

Packing List

N.W(kgs)	G.W(kgs)	Package	L	W	H	Photo
			(cm)	(cm)	(cm)	
320	350	1	130.000	68.000	34.000	 
1200	1248	1	170.000	170.000	80.000	
1544	1575	1	130.000	95.000	70.000	
	3173	3				

This is **Exhibit “W”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)



Sam >

Thu, Jan 11 at 7:18 AM

Good morning David, what CEI is suggesting is that we deduct the amount to finish from your closing and you keep that money and finish it yourself with Denbosh. You are not paying the project to finish it you are deducting the amount and closing. Let me know if this works for you, so I can advise. Thanks in advance

Thu, May 30 at 12:59 PM

Sam, subject to an accurate estimate on completion and other incurred costs I accept. Do I need to email robert as well? He made the offer over the phone

Delivered

This is **Exhibit "X"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow", written in a cursive style.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

----- Forwarded Message -----

From: Tom Turner <tom.turner@rci.rogers.com>
To: Nitin Kawale <nitinkawale@rogers.com>
Sent: Tuesday, February 27, 2024 at 09:34:47 a.m. EST
Subject: Re: Penthouse 128 hazelton

Rob H will reach out to him

T2

Get [Outlook for iOS](#)

From: NITIN KAWALE <nitinkawale@rogers.com>
Sent: Tuesday, February 27, 2024 8:56:14 AM
To: Tom Turner <Tom.Turner@rci.rogers.com>
Subject: Re: Penthouse 128 hazelton

Hi Tom,

Thanks. I think just someone talking to David to get everyone on the same page would help.

Thanks for your assistance.

Tom, Michael, let me know if you get down to Florida before the end of April. Come by for a visit/golf. I am in Fort Lauderdale.

Best,

Nitin
Sent from my iPad

On Feb 27, 2024, at 8:44 AM, Tom Turner <Tom.Turner@rci.rogers.com> wrote:

I will speak to Edward AGAIN. I am sure he thought it was handled

Get [Outlook for iOS](#)

From: Nitin Kawale <nitinkawale@rogers.com>
Sent: Tuesday, February 27, 2024 7:50:55 AM
To: Michael Krstajic <Michael.Krstajic@rci.rogers.com>; Tom Turner <Tom.Turner@rci.rogers.com>
Subject: Re: Penthouse 128 hazelton

Hi Michael, Tom

Hope you guys are well. Just following up on this. I just heard from my friend David and as you suggested Michael, he agreed to wait to see how things unfold. Unfortunately, he has had no communications at all from Constantine. Maybe Robert Hitchcox, who he has been dealing with, could give him an update call.

David is a good guy but has means and is frustrated. I think a quick communications from Robert or someone else at Constantine could keep the situation stabilized.

Best,

Nitin

On Monday, February 12, 2024 at 05:00:32 a.m. EST, Nitin Kawale <nitinkawale@rogers.com> wrote:

Hi Michael,

Not sure if I got back to you on this, as I was on the move quite a bit last week. I did speak with David after you and I spoke and he was happy to hear your guidance and he is going to wait and let things unfold as you suggested.

Thanks again for your time and guidance.

Grab a drink sometime between Feb 21-28?

Thanks,

Nitin

On Wednesday, February 7, 2024 at 08:15:24 a.m. GMT, Nitin Kawale <nitinkawale@rogers.com> wrote:

Hi Michael,

I hope you are well and we are overdue to catch up! I am in Europe but will reach out when I am back.

I am reaching out on behalf of my friend David Berry. You can read the situation description he sent me below.

The net net is that he has had a difficult time in resolving his penthouse condo issue (128 Hazelton) with Mizrahi Developments and their partner Constantine Enterprises (Edward Roger's company but the individual that is involved here is Robert Hitchcox.) I suspect you know Robert well as well as Sam Mizrahi.

David has tried for years to resolve this and is now considering all of his options. It is, financially, a meaningful transaction. He would like to resolve this amicably and as soon as possible. I am 100% sure that Edward does not know of this situation and would not be happy how things have dragged on here.

My hope is that you could have a chat with David and also with Constantine Enterprises so that this can be resolved quickly without any escalation. I am sure if Edward had an understanding of the issue he would want Constantine to work out a resolution. Given what is happening in the industry an escalation will not play out well in the public domain.

Michael, I am hoping you can provide some guidance to David. David is copied on this email and his mobile is 416-500-9080.

Thank you so much for looking at this.

Cheers,

Nitin

647-271-0625 (please use WhatsApp while I am in Europe)

On Wednesday, February 7, 2024 at 04:11:30 a.m. GMT, David Berry <dberry@winterberryinvestments.com> wrote:

Nitin

Here's a synopsis of the whole painful ordeal of my original purchase of the penthouse at 128 hazelton avenue in 2016 right up to now in which the developer Mizrahi's developments (Sam Mizrahi) and his partner Constantine Enterprises (financed by Edward Rogers although not active . Robert hitchcox is the every day guy although all major sign offs are by Rogers) have acted in a shameful self serving manner that is leaving me little choice on whether to escalate things.

I suspect Edward Rogers has very little involvement and likely is largely in the dark to the actions that are at issue and the reason for me reaching out. I am hoping that things can be rectified before escalation which is imminent.

Here's the timeline:

2016.

Purchase and sale of the entire 9th floor and half of the 8th floor. 13.25 mill. Downpayment 2.65 million. The agreement also included all upgrades specified plus 4 parking spots

2019

sold the 8th floor to David Bewick owner of the rest of the 8th floor for 6 million and change most of which is deducted from my final payment owing. Although David Bewick was really the only buyer and I could have done the deal myself Mizrahi wouldn't do the assignment without commission which was paid to both mizrahi and Constantine (or robert hitchcox). As part of the deal it was agreed all upgrades from the 8th floor would be rolled into my 9th floor.

2020

building was completed

2021.

No movement on my unit. Mizrahi first tries to claim non of the cost of my upgrades from the space I sold on the 8th floor will counted in valuing the included upgrade amount already accounted for as paid in my APS. After shooting that claim down Mizrahi claims my new design of my 9th floor is going to cost 2.5 million more then my old design which included 3000 more feet of space

I engage two professional valuator. The first estimates that my new design is cheaper than the original by 800k. The second estimates my new design is cheaper by 500k

Despite these professional opinions I agree to pay 800k in upgrades as well as pay for all the stone materials and 6ft stone bathtub, and stone sinks, toilets, bronze fireplace (floor to ceiling), bronze skylight covering entire foyer and multiple other fixtures. These materials and fixtures would arguably have cost Mizrahi and Constantine another million.

To just get moving I agreed to the above

2022.

Mizrahi states that he still can't cover my design costs. Again rather than escalate things I agree to eliminate multiple expensive upgrades again saving Mizrahi and Constantine massive costs that they were obligated to pay. Again I just want to get things moving

2023.

No movement on my unit other than some framing. At the same time both Constantine and Mizrahi have crews going on their offices on first and second floor. Constantine's offices now complete. Mizrahi's offices more than half complete

2024.

Mizrahi reaches out to me to see if I would complete the penthouse myself and then they would deduct 2.3 million from the final payment of 3.3 million. I say no to that proposal for a number of reasons one of which is I estimate the cost now to complete as a lot more than 2.3 million. Maybe more than my entire amount owing. Maybe well through it. Robert Hitchcox then calls me and I explain the reasoning for rejecting the proposal. He seems to understand. I ask him when my unit is going to start moving and he says he's going to get going on things.

Mizrahi tells me he has lined up financing for 128 hazelton project that will take out the construction financing debt that has been hindering the project and also funding for the completion of my unit. He says Constantine just needs to sign off on it.

Weeks go by and still no sign off by Constantine. Apparently the financing falls through because Constantine won't sign off on financing. The construction financing entity duca financial services files to have a receiver appointed by the court. This act is picked up by the globe & mail and other papers. Constantine then takes out duca's debt to relieve things. But still have not provided financing for the completion of my unit. Mizrahi is claiming he doesn't need to provide financing for the completion of my unit as it's now Constantine's responsibility as they squashed the financing that Mizrahi had lined up.

Here's the really crazy part. Constantine is having furniture delivered for their now completed luxury offices on the second floor. Mizrahi is more than half done their offices on the first floor. This is such a ridiculous conflict of interest. Channeling funding from a project for their own benefit?? By any standard it's offside.

Nitin, I gather Edward Rogers is very ethical. I'm sure he does not want this escalated as it will be very public and there's clearly wrongdoing and damages from that wrongdoing. I'm also pretty sure he is unaware of it. Can

you please see if he will meet for a coffee or do a call or just fix things. I'm having my lawyer do up a demand letter. Essentially all I want is my unit completed as is the obligation of the partners of 128 hazelton ie Constantine and Mizrahi. As well I have incurred some costs as a result of these unnecessary delays. My personal items are spread over 6 storage units plus a profession storage facility and have been there for 2 years. My artwork is at professional art storage facility. These costs aren't substantial but they should be covered. And then there's some rental costs. The building has been completed for almost 4 years.

Thanks Nitin.

Dave

4165009080

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Ce message est confidentiel. Notre transmission et réception de courriels se fait strictement

suivant les modalités énoncées dans l'avis publié à www.rogers.com/aviscourriel

This is **Exhibit "Y"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N" and "M".

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

Placeholder

Link to Exhibits Y to EE - Recordings

<https://tyrllp.sharefile.com/d-sda1139206eaa414f9a15090ed69d054a>

This is **Exhibit “Z”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N" and "M".

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

Placeholder

Link to Exhibits Y to EE - Recordings

<https://tyrllp.sharefile.com/d-sda1139206eaa414f9a15090ed69d054a>

This is **Exhibit "AA"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N" and "M".

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

Placeholder

Link to Exhibits Y to EE - Recordings

<https://tyrllp.sharefile.com/d-sda1139206eaa414f9a15090ed69d054a>

This is **Exhibit “BB”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow", written in a cursive style.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

Placeholder

Link to Exhibits Y to EE - Recordings

<https://tyrllp.sharefile.com/d-sda1139206eaa414f9a15090ed69d054a>

This is **Exhibit "CC"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow", written in a cursive style.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

Placeholder

Link to Exhibits Y to EE - Recordings

<https://tyrllp.sharefile.com/d-sda1139206eaa414f9a15090ed69d054a>

This is **Exhibit “DD”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

Placeholder

Link to Exhibits Y to EE - Recordings

<https://tyrllp.sharefile.com/d-sda1139206eaa414f9a15090ed69d054a>

This is **Exhibit “EE”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

Placeholder

Link to Exhibits Y to EE - Recordings

<https://tyrllp.sharefile.com/d-sda1139206eaa414f9a15090ed69d054a>

This is **Exhibit “FF”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

**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

**AFFIDAVIT OF ROBERT HISCOX
(sworn February 23, 2024)**

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

1. I am co-founder and chief executive officer of the Applicant, Constantine Enterprises Inc. (“**CEI**”) and I am also a director and officer of the Respondent, Mizrahi (128 Hazelton) Inc. (“**Hazelton**”). I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

I. OVERVIEW

2. I swear this affidavit in support of an application brought by CEI to appoint KSV Restructuring Inc. (“**KSV**”) as receiver and manager 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), 76967-0008 (LT), 76967-0010 (LT) to 76967-0012 (LT) inclusive, 76967-0017 (LT) to 76967-0021 (LT) inclusive, 76967-0023 (LT) to 76967-0028 (LT) inclusive, 76967-0030 (LT) to 76967-0032 (LT) inclusive, 76967-0034 (LT) to 76967-0038 (LT) inclusive, 76967-0041 (LT) to 76967-0043 (LT) inclusive, 76967-0045 (LT) to 76967-0048 (LT) inclusive, 76967-0053 (LT), 76967-0054 (LT), 76967-0057 (LT) to 76967-0060 (LT) inclusive, 76967-0062 (LT), 76967-0065 (LT) to 76967-0067 (LT) inclusive, 76967-0073 (LT), 76967-0074 (LT), and 76967-0076 (LT), as more specifically described in **Schedule “A”** attached hereto (the “**Real Property**”); and (b) all of the assets, undertakings and properties of 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**”).

3. As of February 29, 2024, along with certain additional unsecured obligations, the Debtors are expected to owe the following secured amounts to CEI:

(a) Hazelton:

(A) \$13,015,116.36, plus interest continuing to accrue from and after February 29, 2024 and legal fees and expenses from before and after that date (the “**Hazelton Priority Indebtedness**”) pursuant to the DUCA Commitment (as defined below) with Hazelton as borrower and DUCA Financial Services Credit Union Ltd. (“**DUCA**”) as lender. To secure payment of the Hazelton Priority Indebtedness, Hazelton granted security over its Property to DUCA which subsequently assigned such security and the Hazelton

Priority Indebtedness to CEI on February 1, 2024 (as described in greater detail below);

(B) \$31,041,763,16, plus interest continuing to accrue from and after February 29, 2024 and legal fees and expenses from before and after that date pursuant to the 2015 Credit Agreement (as defined below), the indebtedness in respect of which is secured and subordinate to the Hazelton Priority Indebtedness, (the “**Hazelton Subordinate Indebtedness**”); and

(b) Retail: \$2,854,278, plus interest continuing to accrue from and after February 29, 2024 and legal fees and expenses from before and after that date (the “**Retail Indebtedness**”, together with the Hazelton Priority Indebtedness, the “**Indebtedness**”) pursuant to the Retail Note (as defined below) issued by Hazelton in favour of CEI. To secure payment of the Retail Indebtedness, Retail granted security over its Property to CEI.

4. The Real Property is Hazelton’s primary asset and is made up of certain premises in relation to a nearly complete nine-storey, 20-unit luxury condominium development project located in the heart of 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**”). Hazelton developed and constructed the Hazelton Project and as of the swearing of this affidavit remains the registered owner of 10 condominium units, and the one ground floor commercial retail space, and the parking spaces allocated to the units and the retail space (which collectively makes up the Real Property). Construction of the Hazelton Project is more than five years behind schedule.

5. Retail's primary Property is an agreement of purchase and sale between Retail (as assigned by Mizrahi Inc. to Retail), as purchaser, and Hazelton, as vendor, pursuant to which Retail has a right to purchase a unit intended for use as a professional office space located on level 1 of the Hazelton Project, together with four parking spaces and one locker for \$2,393,000, on the terms and conditions set out therein (as may be amended, supplemented, restated, replaced or otherwise modified from time to time, the "**Retail APS**").

6. Breaches or defaults of the DUCA Commitment (with respect to the Hazelton Priority Indebtedness) and Retail Note (with respect to the Retail Indebtedness) and/or CEI's Security (as defined below) have occurred as follows:

- (a) DUCA Commitment: a construction lien was registered on title to the Real Property which Hazelton failed to vacate or discharge within ten days after registration. This resulted in an acceleration and commencement of the receivership application by DUCA (as described below) of the Hazelton Priority Indebtedness, which remains outstanding and has not been repaid.
- (b) Retail Note: Retail failed to make monthly interest payments to CEI, which became payable in 2022 after \$250,000 of monthly interest under the Retail Note had capitalized. This resulted in an acceleration of the Retail Indebtedness, which remains outstanding and has not been repaid.

7. On September 22, 2022, CEI delivered a demand letter and a notice of intention to enforce security pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") to Retail.

8. On December 6, 2023, DUCA delivered a demand letter and a notice of intention to enforce security pursuant to the BIA to Hazelton.

9. The Hazelton Subordinate Indebtedness is also in default having matured without being repaid.

10. As of the date of swearing this affidavit, CEI has not received payment of the Indebtedness and accordingly CEI is seeking a Court-order appointing KSV as receiver and manager of the Property. CEI has the right to the appointment of a receiver over the Property pursuant to the terms of CEI's Security (as defined below).

11. As further described below, I understand that Aviva Insurance Company of Canada ("**Aviva**") has a second priority registration against the Real Property for certain deposit insurance indemnification obligations (subordinate to CEI's security in respect of the DUCA Commitment), securing the maximum amount of \$18,500,000. I am also advised that two parties have registered construction liens against title to the Real Property. The indebtedness in respect of one of the construction liens has been purchased by CEI and the related registration is in process of being removed from title.

12. I understand from Stephanie Fernandes of Cassels Brock & Blackwell LLP ("**Cassels**"), counsel to CEI, that Aviva and the other parties who have a registered interest (including a construction lien) will be served with CEI's application to appoint KSV as receiver. I believe that it is in the best interests of CEI, the other secured creditors and the other stakeholders of the Debtors that a receiver be appointed to preserve the value of the Property and realize on the Property in a transparent manner with a view to maximizing recovery.

II. BACKGROUND

A. Parties

13. Founded in 2013, CEI is a Toronto-based private real estate fund dedicated to acquiring, developing and managing properties in Canada and abroad. Since 2015, CEI has assisted in the financing of the Hazelton Project.

14. Hazelton is the registered owner of the Real Property and is the borrower under the DUCA Commitment, the 2015 Credit Agreement, the 2020 Grid Note and the 2021 Grid Note (each as defined below). The shares in the capital of Hazelton are owned 50% by (i) Mizrahi Developments Inc. ("**MDI**"), an entity which Sam Mizrahi ("**Mizrahi**") has represented to me as being controlled by Mizrahi, and (ii) 50% by CEI. The development and construction of the Hazelton Project was outsourced by Hazelton to Mizrahi Inc. In addition to myself, Mizrahi is the only other director and officer of Hazelton. Decision making in respect of Hazelton is equal among the shareholders, and the shareholders' relationship is governed by a unanimous shareholders agreement between MDI and CEI, as shareholders, and Hazelton, as corporation, dated June 19, 2015 (as may be amended, supplemented, restated, replaced or otherwise modified from time to time, the "**Shareholders Agreement**"). A copy of the Shareholders Agreement and the Agreement to be Bound by Unanimous Shareholders Agreement by MDI in favour of CEI and Hazelton (which was entered into in connection with the MDI's purchase of shares in the capital of Hazelton from Mizrahi Enterprises Inc.) are attached hereto as **Exhibits "A"** and **"B"**.

15. On December 3, 2021, MDI, Hazelton and CEI entered into a Contribution Agreement (the "**Contribution Agreement**") pursuant to which CEI is entitled to require that CEI and MDI equally contribute capital if CEI has reasonable grounds for believing that a budget deficit is likely to take place within the next 90-day period. A copy of the Contribution Agreement is attached hereto as **Exhibit "C"**.

16. Retail is the purchaser under the Retail APS and is the borrower under the Retail Note. I understand that the shares in the capital of Retail are wholly owned by Mizrahi or his designee.

Mizrahi is the sole director of Retail and its registered office is located at Mizrahi's personal residence.

17. Mizrahi is the President of Hazelton and Retail and is the principal of the Mizrahi Development group of companies, a condominium development and building group (the "**Mizrahi Group**") (based on recent corporate profile reports and the Mizrahi Group website). Mizrahi is CEI's operating and development counterpart in connection with the construction of the Hazelton Project.

18. The Ontario corporate profile reports of Hazelton and Retail are attached hereto as **Exhibits "D"**.

B. The Mizrahi Group's Other Development Project Financed by CEI

19. In addition to the Hazelton Project, CEI also financed another condominium development jointly operated and developed by CEI and the Mizrahi Group and located at 180 Steeles Avenue West, Vaughan, Ontario (the "**180 Steeles Project**"). The 180 Steeles Project is planned for a high-rise mixed-use development on the property consisting of up to 2,196 residential units with heights of up to 178.1M for the 2 towers fronting on Steeles Ave West and heights up to 113.7 M for the 2 towers without direct frontage on to Steeles Ave West. Phase 1 of the proposed development will include up to 1899 units.

20. The Mizrahi Group is in default of its obligations to CEI in connection with amounts advanced by CEI relating to the 180 Steeles Project.

21. CEI intends to commence a parallel receivership application in respect of the Mizrahi Group's equity interests in respect of the 180 Steeles Project in the Ontario Superior Court of Justice (Commercial List) (the "**Court**") contemporaneous with the receivership application in support of which this affidavit is being sworn.

C. Hazelton Indebtedness and Security

22. On June 30, 2017, DUCA made available certain demand credit facilities to Hazelton to finance construction of the Hazelton Project on the terms and conditions set out in a commitment letter issued by DUCA to Hazelton on June 27, 2017, as amended by letters dated May 4, 2017, June 19, 2017, December 4, 2018, June 30, 2020, January 20, 2021, June 30, 2021, February 28, 2022, June 30, 2022, October 31, 2022, January 31, 2021 and April 30, 2023 (collectively, the “**DUCA Commitment**”). A copy of the DUCA Commitment is attached hereto as **Exhibit “E”**.

23. The credit facilities established by DUCA in favour of Hazelton pursuant to the DUCA Commitment are as follows: (i) a non-revolving facility in the principal amount of \$33,460,000; (ii) a revolving swingline facility in the principal amount of \$500,000; and (iii) a non-revolving letter of credit facility in the principal amount of \$500,000 (collectively, the “**DUCA Loan**”).

24. The security granted to DUCA relating to the DUCA Loan and Hazelton Priority Indebtedness, which security was assigned to CEI on February 1, 2024, includes, among other things (collectively the “**DUCA Security**”):

- (a) a first-ranking mortgage by Hazelton against the Real Property (the “**DUCA Mortgage**”);
- (b) a general assignment of rents by Hazelton (the “**DUCA GAR**”); and
- (c) a general security agreement by Hazelton (the “**DUCA GSA**”).

25. Attached hereto as **Exhibits “F”-“H”** (inclusive) is a copy of the DUCA Mortgage, the DUCA GAR, and the DUCA GSA.

D. Hazelton Default, Demand and Enforcement

26. On October 8, 2023, a breach occurred under the DUCA Commitment upon Hazelton failing to vacate or discharge a construction lien registered on title to the Real Property within ten days of registration on September 28, 2023. The applicable construction lien was registered by CEC Mechanical Ltd. ("**CEC**") in the amount of \$863,657. In correspondence dated November 21, 2023 CEC asserted that \$507,657.76 remained outstanding in respect of their construction lien. A copy of the correspondence is attached hereto as **Exhibit "I"**.

27. On November 15, 2023, DUCA delivered a letter to Hazelton (the "**November Correspondence**") explaining that DUCA had transferred the Hazelton facility to its Special Assets group for, (i) concerns regarding publicly available information in respect of an appointment of Alvarez & Marsal Canada Inc. as receiver and manager of "The One" project, (ii) ongoing construction delays of the Hazelton Project, which resulted in the loan not being repaid by the maturity date of September 30, 2023, and (iii) the inability to control closing dates of remaining units. A copy of the November Correspondence is attached hereto as **Exhibit "J"**.

28. On December 6, 2023, DUCA delivered demand letters and notices of intention to enforce security under section 244 of the BIA to Hazelton (the "**Hazelton Demand**") in connection with the DUCA Loan. A copy of the Hazelton Demand is attached hereto as **Exhibit "K"**.

29. On January 19, 2024, DUCA commenced an application in the Court (Court File Number CV-24-00713019-00CL) to appoint a receiver and manager over all of the assets, undertakings and properties of Hazelton (the "**DUCA Receivership Application**").

30. On February 1, 2024, DUCA assigned its rights, benefits and interest in and to the DUCA Commitment and the DUCA Security to CEI pursuant to a debt purchase agreement between DUCA, as assignor and CEI, as assignee. In accordance with the terms of the debt purchase agreement, DUCA agreed to forthwith seek an order dismissing the DUCA Receivership Application. A copy of the debt purchase agreement is attached hereto as **Exhibit "L"**.

31. On February 9, 2024, before the DUCA Receivership Application was heard, the Court granted an order made on consent of DUCA and Hazelton dismissing the DUCA Receivership Application. A copy of the order is attached hereto as **Exhibit “M”**.

32. The amounts owing under the DUCA Commitment and secured by the DUCA Security, as assigned to CEI, remain outstanding.

E. Retail Indebtedness and Security

33. On November 10, 2020, Retail issued a promissory note in favour of CEI pursuant to which CEI advanced loans to Retail in the aggregate principal amount of \$2,174,130 (the **“Retail Note”**). 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”**)). A copy of the Retail Note and Retail Flow-Through Note are attached hereto as **Exhibits “N”** and **“O”**.

34. The security granted to CEI in respect of the Retail Note includes the following (the **“Retail Security**, and together with the DUCA Security, the **“Security”**, and together with the DUCA Commitment and the Retail Note, the **“Loan and Security Documents”**):

- (a) a general security agreement by Retail (the **“Retail GSA”**);
- (b) an option 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

- (c) an unlimited guarantee by Mizrahi in respect of all obligations owing by Retail to CEI (the “**Retail Guarantee**”).

A copy of the Retail GSA, Option Agreement and the Retail Guarantee is attached hereto as **Exhibits “P”-“R”** (inclusive).

F. Retail Default and Demand

35. In accordance with the terms of the Retail Note, after \$250,000 of monthly interest under the Retail Note had capitalized (which occurred in February 2022), Retail was required to make monthly interest payments to CEI on the last day of each calendar month thereafter and failed to do so. Accordingly, as of February 28, 2022, Retail was in default of that obligation as such interest had capitalized and thereafter Retail failed to make the required interest payments.

36. On September 22, 2022, CEI delivered a demand letter and notice of intention to enforce security under section 244 of the BIA to Retail (the “**Retail Demand**”). A copy of the Retail Demand is attached hereto as **Exhibit “S”**.

37. Notwithstanding the long existing default on the Retail Note, CEI refrained from taking enforcement steps in connection with the Retail Security until now because of the relatively small quantum of the Retail Indebtedness relative to the quantum of all of the indebtedness of the Mizrahi Group to CEI and the complex relationship of CEI and the Mizrahi Group as it relates to the Hazelton Project and 180 Steeles Project.

G. Other Creditors and Indebtedness

38. A search of title against the Real Property current to February 9, 2024 (the “**Title Searches**”) discloses financial encumbrances, as summarized below. A table summarizing the financial encumbrances in further detail is attached hereto as **Exhibit “T”**, and copies of the Title

Searches are attached hereto as **Exhibit “U”**. Unless otherwise indicated, the encumbrances are registered against all PIN numbers making up the Real Property.

- (a) the DUCA Mortgage in favour of CEI;
- (b) A notice of the DUCA GAR in favour of CEI;
- (c) A charge in favour of Aviva registered on September 22, 2016, and securing the maximum principal amount of \$18,500,000;
- (d) A charge in favour of CEI registered on June 19, 2015, and securing the maximum principal amount of \$21,000,000;
- (e) A notice of general assignment of rents in favour of CEI in respect of the 2015 Loan (as defined below); and
- (f) A construction lien registered by CEC on September 29, 2023 and a related certificate of action in respect of PIN numbers 21196-0353 (LT); 76967-0001 (LT); 76967-0004 (LT); 76967-0008 (LT); 76967-0010 (LT) to 76967-0012 (LT) (inclusive); 76967-0017 (LT) to 76967-0020 (LT) (inclusive); and 76967-0028 (LT).

39. The second mortgagee, Aviva, is the deposit insurer for the Hazelton Project. Aviva entered into a priority agreement with DUCA dated June 27, 2017, pursuant to which Aviva subordinated its mortgage to the DUCA Mortgage (the “**Priority Agreement**”). A copy of the Priority Agreement is attached hereto as **Exhibit “V”**.

40. As noted above, CEI is also the third mortgagee in respect of a non-revolving loan facility advanced by CEI to Hazelton in the principal amount of \$21,000,000 pursuant to the terms of a credit agreement between Hazelton, as borrower, Mizrahi Enterprises Inc., as pledgor and CEI, as lender (the “**2015 Credit Agreement**”) in respect of which \$31,041,763.16 is due and owing

as of February 29, 2024. CEI granted a subordination, assignment, postponement and standstill agreement in favour of DUCA on June 22, 2017, pursuant to which CEI subordinated its third in priority mortgage to the DUCA Mortgage (the “**Subordination Agreement**”). CEI also granted postponements registered on title to the Real Property in favour of Aviva and the City of Toronto. A copy of the Subordination Agreement and the postponements registered on title in favour of DUCA, Aviva and the City of Toronto is attached hereto as **Exhibit “W”**.

41. The loan advanced under the 2015 Credit Agreement (the “**2015 Loan**”) matured on June 30, 2020 (subject to a 90-day extension in limited circumstances in accordance with the terms of the 2015 Credit Agreement).

42. In addition, there have been significant cost overruns and delays in respect of the Hazelton Project relative to the budget delivered by the Mizrahi Group and accepted by CEI in connection with the 2015 Credit Agreement such that as it is currently anticipated that the Hazelton Project will exceed the initial budget by over \$50 million and will be completed more than five years after the completion date initially estimated by the Mizrahi Group and represented to CEI.

43. Notwithstanding the maturity of the loan, budget overruns and construction delays, CEI has not taken steps to enforce upon its security in connection with the 2015 Credit Agreement or otherwise seek repayment of the 2015 Loan because the terms of the Subordination Agreement provide that any such action taken by CEI would trigger a default under the DUCA Commitment. CEI being able to take steps to enforce upon its security granted by Hazelton was a key reason why CEI purchased and took an assignment of the Hazelton Priority Indebtedness.

44. I am advised by Cassels that there are no other mortgages or liens registered against title to the Real Property shown in the Title Searches other than those listed above. A copy of the Title Searches is attached hereto as **Exhibit “U”**.

45. Searches conducted pursuant to the *Personal Property Security Act* (the “PPSA”) in Ontario with a currency date of February 6, 2024 against each of the Debtors, discloses the following registrations:

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 2015 Credit Agreement Security.

Retail

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

46. The registration in favour of Mizrahi Constantine (180 SAW) LP is in relation to security granted by Retail to secure a guarantee by Retail in favour of Mizrahi Constantine (180 SAW) LP guaranteeing certain obligations of Sam M (180 SAW) LP Inc. to Mizrahi Constantine (180 SAW) LP to make certain contributions which are no longer required such that no obligations are outstanding in respect of this registration.

47. The Ontario PPSA searches did not disclose registrations in favour of any other secured party. A summary of the Ontario PPSA search results against each of the Respondents is attached hereto as **Exhibit “X”**.

48. In addition to (i) the Loan and Security Documents and the Indebtedness which is the subject of the receivership application which this affidavit is being sworn in support of, (ii) the Hazelton Subordinate Indebtedness, and (iii) the indebtedness relating to a construction lien registered on title by Ozz Electric Inc. on January 31, 2024 (the “**Construction Lien Indebtedness**”) (the indebtedness in respect of which has been purchased by CEI and the related registration on title has been removed), Hazelton is also indebted to CEI pursuant to a 2020 Grid Note and a 2021 Grid Note. Specifically, (i) on November 10, 2020, Hazelton issued an unsecured promissory note to CEI pursuant to which CEI advanced loans to Hazelton in the aggregate principal amount of \$3,200,000 (the “**2020 Grid Note**”); and (ii) on December 3, 2021, Hazelton issued an unsecured promissory note to CEI pursuant to which CEI advanced loans to Hazelton in the aggregate principal amount of \$1,500,000 (the “**2021 Grid Note**”). A copy of the 2020 Grid Note and the 2021 Grid Note is attached hereto as **Exhibits “Y” and “Z”**.

III. RECEIVERSHIP

49. As of February 29, 2024, the total Indebtedness (not including the Hazelton Subordinate Indebtedness, the Construction Lien Indebtedness, the 2020 Grid Note or the 2021 Grid Note) is expected to be \$15,869,394.36, being (i) \$13,015,116.36 in respect of the Hazelton Priority Indebtedness, and (ii) \$2,854,278 in respect of the Retail Indebtedness, in each case plus interest accruing after from and after February 29, 2024 and fees, legal expenses and disbursements incurred and accruing before and after such date.

50. CEI has lost confidence in the Mizrahi Group’s ability to perform its obligations under its various agreements with CEI (including without limitation the Loan and Security Documents) in light of, among other things, the cost overruns and construction delays in completion of the Hazelton Project and the status of the development of the 180 Steeles Project which has contributed to a breakdown in the relationship between CEI and the Mizrahi Group. CEI has also

lost confidence in the Mizrahi Group as a result of ongoing challenges on a myriad of other situations involving the Mizrahi Group and/or Sam Mizrahi, including a large development project located at Bloor Street and Yonge Street in Toronto known as the “One” and Bridging Finance, both of which are in Court-supervised receivership proceedings.

51. I am also concerned that the Mizrahi Group will intentionally delay or interfere with the completion and monetization of the Hazelton Project at the expense of CEI. In this regard Mizrahi has recently begun making baseless allegations that CEI is acting in bad faith and is breaching its fiduciary duty while expecting CEI to bear the entire financial burden of moving the Hazelton Project forward.

52. For example, CEI issued a capital call notice pursuant to the Contribution Agreement on February 12, 2024. A copy of the capital call notice is attached hereto as **Exhibit “AA”**. To date, no funds have been received by Hazelton from MDI in respect of this capital call. Without additional funds, the Hazelton Project units cannot be completed and sold. Mizrahi has taken the position that the capital call is not valid, and instead certain funds should be used from closing of sale proceeds (which are subject to the Security held by CEI) to complete the work. This is particularly concerning given that at the same time Mizrahi has (i) refused to contribute any funds so that Hazelton can satisfy amounts owing by it that are secured by construction liens; (ii) claimed that any contribution obligations MDI has should be set off against unsecured obligations owed to MDI or related entities; and (iii) taken the position that the Retail APS should be closed, by setting off unsecured obligations owing to Retail by Hazelton while it is clear that he does not expect all secured obligations owing by Hazelton to CEI will be satisfied.

53. Hazelton and Retail are insolvent. There do not appear to be sufficient assets available to satisfy their secured creditors, including CEI. Further, decisions in respect of Hazelton require agreement between Mizrahi and me. Given the breakdown in the relationship a new decision-

making structure needs to be put in place to ensure that the Property is realized upon, and proceeds of sale are distributed appropriately to creditors in accordance with their relative priority.

54. For these reasons I believe that the appointment of a receiver is necessary and appropriate in the circumstances. A receiver will also allow CEI to realize on its security in an efficient, transparent, and orderly manner for its benefit and for the benefit of any other creditors of Hazelton and Retail.

55. In accordance with the terms of the DUCA GSA and the Retail GSA, CEI is entitled to seek the appointment of a court appointed receiver in the event Hazelton or Retail, as applicable, default in their obligations under the Loan and Security Documents, as follow:

- (a) DUCA GSA: Section 13.1 of the DUCA GSA provides upon the occurrence of an event of default that is continuing, CEI may enforce its rights by, among other things, “appoint[ing] or reappoint[ing] by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of the Secured Party, or not, to be a receiver...”; and
- (b) Retail GSA: Section 12.03(j) of the Retail GSA provides upon the occurrence of an event of default that is continuing, CEI may enforce its rights by, among other things, applying “to a court of competent jurisdiction for the appointment of a Receiver of the Collateral or any part of the Collateral...”

56. It is just and convenient in the circumstances to appoint a receiver over the Property with the power to market and sell the Property for the benefit of CEI and the other creditors.

57. CEI’s intention is for the receiver to take steps to complete the sale of units already subject to agreements of purchase and sale, to facilitate the final phase of construction of the Hazelton Project required for completion of units where necessary, and to facilitate the marketing and sale

of the remaining condominium units in order to realize on the value of the Property and repay creditors. CEI anticipates that the receiver, if appointed, will bring a motion for approval by the court of a sales process in connection with such realization efforts.

58. With respect to Retail, CEI understands that if appointed, the receiver would also bring a motion for approval by the court of a sale process in connection with its assets. In that respect, CEI currently intends to submit a bid as a stalking horse purchaser in connection with such process.

59. I understand that KSV is qualified to act as receiver and is prepared to act as receiver if so appointed. KSV has significant experience acting as a court-officer in real estate restructurings, including as monitor in the Urbancorp Group proceedings under the CCAA. A copy of KSV's consent to act as receiver is attached hereto as **Exhibit "BB"**.

60. KSV was retained by CEI in February 2024 solely in the context of preparing for its potential role as Court-appointed receiver. In that capacity, KSV has had access to certain financial and other records. In that regard, KSV is well positioned to begin to efficiently monetize the assets of the Debtors for the benefit of their stakeholders.

IV. CONCLUSION

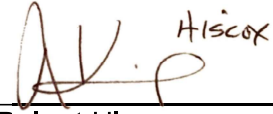
61. I swear this affidavit in support of the application brought by CEI to appoint KSV as receiver over the Property.

SWORN BEFORE ME

by videoconference on February 23, 2024
in accordance with O.Reg. 431/20:
Administering Oath or Declaration
Remotely. The deponent and I were located
in the City of Toronto in the Province of
Ontario.



Jeremy Bornstein
LSO#: 65425C



Robert Hiscox

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

This is **Exhibit "GG"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

**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

FACTUM OF THE APPLICANT

**RECEIVERSHIP APPLICATION
RETURNABLE MAY 13, 2024**

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Lawyers for the Applicant

TO: **THE SERVICE LIST**

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

CONSTANTINE ENTERPRISES INC.

Applicant

- and –

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MIZRAHI 128 HAZELTON RETAIL INC.**

Respondents

TABLE OF CONTENTS

	Page No.
PART I - OVERVIEW.....	1
PART II - SUMMARY OF FACTS.....	2
A. The Parties	2
B. Summary Of Debt and Security Structure	3
C. The Secured Unpaid Debts Owing by Hazelton	5
(i) Hazelton Priority Indebtedness.....	5
(ii) Hazelton Subordinate Indebtedness.....	7
D. Secured Unpaid Debts Owing by Retail	8
(i) Retail Indebtedness.....	8
E. Other Creditors and Indebtedness	9
F. The Breakdown in the Relationship.....	10
PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES	13
A. The Technical Requirements to Appoint a Receiver are Met.....	13
B. Appointing KSV as Receiver is Just and Convenient	14
C. The Amended Statement of Claim	19
PART IV - ORDER REQUESTED.....	23

PART I - OVERVIEW

1. CEI, as a secured creditor, seeks the appointment of KSV as Receiver over the Real Property¹ and all assets, undertakings, and properties of the Debtors, including all related proceeds, pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3 and section 101 of the *Courts of Justice Act*, RSO 1990, c. C-43.²
2. Hazelton and Retail owe CEI more than \$47 million under secured lending facilities. CEI made demands for payment and delivered demands and notices to enforce security under section 244 of the BIA³ to the Debtors but the Indebtedness remains unpaid.
3. CEI has lost confidence in Mizrahi and the Mizrahi Group's ability to fulfill their financial obligations, past and ongoing. The development of the Hazelton Project, a luxury condominium development in the heart of Yorkville, is at a standstill because of the lack of funding and the breakdown in the relationship between CEI and Mizrahi, to the detriment of stakeholders, including other lenders and the occupants of the Hazelton Project. In addition, based on Mizrahi's most recently delivered budget, the cost of the Hazelton Project will exceed Mizrahi's initial budget by over \$50,000,000 and the estimated completion date is more than five years behind schedule based on Mizrahi's current estimates.⁴ Additional funding is necessary to complete the Hazelton Project and the only viable lender is CEI. It is certainly not Mizrahi or the Mizrahi Group.
4. The Debtors do not dispute that the Indebtedness was advanced by CEI, that security was granted to CEI, or that, despite proper demand for payment, the Indebtedness has not been paid.

¹ The Real Property is legally described in the Affidavit of Robert Hiscox sworn February 23, 2024 (the "**First Hiscox Affidavit**") at para 2 and in Schedule "A" attached.

² Capitalized terms not otherwise defined herein have the meaning given to them in the First Hiscox Affidavit or the Reply Affidavit of Robert Hiscox sworn April 15, 2024 (the "**Reply Hiscox Affidavit**"), as applicable.

³ [Bankruptcy Insolvency Act](#) [BIA].

⁴ First Hiscox Affidavit at paras 4, 42.

5. Indeed, instead of filing responsive evidence to this application, the Debtors—or rather, just one of them—initiated an action against CEI and its principals. The Amended Statement of Claim does not contest the Indebtedness, security, or delivery of the demands. Notably, the Amended Statement of Claim *accepts as fact* that the Indebtedness was advanced to the Debtors and that the Loan and Security Documents were entered into by the Debtors.⁵ Instead, Retail and other Mizrahi Group entities make bare and unparticularized allegations of “bad faith” and breach of duties allegedly owing by the defendants. That action, if pursued, will be vigorously defended and the subject of a motion to strike.⁶

6. CEI seeks to appoint the Receiver in furtherance of its contractual right to do so and with a view to preserving and realizing on the Property.⁷ In the circumstances, it is just and convenient to appoint the Receiver over the Property.

7. CEI has commenced a parallel receivership application in respect of the Mizrahi Group’s equity interests in the 180 Steeles Project, another condominium development jointly operated and developed by CEI and Mizrahi, which is being heard at the same time as this application.⁸

PART II - SUMMARY OF FACTS

A. The Parties

8. CEI is a Toronto-based private real estate fund dedicated to acquiring, developing, and managing properties in Canada and abroad. Since 2015, CEI has assisted in the financing of the Hazelton Project.⁹

⁵ Supplementary Affidavit of Sam Mizrahi affirmed April 8, 2024, Exhibit “A” at paras 26 and 28 (“**Second Mizrahi Affidavit**”).

⁶ Reply Hiscox Affidavit at para 4.

⁷ First Hiscox Affidavit at para 12.

⁸ Court File No. CV-24-00715326-00CL. See First Hiscox Affidavit at paras 19-21.

⁹ First Hiscox Affidavit at para 13.

9. Hazelton is the borrower under the DUCA Commitment, the 2015 Credit Agreement, the 2020 Grid Note, and the 2021 Grid Note. The shares in the capital of Hazelton are owned 50% by CEI and 50% by MDI, an entity which Mizrahi controls.¹⁰

10. Hazelton is the registered owner of the Real Property. The Real Property is Hazelton's primary asset and consists of 10 condominium units within Hazelton Project, a nine-storey, 20-unit luxury condominium building located in the Yorkville neighbourhood, along with one ground floor commercial retail space and the parking spaces allocated to the units and the retail space.¹¹ CEI's role in the Hazelton Project is limited to a lender and shareholder. The development and construction of the Hazelton Project was outsourced by Hazelton to Mizrahi Inc. and there have been significant cost overruns and delays in respect of the Hazelton Project.¹²

11. Retail is the borrower under the Retail Note. Retail is wholly owned by Mizrahi or his designee. Mizrahi is the sole director of Retail, and its registered office is located at Mizrahi's personal residence.¹³

12. Retail's primary asset is the Retail APS, which provides Retail the right to purchase a unit in the Hazelton Project, together with four parking spaces and one locker for \$2,393,000.¹⁴

B. Summary Of Debt and Security Structure

13. A summary of the uncontested debt owed to CEI and security structure, including the defaults that have not been cured and the notices and demands delivered, are set out in the table below and more fully set out in the First Hiscox Affidavit:

¹⁰ First Hiscox Affidavit at para 14.

¹¹ First Hiscox Affidavit at para 4.

¹² First Hiscox Affidavit at paras 4, 14, and 42.

¹³ First Hiscox Affidavit at para 5.

¹⁴ First Hiscox Affidavit at para 5.

Borrower	Agreement	Security	Default	Demand	Amount ¹⁵
Hazelton	DUCA Commitment ¹⁶ Debt Purchase Agreement ¹⁷	First-ranking mortgage ¹⁸ General Security Agreement ¹⁹ General Assignment of Rents ²⁰	October 8, 2023 ²¹	December 6, 2023 ²²	\$13,015,116.36 i.e., the Hazelton Priority Indebtedness
Hazelton	2015 Credit Agreement ²³	Third-ranking mortgage ²⁴ General Security Agreement ²⁵ General Assignment of Rents ²⁶	June 30, 2020 ²⁷	February 27, 2024 ²⁸	\$31,041,763.16 i.e., the Hazelton Subordinate Indebtedness
Retail	Retail Note ²⁹	General Security Agreement ³⁰ Option Agreement ³¹ Retail Guarantee ³²	February 28, 2022 ³³	September 22, 2022 ³⁴	\$2,854,278 i.e., the Retail Indebtedness

¹⁵ This amount is as of February 29, 2024 and is exclusive of interest accruing from and after February 29, 2024 and legal fees and disbursements incurred and accruing before and after that date.

¹⁶ First Hiscox Affidavit at Exhibit "E".

¹⁷ First Hiscox Affidavit at Exhibit "L".

¹⁸ First Hiscox Affidavit at Exhibit "F".

¹⁹ First Hiscox Affidavit at Exhibit "G".

²⁰ First Hiscox Affidavit at Exhibit "H".

²¹ First Hiscox Affidavit at para 26.

²² First Hiscox Affidavit at para 28 and Exhibit "K".

²³ Reply Hiscox Affidavit at Exhibit "B".

²⁴ Reply Hiscox Affidavit at Exhibit "C". Aviva has a second priority registration against the Real Property for certain deposit insurance indemnification obligations (subordinate to CEI's security in respect of the DUCA Commitment), securing the maximum amount of \$18,500,000.

²⁵ Reply Hiscox Affidavit at Exhibit "E".

²⁶ Reply Hiscox Affidavit at Exhibit "D".

²⁷ First Hiscox Affidavit at paras 41-43.

²⁸ Reply Hiscox Affidavit at para 6 and Exhibit "A".

²⁹ First Hiscox Affidavit at Exhibit "N".

³⁰ First Hiscox Affidavit at Exhibit "P".

³¹ First Hiscox Affidavit at Exhibit "Q".

³² First Hiscox Affidavit at Exhibit "R".

³³ First Hiscox Affidavit at para 35.

³⁴ First Hiscox Affidavit at para 36 and Exhibit "S".

C. The Secured Unpaid Debts Owning by Hazelton

(i) Hazelton Priority Indebtedness

14. On January 27, 2017, DUCA made available certain demand credit facilities to Hazelton to finance construction of the Hazelton Project totalling \$34,460,000 (the “**DUCA Loan**”).³⁵ As security, Hazelton granted DUCA:

- (a) a first-ranking mortgage against the Real Property;
- (b) a general assignment of rents; and
- (c) a general security agreement, which includes a contractual right for the lender to seek a court-appointed receiver over the Property pursuant to section 13.1 of the agreement (collectively the “**DUCA Security**”).³⁶

15. On October 8, 2023, Hazelton breached the DUCA Commitment by failing to vacate or discharge a construction lien registered on title to the Real Property within ten days of registration.³⁷

16. On November 15, 2023, DUCA delivered a letter to Hazelton explaining that DUCA had transferred the Hazelton facility to its Special Assets group due to:

- (a) concerns regarding publicly available information in respect of an appointment of a court-appointed receiver and manager of “The One” project (one of Mizrahi’s other development projects in Toronto);
- (b) ongoing construction delays of the Hazelton Project, which resulted in the loan not being repaid by the maturity date of September 30, 2023; and

³⁵ First Hiscox Affidavit at para 23.

³⁶ First Hiscox Affidavit at paras 24 and 55(a).

³⁷ First Hiscox Affidavit at para 26.

(c) the inability to control closing dates of remaining units.³⁸

17. On December 6, 2023, DUCA delivered the Hazelton Demand to Hazelton.³⁹ On January 19, 2024, DUCA commenced a receivership application in this Court to appoint a receiver and manager over all of the assets, undertakings, and properties of Hazelton.⁴⁰

18. On February 1, 2024, DUCA assigned its rights, benefits, and interest in and to the DUCA Commitment and the DUCA Security to CEI pursuant to a debt purchase agreement. As a result, on February 9, 2024, DUCA obtained an order dismissing its receivership application without prejudice.⁴¹

19. Notwithstanding that Hazelton has had over four months to repay the Hazelton Priority Indebtedness, it remains outstanding.⁴² As of February 29, 2024, the amount owing under the DUCA Loan (i.e., the Hazelton Priority Indebtedness) and secured by the DUCA Security is \$13,015,116.36.⁴³

20. The Hazelton Priority Indebtedness also includes various condominium fee payments that have been made by CEI on Hazelton's behalf. CEI is entitled to pay expenses, including the condominium fees, on behalf of Hazelton to preserve and protect its collateral pursuant to the DUCA Commitment and DUCA Security.

21. To preserve the value of Hazelton's Property and protect CEI's collateral, on March 11, 2024 and April 5, 2024, CEI made payments in the respective amounts of \$31,765.17 and \$38,142.89 directly to the condominium corporation, TSCC 2967, on account of condominium

³⁸ First Hiscox Affidavit at para 27.

³⁹ First Hiscox Affidavit at para 28.

⁴⁰ First Hiscox Affidavit at para 29.

⁴¹ First Hiscox Affidavit at para 31.

⁴² First Hiscox Affidavit at para 6(a).

⁴³ First Hiscox Affidavit at para 3(a)(A). This amount is exclusive of interest accruing from and after February 29, 2024 and legal fees and disbursements incurred and accruing before and after such date.

common expense fees that Hazelton had failed to pay when due (collectively, the “**Condominium Fee Indebtedness**”).⁴⁴ The amounts paid become due and owing and are added to the principal amount owing under the DUCA Commitment.⁴⁵

22. These payments of common expense fees are indicative of the predicament faced by CEI. CEI is the only entity that has and will be in the position in the future to lend the funds necessary to complete the Hazelton Project. It certainly has not been, and will not be, Mizrahi and the Mizrahi Group. CEI has already purchased construction lien indebtedness registered against the title to the Real Property in an effort to preserve the Hazelton Project.⁴⁶

(ii) Hazelton Subordinate Indebtedness

23. CEI also advanced a non-revolving loan facility to Hazelton in the principal amount of \$21,000,000 pursuant to the 2015 Credit Agreement.⁴⁷ As security, Hazelton granted CEI:

- (a) a third-ranking mortgage against the Real Property;
- (b) a general assignment of rents; and
- (c) a general security agreement by Hazelton, which includes a contractual right for CEI to seek a court-appointed receiver over the Property pursuant to section 5.13 of the agreement.⁴⁸

24. CEI granted a subordination, assignment, postponement and standstill agreement in favour of DUCA on June 22, 2017, pursuant to which CEI subordinated its third in priority mortgage to DUCA.⁴⁹

⁴⁴ Reply Hiscox Affidavit at para 10.

⁴⁵ [Condominium Act, 1998, SO 1998, c 19, s 84\(1\)](#). See Reply Hiscox Affidavit at para 11.

⁴⁶ First Hiscox Affidavit at para 11, 26, 38(f), 48, 52.

⁴⁷ First Hiscox Affidavit at para 40.

⁴⁸ Reply Hiscox Affidavit at para 6.

⁴⁹ First Hiscox Affidavit at para 40; Exhibit “W”.

25. The loan advanced under the 2015 Credit Agreement matured on June 30, 2020.⁵⁰
26. On February 27, 2024, CEI delivered to Hazelton a demand letter and notice of intention to enforce security under section 244 of the BIA in relation to the Hazelton Subordinate Indebtedness.⁵¹
27. Notwithstanding the maturity of the loan, budget overruns and construction delays, CEI did not take steps to enforce upon its security in connection with the 2015 Credit Agreement or otherwise seek repayment of the Hazelton Subordinate Indebtedness earlier, because doing so was not permitted under the DUCA Commitment.⁵²
28. Hazelton has not repaid the Hazelton Subordinate Indebtedness, which remains outstanding. As of February 29, 2024, the amount owing under the Hazelton Subordinate Indebtedness is \$31,041,763.16.⁵³

D. Secured Unpaid Debts Owing by Retail

(i) Retail Indebtedness

29. On November 10, 2020, CEI advanced loans to Retail in the aggregate principal amount of \$2,174,130 (the “**Retail Note**”). As security, Retail granted CEI:
- (a) a general security agreement, which includes a contractual right for CEI to seek a court-appointed receiver over the Property pursuant to section 12.03(j) of the agreement; and

⁵⁰ First Hiscox Affidavit at para 41. The loan maturing was subject to a 90-day extension in limited circumstances in accordance with the terms of the 2015 Credit Agreement.

⁵¹ Reply Hiscox Affidavit at para 6.

⁵² First Hiscox Affidavit at para 43.

⁵³ First Hiscox Affidavit at para 3(a)(B). This amount is exclusive of interest accruing from and after February 29, 2024 and legal fees and disbursements incurred and accruing before and after such date.

- (b) an unlimited guarantee by Mizrahi of all obligations owing by Retail to CEI (the “**Retail Security**”, and together with the DUCA Security and the Subordinate Indebtedness Security, the “**Loan and Security Documents**”).⁵⁴

30. In February 2022, \$250,000 of monthly interest had accrued under the Retail Note. In accordance with its terms, after the \$250,000 had accrued, Retail was required to make monthly interest payments to CEI on the last day of each calendar month thereafter. Retail failed to do so. Accordingly, as of February 28, 2022, Retail was in default of its obligation to make the required interest payments.⁵⁵

31. On September 22, 2022, CEI delivered the Retail Demand to Retail.⁵⁶ CEI refrained from taking enforcement steps in connection with the Retail Security earlier because of the relatively small quantum of the Retail Indebtedness and the complex relationship between CEI and the Mizrahi Group.⁵⁷

32. Notwithstanding that Retail has had at least 18 months to repay the Retail Indebtedness, it remains outstanding. As of February 29, 2024, the amount owing under the Retail Note and secured by the Retail Security is \$2,854,278.⁵⁸

E. Other Creditors and Indebtedness

33. In addition to the security granted in favour of CEI described above, Hazelton has granted security in its personal property and a second priority mortgage to Aviva for certain deposit

⁵⁴ First Hiscox Affidavit at para 34.

⁵⁵ First Hiscox Affidavit at para 35.

⁵⁶ First Hiscox Affidavit at para 36.

⁵⁷ First Hiscox Affidavit at para 37.

⁵⁸ First Hiscox Affidavit at para 3(b). This amount is exclusive of interest accruing from and after February 29, 2024 and legal fees and disbursements incurred and accruing before and after such date.

insurance indemnification obligations (subordinate to CEI's security in respect of the DUCA Commitment), securing the maximum amount of \$18,500,000.⁵⁹

34. In addition to the Hazelton Priority Indebtedness, the Hazelton Subordinate Indebtedness, and the Retail Indebtedness, Hazelton is also indebted to CEI pursuant to the 2020 Grid Note and the 2021 Grid Note, in the aggregate principal amount of \$3,200,000 and \$1,500,000, respectively.⁶⁰

35. There are also certain other construction liens registered on title to the Real Property. The only entity that has been willing to meaningfully address the liens and preserve the Hazelton Project is CEI. The indebtedness relating to a construction lien registered on title by Ozz Electric Inc. on January 31, 2024 was recently purchased by CEI and the related registration on title has been removed.⁶¹

F. The Breakdown in the Relationship

36. CEI has lost confidence in the ability of Mizrahi Group to perform its obligations under its various agreements with CEI, including without limitation the Loan and Security Documents.⁶² The Mizrahi Group has had a considerable amount of time to pay the Indebtedness, including since the issuance of the demands and the commencement of this application, but they have failed to do so.⁶³

37. Hazelton's recent inability to pay its portion of the common expenses for the Hazelton Project is particularly troubling. Hazelton is responsible for almost half of the total common

⁵⁹ First Hiscox Affidavit at paras 11 and 45. Also, as described in the First Hiscox Affidavit at paragraphs 45 and 46, Retail has also granted security in its personal property in favour of Mizrahi Constantine (180 SAW) LP to secure a guarantee by Retail in favour of Mizrahi Constantine (180 SAW) LP, guaranteeing certain obligations of Sam M (180 SAW) LP Inc. to Mizrahi Constantine (180 SAW) LP to make certain contributions. These contributions are no longer required, such that no obligations are outstanding in respect of this registration.

⁶⁰ First Hiscox Affidavit at para 48.

⁶¹ First Hiscox Affidavit at para 48; Reply Hiscox Affidavit at paras 3(d), 13-14.

⁶² First Hiscox Affidavit at para 50.

⁶³ Reply Hiscox Affidavit at para 15(a).

expenses and TSCC 2967 relies on timely payment when due to properly maintain the Hazelton Project. Although CEI recently advanced the funds on Hazelton's behalf, Hazelton will not necessarily have the funds required to pay condominium fees going forward as and when due.⁶⁴

38. Indeed, without the appointment of the Receiver, Hazelton's expenses will not be paid unless CEI continues to directly pay costs on account of Hazelton to preserve and protect its collateral, including condominium fees and amounts required to complete the Hazelton Project units so they can be sold. If Hazelton's expenses are not paid in a timely manner, there is a significant risk that the value of the Property will be materially diminished because of the potential safety and maintenance issues relating to not properly maintaining the building and the potential stigma that could become associated with the Hazelton Project where there are a large number of vacancies in the building because construction on the Hazelton Project units is not completed for an extended period of time.⁶⁵

39. In addition to the defaults described above, CEI recently issued a capital call notice to MDI pursuant to the Contribution Agreement. The purpose of the capital call was to request the additional funds required to complete and sell the Hazelton Project units, which amounts were required to be paid no later than March 14, 2024.⁶⁶ MDI failed to make its required contributions, further evidencing that Hazelton will not be able to meet its obligations.⁶⁷

40. The Mizrahi Group's failure to fund its obligations in respect of the Hazelton Project and the breakdown in the relationship between CEI and the Mizrahi Group creates significant risk that the value of the Property will be materially negatively impacted unless the Receiver is appointed

⁶⁴ Reply Hiscox Affidavit at paras 8-11.

⁶⁵ Reply Hiscox Affidavit at para 15(c)(A).

⁶⁶ First Hiscox Affidavit at paras 15 and 52, Exhibit "C". The Contribution Agreement requires CEI to require that CEI and MDI equally contribute capital if CEI has reasonable grounds for believing that a budget deficit is likely to take place within the next 90-day period.

⁶⁷ Reply Hiscox Affidavit at para 15(b).

to ensure that the Property is realized upon in an orderly, transparent manner for the benefit of CEI and other stakeholders.⁶⁸

41. This would not be the first time that the assistance of a receiver was required to bring a Mizrahi-led development project to completion. Mizrahi and the Mizrahi Group are currently facing myriad of other ongoing challenges, including the development project located at Bloor Street and Yonge Street in Toronto known as the “One”, which is in a Court-supervised receivership proceeding.⁶⁹

42. There is also a real concern that the Mizrahi Group will intentionally delay or interfere with the completion and monetization of the Hazelton Project at the expense of CEI.⁷⁰ The only directors and officers of Hazelton are the respective nominees of MDI and CEI, being Mizrahi for MDI and Robert Hiscox for CEI. Decision-making in respect of Hazelton is equal among the shareholders, and the shareholders’ relationship is governed by a unanimous shareholders agreement. The breakdown in the relationship has and will continue to negatively impact decision-making in respect of Hazelton.⁷¹ With Mizrahi as a partner, there is no path to monetize the Property for the benefit of CEI and Hazelton’s other stakeholders.⁷²

43. CEI’s intention is for the Receiver to take steps to complete the sale of units already subject to agreements of purchase and sale, to facilitate the final phase of construction of the Hazelton Project required for completion of units where necessary, and to facilitate the marketing and sale of the remaining condominium units in order to realize on the value of the Property and repay creditors. CEI anticipates that the Receiver, if appointed, will bring a motion for approval by

⁶⁸ First Hiscox Affidavit at paras 53 and 54.

⁶⁹ First Hiscox Affidavit at para 50.

⁷⁰ First Hiscox Affidavit at para 51.

⁷¹ First Hiscox Affidavit at para 53.

⁷² Reply Hiscox Affidavit at para 15(c)(B).

the court of a sales process in connection with such realization efforts and enhance transparency.⁷³

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

44. The only issue on this application is whether this Court should appoint KSV as Receiver over the Property. CEI submits that it is appropriate for this Court to appoint KSV as Receiver because:

- (a) the technical requirements for the appointment of the Receiver under the BIA have been met; and
- (b) it is just and convenient to appoint the Receiver under the BIA and CJA in the circumstances.

A. The Technical Requirements to Appoint a Receiver are Met

45. Section 243 of the BIA authorizes the Court to appoint a receiver on an application by a secured creditor over the property of an insolvent person. Subsection 243(1.1) of the BIA requires that a notice of intention to enforce security as required by section 244 of the BIA is delivered to the insolvent person prior to such application.⁷⁴

46. There is no dispute that the technical requirements for the appointment of the Receiver have been met. CEI is the primary secured creditor of the Debtors and has standing to bring this application. Notices of intention to enforce security under s 244 of the BIA were delivered to the Debtors. The Retail Demand, Hazelton Demand, and Hazelton Subordinate Demand were

⁷³ First Hiscox Affidavit at para 57. With respect to Retail, CEI understands that if appointed, the Receiver would also bring a motion for approval by the court of a sale process in connection with its assets. In that respect, CEI currently intends to submit a bid as a stalking horse purchaser in connection with such process. See First Hiscox Affidavit at para 58.

⁷⁴ BIA, [ss 243, 243\(1.1\)](#) and [244\(2\)](#).

delivered on September 22, 2022, December 6, 2023, and February 27, 2024, respectively.⁷⁵ In each case, the 10-day notice periods have expired.

47. KSV is qualified to act as Receiver in accordance with subsection 243(4) of the BIA and has provided its consent to act.⁷⁶

B. Appointing KSV as Receiver is Just and Convenient

48. Section 101 of the CJA and subsection 243(1) of the BIA each permit the appointment of a receiver where it is “just or convenient”.⁷⁷

49. It is well-established that the extraordinary nature of the appointment of a receiver as a remedy “is significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements [...] The relief becomes even less extraordinary when dealing with a default under a mortgage.”⁷⁸

50. Where the creditor’s security provides for the appointment of a receiver:

- (a) there is no requirement for the Applicant to establish that it will suffer irreparable harm if the proposed receiver is not appointed;⁷⁹ and
- (b) a receiver should be appointed where the secured creditor has lost faith in the debtor, unless there is good reason to deny the appointment.⁸⁰

⁷⁵ First Hiscox Affidavit at paras 28 and 36 and Exhibits “K” and “S”; Reply Hiscox Affidavit at para 6 and Exhibit “A”.

⁷⁶ BIA, ss 2 and 243(4); First Hiscox Affidavit at para 59 and Exhibit “BB”.

⁷⁷ [Courts of Justice Act, RSO 1990, c C.43](#) [CJA], s 101; [BIA, s 243\(1\)](#).

⁷⁸ *BCIMC Construction Fund Corporation et al v The Clover on Yonge Inc.*, [2020 ONSC 1953](#) at [para 43](#). See also [C & K Mortgage](#) at paras [17-18](#).

⁷⁹ See also *Bank of Montreal v Carnival National Leasing Limited*, [2011 ONSC 1007](#) at [paras 24](#) and [28](#) [*Carnival National*], citing [Freure Village](#) at [para 10](#).

⁸⁰ *Romspen Investment Corporation v Atlas Healthcare (Richmond Hill) Ltd., et al*, 2018 ONSC 7382 at para 100 (See Schedule “C” of this Factum for a copy of this decision). See also *PricewaterhouseCoopers Inc. v Northern Citadel*, [2023 ONSC 37](#) at [paras 92-94](#).

51. In this case, the Indebtedness is secured by Loan and Security Documents that expressly provide for a court-appointed receiver over the Property in the circumstances.

52. In determining whether the appointment of a receiver is “just or convenient”, the Court must consider “all of the circumstances but in particular the nature of the property and the rights and interests of all relevant parties.”⁸¹

53. The discretionary factors historically considered in the determination of whether it is appropriate to appoint a receiver were recently cited by Justice Osborne of this Court and include among others:

- (a) whether irreparable harm might be caused if no order were made, although it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
- (b) the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of the assets while litigation takes place;
- (c) the nature of the property;
- (d) the balance of convenience to the parties;
- (e) the fact that the creditor has the right to appoint a receiver under the documentation providing for the loan;

⁸¹ [Bank of Nova Scotia v Freure Village on Clair Creek \(1996\), 40 CBR \(3d\) 274 \(Ont SCJ\)](#) [*Freure Village*] at [para 10](#). See also *C & K Mortgage et al v 11282751 Canada Inc et al*, [2024 ONSC 1039](#) at [para 16](#) [*C & K Mortgage*].

- (f) the principle that the appointment of a receiver is extraordinary relief which should be granted cautiously;
- (g) the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties more efficiently; and
- (h) the conduct of the parties.⁸²

54. There is no “checklist but a collection of considerations to be viewed holistically in an assessment as to whether, in all the circumstances, the appointment of a receiver is just or convenient.”⁸³

55. In the circumstances, it is just and convenient for this Court to appoint the Receiver over the Property for the following reasons, among others:

- (a) CEI’s secured indebtedness is approximately \$44 million and \$2.8 million in relation to Hazelton and Retail, respectively;
- (b) defaults have occurred and are continuing under the Loan and Security Documents;⁸⁴
- (c) CEI is entitled to the appointment of the Receiver pursuant to the terms of the Loan and Security Documents;⁸⁵

⁸² [C & K Mortgage](#) at [para 19](#), citing *Canadian Equipment Finance and Leasing Inc. v The Hypoint Company Limited*, [2022 ONSC 6186](#). Courts cite *Bennett on Receivership*, 4th ed. (Toronto, Carswell, 2021) for this consolidated list of factors (See Schedule “D” of this Factum).

⁸³ [C & K Mortgage](#) at [para 20](#), citing [Pandion](#) at [para 54](#).

⁸⁴ First Hiscox Affidavit at paras 10, 49.

⁸⁵ First Hiscox Affidavit at para 55.

- (d) There does not appear to be sufficient assets available to satisfy the Debtors' secured creditors;⁸⁶
- (e) MDI has failed to make its required financial contributions to Hazelton, such that Hazelton will not have the funds necessary to complete and sell the remaining Hazelton Project units or maintain the Property;⁸⁷
- (f) CEI has lost confidence in Mizrahi as a partner and developer, and the Mizrahi Group's ability to perform its obligations under its various agreements with CEI;⁸⁸
- (g) the relationship between the Mizrahi Group and CEI has broken down which has and will continue to adversely impact decision-making in respect of Hazelton and preclude monetization of the Property;⁸⁹
- (h) important decisions with respect to the completion and sale of the remaining Hazelton Project units cannot be made due to the breakdown in the relationship between the Mizrahi Group and CEI;⁹⁰ and
- (i) there is a serious risk that the value of the Property will materially decline because of the potential safety and maintenance issues relating to the Hazelton Project and the potential stigma that could become associated with the Hazelton Project.⁹¹

⁸⁶ First Hiscox Affidavit at para 53.

⁸⁷ Reply Hiscox Affidavit at para 15(b).

⁸⁸ First Hiscox Affidavit at para 50.

⁸⁹ Reply Hiscox Affidavit at para 15(c)(B).

⁹⁰ First Hiscox Affidavit at para 53; Reply Hiscox Affidavit at para 15(c)(B).

⁹¹ Reply Hiscox Affidavit at para 15(c)(A).

56. In addition, the appointment of a receiver is also appropriate where a debtor has failed to pay its creditors despite its creditors permitting a reasonable time for payment following the debts becoming due.⁹²

57. In fact, a secured creditor seeking to appoint a receiver is subject to the good faith requirement under section 4.2 of the BIA, and its conduct in events preceding the application is covered by that requirement, where that conduct is factually and temporally connected to the proceedings.⁹³ Where a secured creditor provides the debtor a reasonable length of time for repayment and demands for payment have been issued, it objectively provides a good faith basis for the appointment of a receiver.⁹⁴ Put differently, absent an improper purpose, a secured creditor “pursuing its interests and asserting its rights within the bounds of, and for purposes squaring with, the Canadian insolvency system i.e. recovering its loans” will be considered to be acting in good faith.⁹⁵

58. CEI seeks the appointment of the Receiver in good faith. CEI provided the Debtors with a reasonable length of time for payment and is simply pursuing its interests and asserting its contractual rights. The Debtors have had a reasonable opportunity to pay the debts owing but have not done so. Instead, the nature and extent of the debts continue to mount.⁹⁶

59. Furthermore, the appointment of the Receiver will:

- (a) allow for the completion of the sale of units already subject to agreements of purchase and sale;

⁹² *Bank of Montreal v Sherco Properties Inc.*, [2013 ONSC 7023](#) at [paras 47-48](#).

⁹³ *CWB Maximum Financial Inc v 2026998 Alberta Ltd*, [2021 ABQB 137](#) at [para 59](#) and BIA, [s 4.2](#).

⁹⁴ *Kingsett Mortgage Corporation v 30 Roe Investments Corp.*, [2022 ONSC 2777](#) at [para 34](#).

⁹⁵ *Schendel Management Ltd*, [2019 ABQB 545](#) at [para 35](#).

⁹⁶ First Hiscox Affidavit at paras 28 and 36; Reply Hiscox Affidavit at para 6.

- (b) facilitate the final phase of construction of the Hazelton Project required for completion of units where necessary;
- (c) facilitate the marketing and sale of the remaining Hazelton Project units in order to realize on the value of the Property and repay creditors; and
- (d) preserve the value of the Property and allow for its realization in a transparent manner in the interests of all stakeholders.⁹⁷

60. In all the circumstances, it is just and convenient to appoint the Receiver.

C. The Amended Statement of Claim

61. The Debtors chose not to file substantive affidavit evidence in response to CEI's affidavit evidence and elected not to cross-examine CEI's affiant.

62. Instead, the Debtors filed a series of short, vague affidavits from Mizrahi, the first of which contains nothing more than a bare, unsupported allegation that CEI and its principals have acted in bad faith and breached duties allegedly owed by CEI.⁹⁸ Mizrahi's affidavit and supplementary affidavit also attach a Statement of Claim and an Amended Statement of Claim, which make bare and unparticularized allegations of bad faith.

63. Weeks after Mizrahi's responding evidence was due, he also served a further supplementary affidavit with the bare assertion that the appointment of the Receiver was "unnecessary".⁹⁹ Mr. Hiscox's evidence clearly demonstrates that the assistance of an

⁹⁷ First Hiscox Affidavit at para 57.

⁹⁸ Affidavit of Sam Mizrahi sworn April 5, 2024 ("**First Mizrahi Affidavit**") at para 3 and Exhibit "A".

⁹⁹ Further Supplementary Affidavit of Sam Mizrahi affirmed April 22, 2024 ("**Further Supplementary Mizrahi Affidavit**"). The service of the Further Supplementary Affidavit was purely tactical, and contains evidence that was available at the time that the First Mizrahi Affidavit and the Second Mizrahi Affidavit were affirmed. It should be disregarded by the Court or given very little weight.

independent, court-appointed officer is needed and Mizrahi's own affidavit evidence only bolsters that need.

64. For example, Mizrahi seems to suggest in his evidence—though it's not entirely clear—that *if* the sale of certain condominium units close and *if* further occupancy is achieved, the obligations on Hazelton will be lower and the Indebtedness reduced (though *not* eliminated).¹⁰⁰ However, Mizrahi neglects to contend with the reality that (1) the units are not closed (2) there is no obligation to close, and in some cases, the units have not even been sold much less finished so that they can be sold,¹⁰¹ (3) to close various units, significant discounts and credits have been offered¹⁰² and (4) even if the units do close, *it will not eliminate the Indebtedness*. The total Indebtedness owing exceeds \$44 million, and the total revenue Mizrahi *hopes* Hazelton will receive from the sale of units is approximately \$27 million, none of which takes into the account the additional costs to complete the Hazelton Project, carry the debt while the Hazelton Project is being completed, and pay off the existing unsecured creditors, much less that almost \$13 million of that amount is entirely speculative and relates to units that have not even been sold.¹⁰³

65. In other words, Mizrahi's hopes for revenue would barely make a dent in the outstanding financial obligations even if those hopes somehow materialized in short order and do nothing to address the breakdown in the relationship. Mizrahi himself does not assert to the contrary. His vague and speculative evidence about what could or should have been does not detract from the fact that the Debtors have defaulted on their secured lending obligations and CEI is entitled to seek the appointment of the Receiver in the circumstances under the relevant Loan and Security

¹⁰⁰ Further Supplementary Mizrahi Affidavit at para 2.

¹⁰¹ Mizrahi led no evidence that the units are in a position to close because there is no evidence that notices of occupancy have been issued for each unit, that standard licence fees have been paid, or that the relevant agreements have been signed.

¹⁰² See, for example, Further Supplementary Mizrahi Affidavit Exhibit "A", which shows that the purchaser of unit 402 has been credited \$600,000 because the unit is not habitable and that unit 901 has been discounted \$1,000,000.

¹⁰³ Hazelton is insolvent because there are not enough funds to pay expenses and creditors and Mizrahi did not lead any evidence to support that the deposits or funds are available (which they are not).

Documents. Furthermore, the Amended Statement of Claim also addresses Mizrahi's allegations about occupancy and closing, such that a court will have the opportunity to fully consider the matter on a full evidentiary record.¹⁰⁴

66. Mizrahi's bare allegations of bad faith and the mere existence of the Amended Statement of Claim do not detract from the need and propriety of the appointment of the Receiver.

67. The courts have been clear that allegations of bad faith against the applicant in a receivership application that are unproven, uncertain or vague will not lead to a finding of bad faith.¹⁰⁵

68. In *Vancouver Coastal*,¹⁰⁶ the Supreme Court of British Columbia recently considered a contested receivership application where the respondent argued that the receivership order should not be granted because it had filed a civil claim against the applicant in the weeks leading up to the hearing. In the civil claim, the respondent alleged breach of the duty of honest contractual performance and that the applicant and other defendants conspired to cause the respondent to suffer financial distress so as to create conditions for the applicant's "hostile takeover" of the respondent's operations. The respondent sought damages and an injunction to restrain the applicant from seeking the appointment of a receiver.

69. In appointing a receiver, the Court rejected the respondent's arguments because the civil claim did not attack the validity of the loan and security documentation or the amount of the debts.

The civil claim simply sought damages. In particular, the Court held:

Yet, the relief sought in the NOCC [Notice of Civil Claim] does not attack the validity of the loan and security documentation; nor is the amount of the debt and loans put in dispute. The NOCC only seeks a stay of any enforcement proceeding. What I

¹⁰⁴ Further Supplementary Mizrahi Affidavit at para 3.

¹⁰⁵ See for example, *Carnival National* at [para 32](#), *Pandion Mine Finance Fund LP v Otso Gold Corp.*, [2022 BCSC 136](#) at paras [62-64](#) [*Pandion*] and *Vancouver Coastal Health Authority v Seymour Health Centre Inc.*, [2023 BCSC 1158](#) at [paras 120-123](#) [*Vancouver Coastal*].

¹⁰⁶ *Vancouver Coastal Health Authority v Seymour Health Centre Inc.*, [2023 BCSC 1158](#) [*Vancouver Coastal*].

take from this pleading and counsel's submissions is that Seymour Health's overall strategy appears to be that it hopes to prosecute its claim against the defendants and, assuming the petition is converted to a trial, file a counterclaim to this proceeding. From there, if and when Seymour Health is successful in proving its allegations, the damage award will be offset against the amounts owing to VCH.

[...] What the defendant seeks is not really a defence to the debt or contractual claim to security; rather, it is an entirely separate cause of action that may give rise to a counterclaim to set off against the debt owing.¹⁰⁷ (emphasis added)

70. In deciding to appoint the receiver in that case, the Court cited *Western Holdings*,¹⁰⁸ where the British Columbia Court of Appeal stated that even where there is a bona fide dispute concerning the debt and/or security, a receiver may be appointed in circumstances where there is evidence of serious potential prejudice or jeopardy to a creditor's rights to recover under its claim and security interest.¹⁰⁹ The Court in *Vancouver Coastal* then went on to distinguish the cases cited by the respondent to refuse or adjourn the appointment of a receiver pending resolution of a *bona fide* dispute since in *Vancouver Coastal* – as in this case – the property subject to the applicant's security was in jeopardy and there were important interests at risk, including those of the applicant and others.¹¹⁰

71. Similarly, the Supreme Court of British Columbia in *Pandion Mine*¹¹¹ also recently appointed a receiver in the face of litigation by a shareholder of the respondent alleging conspiracy and bad faith. In appointing a receiver, the Court held:

Brunswick's [the plaintiff shareholder of the respondent] allegation that Pandion engaged in a conspiracy is disputed. I

¹⁰⁷ [Vancouver Coastal](#) at paras 125-126. In addition to seeking a "stay of any enforcement proceeding" the respondent plaintiff's notice of civil claim sought millions of dollars in damages against the applicant defendant: see [Vancouver Coastal](#) at para 2.

¹⁰⁸ *Western Holdings Corp v Brosseuk*, [2022 BCCA 32](#).

¹⁰⁹ [Vancouver Coastal](#) at paras 127.

¹¹⁰ [Vancouver Coastal](#) at paras 128-9.

¹¹¹ *Pandion Mine Finance Fund LP v Otso Gold Corp*, [2022 BCSC 136](#).

am unable to determine on this application whether it is well founded.

I cannot find that Pandion is pursuing its claim against Otso and seeking appointment of a receiver in bad faith. Whether or not Pandion is liable to Brunswick, it is undisputed that Otso owes more than US\$25 million to Pandion. It is undisputed that Pandion has the status of a secured creditor. **(emphasis added)**

72. Similar to *Vancouver Coastal*, Retail does not attack the validity of the Loan and Security Documents or the amount of the Indebtedness in the action—it simply seeks damages. Retail does not challenge the appointment of the Receiver and importantly Hazelton is not even a party to that action. Simply put, baseless and unparticularized allegations of bad faith in the tactically issued Amended Statement of Claim are not reasons to deny the appointment of the Receiver. In any event, the appointment of the Receiver will not prejudice or end the plaintiffs' ability to advance the claims set out in the Amended Statement of Claim against CEI and its principals, which will be vigorously defended.

PART IV - ORDER REQUESTED

73. CEI submits that for these reasons, it is just and convenient to appoint KSV as Receiver of the Property. CEI respectfully requests an order substantially in the form attached at Tab 1.A of the Application Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of April, 2024.

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Lawyers for the Applicant

This is **Exhibit “HH”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N" and "M".

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-24-00715326-00CL DATE: 13-MAY-2024
CV-24-00715321-00CL

NO. ON LIST: 3 / 4

TITLE OF PROCEEDING: **Constantine Enterprises Inc. v. Sam M LP Inc. et al, and related matters.**

BEFORE: **Mr. Justice Cavanagh**

PARTICIPANT INFORMATION

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For Responding Parties / Others:

Name of Person Appearing	Name of Party	Contact Info
Steve Weisz	Lawyer for the Respondents (Sam M LP Inc., Mizrahi 128 Hazelton Inc., et al)	sweisz@cozen.com
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ENDORSEMENT OF JUSTICE CAVANAGH:

Introduction

- [1] Constantine Enterprises Inc. (“CEI”) brings two separate applications for the appointment of a receiver. The applications involve related respondents who were represented by the same counsel. The applications were heard together.
- [2] The Notice of Application in the first application was issued on February 22, 2024. The Respondents are Mizrahi (128 Hazelton) Inc. and Mizrahi 128 Hazelton Retail Inc. I refer to this application as the “Hazelton Application”.
- [3] The Notice of Application in the second application was issued on February 23, 2024. The Respondents are Sam M (180 SAW) LP Inc. and Sam M (180 SAW) Inc. I refer to this application as the “SAW Application”.
- [4] Sam Mizrahi is a principal of the Respondents in each application. He was separately represented at the hearing of these applications.

Analysis

- [5] I address the two related applications separately. I first address the Hazelton Application.

Parties to Hazelton Application

- [6] CEI as a secured creditor seeks the appointment of KSV Restructuring Inc. (“KSV”) as receiver and manager over certain real property and all assets, undertakings, and properties of the Respondents Mizrahi (128 Hazelton) Inc. and Mizrahi 128 Hazelton Retail Inc.
- [7] CEI is a Toronto-based private real estate fund dedicated to acquiring, developing and managing properties in Canada and abroad. Since 2015, CEI has assisted in the financing of a project to develop properties located at 126 Hazelton Avenue, Toronto and 128 Hazelton Avenue, Toronto (the “Hazelton Project”).
- [8] Mizrahi (128 Hazelton) Inc. (“Hazelton”) is the registered owner of the real property comprised of certain condominium units located at 126 Hazelton Avenue, Toronto and 128 Hazelton Avenue, Toronto (the “Real Property”).
- [9] The Real Property is Hazelton’s primary asset and is made up of certain premises in relation to a nearly complete nine-story, 20-unit luxury condominium development project located in Toronto’s Yorkville neighbourhood including commercial retail space on the ground floor and three levels of underground parking. Hazelton developed and constructed the Hazelton Project and is the registered owner of 10 condominium units and the one ground floor commercial retail space, and the parking spaces allocated to the units at the retail space which collectively make up the Real Property.
- [10] Mizrahi 128 Retail Inc. (“Retail”) is a party to an agreement of purchase and sale between Retail (as assigned by Mizrahi Inc. to Retail), as purchaser, and Hazelton, as vendor, pursuant to which Retail has a right to purchase a unit intended for use as a professional office space, together with four parking spaces and one locker, for \$2,393,000 (the “Retail APS”).

Indebtedness owing to CEI

- [11] As of February 29, 2024, Hazelton is indebted to CEI in the amount of \$13,015,116.36 plus accruing interest after that date and legal fees and expenses from before and after that date (the “Hazelton Priority Indebtedness”) pursuant to indebtedness originally owed to DUCA Financial

Services Credit Union Ltd. (“DUCA”). To secure payment of the Hazelton Priority Indebtedness, Hazelton granted security over its property to DUCA which subsequently assigned such security and the Hazelton Priority Indebtedness to CEI on February 1, 2024.

- [12] As of February 29, 2024, Hazelton is indebted to CEI in the amount of \$31,041,763.16 plus interest continuing to accrue from and after that date and legal fees and expenses from before and after that date pursuant to the 2015 Credit Agreement, the indebtedness in respect of which is secured and subordinate to the Hazelton Priority Indebtedness (the “Hazelton Subordinate Indebtedness”).
- [13] As of February 29, 2024 Retail is indebted to CEI in the amount of \$2,854,278 plus accruing interest after that date and legal fees and expenses from before and after that date pursuant to a promissory note issued by Hazelton in favour of CEI (the “Retail Indebtedness”). To secure payment of the Retail Indebtedness, Retail granted to CEI a security interest over its property.
- [14] In addition to this security granted in favour of CEI, Hazelton granted security in its personal property and a second priority mortgage to Aviva for certain deposit insurance indemnification obligations (subordinate to CEI’s security in respect of the DUCA commitment), securing the maximum amount of \$18,500,000.
- [15] Hazelton is also indebted to CEI pursuant to what are described as the “2020 Grid Note” and the “2021 Grid Note”, in the aggregate principal amount of \$3,200,000 and \$1,500,000, respectively.
- [16] There are also certain other construction liens registered on title to the Real Property. The indebtedness relating to a construction lien registered on title by Ozz Electric Inc. on January 31, 2024 was recently purchased by CEI and the related registration of title has been removed.

Enforcement of security by DUCA

- [17] On October 8, 2023, Hazelton breached the DUCA commitment by failing to vacate or discharge a construction lien registered on title to the Real Property within ten days of registration.
- [18] On December 6, 2023, DUCA delivered a demand to Hazelton. On January 19, 2024, DUCA commenced a receivership application to appoint a receiver and manager over all of the assets, undertakings and properties of Hazelton.
- [19] On February 1, 2024, DUCA assigned its rights, benefits and interest in and to the DUCA commitment and DUCA Security to CEI pursuant to a debt purchase agreement. As a result, on February 9, 2024, DUCA obtained an order dismissing its receivership application without prejudice.

Position of CEI

- [20] CEI has provided evidence that it has lost confidence in the ability of the Mizrahi Group to perform its obligations under its various agreements with CEI, including the loan and security documents. CEI notes that the Mizrahi Group has had a considerable amount of time to pay the indebtedness, including since the issuance of demands and the commencement of this application, but they have failed to do so.
- [21] CEI submits that without the appointment of a Receiver, Hazelton’s expenses will not be paid unless CEI continues to directly pay costs on account of Hazelton to preserve and protect its collateral, including condominium fees and amounts required to complete the Hazelton Project units so they can be sold. CEI submits that if Hazelton’s expenses are not paid in a timely manner,

there is a significant risk that the value of the Property will be materially diminished because of the potential safety and maintenance issues relating to not properly maintaining the building and the potential stigma that could be, associated with the Hazelton Project, where there are vacancies in the building because construction of the units is not completed for an extended period of time.

[22] In addition to these defaults, CEI recently issued a capital call notice to Mizrahi Developments Inc. (“MDI”) pursuant to the Contribution Agreement. The purpose of the capital call was to request the additional funds required to complete and sell the Hazelton Project units, which amounts were required to be paid by March 14, 2024. MDI failed to make the contributions.

[23] CEI’s intention is for the Receiver to take steps to complete the sale of units already subject to agreements of purchase and sale, to facilitate the final phase of construction of the Hazelton Project required for completion of units when necessary, and to facilitate the marketing and sale of the remaining condominium units in order to realize on the value of the Property and repay creditors. CEI anticipates that the Receiver, if appointed, will bring a motion for approval by the court of a sales process in connection with such realization efforts and enhance transparency.

[24] CEI submits that it has met the technical requirements for the appointment of a receiver under the BIA and that it is just and convenient for a receiver to be appointed under the BIA and CJA in the circumstances.

Position of the Mizrahi Respondents

[25] The Mizrahi Respondents says that the construction of the condominium for the Hazelton Project is nearly complete and only two units remain to be sold. The other eight units are sold but not yet closed.

[26] The Mizrahi Respondents contend that for an extended period of time, in an effort to pay down the indebtedness and reduce condominium fees payable by Hazelton, MDI has been requesting CEI to proceed with the closing of the sold units. The Mizrahi respondents contend that CEI has refused to proceed with closing of these units which has resulted in Hazelton’s exposure to pay condominium fees, inability to pay down the secured debt and interest liability under the DUCA loan.

[27] The Mizrahi Respondents say that the parties appear to be proceeding with the path forward for which a receiver is not necessary.

Mizrahi legal action

[28] A Statement of Claim was recently issued by the Respondents, among others, as plaintiffs against CEI, Robert Hiscox and Edward S. Rogers III. In the Statement of Claim, the plaintiffs allege, in connection with the Hazelton Project, that CEI, Mr. Hiscox and Mr. Rogers took steps to prevent the indebtedness of the Hazelton Project to be repaid. The plaintiffs allege that, in response to a capital call made by CEI under the Shareholder Agreement for Hazelton, Mizrahi Development Inc. responded that no additional capital is required to exit the Hazelton Project. The plaintiffs allege that instead of closing on the sold units, CEI has proceeded with this receivership application, which comes at a substantial cost to Hazelton and the Hazelton Project.

[29] The Mizrahi Respondents rely on the claim in the Statement of Claim that there is no indebtedness owed to CEI. They say, on the strength of the pleaded allegations, that there is a legitimate dispute over the existence of the indebtedness claimed by CEI.

- [30] The Respondents rely on allegations in the Statement of Claim to submit that CEI, Mr. Hiscox and Mr. Rogers have failed to act in good faith.
- [31] In *Vancouver Coastal Health Authority v. Seymour Health Centre Inc.*, 2023 BCSC 1158, the respondents to an application for the appointment of a receiver filed a civil claim for damages against the applicant in the weeks leading up to the hearing of the application. The respondents alleged that the applicant and other defendants had acted in bad faith. They sought damages and an injunction to restrain the applicant from seeking the appointment of a receiver. The court, at para. 126-134, rejected this argument on the ground that the respondents' claim was not really a defence to the debt or contractual claim to security; rather, it is an entirely separate cause of action that may give rise to a counterclaim to set off against the debt owing. Other circumstances attenuated the respondents concerns that a receivership would prejudice its ability to advance its claims.
- [32] The allegations in the Statement of Claim are not evidence. I do not give weight to these pleaded allegations on these applications. The plaintiffs in the civil action are free to pursue the action, but the claims as pleaded do not show that it is not just or convenient for a receiver to be appointed in the circumstances.
- [33] The Mizrahi Respondents submit that this is a partnership dispute and not a conventional creditor and debtor relationship. They submit that it is not just or convenient for this Court to appoint a receiver in all of the circumstances. They submit that:
- a. CEI is effectively the only creditor with respect to the Hazelton Project;
 - b. the Hazelton Project is nearly complete with almost all units sold in the appointment of a receiver is not needed to complete the sale of these already sold units;
 - c. there is no evidence that the Mizrahi Respondents are not cooperating with CEI, or are interfering with furthering the completion of the Hazelton Project. The Mizrahi Respondents rely on the allegations in the Statement of Claim that conduct on the part of CEI amounts to bad faith in its capacity as a shareholder of Hazelton.
- [34] Section 243(1) of the *BIA* and section 101 of the *CJA* each provide for the appointment of a receiver where it is "just or convenient".
- [35] It is well-established that the ordinary nature of the appointment of a receiver as a remedy is "significantly reduced when dealing with a secured creditor who has the right to a receivership under its security arrangements [...]. The relief becomes even less extraordinary when dealing with a default under a mortgage". See *BCIMIC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953, at para. 43.
- [36] Where the creditor's security provides for the appointment of a receiver, there is no requirement for the applicant to establish that it will suffer irreparable harm if the proposed receiver is not appointed. See *Bank of Montreal v. Carnival National Leasing Limited*, 2011 ONSC 1007, at paras. 24 and 28.
- [37] In *C & K Mortgage et al. v. 11282751 Canada Inc. et al.*, 2024 ONSC 1039, Osborne J. set out the following factors that have historically been taken into account in the determination of whether it is appropriate to appoint a receiver:

- a. whether irreparable harm might be caused if no order is made, although as stated above, it is not essential for a creditor to establish irreparable harm if a receiver is not appointed where the appointment is authorized by the security documentation;
- b. the risk to the security holder taking into consideration the size of the debtor's equity in the assets and the need for protection or safeguarding of assets while litigation takes place;
- c. the nature of the property;
- d. the apprehended or actual waste of the debtor's assets;
- e. the preservation and protection of the property pending judicial resolution;
- f. the balance of convenience to the parties;
- g. the fact that the creditor has a right to appointment under the loan documentation;
- h. the enforcement of rights under a security instrument where the security-holder encounters or expects to encounter difficulties with the debtor;
- i. the principle that the appointment of a receiver should be granted cautiously;
- j. the consideration of whether a court appointment is necessary to enable the receiver to carry out its duties efficiently;
- k. the effect of the order upon the parties;
- l. the conduct of the parties;
- m. the length of time that a receiver may be in place;
- n. the cost to the parties;
- o. the likelihood of maximizing return to the parties; and
- p. the goal of facilitating the duties of the receiver.

[38] Osborne J. explained, at para. 20, that these factors are not a checklist but a collection of considerations to be viewed holistically in an assessment of whether, in all the circumstances, the appointment of a receiver is just or convenient.

[39] The Mizrahi Respondents submit that CEI should exercise other contractual rights than those that allow for the appointment of a receiver.

[40] CEI is the primary secured creditor of the Respondents. Notices of intention to enforce security were delivered to the Respondents and the ten-day periods for payment have expired.

[41] KSV is qualified to act as Receiver in accordance with subsection 243(4) of the BIA and has consented to act.

[42] CEI is a secured creditor and has security over the Property. CEI has shown that the Mizrahi defendants are indebted to it, that they are in default of their obligations in relation to such indebtedness, and that its security provides for the appointment of a receiver in these circumstances.

[43] I accept CEI's evidence that it has lost confidence in the Mizrahi Respondents. I reject the submission made by the Mizrahi Respondents that the parties are working together and will be able to complete the Hazelton Project without the need for the appointment of a Receiver. The fact that serious allegations are being made in the Statement of Claim, which CEI denies, supports CEI's position that they have lost confidence in the Mizrahi Respondents and that a receiver is needed.

[44] CEI has provided the Respondents with a reasonable length of time for payment. CEI is asserting its contractual rights to seek the appointment of a receiver in these circumstances. The appointment of a receiver will (a) allow for the completion of the sale of units already subject to agreements of purchase and sale, (b) facilitate the final phase of construction of the Hazelton project required for completion of units where necessary, (c) facilitate the marketing and sale of the remaining Hazelton Project units in order to realize value of the Property and repay creditors, and (d) preserve the value of the Property and allow for its realization in a transparent manner in the interests of all stakeholders.

[45] I am satisfied that it is just and convenient for KSV to be appointed as receiver of the Property in the Hazelton Application.

[46] I now turn to the SAW Application.

Parties to SAW Application

[47] Mizrahi Constantine (180 SAW) LP (the "Partnership") is a limited partnership that owns property at 180 Steeles Avenue West, Toronto. The general partner of the partnership is Mizrahi Constantine (180 SAW) Inc. ("General Partner").

[48] Sam M (180 SAW) LP Inc. ("Mizrahi Partner") owns a one-third interest in the Partnership. CEI owns a two-thirds interest in the Partnership. Sam M (180 SAW) Inc. ("Mizrahi Shareholder") owns 50% of the shares of the General Partner. CEI owns 50% of the shares of the General Partner.

[49] CEI, is a secured creditor, seeks the appointment of KSV as receiver over the partnership interest of SAM M (180 SAW) LP Inc. (the "Mizrahi Partner") and all shares in the capital of Mizrahi Constantine (180 SAW) Inc. (the "General Partner") owned by SAM M (180 SAW) Inc. (the "Mizrahi Shareholder"), including all dividends, distributions, and related proceeds, pursuant to subsection 243 (1) of the BIA and section 101 of the CJA.

[50] Mizrahi Partner is a borrower or guarantor of the Indebtedness and has pledged his interest in the Partnership in respect of those obligations.

[51] The Mizrahi Shareholder is a guarantor under the 18 ESA W Loan and 18 ESA W Note and has pledged shares in the General Partner in respect of those obligations.

[52] The General Partner is the general partner of the Partnership. Mr. Mizrahi and CEI's nominee, Robert Hiscox, are the only directors and officers of the General Partner. The shares in the capital of the General Partner are held 50% by the Mizrahi Shareholder and 50% by CEI. Decision-making respect of the General Partner is equal among the shareholders, and the shareholders' relationship is governed by a unanimous shareholders agreement.

[53] The Partnership is a limited partnership. The Mizrahi Partner and CEI are its limited partners. The partnership interests in the Partnership are held one-third by Mizrahi Partner and two-thirds by CEI.

- [54] The Partnership is the owner of property at 180 Steeles Avenue West, Toronto (the “180 Steeles Real Property”). The 180 Steeles Project is currently in the development phase with rezoning being pursued to convert the current use of the 180 Steeles Real Property as a large plaza to its new intended use as a condominium building.
- [55] Mizrahi SPV is the borrower under the SPV Loan. The shares in the capital of Mizrahi SPV are wholly-owned by Mr. Mizrahi or his designee.
- [56] Mr. Mizrahi is the President and sole director and officer of Mizrahi Partner, Mizrahi Shareholder, and Mizrahi SPV. He is also the principal of the Mizrahi Group, a group of development companies engaged in condominium development and building.

Indebtedness

- [57] A summary of the indebtedness owed to CEI (the “Indebtedness”) and the security structure, including the defaults that have not been cured and the notices sent and demands for payment made are described in the first affidavit of Robert Hiscox and summarized in CEI’s factum at para. 16.
- [58] The SAW Loans and the SPV Loan matured on August 31, 2022. Following maturity, and attempts to seek repayment from the Debtors, CEI delivered demand letters and notices of intention to enforce security under s. 244 of the *BIA* to the Debtors, Mizrahi SPV, and respective guarantors on September 22, 2022.
- [59] Mr. Hiscox’s evidence is that since September 2022, CEI had taken steps to cooperate with the Mizrahi Group, including the Debtors, to preserve their business relationship and attempt to maximize the value of the 180 Steeles Project. However, nearly \$29 million remains outstanding, which includes the contributions that CEI made on behalf of the Mizrahi Partner under the Partnership Agreement since October 2023, when the Mizrahi Partner failed to make its required contributions in the amount of \$166,667 monthly. Mr. Hiscox’s evidence is that Mizrahi Partner continues to be in default of its required monthly contribution amounts and CEI has no confidence that Mizrahi Partner will make those required contributions in the future.
- [60] Searches conducted on behalf of CEI under the *Personal Property Security Act* against each of the Debtors discloses only the following registrations:
- a. a registration in favour of CEI against Mizrahi Partner,
 - b. a registration in favour of Mizrahi Shareholder against Mizrahi Partner, and
 - c. a registration in favour of MDI against Mizrahi Shareholder.
- [61] In addition to the amounts owing to CEI, the Partnership is indebted to a second mortgagee in the approximate amount of \$20 million, and a first mortgagee – CWB - in the amount of a proximately \$78 million. The loans advanced by these mortgagees remained outstanding and the capital contributed by the limited partners has not been withdrawn.

Breakdown of relationship

- [62] Mr. Hiscox has provided evidence that CEI has lost confidence in the ability of the Mizrahi Group to perform its obligations under its various agreements with CEI and has lost confidence in Mr. Mizrahi as a partner and developer.

- [63] The development of the Steeles Project is at a halt. CEI has determined that the most direct path to repayment of the Indebtedness was for the Partnership to sell the 180 Steeles Project. CEI engaged various efforts to market the Property for sale but the sales process failed to result in any viable offers.
- [64] CEI submits that there is no viable path forward for a sale transaction or any reasonable prospect of completing a sale of the 180 Steeles Project in the near future that would result in CEI being repaid its indebtedness in full. CEI submits that there is a significant risk that the value of the Property will be materially diminished because of continued development delays and/or enforcement by CWB or Trez of their respective mortgages in connection with the 180 Steeles Project.
- [65] CEI submits that there is no reason to believe that his right Partner will fulfil its financial obligations moving forward stop it submits that without the appointment of a receiver, the Partnership's expenses will not be paid unless CEI contributes the entire amount to preserve and protect his collateral, and both Mr. Mizrahi and CEI agree on how such funds should be expended.
- [66] Mr. Hiscox's evidence is that there is a significant risk to enforcement steps being taken under the mortgages registered on title to the 180 Steeles Real Property by the mortgagees. The occurrence of default under either of the mortgages would entitle each of the mortgagees to take enforcement action, which would present a significant risk that the value of the Property will be materially diminished.
- [67] Mr. Mizrahi has provided evidence that CWP is in the process of renewing its lending facility. The renewal term includes an extension only to September 3, 2024 with a significant renewal fee. The renewal terms also require "a full covering personal liability guarantee" from Mr. Edward Rogers and CEI in support of the loan and the "granting of the one (1) six-month extension option [is] subject to material progress have a good made toward resolution of the Receivership". Similarly, the other mortgagee, Trez, recently offered a brief extension on its lending facility and a number of conditions precedent to that extension have not been satisfied.
- [68] This evidence shows that the mortgagees are amenable to brief extensions provided certain conditions are satisfied in the Partnership continues to comply with its obligations. The ability of the Partnership to do so depends on it being funded and being able to make decisions.
- [69] CEI's intention is for the Receiver to realize on the value of the Property and to repay CEI. CEI dissipates that the Receiver, if appointed, will bring a motion for approval by the Court of a sale process in connection with such realization efforts.
- [70] The technical requirements to appoint a receiver under the *BIA* have been satisfied.
- [71] Section 20 of the Pledges specifically provide that CEI's entitled to the appointment of a receiver in the event of default.

Position of Respondents

- [72] The Respondents submit that it is unnecessary for the court to intervene in what they submit is a partnership dispute and appoint a receiver. They submit that the security held by CEI provides extensive remedies, including taking possession of the collateral and exercising the Respondents' voting rights to effectively take control of the Partnership and the 180 Steeles Project. The Respondents submit that there is no evidence that they have not cooperated or would not cooperate in the development of the 180 Steeles Project. The Respondents submit that the appointment of a

receiver will not address the potential harm or alleged deterioration of the 180 Steeles Project. The Respondents submit that the appointment of a receiver is not just or convenient.

[73] The Respondents rely on allegations in the Statement of Claim that CEI, Mr. Hiscox and Mr. Rogers rejected offers for the 180 Steeles Project which would have retired the indebtedness owed to CEI in connection with the 180 Steeles Project and earned a profit. They rely on pleaded allegations that CEI blocked a sale of the 180 Steeles Project so that CEI could be in a position to eliminate the Respondents' one-third interest in the 180 Steeles Project.

[74] Pleadings are not evidence and I do not treat the allegations made in the Statement of Claim as evidence on this application.

[75] I have considered the various factors set out in *C & K Mortgage* holistically. The development of the 180 Steeles Project is halted. I accept the evidence of Mr. Hiscox that there has been a breakdown of the relationship between CEI and the Mizrahi Group.

[76] I am satisfied that it is just and convenient for this Court to appoint a Receiver over the Property because (a) CEI's aggregate secured indebtedness is approximately \$28.9 million in relation to Mizrahi Partner and Mizrahi Shareholder; (b) defaults have occurred and are continuing under various loans and security documents, (c) CEI is entitled to seek the appointment of a receiver pursuant to the terms of the pledges; (d) there does not appear to be sufficient assets available to satisfy the Respondents' secured creditors; (e) Mizrahi Partner has failed to make the required contributions to the Partnership such that the Partnership will not have sufficient funds to advance the development of the 180 Steeles Project; (f) the relationship between the Mizrahi group and CEI has broken down; (g) there is a real risk that the Property will decline in value if a receiver is not appointed to stabilize the situation; and (h) the appointment of a receiver will not end the plaintiffs' ability to pursue their claims made in the Statement of Claim.

[77] I am satisfied that the appointment of the Receiver would preserve the value of the Property and ensure that it is realized upon in an orderly, transparent manner, for the benefit of CEI and other stakeholders. Delay in the appointment of the receiver materially increases the risk of development delays and enforcement by CWP or Trez of their respective mortgages.

Disposition

[78] For these reasons:

- a. Order to issue in the Hazelton Application in the form signed by me today.
- b. Order to issue in the SAW Application in the form signed by me today.

[79] Mr. Mizrahi made submissions at the hearing about his interpretation of the word "records" in the proposed form of order in the Hazelton Application and his opposition to producing information on records that are not project related. I note these submissions. He does not ask for changes to the proposed forms of order in this respect.

Cavanagh J

This is **Exhibit "II"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow", written in a cursive style.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

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 "**Indemnatee**") 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 Indemnatee 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.

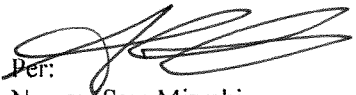
MIZRAHI DEVELOPMENTS INC.

X

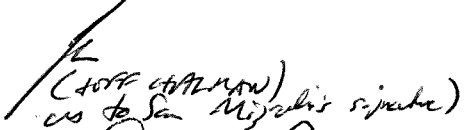
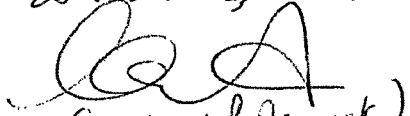
Per: 
Name: Sam Mizrahi
Title: President
I have authority to bind the Corporation

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

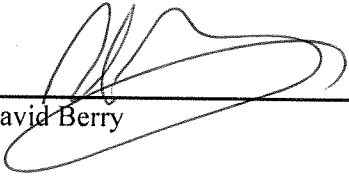
MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

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

Contents	1
1 Executive Summary.....	2
2 Proforma Budget Summary	3
3 Projected Revenue	4
4 Source of Funding.....	5
5 Preliminary Construction Cost Estimate.....	6
6 Project Statistics	7



1 Executive Summary



Altus Group

98 Residential Suites, Mixed Use Condominium
 1451 Wellington Street West
 Ottawa, Ontario

Proforma
 100379
 19-Jan-16

Executive Summary

**Analysis
 Based on
 \$715/sf**

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%



2 Proforma Budget Summary



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			
				Efficiency = 79.10%		Garage = 33.2% Average Suite 1,042	
				205,117 Cost per sf GFA	136,917 Cost per sf GLA	108,306 Cost per sf 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

Key Performance Indicators
Efficiency = 79.10% Garage = 33.2%
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 sf NSA/NLA	98 Cost per Suite
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	72,431,118	353.12	529.01	668.76	739,093
GROSS EXPENDITURES (A)							
		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)
		OFFSETTING INCOME (B)	(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)							
		Check	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 Date
 Proforma 100379
 19-Jan-16

Preliminary Reveue Calculation

Residential	Area	No.	Price/SF	
Suites Sold	0	-	-	per sf (Bella's Bistro) 0
Suites Sold			715	per sf 0
Suites Unsold	108,306	98	715	per sf 77,439,128
Suites Total	108,306	98	715	per sf 77,439,128 A

Parking	Area	No.	Price/SF	
	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 0
	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	82,689,128	A+B
Net HST Payable		9.86%	(7,421,398)	
Net Sales Revenue			75,267,730	

Commercial	Area	Price/SF	
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	Amount
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



Altus Group

98 Residential Suites, Mixed Use Condominium
1451 Wellington Street West
Ottawa, Ontario

Report Proforma
Project 100379
Date 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	71,500,000	100.00%

Insured Residential Deposits

Assume 70% Presales	57,882,389	98 Total Units
Assumed 15% deposits	8,682,358	69 Sold Tarion Units
Required	8,600,000	

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	2,000,000



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.



3. Divisional Summary



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%							
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	

		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%		EXCLUDED	\$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	\$0.00	\$0	0.0%
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							

		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%
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
E.O. balcony sliding doors - Included in windows	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		

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

1451 Wellington Street West
Ottawa, ON

Date: 11/26/2015
Job No: 100379

Notes:

- This estimate was based on architectural drawings dated Oct 05, 2015, and project statistics Dated Nov 19, 2015

Description

Included:

- 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	

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

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

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)

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	

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

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

Electrical Estimate Summary - (O of M)DescriptionIncluded:

- 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

Parking

Description	Quantity	Rate	Amount
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

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	

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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Project : 1451 Wellington Street West

100379

Location: Ottawa, ON

Parking

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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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

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

Project : 1451 Wellington Street West

\$ 100,379.00

Location: Ottawa, ONTower

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 Devices	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

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	576

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

This is **Exhibit “JJ”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

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,

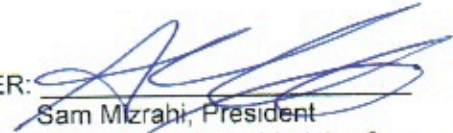
BORROWER:

MIZRAHI DEVELOPMENTS INC.

PER: 
Sam Mizrahi, President
I have authority to bind the Corporation

GUARANTOR:

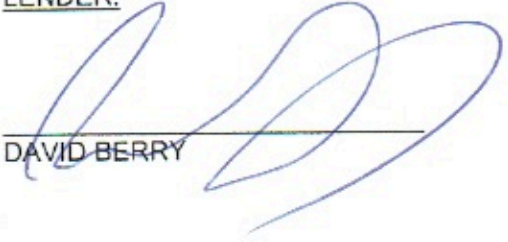
MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

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

This is **Exhibit “KK”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

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

This is **Exhibit “LL”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow", written in a cursive style.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

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.

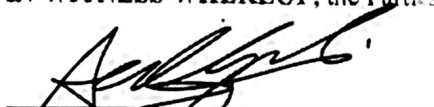
6.7 Term

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.

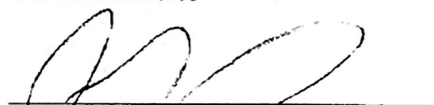
6.8 Notwithstanding

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.

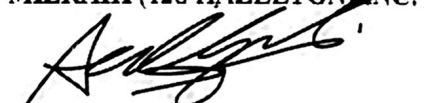
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.



SAM MIZRAHI

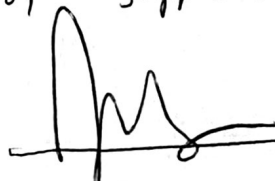


DAVID BERRY


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

468

CONFIDENTIALITY AGREEMENT

This agreement ("**Agreement**") is made the 28 day of June, 2016 (the "**Effective Date**").

BETWEEN: DAVID BERRY, of the City of Toronto in the Province of Ontario
(hereinafter referred to as "**David**")

AND SAM MIZRAHI, of the City of Toronto in the Province of Ontario
(hereinafter referred to as "**Sam**")

RECITALS

WHEREAS David, Sam, Mizrahi Developments Inc. ("**MDI**") and Mizrahi Development Group (1451 Wellington) Inc. ("**Wellington Inc.**") have entered into a term sheet (the "**Term Sheet**") whereby David has agreed to loan MDI the aggregate amount of ten million dollars (\$10,000,000) (the "**Loan Transaction**");

AND WHEREAS on or about the date of execution of this Agreement, David, Sam, MDI and Wellington Inc. have, or shall, enter into a loan agreement, personal guarantee, general security agreements and other ancillary documents to consummate the Loan Transaction;

AND WHEREAS David, Sam and Mizrahi (128 Hazelton) Inc. entered into a Supplementary Agreement relating to certain supplemental security and obligations with respect to the Loan Transaction, which Supplementary Agreement is intended to be strictly confidential

NOW THEREFORE, in consideration of the background, the mutual covenants contained herein, and other good and valuable consideration (the receipt and sufficiency of which are acknowledged by the Parties), the Parties agree as follows:

SECTION 1 - CONFIDENTIALITY

It is understood by the parties hereto that the Supplementary Agreement is intended to be confidential in nature. In the event that it has been finally determined by a court of competent jurisdiction from which no appeal lies that David has disclosed the existence and terms of the Supplementary Agreement by delivering a signed copy of the Supplementary Agreement to any third parties who were not otherwise aware of the Supplementary Agreement, David shall forfeit (i) repayment of all amounts due and owing under Loan Facility #1 and Loan Facility #2, and (ii) his right to exercise the warrant which shall be delivered to him on consummation of the Loan Transaction entitling David to obtain twenty five percent (25%) of the Net Profits in the Project.

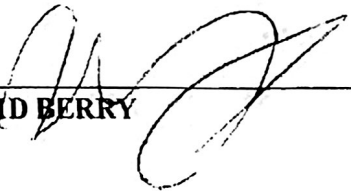
Notwithstanding the foregoing, David shall be entitled to disclose the existence and/or terms of the Supplementary Agreement and deliver a copy of same to his accountants, lawyers and other professional advisors (on a need-to-know basis), and such disclosure shall not be considered a violation of this Section 1. In addition, disclosure of the existence and/or terms of the Supplementary Agreement by David (which includes by way of delivering a copy of same) with the consent of Sam, or disclosure of the existence and/or terms of the Supplementary Agreement by David (which includes by way of delivering a copy of same) subsequent to any disclosure of the Supplementary Agreement by Sam, or disclosure of the existence and/or terms of the Supplementary Agreement by David (which includes by way of delivering a copy of same) pursuant to an order of a court of competent jurisdiction, or disclosure of the existence and/or terms of the Supplementary

Agreement by David (which includes by way of delivering a copy of same) as required by law, or disclosure of the existence and/or terms of the Supplementary Agreement by David (which includes by way of delivering a copy of same) in connection with enforcement of this Supplementary Agreement or any other agreement or document delivered in connection with the Loan Transaction, shall not be considered a violation of this Section 1.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.



SAM MIZRAHI



DAVID BERRY

This is **Exhibit “MM”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

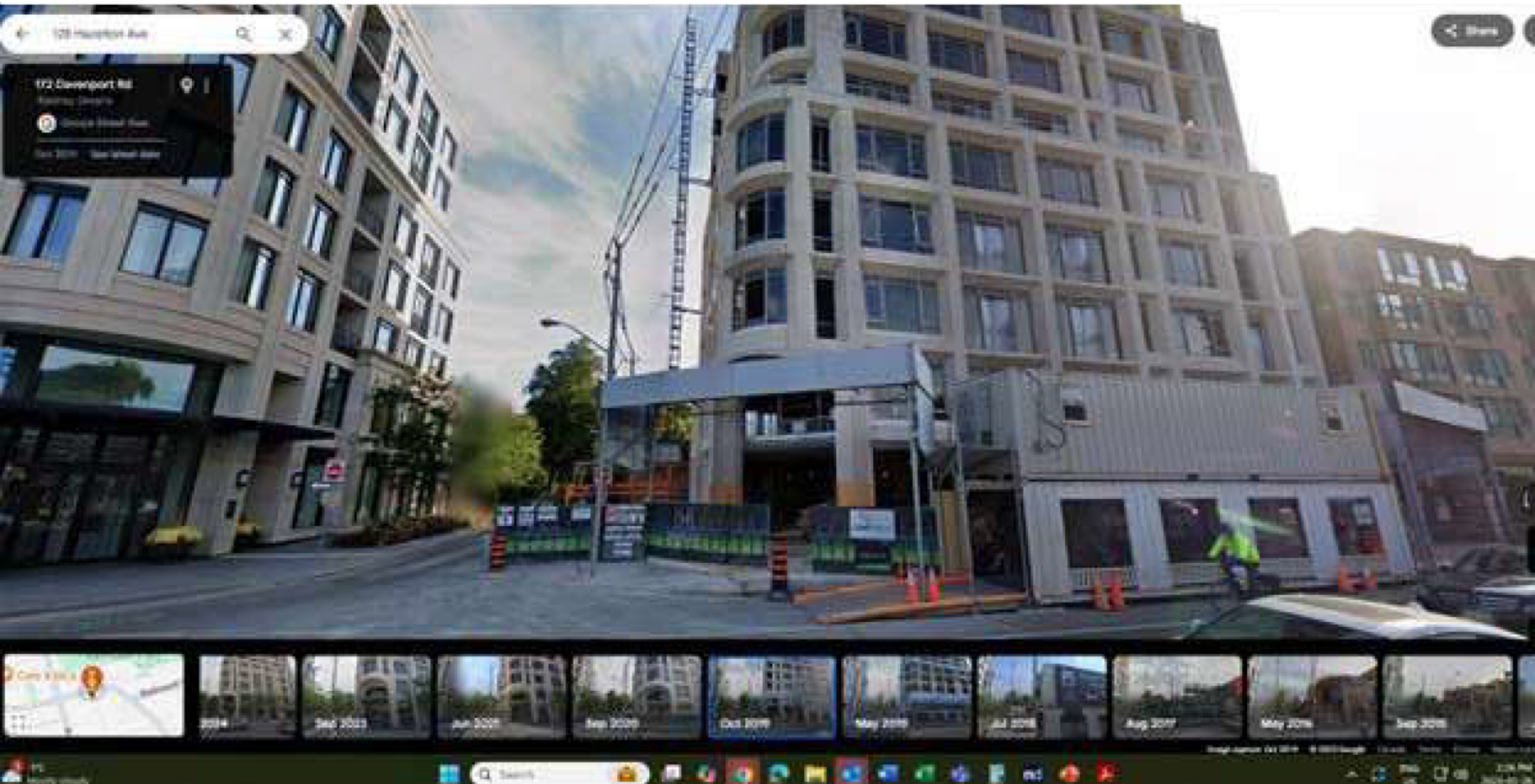
Nick Morrow

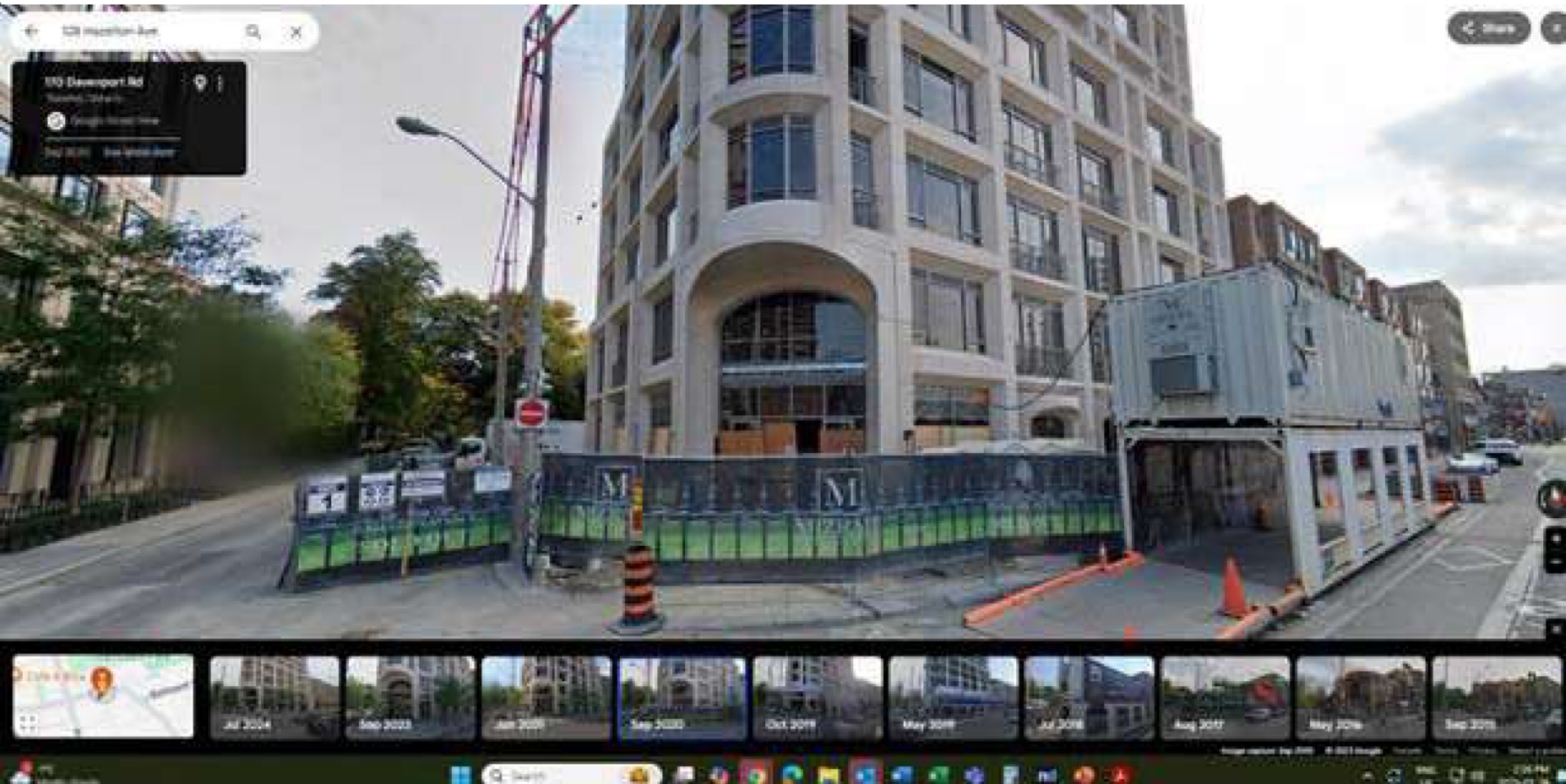
Commissioner for Taking Affidavits
(or as may be)

471









This is **Exhibit “NN”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow", written in a cursive style.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

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

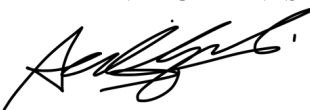
3. The Borrower, the Lender, 1451, and Sam hereby acknowledge and agree that the terms of the Loan Agreement are in all other respects ratified and confirmed and remain in full force and effect unamended.

[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.

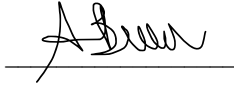
By: 

Name: Sam Mizrahi

Title: President




SAM MIZRAHI



Witness



DAVID BERRY



Witness

SCHEDULE A

SCHEDULE B

SCHEDULE C

This is **Exhibit "OO"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

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.

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 February 24, 2017 and the amount of any new Levies that were not exigible as of February 24, 2017 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 furnace or 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 and water and 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 Taron 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 Taron 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/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.
 - (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 125 Hazelton Avenue, Toronto, Ontario, M5R 2E4 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;

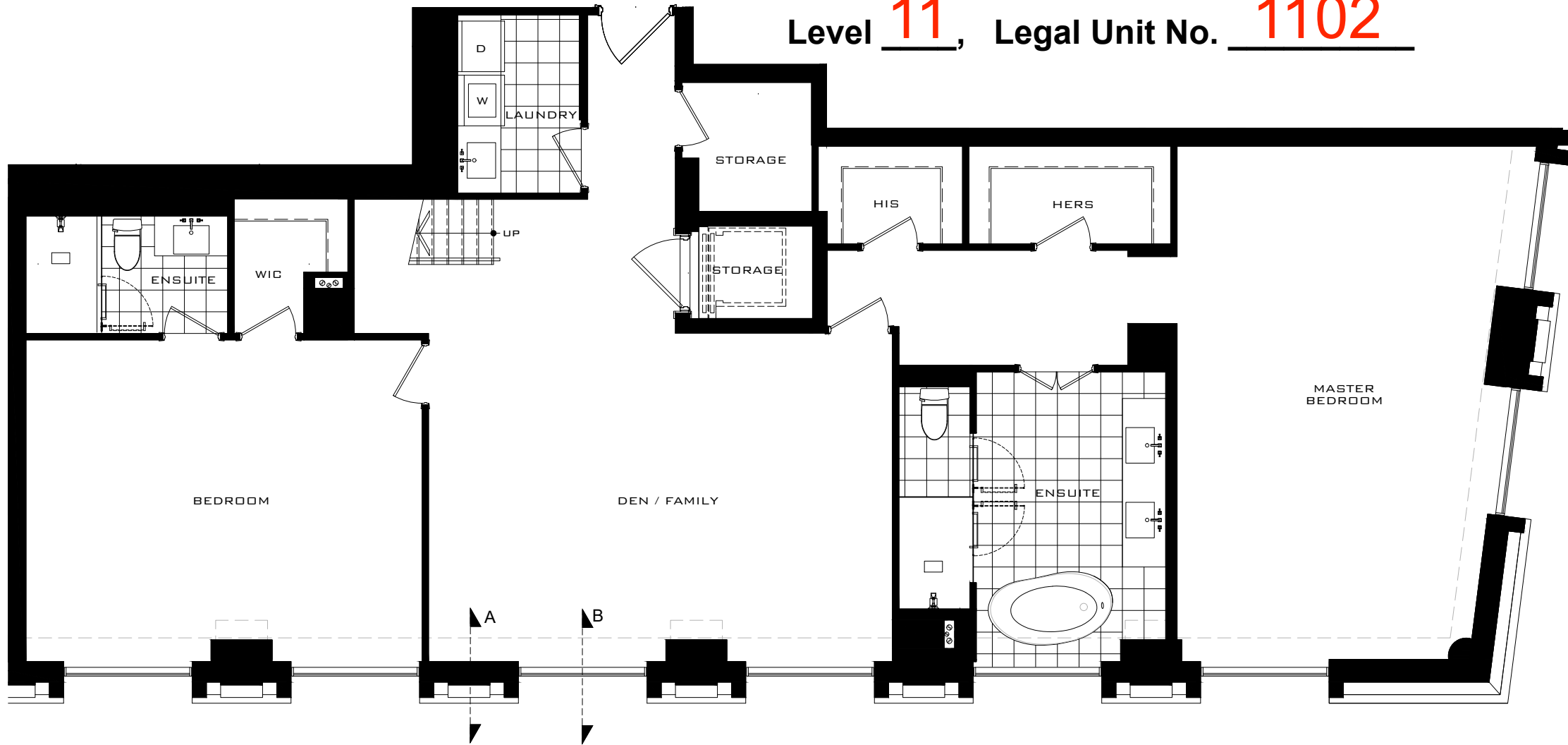
- (g) any trades/suppliers or sub-trades/suppliers, who have been retained by or on behalf of the Vendor (or who are otherwise dealing with the Vendor) to facilitate the completion and finishing of the Unit and the installation of any extras or upgrades ordered or requested by the Purchaser;
- (h) one 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

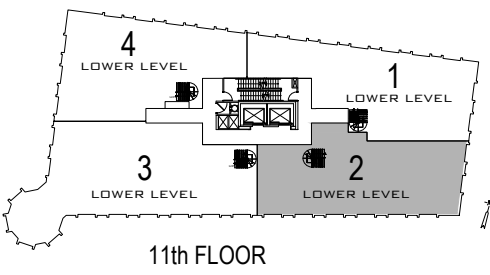
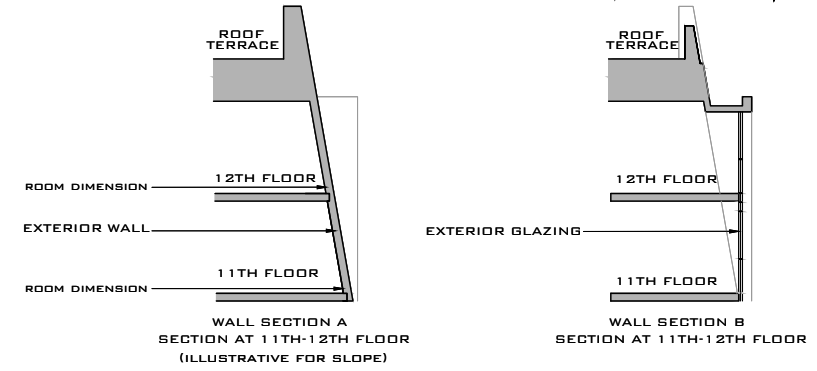
Level 11, Legal Unit No. 1102



LOWER LEVEL
1,813 sf

Suite 1102/ 1202

3B+DEN



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

10/26/2021

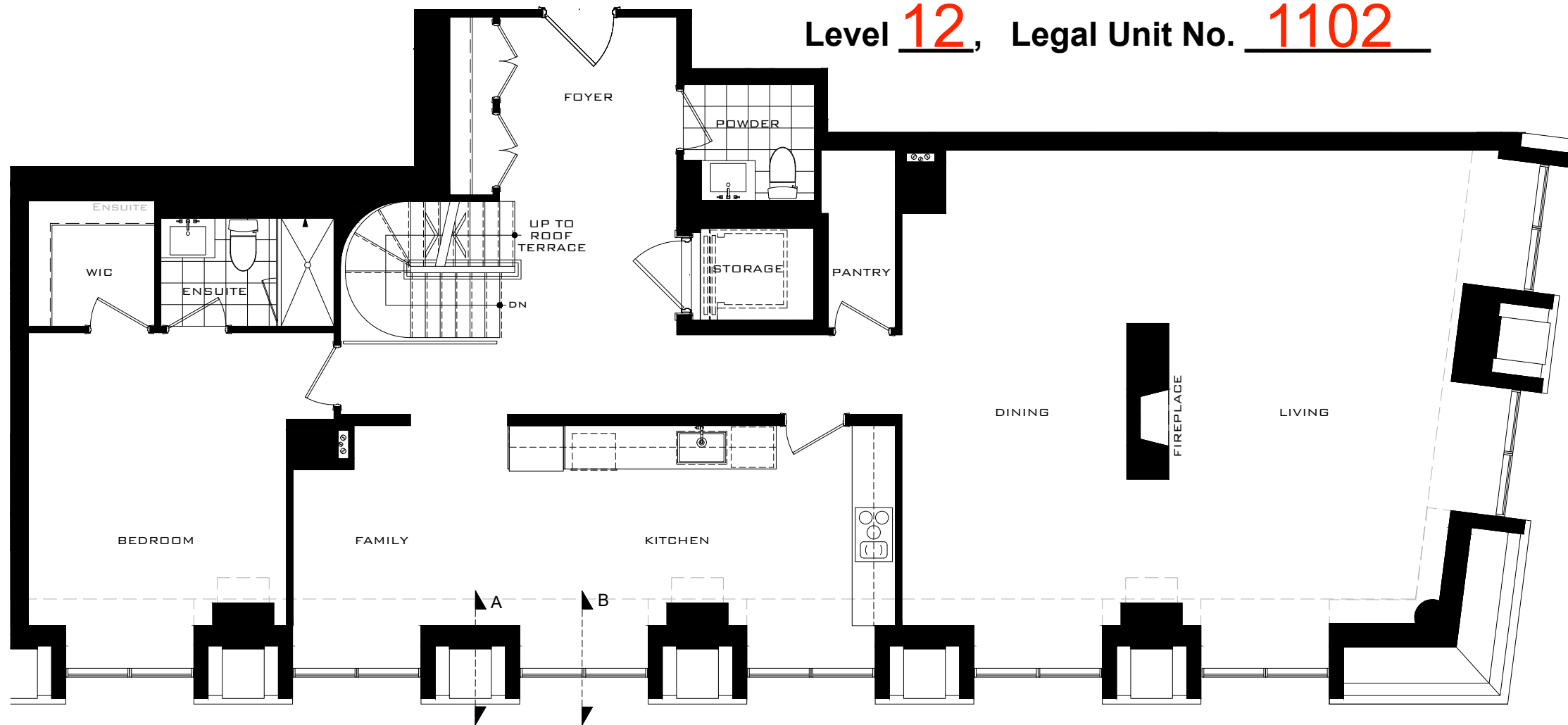
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SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE

SKETCH

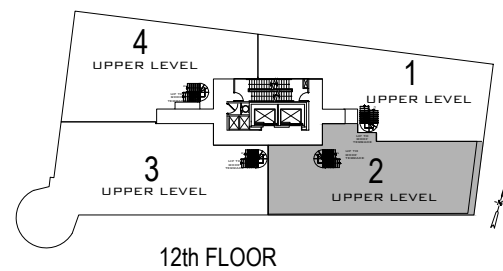
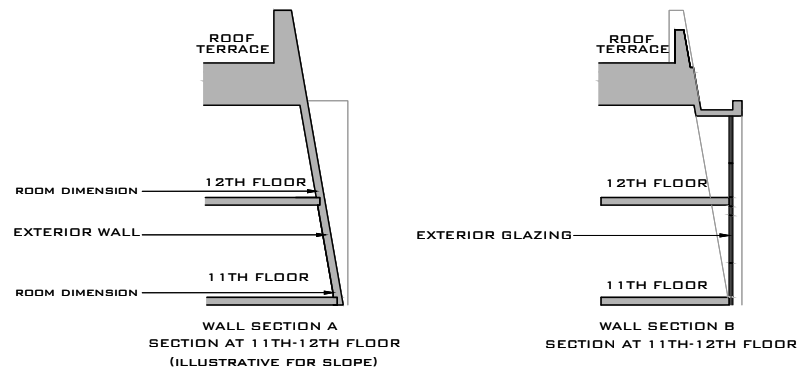
Level 12, Legal Unit No. 1102



UPPER LEVEL
1,774 sf

Suite 1102/ 1202

3B+DEN



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

10/26/2021

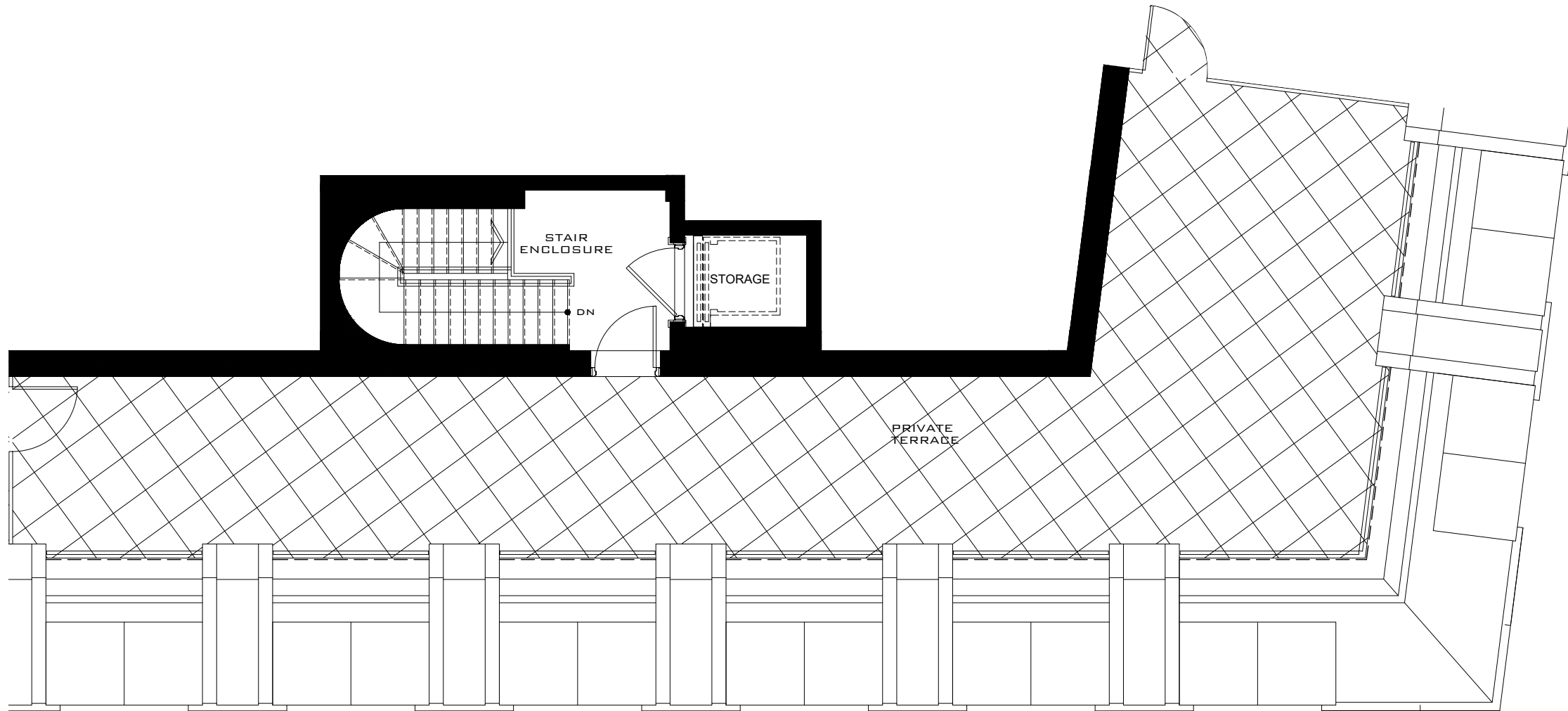
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SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE

SKETCH

Level R-Terr, Legal Unit No. 1102

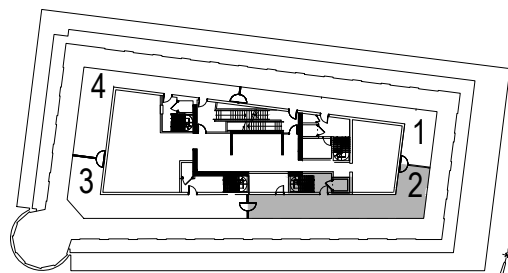


Suite 1102/ 1202 3B+DEN

ROOF TOP TERRACE

206 sf Roof Access

678 sf Roof Private Terrace



ROOF TOP TERRACE

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

10/26/2021

Date

SCHEDULE "B" TO THE AGREEMENT OF PURCHASE AND SALE**FEATURES AND FINISHES**

- Laundry Room
 - Ceramic floors selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
 - High efficiency front loading Washer and Dryer selected from Vendor's standard selections
- Living Room & Dining Room
 - Pre-finished engineered Hardwood floors selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
- Foyer
 - Pre-finished engineered Hardwood or stone tile floor in entranceway selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
- 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. pot lights selected from Vendor's standard selections
 - Gas or Electric Cooktop, Oven, Dishwasher, Refrigerator, Microwave and Hood fan selected from Vendor's standard selections
- Powder Room
 - Vanity with stone countertop selected from Vendor's standard selections
 - Under-mounted sink and designer fixtures (as per plan) selected from Vendor's standard selections
 - Privacy lock
 - Stone tile floor selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
- Terraces/Balconies
 - Living room and/or Master Bedroom access to (in selected suites as per plan)
 - Railing as per architectural building design
 - Exterior lighting as per architectural building design
- Library/Den
 - Pre-finished engineered Hardwood floor or carpet selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
- Master Bedroom Suite
 - Pre-finished engineered Hardwood floor or carpet selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
- Master Ensuite
 - Stone tiles selected from Vendor's standard selections
 - Vanity with stone countertop, under-mounted sink, and designer fixtures selected from Vendor's standard selections
 - Bathtub and coordinated fixtures as per plan
 - Frameless glass shower enclosure as per plan
 - L.E.D. pot lights selected from Vendor's standard selections
 - Privacy lock
- Guest Bathroom
 - Stone tiles selected from Vendor's standard selections
 - Vanity with stone countertop, under-mounted sink, and designer fixtures selected from Vendor's standard selections
 - Bathtub and coordinated fixtures as per plan
 - Frameless glass shower enclosure as per plan
 - L.E.D. pot lights selected from Vendor's standard selections
 - Privacy lock
- Bedroom
 - Pre-finished engineered Hardwood floors or carpet selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
- Ceilings, Walls & Doors
 - 9' high ceilings (dropped ceilings at Kitchen, Bathrooms, Closets, Foyer, Laundry Room and Mechanical Room)
 - Smooth ceilings, walls and bulkheads throughout
 - Strict box-out controls for mechanical systems
 - 7" Baseboards
 - 3 ½ " Door casing with backhand
 - Custom doors throughout
 - Acoustically engineered demising walls
 - Sliding doors to Balconies and Terraces as per plan
 - Door hardware selected from Vendor's standard selections
 - All ceilings, walls, baseboards, mouldings and doors painted selected from Vendor's standard selections
 - 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. pot lights selected from Vendor's standard selections 1 per 75 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, internet in Living Room, Kitchen, Library/Den and all Bedrooms
- Home security system as per Vendor's standard specifications
- Carbon monoxide and smoke detectors hard-wired
- Pre-wired CAT computer network

E. & O.E.

Subject to paragraph 4 of the Agreement of Purchase and Sale attached hereto, the Vendor shall have the right to substitute other products and materials for those listed in this Schedule or provided for in the plans and specifications provided that the substituted products and materials are of a quality equal to, or better than, the products and materials so listed or so provided.

1. Stone and wood are subject to natural variations in colour and grain. Ceramic tile and broadloom are subject to pattern, shade and colour variations.
2. The Purchaser acknowledges that there shall be no reduction in the price or credit for any standard feature listed herein which is omitted at the Purchaser's request.
3. References to model types or model numbers refer to current manufacturer's models. If these types or models shall change, the Vendor shall provide an equivalent model.
4. All dimensions, if any, are approximate.
5. All specifications and materials are subject to change without notice.
6. Pursuant to this Agreement or this Schedule or pursuant to a supplementary agreement or purchase order the Purchaser may have requested the Vendor to construct an additional feature within the Unit which is in the nature of an optional extra (such as, by way of example only, a fireplace); if, as a result of building, construction or site conditions within the Unit or the Building, the Vendor is not able to construct such extra, then the Vendor may, by written notice to the Purchaser, terminate the Vendor's obligation to construct the extra. In such event, the Vendor shall refund to the Purchaser the monies, if any, paid by the Purchaser to the Vendor in respect of such extra, without interest and in all other respects this Agreement shall continue in full force and effect.
7. Floor and specific features will depend on the Vendor's package as selected

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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 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 Ottawa-Carleton 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 February 21, 2017 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.
3. A copy of Ontario's Residential Condominium Buyers' Guide, in accordance with the *Condominium Act, 1998*, last updated November 6, 2020 and posted on the Condominium Authority of Ontario's (CAO's) website. Purchasers are advised that the CAO's website will be updated periodically with the latest version of the Ontario's Residential Condominium Buyer's Guide <https://www.condoauthorityontario.ca/resources/condo-buyers-guide/>

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 _____, this _____ day of 10/26/2021, 2021.

WITNESS:



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)



Purchaser **David Martin Millen Berry**

Purchaser

507



**Condominium Form
(Tentative Occupancy Date)**

Property 1451 Wellington Ave W.

Condominium Suite - 1102

**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 DEVELOPMENT GROUP (1451 WELLINGTON) INC.
Full Name(s)
PURCHASER David Martin Millen 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 31st day of January, 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 31st day of December, 2025.

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:

(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. the 30th day of October, 2022.

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:

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). the 2nd day of March, 2026.

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 10/27/2021 day of _____, 20__.

VENDOR: _____

PURCHASER: _____

508



Condominium Form (Tentative Occupancy Date)

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 DEVELOPMENT GROUP (1451 WELLINGTON) INC.		
	Full Name(s)		
	45584	125 Hazelton Avenue	
	Tarion Registration Number	Address	
	(416) 922-4200	Toronto	ON M5R 2E4
	Phone	City	Province Postal Code
	(866) 300-0219	reception@mizrahidevelopments.ca	
	Fax	Email*	

PURCHASER	David Martin Millen Berry		
	Full Name(s)		
	124 Park Road, Toronto, Ontario, M4W 2N7		
	Address	City	Province Postal Code
	Phone	davidmmberry@rogers.com	
	N/A	Email*	
	Fax		

PROPERTY DESCRIPTION

1102- 1451 Wellington Avenue West			
Municipal Address			
Ottawa	ON		
City	Province	Postal Code	
Short Legal Description			
Part of Lots 1,2,3 And 4, Registered Plan 145 On The North Side Of Richmond Road (Now Wellington Street) Being Part Of Pins 04030-0155 (LT) And 04030-0154 (LT)			

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 30th day of April, 2019.

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.



Condominium Form (Tentative Occupancy Date)

- (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.



Condominium Form
(Tentative Occupancy Date)

- (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:

See Appendix

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.

**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 1st day of September, 2018.



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



**Condominium Form
(Tentative Occupancy Date)**

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.



**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.]

1. See Schedule "B" following page 12



**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.]

1. See Schedule "B" following page 12

**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)	\$250.00, 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)(viii)
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)

FINTRAC COMPLIANCE


PURCHASER

Name: David Martin Millen Berry
Address: 124 Park Road, Toronto, Ontario, M4W 2N7
Date of Birth: July 19, 1965
Occupation: _____

PURCHASER

IDENTIFICATION

A photocopy of the following identification is attached:

 Passport

Number: HK908730
Issued By: Canada
Expiry Date: March 1, 2026
(dd/mm/yyyy)

Number: _____
Issued By: _____
Expiry Date: _____
(dd/mm/yyyy)

OWNERSHIP

I/We hereby certify that I/we am/are purchasing the Real Property for my/our own use and that the Real Property is not being purchased by myself/ourselves as an agent, trustee or otherwise on behalf of or for another person.

I/We am/are purchasing the Real Property for someone else whose identification is as follows:

Name: _____
Address: _____
Date of Birth: _____
Occupation: _____
Relationship To Purchaser: _____

Identification

Passport



Birth Certificate

Drivers Licence
Number: _____
Issued By: _____
Expiry Date: _____
(dd/mm/yyyy)

I am purchasing the Real Property for a Corporation whose identification is as follows:
Name of Corporation: _____
Address: _____
Purchaser's relationship to Corporation: _____

Identification

A photocopy of the Articles of Incorporation is attached.

Witness:  Purchaser: 
Witness: _____ Purchaser: _____

* Financial Transactions and Reports Analysis Centre of Canada established pursuant to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act

Warranty Information for New Condominium Units



This information sheet provides a basic overview of the warranties and protections that come with your new condominium unit. This warranty is provided to you **by your builder** and backed by Tarion. For more detailed information, visit tarion.com and log into our online learning hub at www.tarion.com/learninghub

The Pre-Delivery Inspection (PDI)

Before you take occupancy of your unit, your builder is required to conduct a pre-delivery inspection, (PDI) with you or someone you designate to act on your behalf. If you wish, you may be accompanied by someone who can provide expert assistance. The PDI is important because it is an opportunity to learn about how to operate and maintain parts of your unit, such as the ventilation and heating systems. It is also important because it gives you an opportunity to note items in your unit that are damaged, missing, incomplete, or not working properly before you take occupancy. This record is also very important as it may help show what items may have been damaged before you moved in and helps resolve any disputes relating to whether or not an item of damage was caused by your occupancy and use.

The PDI is only one piece of evidence relating to damaged or incomplete items, and you should note and document (e.g. via photos or video) any concerns or damaged items as soon as you notice them after taking occupancy if they were missed on the PDI. If the damaged items are not addressed by your builder, you can include them in your 30-Day Form to Tarion. Damaged items are covered under the warranty if the damage was caused by the builder. There is more information about the PDI here: www.tarion.com/learninghub

Deposit Protection

The Condominium Act requires your builder to hold the deposit for your condominium unit in trust until the deposit is provided to the person entitled to it or the amount of your deposit is insured, as applicable. If your Agreement of Purchase and Sale is terminated by the builder, except as a result of the Purchaser's default, your deposit must be returned to you in full within 10 days. If your deposit is not returned, you are still protected by Tarion for the return of your deposit, or portion that has not yet been returned, up to \$20,000. This protection includes the money you put down towards upgrades and other extras.

Delayed Occupancy Coverage

Your builder guarantees that your unit will be ready for you to move in by a date specified in the purchase agreement or a date that has been properly extended (if for certain reasons the original occupancy date cannot be met). You may be able to claim up to \$7,500 from your builder in compensation if they do not meet the conditions for an allowable extension that are outlined in the Addendum to your Agreement of Purchase and Sale.

Warranty Coverage

The warranty on work and materials commences on your occupancy date and provides up to a maximum of \$300,000 in coverage. There are limitations on scope and duration as follows. Your builder warrants that your home will, on delivery, have these warranties:

One-Year Warranty

- Your home is constructed in a workmanlike manner, free from defects in material, is fit for habitation and complies with Ontario's Building Code
- Protects against unauthorized substitution of items specified in the Agreement of Purchase and Sale or selected by you

Two-Year Warranty

- Protects against water penetration through the basement or foundation walls, windows, and the building envelope
- Covers defects in work and materials in the electrical, plumbing, and heating delivery and distribution systems
- Covers defects in work and materials that result in the detachment, displacement, or deterioration of exterior cladding (such as brick work, aluminum, or vinyl siding)
- Protects against violations of Ontario's Building Code that affect health and safety

Seven-Year Warranty

- Protects against defects in work or materials that affect a structural load-bearing element of the home resulting in structural failure or that materially and adversely compromise the structural integrity; and/or that materially and adversely affect the use of a significant portion of the home.

Continued...

Construction Performance Guidelines

The Construction Performance Guidelines are a resource to provide advance guidance as to how Tarion may decide disputes between homeowners and builders regarding defects in work or materials. The Construction Performance Guidelines are intended to complement Ontario's Building Code. They are supplemented by any applicable guidelines or standards produced by industry associations. They do not replace manufacturer warranties. The Construction Performance Guidelines are available in several different formats accessible via cpg.tarion.com.

Warranty Exclusions

Your warranty, provided to you by your builder and backed by Tarion, is a limited warranty, and the protection provided by Tarion is also limited. Exclusions to coverage include: normal wear and tear, damage caused by improper maintenance, damage caused by a third party, secondary damage caused by defects that are under warranty, supplementary warranties, deficiencies caused by homeowner actions, elevators, HVAC appliances, specific defects accepted in writing and damage resulting from an Act of God.

The Common Elements Warranty

For most condominiums, warranty coverage also includes the shared areas, known as the common elements. The common elements warranty is separate from your unit warranty. It begins when the condominium is registered and, unlike your unit warranty, is managed by your condominium corporation. For warranty assistance related to items located outside of the boundaries of your unit, contact your property manager or condominium corporation's Board of Directors. To learn more about your unit and common element boundaries, you can refer to Schedule C of the proposed declaration in your disclosure statement or, if the condominium is registered, of the registered declaration.

Important Next Steps

1. Visit Tarion's website to learn more about your warranty coverage and the process for getting warranty assistance, as well as your rights, responsibilities and obligations as a new homeowner.
2. Prepare for your pre-delivery inspection (PDI). Visit Tarion's website for helpful resources, including a PDI Checklist and educational videos.
3. Register for Tarion's **MyHome** right after you take occupancy. MyHome is an online tool you can use from your computer or mobile device that allows you to submit warranty claims and upload supporting documents directly to your builder and Tarion. It also alerts you to important dates and warranty timelines, allows you to receive official correspondence from Tarion electronically, and schedule an inspection with Tarion when you need assistance.

About Tarion

Tarion is a not-for-profit organization that administers Ontario's new home warranty and protection program. Our role is to ensure that purchasers of new homes receive the warranties and protections, provided by their builder and backstopped by Tarion, that they are entitled to by law.

Contact us at **1-877-982-7466** or customerservice@tarion.com.

This is **Exhibit “PP”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

AGREEMENT OF PURCHASE AND SALE

The undersigned, **David Martin Millen Berry** (collectively, the "Purchaser"), hereby agrees with **Mizrahi Development Group (1451 Wellington) 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** Parking Unit(s) and **TWO** Storage Unit(s), all of 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 Ottawa and which are currently municipally known as 1451 Wellington Street West (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 **FOUR MILLION FIVE HUNDRED FIFTY FOUR THOUSAND THREE HUNDRED (\$4,554,300.00)** 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 **ONE MILLION ONE HUNDRED THIRTY EIGHT THOUSAND FIVE HUNDRED SEVENTY-FIVE (\$1,138,575.00)** 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.

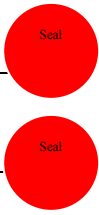
The following Schedules of this Agreement, if attached hereto, shall form a part of this Agreement. The Purchaser acknowledges that he has read all Sections and Schedules of this Agreement and the form of Acknowledgement, if any:

- Schedule "A" – Unit Plan/sketch
- Schedule "B" – Features & Finishes
- Schedule "C" – Occupancy Licence
- Schedule "D" - Warning Provisions
- Schedule "E" – Receipt Confirmation
- Schedule 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 10/26/2021 day of _____, 2021.

SIGNED, SEALED AND DELIVERED)
 in the presence of)
 _____)
 WITNESS:)
 (as to all Purchaser's)
 signatures, if more than)
 one purchaser))


 PURCHASER: **David Martin Millen Berry**
 D.O.B.: **July 19, 1965** S.I.N.: _____
 PURCHASER:
 D.O.B.: _____ S.I.N.: _____
 Address: **124 Park Road, Toronto, Ontario M4W 2N7**
 Home Phone: _____ Cell Phone: _____
 Purchaser 1 Email: **dauidmberry@rogers.com** Purchaser 2 Email: _____



PURCHASER'S SOLICITOR: _____


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

10/27/2021

DATED, signed, sealed and delivered this _____ day of _____, 2021.

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

MIZRAHI DEVELOPMENT GROUP (1451 WELLINGTON) INC.

Per: 
 Authorized Signing Officer
 I/We have 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.

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 February 24, 2017 and the amount of any new Levies that were not exigible as of February 24, 2017 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 furnace or 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 and water and 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 Taron 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 Taron 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/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.
 - (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 125 Hazelton Avenue, Toronto, Ontario, M5R 2E4 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;

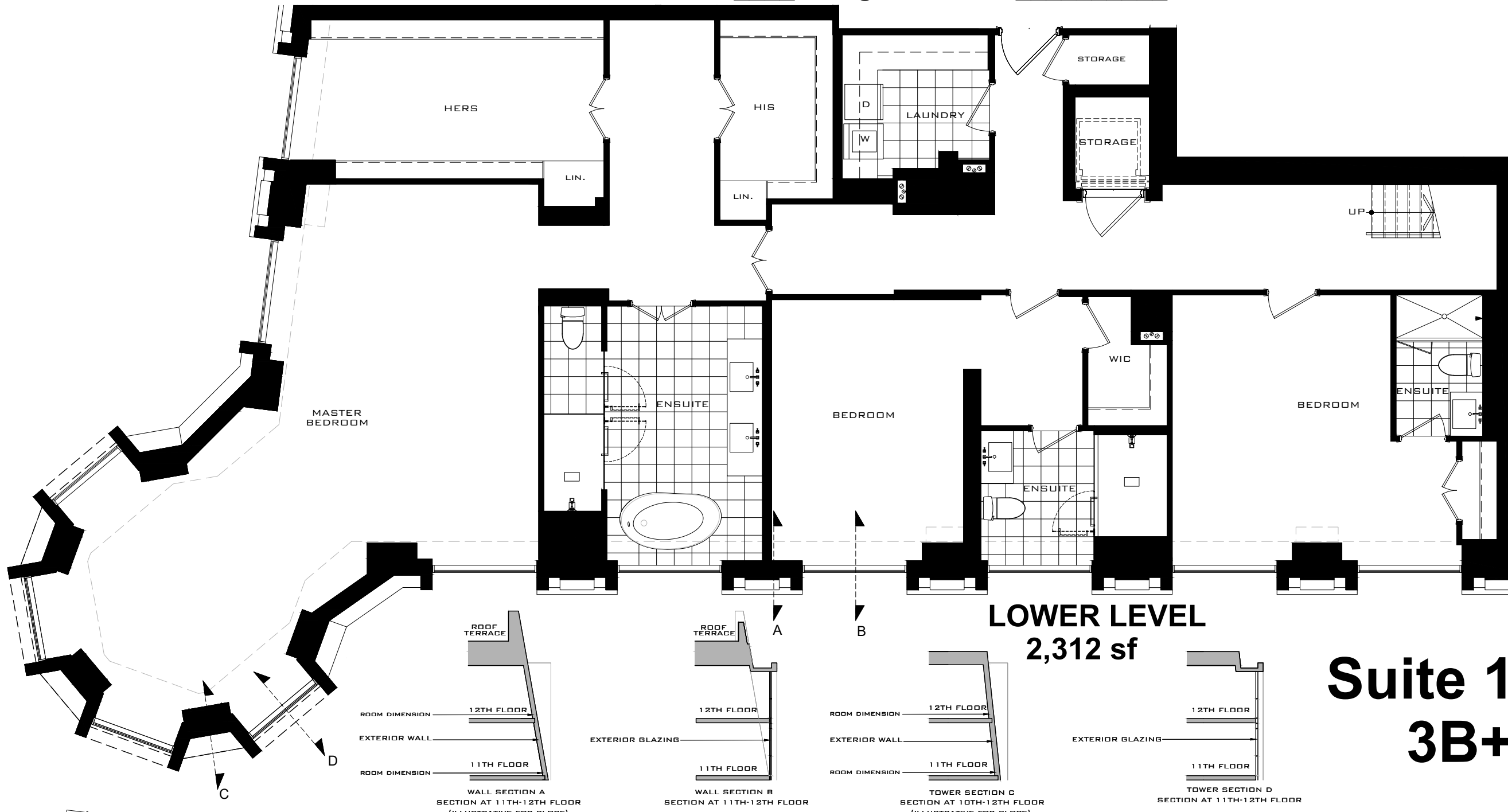
- (g) any trades/suppliers or sub-trades/suppliers, who have been retained by or on behalf of the Vendor (or who are otherwise dealing with the Vendor) to facilitate the completion and finishing of the Unit and the installation of any extras or upgrades ordered or requested by the Purchaser;
- (h) one 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

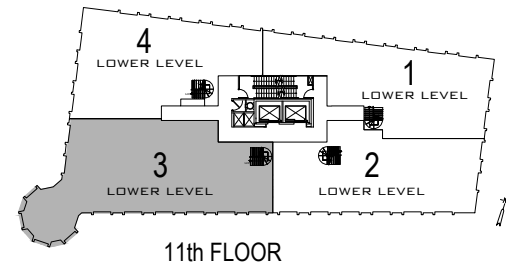
SKETCH

Level 11, Legal Unit No. 1103



LOWER LEVEL
2,312 sf

Suite 1103/ 1203 3B+DEN



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.



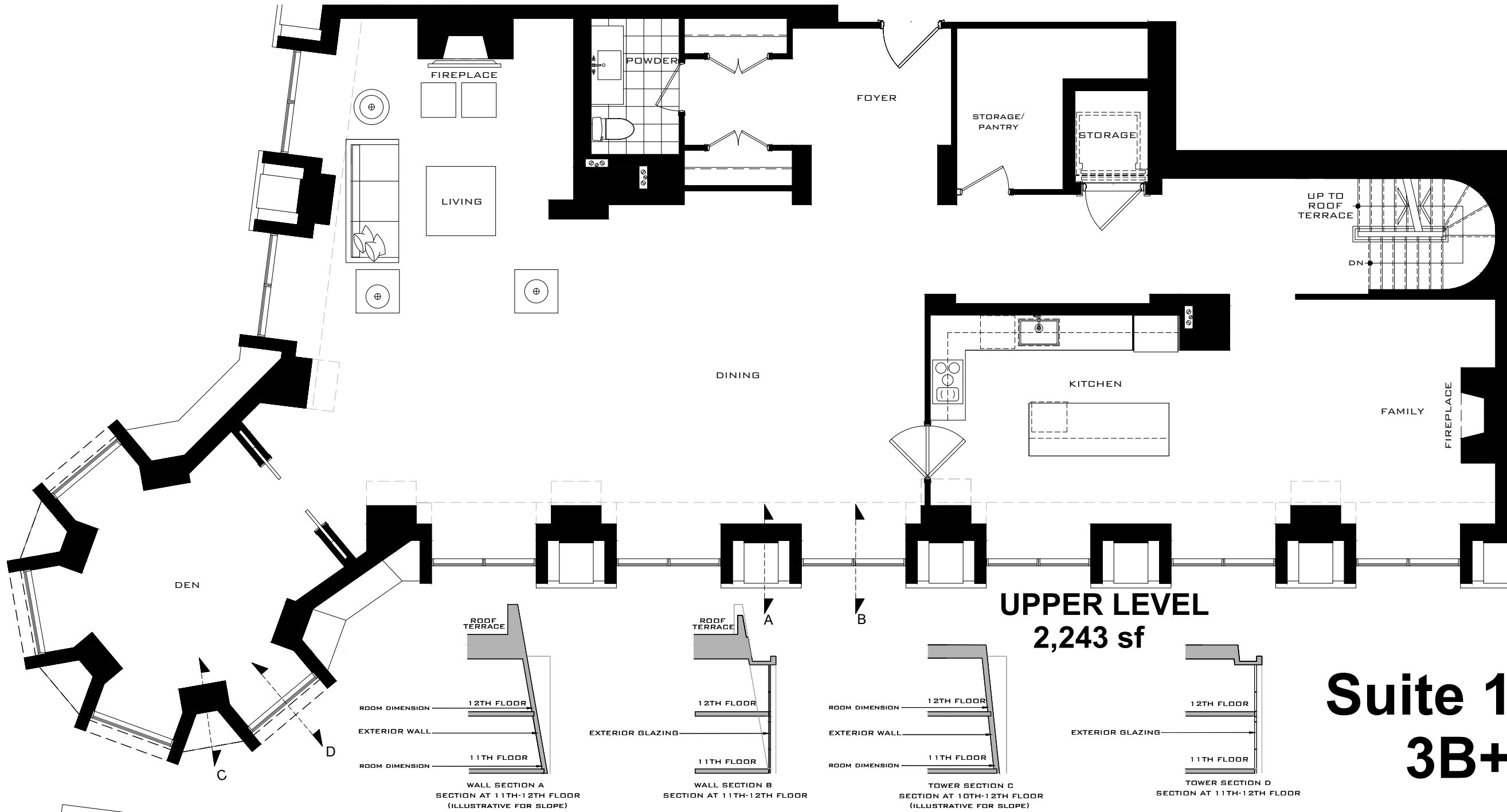

 Purchaser Acknowledgement

10/26/2021
 Date

SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE

SKETCH

Level 12, Legal Unit No. 1103

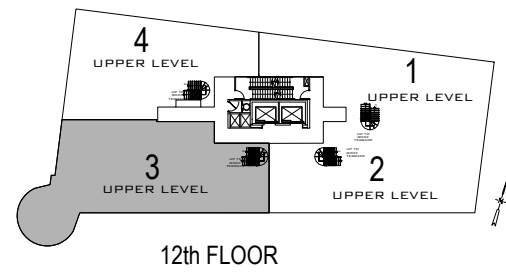


UPPER LEVEL
2,243 sf

Suite 1103/ 1203

3B+DEN

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

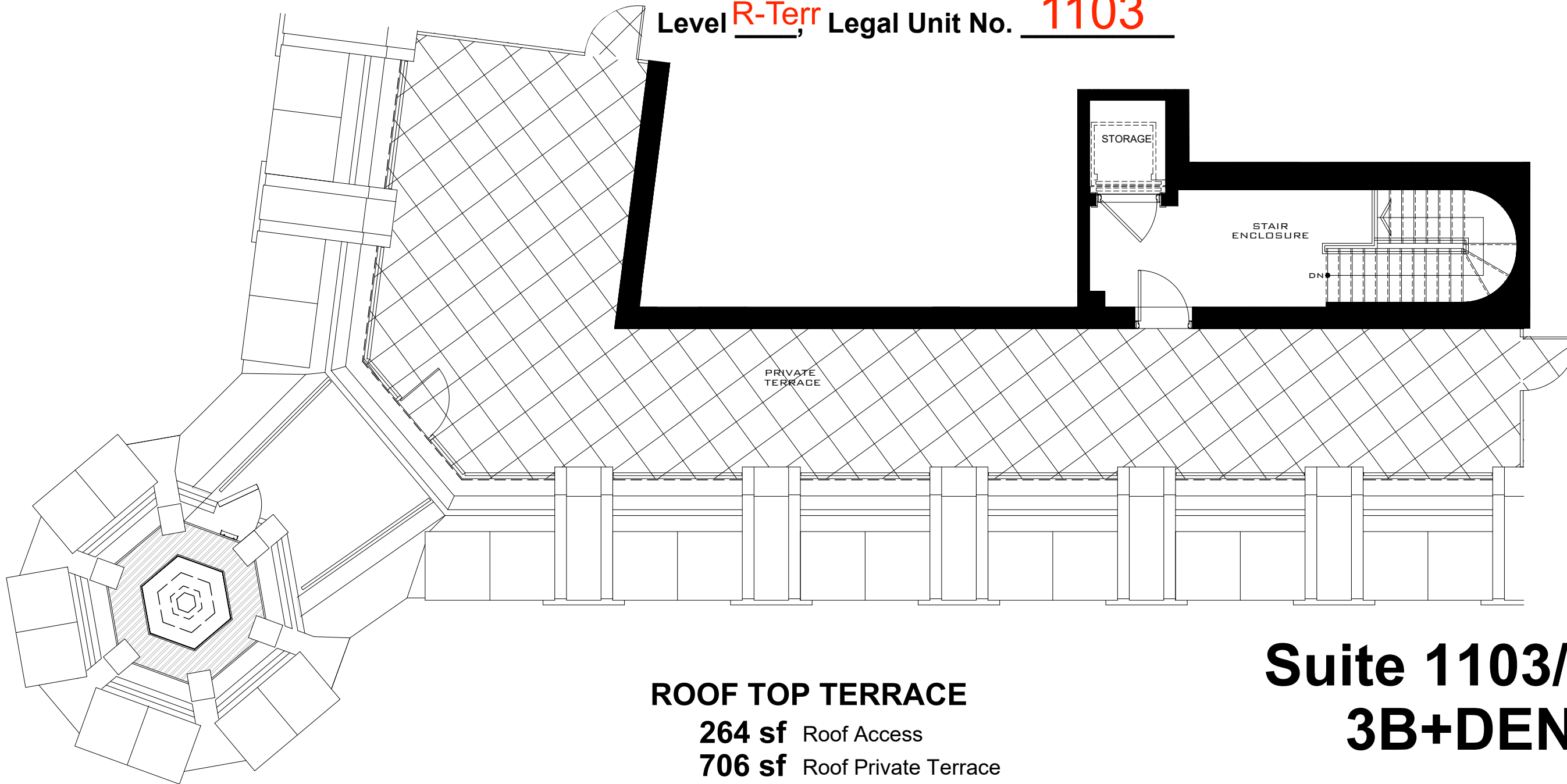
10/26/2021
Date



SCHEDULE "A" TO THE AGREEMENT OF PURCHASE AND SALE

SKETCH

Level R-Terr, Legal Unit No. 1103



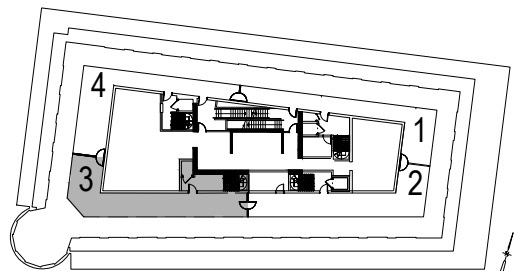
Suite 1103/ 1203 3B+DEN

ROOF TOP TERRACE

264 sf Roof Access

706 sf Roof Private Terrace

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.



ROOF TOP TERRACE



Purchaser Acknowledgement

10/26/2021

Date

SCHEDULE "B" TO THE AGREEMENT OF PURCHASE AND SALE**FEATURES AND FINISHES**

- Laundry Room
 - Ceramic floors selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
 - High efficiency front loading Washer and Dryer selected from Vendor's standard selections
- Living Room & Dining Room
 - Pre-finished engineered Hardwood floors selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
- Foyer
 - Pre-finished engineered Hardwood or stone tile floor in entranceway selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
- 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. pot lights selected from Vendor's standard selections
 - Gas or Electric Cooktop, Oven, Dishwasher, Refrigerator, Microwave and Hood fan selected from Vendor's standard selections
- Powder Room
 - Vanity with stone countertop selected from Vendor's standard selections
 - Under-mounted sink and designer fixtures (as per plan) selected from Vendor's standard selections
 - Privacy lock
 - Stone tile floor selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
- Terraces/Balconies
 - Living room and/or Master Bedroom access to (in selected suites as per plan)
 - Railing as per architectural building design
 - Exterior lighting as per architectural building design
- Library/Den
 - Pre-finished engineered Hardwood floor or carpet selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
- Master Bedroom Suite
 - Pre-finished engineered Hardwood floor or carpet selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
- Master Ensuite
 - Stone tiles selected from Vendor's standard selections
 - Vanity with stone countertop, under-mounted sink, and designer fixtures selected from Vendor's standard selections
 - Bathtub and coordinated fixtures as per plan
 - Frameless glass shower enclosure as per plan
 - L.E.D. pot lights selected from Vendor's standard selections
 - Privacy lock
- Guest Bathroom
 - Stone tiles selected from Vendor's standard selections
 - Vanity with stone countertop, under-mounted sink, and designer fixtures selected from Vendor's standard selections
 - Bathtub and coordinated fixtures as per plan
 - Frameless glass shower enclosure as per plan
 - L.E.D. pot lights selected from Vendor's standard selections
 - Privacy lock
- Bedroom
 - Pre-finished engineered Hardwood floors or carpet selected from Vendor's standard selections
 - L.E.D. pot lights selected from Vendor's standard selections
- Ceilings, Walls & Doors
 - 9' high ceilings (dropped ceilings at Kitchen, Bathrooms, Closets, Foyer, Laundry Room and Mechanical Room)
 - Smooth ceilings, walls and bulkheads throughout
 - Strict box-out controls for mechanical systems
 - 7" Baseboards
 - 3 ½ " Door casing with backhand
 - Custom doors throughout
 - Acoustically engineered demising walls
 - Sliding doors to Balconies and Terraces as per plan
 - Door hardware selected from Vendor's standard selections
 - All ceilings, walls, baseboards, mouldings and doors painted selected from Vendor's standard selections
 - 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. pot lights selected from Vendor's standard selections 1 per 75 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

- o Technology
- o Rough-in for cable, telephone, internet in Living Room, Kitchen, Library/Den and all Bedrooms
- o Home security system as per Vendor's standard specifications
- o Carbon monoxide and smoke detectors hard-wired
- o Pre-wired CAT computer network

E. & O.E.

Subject to paragraph 4 of the Agreement of Purchase and Sale attached hereto, the Vendor shall have the right to substitute other products and materials for those listed in this Schedule or provided for in the plans and specifications provided that the substituted products and materials are of a quality equal to, or better than, the products and materials so listed or so provided.

1. Stone and wood are subject to natural variations in colour and grain. Ceramic tile and broadloom are subject to pattern, shade and colour variations.
2. The Purchaser acknowledges that there shall be no reduction in the price or credit for any standard feature listed herein which is omitted at the Purchaser's request.
3. References to model types or model numbers refer to current manufacturer's models. If these types or models shall change, the Vendor shall provide an equivalent model.
4. All dimensions, if any, are approximate.
5. All specifications and materials are subject to change without notice.
6. Pursuant to this Agreement or this Schedule or pursuant to a supplementary agreement or purchase order the Purchaser may have requested the Vendor to construct an additional feature within the Unit which is in the nature of an optional extra (such as, by way of example only, a fireplace); if, as a result of building, construction or site conditions within the Unit or the Building, the Vendor is not able to construct such extra, then the Vendor may, by written notice to the Purchaser, terminate the Vendor's obligation to construct the extra. In such event, the Vendor shall refund to the Purchaser the monies, if any, paid by the Purchaser to the Vendor in respect of such extra, without interest and in all other respects this Agreement shall continue in full force and effect.
7. Floor and specific features will depend on the Vendor's package as selected

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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 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 Ottawa-Carleton 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 February 21, 2017 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.
3. A copy of Ontario's Residential Condominium Buyers' Guide, in accordance with the *Condominium Act, 1998*, last updated November 6, 2020 and posted on the Condominium Authority of Ontario's (CAO's) website. Purchasers are advised that the CAO's website will be updated periodically with the latest version of the Ontario's Residential Condominium Buyer's Guide <https://www.condoauthorityontario.ca/resources/condo-buyers-guide/>

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 _____, this _____ day of 10/26/2021, 2021.

WITNESS:



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)



Purchaser **David Martin Millen Berry**

Purchaser

549



**Condominium Form
(Tentative Occupancy Date)**

Property 1451 Wellington Ave W.

Condominium Suite - 1103

**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 DEVELOPMENT GROUP (1451 WELLINGTON) INC.

Full Name(s)

PURCHASER David Martin Millen 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 31st day of January, 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 31st day of December, 2025.

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 30th day of October, 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 2nd day of March, 2026.

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 10/26/2021 day of _____, 20__.

VENDOR: [Signature]

PURCHASER: [Signature]



**Condominium Form
(Tentative Occupancy Date)**

**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 DEVELOPMENT GROUP (1451 WELLINGTON) INC.
 Full Name(s)
 45584
 Tarion Registration Number 125 Hazelton Avenue
 (416) 922-4200 Address
 Toronto ON M5R 2E4
 Phone City Province Postal Code

 (866) 300-0219 reception@mizrahidevelopments.ca
 Fax Email*

PURCHASER David Martin Millen Berry
 Full Name(s)
 124 Park Road, Toronto, Ontario, M4W 2N7
 Address City Province Postal Code
 Phone
 N/A davidmmberry@rogers.com
 Fax Email*

PROPERTY DESCRIPTION

1103- 1451 Wellington Avenue West
 Municipal Address
 Ottawa ON
 City Province Postal Code

 Short Legal Description

Part of Lots 1,2,3 And 4, Registered Plan 145 On The North Side Of Richmond Road (Now Wellington Street)
 Being Part Of Pins 04030-0155 (LT) And 04030-0154 (LT)

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 30th day of April, 2019.

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.



Condominium Form (Tentative Occupancy Date)

- (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.



Condominium Form
(Tentative Occupancy Date)

- (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:

See Appendix

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.

**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 1st day of September, 2018.



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.



**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.]

1. See Schedule "B" following page 12



**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.]

1. See Schedule "B" following page 12

**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)	\$250.00, 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)(viii)
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)

FINTRAC COMPLIANCE


PURCHASER

Name: David Martin Millen Berry
Address: 124 Park Road, Toronto, Ontario, M4W 2N7
Date of Birth: July 19, 1965
Occupation: _____

PURCHASER

IDENTIFICATION

A photocopy of the following identification is attached:

 Passport

Number: HK908730
Issued By: Canada
Expiry Date: March 1, 2026
(dd/mm/yyyy)

Number: _____
Issued By: _____
Expiry Date: _____
(dd/mm/yyyy)

OWNERSHIP

I/We hereby certify that I/we am/are purchasing the Real Property for my/our own use and that the Real Property is not being purchased by myself/ourselves as an agent, trustee or otherwise on behalf of or for another person.

I/We am/are purchasing the Real Property for someone else whose identification is as follows:

Name: _____
Address: _____
Date of Birth: _____
Occupation: _____
Relationship To _____
Purchaser: _____



Identification

Number: _____
Issued By: _____
Expiry Date: _____
(dd/mm/yyyy)

I am purchasing the Real Property for a Corporation whose identification is as follows:
Name of Corporation: _____
Address: _____
Purchaser's relationship to Corporation: _____

Identification

A photocopy of the Articles of Incorporation is attached.

Witness:  Purchaser: 
Witness: _____ Purchaser: _____

* Financial Transactions and Reports Analysis Centre of Canada established pursuant to the Proceeds of Crime (Money Laundering) and Terrorist Financing Act

Warranty Information for New Condominium Units



This information sheet provides a basic overview of the warranties and protections that come with your new condominium unit. This warranty is provided to you **by your builder** and backed by Tarion. For more detailed information, visit tarion.com and log into our online learning hub at www.tarion.com/learninghub

The Pre-Delivery Inspection (PDI)

Before you take occupancy of your unit, your builder is required to conduct a pre-delivery inspection, (PDI) with you or someone you designate to act on your behalf. If you wish, you may be accompanied by someone who can provide expert assistance. The PDI is important because it is an opportunity to learn about how to operate and maintain parts of your unit, such as the ventilation and heating systems. It is also important because it gives you an opportunity to note items in your unit that are damaged, missing, incomplete, or not working properly before you take occupancy. This record is also very important as it may help show what items may have been damaged before you moved in and helps resolve any disputes relating to whether or not an item of damage was caused by your occupancy and use.

The PDI is only one piece of evidence relating to damaged or incomplete items, and you should note and document (e.g. via photos or video) any concerns or damaged items as soon as you notice them after taking occupancy if they were missed on the PDI. If the damaged items are not addressed by your builder, you can include them in your 30-Day Form to Tarion. Damaged items are covered under the warranty if the damage was caused by the builder. There is more information about the PDI here: www.tarion.com/learninghub

Deposit Protection

The Condominium Act requires your builder to hold the deposit for your condominium unit in trust until the deposit is provided to the person entitled to it or the amount of your deposit is insured, as applicable. If your Agreement of Purchase and Sale is terminated by the builder, except as a result of the Purchaser's default, your deposit must be returned to you in full within 10 days. If your deposit is not returned, you are still protected by Tarion for the return of your deposit, or portion that has not yet been returned, up to \$20,000. This protection includes the money you put down towards upgrades and other extras.

Delayed Occupancy Coverage

Your builder guarantees that your unit will be ready for you to move in by a date specified in the purchase agreement or a date that has been properly extended (if for certain reasons the original occupancy date cannot be met). You may be able to claim up to \$7,500 from your builder in compensation if they do not meet the conditions for an allowable extension that are outlined in the Addendum to your Agreement of Purchase and Sale.

Warranty Coverage

The warranty on work and materials commences on your occupancy date and provides up to a maximum of \$300,000 in coverage. There are limitations on scope and duration as follows. Your builder warrants that your home will, on delivery, have these warranties:

One-Year Warranty

- Your home is constructed in a workmanlike manner, free from defects in material, is fit for habitation and complies with Ontario's Building Code
- Protects against unauthorized substitution of items specified in the Agreement of Purchase and Sale or selected by you

Two-Year Warranty

- Protects against water penetration through the basement or foundation walls, windows, and the building envelope
- Covers defects in work and materials in the electrical, plumbing, and heating delivery and distribution systems
- Covers defects in work and materials that result in the detachment, displacement, or deterioration of exterior cladding (such as brick work, aluminum, or vinyl siding)
- Protects against violations of Ontario's Building Code that affect health and safety

Seven-Year Warranty

- Protects against defects in work or materials that affect a structural load-bearing element of the home resulting in structural failure or that materially and adversely compromise the structural integrity; and/or that materially and adversely affect the use of a significant portion of the home.

Continued...

Construction Performance Guidelines

The Construction Performance Guidelines are a resource to provide advance guidance as to how Tarion may decide disputes between homeowners and builders regarding defects in work or materials. The Construction Performance Guidelines are intended to complement Ontario's Building Code. They are supplemented by any applicable guidelines or standards produced by industry associations. They do not replace manufacturer warranties. The Construction Performance Guidelines are available in several different formats accessible via cpg.tarion.com.

Warranty Exclusions

Your warranty, provided to you by your builder and backed by Tarion, is a limited warranty, and the protection provided by Tarion is also limited. Exclusions to coverage include: normal wear and tear, damage caused by improper maintenance, damage caused by a third party, secondary damage caused by defects that are under warranty, supplementary warranties, deficiencies caused by homeowner actions, elevators, HVAC appliances, specific defects accepted in writing and damage resulting from an Act of God.

The Common Elements Warranty

For most condominiums, warranty coverage also includes the shared areas, known as the common elements. The common elements warranty is separate from your unit warranty. It begins when the condominium is registered and, unlike your unit warranty, is managed by your condominium corporation. For warranty assistance related to items located outside of the boundaries of your unit, contact your property manager or condominium corporation's Board of Directors. To learn more about your unit and common element boundaries, you can refer to Schedule C of the proposed declaration in your disclosure statement or, if the condominium is registered, of the registered declaration.

Important Next Steps

1. Visit Tarion's website to learn more about your warranty coverage and the process for getting warranty assistance, as well as your rights, responsibilities and obligations as a new homeowner.
2. Prepare for your pre-delivery inspection (PDI). Visit Tarion's website for helpful resources, including a PDI Checklist and educational videos.
3. Register for Tarion's **MyHome** right after you take occupancy. MyHome is an online tool you can use from your computer or mobile device that allows you to submit warranty claims and upload supporting documents directly to your builder and Tarion. It also alerts you to important dates and warranty timelines, allows you to receive official correspondence from Tarion electronically, and schedule an inspection with Tarion when you need assistance.

About Tarion

Tarion is a not-for-profit organization that administers Ontario's new home warranty and protection program. Our role is to ensure that purchasers of new homes receive the warranties and protections, provided by their builder and backstopped by Tarion, that they are entitled to by law.

Contact us at **1-877-982-7466** or customerservice@tarion.com.



This is **Exhibit “QQ”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

October 22, 2024

DELIVERED VIA EMAIL

David Trafford
Morse Shannon LLP
133 Richmond St. W., Suite 501
Toronto, ON M5H 2L3
Email: dtrafford@morseshannon.com

Dear Counsel:

Re: 1451 Wellington / David Berry

We write further to your email received this morning. With respect to the loan amounts that remain outstanding, we can debate the amounts owing based upon the governing agreements and the allocation of payments made to date, but determination of the precise amounts owing are not required for the immediate purpose, which is the registration of a charge in Mr. Berry's favour without prejudice to any position that your client or the Debtor may take in the future.

Our client's proposal does not prejudice your client. Your client's position, however, would prejudice Mr. Berry if another creditor—including those unknown to our client—takes steps to register a security against the property. With respect, Mr. Berry takes little comfort in your advice that you do not know about other secured creditors that have a right of registration given that (1) in a letter from your office on September 11, 2024, your client claimed to be "not aware" of the Supplementary Agreement he had entered into with Mr. Berry on June 28, 2016, which we then provided to your office; and (2) your client has taken the position that Mr. Berry is not entitled to register security, when he is, and your client's position is based on an erroneous calculation of principal and interest payments that he is again relying on Mr. Berry to correct. Our client can have no assurance that other creditors that have a right to registrable security will not emerge, despite your client's assertions to the contrary. For example, the Debtor is in the business of constructing a project and your client's obstructing our client's registration of his security might prejudice him if construction liens are filed against the property. Also, unless you are prepared to provide our client with an indemnity based on your advice, the advice or understandings of counsel are neither relevant nor sufficient.

Notwithstanding the above, and while we will provide to you the definitive calculation of the amounts owing under the Agreements (including Mr. Berry's entitlement to costs incurred in connection with the Loan), for the purpose of your seeking instructions, please refer to the enclosed table and the explanation below regarding the amounts owing under the loan facilities.

Our client has never agreed with your client's contention that the loans have been repaid and we need not revisit historical positions when we have the benefit of the agreements and payments to date. However, as the following shows, there are, and have always been, amounts owing to Mr. Berry under the loans:

- a) The Principal amount of Loan Facility No. 1 was **\$4,000,000**.
- b) The Principal amount of Loan Facility No. 2 was **\$6,000,000**.
- c) Interest of 14% began to accrue on June 29, 2016.
- d) Section 3.5 of the Loan Agreement dated June 29, 2016 ("**Loan Agreement**") provides that *"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."*
- e) Section 4.1 of the Loan Agreement provides that *"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")."*
- f) On November 4, 2019, a cash payment of **\$4,000,000** was made.
- g) On October 12, 2021, the parties amended the Loan Agreement by way of the Amending Agreement ("**Amending Agreement**"), which at section 3 provided that, other than as amended in the Amending Agreement, *"the terms of the Loan Agreement are in all other respects ratified and confirmed and remain in full force and effect unamended."*
- h) The Amending Agreement provided that the \$4,000,000 payment made on November 4, 2019, was to be attributed exclusively to the interest and principal of Loan Facility No. 1.

- i) As at November 4, 2019, the Principal and Interest of Loan Facility No. 1 was **\$6,217,126.89**. The \$4,000,000 payment thus brought the principal balance owing under Loan Facility No. 1 to **\$2,217,126.89**.
- j) From November 4, 2019 until October 26, 2021 (the dates on which the APS for the 1451 Wellington were executed), interest continued to accrued on the remaining balance of Loan Facility No. 1 and on the full amount of Loan Facility No. 2.
- k) The Amending Agreement provided for the partial payment of the interest and principal of the loans by way of transfer of outstanding shares in 2659100 Ontario Inc. ("**Thrive Shares**"), which were valued at **\$7,257,575.87** in accordance with the Amending Agreement.
- l) As the Amending Agreement did not specify that the payment of the Thrive Shares was to be allocated only to Loan Facility No. 1 (as it did with respect to the \$4,000,000 cash payment), then, in accordance with section 3.3. (ii) of the Amending Agreement and section 3.5 of the Loan Agreement, the payment was applied first to the interest on both loans and then the outstanding principal on both loans. At the time, Loan Facility No. 2 had \$6,083,851.67 in outstanding interest and Loan Facility No. 1 had \$667,027.01 in outstanding interest. Once the value of the Thrive Shares was allocated to the outstanding interest payments, the remaining value of the Thrive shares paid down only \$506,697.19 of the principal of Loan Facility No. 1 (even assuming that the full remainder of the value of the Thrive Shares was allocated to Loan Facility No. 1 although there was no requirement to allocate the surplus in that manner), which left Loan Facility No. 1 with a principal balance of **\$1,710,429.69** and Loan Facility No. 2 with a principal balance of **\$6,000,000**.
- m) The Amending Agreement then provides for further reduction of the loans pursuant to the following two provisions: (i) section 3.3(iii) provides for a reduction of the purchase price for two condominium units in the Wellington Project that Mr. Berry had signed APS for (Units 1102 and 1103, valued at \$3,643,375 and \$4,554,300 respectively) (the "**Units**"); and (ii) section 3.3(iii) provides that if the Units did not close within 18 months then both loans would recommence accruing interest (and would not retire).

- n) Specifically, Section 3.3 (iii) of the Amending Agreement provides: *“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.”*
- o) The Units did not close within the prescribed 18-month timeframe and the accrual of interest recommenced on April 27, 2023, and will continue until the registration of the Project and the closing of the purchase of the Units occurs.
- p) Currently, Loan Facility No. 1 has a balance of **\$2,083,717.42** and Loan Facility No. 2 has a balance of **\$7,309,452.47** (both of which continue to accrue interest).

Your client’s position that the provision in the Amending Agreement referring to the “One Credit” further reduced the Loans by providing a credit towards the purchase of condominium units in a separate development in Toronto is incorrect. It does not. By the express wording of the Amending Agreement, the One Credit operates to offset the losses that Mr. Berry suffered as a result of Mr. Mizrahi and the Debtor improperly selling half of the penthouse to third parties when they had already promised the entire penthouse to Mr. Berry in section 3.3 of the original Loan Agreement. Specifically, despite having agreed to sell the entire penthouse floor to the Mr. Berry in the Loan Agreement, Mr. Mizrahi and the Debtor, unbeknownst to Mr. Berry, sub-divided the penthouse of the Project into four units and purportedly sold two of those units to third parties at a price higher than that which Mr. Berry was entitled to buy them under section 3.3 of the original Loan Agreement. The Amending Agreement makes it clear that the “One Credit” is tied to compensating Mr. Berry for his losses caused by the unlawful sale of half of the penthouse floor. It is wrong to apply the “One Credit” to the amounts owing under the loan facilities, as it was an offset and settlement of what would otherwise have been an unlawful breach of contract and an unjust enrichment at Mr. Berry’s expense.

We note that Mr. Berry has also continued to incur costs in connection with the Loan, pursuant to s 4.1 of the Loan Agreement, which are costs that are added to the outstanding amounts under the loans are which are not reflected in the calculations provided in this letter.

For clarity, it is Mr. Berry's position that the Project is holding units 1102 and 1103 for him by way of an institutional constructive trust and that he has an equitable mortgage over Units 1102 and 1103 given that they are fully paid-up units, and he has a specifically enforceable right to close on the units once they are completed, and they cannot be sold to a third party, whether within or outside of any CCAA or other proceedings. Nonetheless, Mr. Berry is entitled to register his security pursuant to the Loan Agreement until such time as the loans are repaid.

It will be a waste of time and resources to argue a motion over the exercise of our client's rights on a without prejudice basis, particularly in light of the fact that paragraph 12 of the Initial Order in the CCAA proceeding specifically allows persons to file security interests and your client has no consent rights in the matter. The fact that your client is seeking to obstruct Mr. Berry from doing so simply because the lawyer who is to register or approve the registration of the security now works with the Monitor's counsel's firm is not only improper on its face, but it is also a breach of your clients' duties of good faith under the CCAA and good faith in contractual performance. We urge you to advise your client to reconsider. We will of course be seeking our client's costs against your client if he is compelled to bring the motion or to bring the motion on an opposed basis.

Yours very truly,



Michael O'Brien

cc: Jason Wadden, Nick Morrow *Tyr LLP*
Steven J. Weisz, Robert Sottile, Dilina Lallani, *Cozen O'Connor*
Harvey Chaiton, George Benchetrit, Michael Pasternack, *Chaitons LLP*

Loan A - \$4 million, June 29 2016 - Oct 12, 2021, March 1, 2023 - Sept 6, 2024, 14% Annual

		Days	Principal	Interest	Principal + Interest	
29-Jun-16	29-Jun-17	365	\$ 4,000,000.00	\$ 560,000.00	\$ 4,560,000.00	
29-Jun-17	29-Jun-18	365	\$ 4,560,000.00	\$ 638,400.00	\$ 5,198,400.00	
29-Jun-18	29-Jun-19	365	\$ 5,198,400.00	\$ 727,776.00	\$ 5,926,176.00	
29-Jun-19	4-Nov-19	128	\$ 5,926,176.00	\$ 290,950.89	\$ 6,217,126.89	
					-\$ 4,000,000.00	\$4 million repaid Nov 4 2019
4-Nov-19	29-Jun-20	238	\$ 2,217,126.89	\$ 202,396.35	\$ 2,419,523.24	
29-Jun-20	29-Jun-21	365	\$ 2,419,523.24	\$ 338,733.25	\$ 2,758,256.49	
29-Jun-21	26-Oct-21	119	\$ 2,758,256.49	\$ 125,897.41	\$ 2,884,153.90	
					-\$ 667,027.01	Thrive interest repayment
					-\$ 506,697.19	Thrive principal repayment
27-Apr-23	27-Apr-24	366	\$ 1,710,429.69	\$ 240,116.21	\$ 1,950,545.91	
27-Apr-24	22-Oct-24	178	\$ 1,950,545.91	\$ 133,171.52	\$ 2,083,717.42	
				\$ 3,257,441.63		
Days	2,489	2,489				

Loan B - \$6 million, June 29 2016 - October 12, 2021, March 1, 2023 - Sept 6, 2024, 14% Annual

		Days	Principal	Interest	Principal + Interest	
29-Jun-16	29-Jun-17	365	\$ 6,000,000.00	\$ 840,000.00	\$ 6,840,000.00	
29-Jun-17	29-Jun-18	365	\$ 6,840,000.00	\$ 957,600.00	\$ 7,797,600.00	
29-Jun-18	29-Jun-19	365	\$ 7,797,600.00	\$ 1,091,664.00	\$ 8,889,264.00	
29-Jun-19	29-Jun-20	366	\$ 8,889,264.00	\$ 1,247,906.54	\$ 10,137,170.54	
29-Jun-20	29-Jun-21	365	\$ 10,137,170.54	\$ 1,419,203.88	\$ 11,556,374.42	
29-Jun-21	26-Oct-21	119	\$ 11,556,374.42	\$ 527,477.25	\$ 12,083,851.67	
					-\$ 6,083,851.67	Thrive interest repayment
27-Apr-23	27-Apr-24	366	\$ 6,000,000.00	\$ 842,301.37	\$ 6,842,301.37	
27-Apr-24	22-Oct-24	178	\$ 6,842,301.37	\$ 467,151.10	\$ 7,309,452.47	
				\$ 7,393,304.14		
Days	2,489	2,489		\$ 10,650,745.76	<u>\$ 9,393,169.89</u>	

Thrive Shares: October 12, 2021
\$7,257,575.87

This is **Exhibit "RR"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

Loan A - \$4 million, June 29 2016 - Oct 12, 2021, March 1, 2023 - January 27, 2025, 14% Annual

				Rate		14%	
		Days	Principal	Interest	Principal + Interest		
29-Jun-16	29-Jun-17	365	\$ 4,000,000.00	\$ 560,000.00	\$ 4,560,000.00		
29-Jun-17	29-Jun-18	365	\$ 4,560,000.00	\$ 638,400.00	\$ 5,198,400.00		
29-Jun-18	29-Jun-19	365	\$ 5,198,400.00	\$ 727,776.00	\$ 5,926,176.00		
29-Jun-19	4-Nov-19	128	\$ 5,926,176.00	\$ 290,950.89	\$ 6,217,126.89		
					-\$ 4,000,000.00		
4-Nov-19	29-Jun-20	238	\$ 2,217,126.89	\$ 202,396.35	\$ 2,419,523.24		
29-Jun-20	29-Jun-21	365	\$ 2,419,523.24	\$ 338,733.25	\$ 2,758,256.49		
29-Jun-21	12-Oct-21	105	\$ 2,758,256.49	\$ 111,085.95	\$ 2,869,342.44		
					-\$ 1,235,780.00	Thrive	
1-Mar-23	1-Mar-24	366	\$ 1,633,562.44	\$ 229,325.31	\$ 1,862,887.75		
1-Mar-24	27-Jan-25	332	\$ 1,862,887.75	\$ 237,224.72	\$ 2,100,112.47		
				\$ 3,335,892.47		Loan A	
Days		2,629	2,629				

Legend	
Blue	Payment on loan
Green	Application of Thrive Shares
Yellow	Current date and balance

Loan B - \$6 million, June 29 2016 - October 12, 2021, March 1, 2023 - January 27, 2025, 14% Annual

				Rate		14%	
		Days	Principal	Interest	Principal + Interest		
29-Jun-16	29-Jun-17	365	\$ 6,000,000.00	\$ 840,000.00	\$ 6,840,000.00		
29-Jun-17	29-Jun-18	365	\$ 6,840,000.00	\$ 957,600.00	\$ 7,797,600.00		
29-Jun-18	29-Jun-19	365	\$ 7,797,600.00	\$ 1,091,664.00	\$ 8,889,264.00		
29-Jun-19	29-Jun-20	366	\$ 8,889,264.00	\$ 1,247,906.54	\$ 10,137,170.54		
29-Jun-20	29-Jun-21	365	\$ 10,137,170.54	\$ 1,419,203.88	\$ 11,556,374.42		
29-Jun-21	12-Oct-21	105	\$ 11,556,374.42	\$ 465,421.11	\$ 12,021,795.52		
					-\$ 6,021,795.87	Thrive	
1-Mar-23	1-Mar-24	366	\$ 5,999,999.65	\$ 842,301.32	\$ 6,842,300.97		
1-Mar-24	27-Jan-25	332	\$ 6,842,300.97	\$ 871,315.48	\$ 7,713,616.45		
				\$ 7,735,412.32		Loan B	
Days		2,629	2,629	\$ 11,071,304.79	\$ 9,813,728.92	Loan A & B	

Loan A and B at Jan 27, 2025 (net of \$4mm Nov. 4 2019, Thrive Oct. 12, 2021) \$ 9,813,728.92

Less: Ottawa (Not yet applied)_	1102	\$3,643,375.00	
	1103	\$4,554,300.00	
		\$8,197,675.00	
			\$ 1,616,053.92

Total Owed to Berry and affiliated entities (when/if Ottawa is applied) \$ 1,616,053.92

Thrive Shares: October 12, 2021 \$7,257,575.87

This is **Exhibit “SS”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

September 5, 2024

DELIVERED VIA EMAIL

James Renihan
Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7
Email: james.renihan@nortonrosefulbright.com

Dear Mr. Renihan:

Re: Mizrahi (128 Hazelton) Inc. / David Berry

Our office is assuming carriage of this matter on behalf of Mr. Berry. We have reviewed your email to Mr. Leslie regarding the Receiver's intention to disclaim the APS for Unit 901 and your proposed timetable to have that motion heard. Mr. Berry will oppose any attempt to disclaim his APS for Unit 901 or attempt to sell the property.

We appreciate that the Receiver wants to advance this matter. Mr. Berry also wants to advance this matter expediently and has been preparing a response and collecting information and materials to respond to your letter dated July 26, 2024. We are working on this response and intend to deliver it to you early next week.

Based on our review of the matter thus far, the response will include information and documents to which the receiver has not previously referred (and may not have previously reviewed), and will likely want to consider prior to preparing a report on the APS for Unit 901.

In light of the above, and with regard to our fall schedules, we propose the following schedule for the Receiver's proposed motion:

1. Delivery of Receiver's motion material - September 20
2. Delivery of responding materials - October 11
3. Cross-examinations (if any) - week of October 21
4. Hearing (early November).

We anticipate that upon seeing our client's response the Receiver may want to take a different approach than indicated, and we are available to discuss.

Yours very truly,

A handwritten signature in blue ink, appearing to read "Michael O'Brien", with a horizontal line extending from the end of the signature.

Michael O'Brien

cc: Jason Wadden, Nick Morrow, *Tyr LLP*
John Leslie, *Dickinson Wright LLP*
Jennifer Stam, *Norton Rose Fulbright Canada LLP*

This is **Exhibit “TT”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N".

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

September 9, 2024

DELIVERED VIA EMAIL

Jerome R. Morse
Morse Shannon LLP
133 Richmond Street West, Suite 501
Email: jmorse@morseshannon.com

Dear Counsel:

Re: David Berry / 128 Hazelton Ave., Unit 901 / Mizrahi Developments Inc. Loan

We act for Mr. Berry and have assumed carriage of this matter from Mr. Leslie.

We write in respect of the 128 Hazelton Ave. project ("**Project**") which is currently in receivership. The Receiver has required Mr. Berry to disclose and provide to it all agreements governing his purchase of Unit 901 in the Project ("**Unit 901**"). This accords with paragraph 5 of Justice Cavanagh's June 4, 2024 Order, requiring all persons with, *inter alia*, documents, contracts, records and information of any kind related to the business of affairs of Mizrahi (128 Hazelton) Inc. ("**Hazelton Inc.**") or Mizrahi 128 Hazelton Retail Inc. to provide them to the Receiver.

As your client is aware, on June 28, 2016, Mr. Mizrahi entered into a Supplementary Agreement with Mr. Berry and Hazelton Inc. ("**Supplementary Agreement**") in respect of the \$10,000,000 loan that Mr. Berry advanced to Mizrahi Developments Inc. and Mizrahi Development Group (1451 Wellington) Inc. ("**Wellington Inc.**") by way of two loan facilities ("**Loan**").

The Supplementary Agreement provides, *inter alia*, that should the final closing of Unit 901 occur prior to the repayment of all amounts due and owing pursuant to the Loan, Mr. Mizrahi will pay for the outstanding amounts owed by Mr. Berry for Unit 901 – up to the maximum amount of principal and interest that remains under Loan Facility #2 (as defined in the Loan Agreements) – by way of a bridge payment ("**Mizrahi Bridge Payment**"), to be repaid immediately subsequent to full confirmed repayment of all amounts owing by Wellington Inc. to Mr. Berry.

Mr. Mizrahi provided a personal guarantee in respect of the Mizrahi Bridge Payment ("**Sam Personal Guarantee**").

Mr. Mizrahi and Hazelton Inc. further agreed and confirmed that, notwithstanding the Mizrahi Bridge Payment and the Sam Personal Guarantee, if any amount of the principal or interest of the Loan remain due and owing at the time of closing for Unit 901, Mr. Berry will not be required to make any additional payments to Hazelton Inc. in order to close on his APS.

As you are aware, pursuant to the Confidentiality Agreement appended to the Supplementary Agreement, disclosure of the Supplementary Agreement (including disclosing its existence and/or terms by delivering a copy thereof) is permitted in circumstances including as required by law, if made pursuant to an order of a court of competent jurisdiction, or if it is made in connection with the enforcement of the Supplementary Agreement.

We write as a courtesy to advise that, in order to comply with paragraph 5 of Justice Cavanagh's Order dated June 4, 2024, appointing the Receiver, Mr. Berry is obligated to bring the Supplementary Agreement to the attention of the Receiver as it is a document that relates to the business and affairs of the Debtor. Such disclosure, which is permitted by the terms of the Confidentiality Agreement, may also require disclosure of the Loan Agreement, Amending Agreement and other agreements related to the Loan (which agreements also permit disclosure as required by law). If Mr. Mizrahi has already disclosed these agreements to the Receiver please advise forthwith.

Yours very truly,



Michael O'Brien

cc: Colin Keith, *Keith Law*
Jason Wadden, Nick Morrow, *Tyr LLP*

This is **Exhibit “UU”** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

September 19, 2024

DELIVERED VIA EMAIL

James Renihan
Norton Rose Fulbright
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7
Email: James.renihan@nortonrosefulbright.com
Fax: 416-216-1944

Dear Mr. Renihan:

Re: Mizrahi (128 Hazelton) Inc. / David Berry

We write in response to your email dated September 18, 2024, and further to our previous letters dated September 5, 2024, and September 12, 2024, regarding Mr. Berry's interest in Unit 901 of the "Hazelton Project".

Relevant Documents

In our previous letters, we advised that there was at least one other relevant agreement of which Mr. Berry was aware that dealt with his interests and rights in Unit 901, and that there were confidentiality considerations involving other parties related to the document. Mr. Berry is now in a position to provide this agreement, and other, related agreements, to the Receiver.

We are providing the following documents by way of a secure document link:

Date	Document	Parties
June 6, 2016	Term Sheet	Mizrahi Developments Inc., Mizrahi Development Group (1451 Wellington) Inc., Sam Mizrahi, David Berry
June 28, 2016	Supplementary Agreement	David Berry, Sam Mizrahi, Mizrahi (128 Hazelton) Inc.
June 28, 2016	Confidentiality Agreement	David Berry, Sam Mizrahi

Date	Document	Parties
June 29, 2016	Loan Agreement	Mizrahi Developments Inc., David Berry, Mizrahi Development Group (1451 Wellington) Inc., Sam Mizrahi
April 17, 2020	Letter Regarding Additional Parking Space for Suite 901 at 128 Hazelton	Mizrahi Developments Inc., Mizrahi (128 Hazelton) Inc., Mizrahi Development Group (1451 Wellington) Inc., Same Mizrahi
October 12, 2021	Amending Agreement	Mizrahi Developments Inc., David Berry, Mizrahi Development Group (1451 Wellington) Inc., Sam Mizrahi
October 27, 2021	Agreement of Purchase and Sale, Unit 1102, 1451 Wellington Street	David Berry, Mizrahi Development Group (1451 Wellington) Inc.
October 27, 2021	Agreement of Purchase and Sale, Unit 1103, 1451 Wellington Street	David Berry, Mizrahi Development Group (1451 Wellington) Inc.

As explained in further detail below, as a result of the enclosed agreements, the payments Mr. Berry has already made on Unit 901, and the representations made to Mr. Berry and the Court (outlined in our September 12 letter) Mr. Berry has no more financial obligations or amounts owing towards Unit 901 at 128 Hazelton, and therefore has an equitable interest and an institutional constructive trust (as opposed to a remedial constructive trust) in his favour in respect of Unit 901 which arose before the appointment of the Receiver. As Mr. Berry has no further payment obligations in respect of Unit 901, the only material step remaining in his purchase of Unit 901 is for the title of his unit to be conveyed to Mr. Berry and Mr. Berry's APS in respect of the Unit 901 is a specifically enforceable contract. As this equitable interest and constructive trust existed prior to the appointment of the Receiver, and for other reasons, Unit 901 was no longer an asset of the Debtors' estate that was available

to be sold to satisfy the claims of secured creditors, and the Receiver is under an obligation to close the sale of Unit 901 to Mr. Berry.

The Agreements

On or about June 29, 2016, Mr. Berry entered into a loan agreement with Mizrahi Developments Inc. (“**MDI**”), Mr. Mizrahi and Mizrahi Development Group (1451 Wellington) Inc. (“**Wellington Inc.**”), whereby Mr. Berry advanced a \$10,000,000 loan to MDI and Wellington Inc. by way of two loan facilities, one being for \$4,000,000 and the other being for \$6,000,000, both accruing interest at a rate of 12.0% per annum compounded annually (“**Loan**” or “**Loan Agreement**”). While the Loan was originally provided in connection with the financing of a condominium project at 1451 Wellington Street, Ottawa (the “**Wellington Project**”), the Loan Agreement also provided Mr. Berry with an additional parking space at 128 Hazelton (as also referenced in a letter dated April 16, 2020). At the time the Loan Agreement was entered into, Mr. Berry had already entered into an agreement of purchase of sale for Unit 901 at the Hazelton Project.

Contemporaneous with the entering into the Loan Agreement (on June 28, 2016), Mr. Mizrahi and Mizrahi (128 Hazelton) Inc. (“**Hazelton Inc.**”) entered into the “**Supplementary Agreement**” with Mr. Berry concerning the Wellington Project and the Hazelton Project as part of the conditions and consideration for entering into the Loan Agreement. The Supplementary Agreement provides that (along with section 3.6 of the Loan Agreement), should the closing of Unit 901 occur prior to the repayment of all amounts due and owing pursuant to the Loan, Mr. Mizrahi will pay for the outstanding amounts owed by Mr. Berry for Unit 901 – up to the maximum amount of principal and interest that remains under Loan Facility #2 (as defined in the Loan Agreements) – by way of a bridge payment (“**Mizrahi Bridge Payment**”), to be repaid immediately subsequent to full confirmed repayment of all amounts owing by Wellington Inc. to Mr. Berry.

Mr. Mizrahi also provided a personal guarantee in respect of the Mizrahi Bridge Payment (“**Sam Personal Guarantee**”).

Further, in the Supplementary Agreement, at “Article 5 – PAYMENTS POSTPONED”, Mr. Mizrahi and Hazelton Inc. further agreed and confirmed that, notwithstanding the Mizrahi Bridge Payment and the Sam Personal Guarantee, if any amount of the principal or interest of the Loan remain due and owing under the Loan (including all interest accrued thereon), then Mr. Berry would *not be required to make any additional payments* to Hazelton Inc. in order to close on his APS and the final closing of this Unit will be completed.

The Supplementary Agreement provides that it remains in effect and would *only* terminate upon repayment to Mr. Berry of all amounts due and owing pursuant to Loan Facility #1 and Loan Facility #2. Further, pursuant to subsection 6.8 of the Supplementary Agreement, the Supplementary Agreement exists and persists notwithstanding any “entire agreement” or similar clause which was contained in any Loan Transaction Document.

On October 12, 2021, Mr. Berry, MDI, Wellington Inc. and Mr. Mizrahi entered into an Amending Agreement to the Loan Agreement (the “**Amending Agreement**”) whereby Mr. Mizrahi, MDI and Wellington Inc. acknowledged that the Loan had matured and would be repaid through a number of payment options, which included providing Mr. Berry an interest in two units in the Wellington Project, being Units 1102 and 1103. Pursuant to the Amending Agreement, should Units 1102 and 1103 not be registered and closed within 18 months of the date of execution of the applicable APS, the Loan would continue to be owing and interest on the Loan would continue to accrue.

The two APS were executed on October 27, 2021. The sale of those units to Mr. Berry did not close within 18 months (being April 2023), and still have not closed. As such, the Loan continues to be outstanding and owing, and interest on the Loan recommenced and continues to accrue.

Unit 901 is Subject to Mr. Berry’s Equitable Interest and a Constructive Trust

Given that the Wellington APS have not yet closed, the Loan remains owing and due and continues to accrue interest. The outstanding balance of the Loan as of September 18, 2024 is calculated as being—at least—approximately \$9,336,255.28. This amount does not account for Mr. Berry’s costs associated with the Wellington Loan, which are to be included as part of the amounts owing pursuant to the Loan Agreement. Mr. Berry is in the midst of calculating such costs, though that figure does not bear on his entitlement to close on Unit 901.

As the Loan remains due and owing, Mr. Berry is not required to make any additional payments to Hazelton Inc. in order to close on his APS, and the final closing can be made notwithstanding this fact.

Consequently, Mr. Berry has paid all that he is required to pay in connection with Unit 901 and he has no more financial or other obligations towards his unit. There is nothing more owing on Unit 901 by Mr. Berry and Mr. Berry’s APS for Unit 901 is therefore a specifically enforceable contract on which Mr. Berry is entitled to close. As it currently stands, with no payment outstanding, the only material step remaining is for the title of Unit 901 to be

conveyed to Mr. Berry. Until the closing occurs, Unit 901 is held in trust in favour of Mr. Berry and Mr. Berry is legally entitled to have the transaction closed without further delay.

As Unit 901 is subject to an equitable interest and an institutional constructive trust in favour of Mr. Berry, neither the Receiver nor the debtor can disclaim Mr. Berry's interests in Unit 901 (or the APS concerning Unit 901), nor can the Receiver sell Unit 901 for the purpose of having the proceeds paid to the secured creditors. This is particularly the case given that a representative of the first-ranking secured creditor (and debtor) advised Mr. Berry that the Receiver would complete the sale of Unit 901 to him, and this intention was explained to the Court, as set out in our previous letter to you. As stated in our September 12, 2024, letter, Mr. Berry will oppose any attempt to disclaim his APS or sell Unit 901.

We trust that the above information, in conjunction with our client's position as stated in our September 12, 2024, letter, provides sufficient information for the Receiver to revisit its position in respect of Unit 901. Our client is entitled to close on Unit 901 and requires the Receiver to do so forthwith without further delay.

We will be pleased to discuss this matter and to work with you and the Receiver towards the closing of Unit 901. In the event that the Receiver will persist with its attempt to disclaim the APS or sell Unit 901, we will work with you to set a schedule for a hearing of the matter.

Your very truly,

A handwritten signature in black ink, appearing to read "Michael O'Brien".

Michael O'Brien

cc: Jason Wadden, Nick Morrow, *Tyr LLP*
Jennifer Stam, *Norton Rose Fulbright Canada LLP*

This is **Exhibit “VV”** referred to in the Affidavit of **David Berry**
sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow", written in a cursive style.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

October 22, 2024

DELIVERED VIA EMAIL

James Renihan
Norton Rose Fulbright
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario M5K 1E7
Email: James.renihan@nortonrosefulbright.com
Fax: 416-216-1944

Dear Mr. Renihan:

Re: Mizrahi (128 Hazelton) Inc. / David Berry

We write further to our October 18, 2024 email and our call on September 19, 2024 regarding Mr. Berry's interest in Unit 901 of the "**Hazelton Project**", and your request for the supplemental documentation in relation to the June 29, 2016 Loan Agreement between Mizrahi Developments Inc., David Berry, Mizrahi Development Group (1451 Wellington) Inc., and Sam Mizrahi (the **Loan Agreement**) relevant to the Hazelton Project.

Relevant Documents

In our previous discussions, we advised that there were additional documents that involved the Loan Agreement, including documents relating to the security placed in favour of Mr. Berry in relation to the Loan Agreement. To that end, we are providing the following documents by way of a secure document link:

Date	Document	Parties and Description
June 29, 2016	Loan A Promissory Note	David Berry, Mizrahi Developments Inc. A Promissory Note executed in relation to Loan Facility #1 from the Loan Agreement for \$4,000,000 Canadian Dollars as required by subsection 5.1(a) of the Loan Agreement.
June 29, 2016	Loan B Promissory Note	David Berry, Mizrahi Developments Inc.

Date	Document	Parties and Description
		A Promissory Note executed in relation to Loan Facility #2 from the Loan Agreement for \$6,000,000 Canadian Dollars as required by subsection 5.1(a) of the Loan Agreement.
June 29, 2016	Postponement Agreement	<p>Mizrahi Developments Inc., David Berry, Mizrahi Development Group (1451 Wellington) Inc., Sam Mizrahi</p> <p>A postponement of claim from Sam in respect of all indebtedness of Mizrahi Developments Inc. and Mizrahi Development Group (1451 Wellington) Inc. in favour of Sam as required by subsection 5(h) of the Loan Agreement.</p>
June 29, 2016	Environmental Indemnity	<p>Mizrahi Developments Inc., Mizrahi (128 Hazelton) Inc., Mizrahi Development Group (1451 Wellington) Inc., Same Mizrahi</p> <p>An environmental indemnity made in favour of David Berry as required by subsection 5.1(i) of the Loan Agreement.</p>
June 29, 2016	Guarantee of Sam Mizrahi	<p>David Berry, Sam Mizrahi</p> <p>A Personal Guarantee agreement of Sam Mizrahi in favour of David Berry in connection with the Loan Agreement as required by subsections 5(f) and 5(g) of the Loan Agreement.</p>
June 29, 2016	Guarantee of Mizrahi Development Group (1451 Wellington) Inc.	David Berry, Mizrahi Development Group (1451 Wellington) Inc.

Date	Document	Parties and Description
		A Guarantee agreement of Mizrahi Development Group (1451 Wellington) in favour of David Berry in connection with the Loan Agreement bound by Sam Mizrahi as required by subsections 5(f) and 5(g) of the Loan Agreement.
June 29, 2016	Warrant	<p>David Berry, Mizrahi Development Group (1451 Wellington) Inc.</p> <p>A Warrant Certificate exercisable by David Berry to acquire 25% on the Net Profits in association with 1451 Wellington project in Ottawa for the exercise price of \$1.00 provided in connection with the Loan Agreement as required by subsection 5(j) of the Loan Agreement.</p>
June 29, 2016	Assignment of Insurance	<p>David Berry, Mizrahi Developments Inc, Mizrahi Development Group (1451 Wellington) Inc.</p> <p>An Assignment document executed in relation to the Loan Agreement that assigns all present and future rights, title and interest in insurance policies affecting the Real Property at 1445 and 1451 Wellington subject to the Loan Agreement as required by subsection 5(e) of the Loan Agreement.</p>
June 29, 2016	GSA (Mizrahi Development Group (1451 Wellington) Inc.)	<p>David Berry, Mizrahi Development Group (1451 Wellington) Inc.</p> <p>A General Security Agreement made by Mizrahi Development Group (1451 Wellington) Inc. (Obliger), to and in favour of David Berry (Creditor) made as a</p>

Date	Document	Parties and Description
		condition precedent to the Loan Agreement that this Security Agreement was executed as security under the Loan Agreement providing collateral for the Loan as required by subsection 5(c) of the Loan Agreement.
June 29, 2016	GSA (Mizrahi Developments Inc.)	David Berry, Mizrahi Developments Inc. A General Security Agreement made by Mizrahi Developments Inc. (Obliger), to and in favour of David Berry (Creditor) made as a condition precedent to the Loan Agreement that this Security Agreement was executed as security under the Loan Agreement providing collateral for the Loan as required by subsection 5(c) of the Loan Agreement.
June 29, 2016	Assignment of Material Agreements	David Berry, Mizrahi Developments Inc, Mizrahi Development Group (1451 Wellington) Inc., Sam Mizrahi An Assignment of any/all contracts relating to the 1451 Wellington Project in favour of David Berry as required by subsection 5(d) of the Loan Agreement.
June 29, 2016	Acknowledgement and Direction Re: Registering Charge	David Berry, Mizrahi Developments Inc, Mizrahi Development Group (1451 Wellington) Inc., Sam Mizrahi An Acknowledgement and Direction by Sam Mizrahi on behalf of Mizrahi Development Group (1451 Wellington) Inc., confirming a charge made on 1451

Date	Document	Parties and Description
		Wellington in favour of David Berry as collateral for the Loan Agreement.

We trust that the above information, and enclosed documents satisfy your request for supplementary documentation pursuant to the Loan Agreement.

Please let us know if you have any further questions or would like to discuss.

Your very truly,



Michael O'Brien

cc: Jason Wadden, Nick Morrow, *Tyr LLP*
Jennifer Stam, *Norton Rose Fulbright Canada LLP*

This is **Exhibit “WW”** referred to in the Affidavit of **David Berry**
sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow", written in a cursive style.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

594

Jerome R. Morse
*Certified by the Law Society of Ontario
as a Specialist in Civil Litigation*
Direct Line: 416-941-5867
jmorse@morseshannon.com

September 11, 2024

BY EMAIL - mobrien@tyrllp.com

Michael O'Brien
Tyr LLP
488 Wellington Street West
Suite 300-302
Toronto, Ontario M5V 1E3

Dear Counsel,

Re: Mizrahi (128 Hazelton) Inc. et al
Our file no.: 50190

We write further to your letter of September 9, 2024. Contrary to your letter, our client is not aware of a Supplementary Agreement dated June 28, 2016 between Mr. Berry and Mizrahi (128 Hazelton) Inc. Please provide a copy of this agreement so we can properly assess your client's position.

We are aware of an agreement with Mr. Berry between Mizrahi Developments Inc, Mr. Mizrahi and Mizrahi Development Group (1451 Wellington) Inc, which is dated June 29, 2016. We are also aware of the Amending Agreement, dated October 12, 2021 between Mizrahi Developments Inc, Mizrahi Development Group (1451 Wellington) Inc and Mr. Berry.

Neither of these agreements concern the affairs of 128 Hazelton and are not "Records" within the meaning of the order appointing the Receiver over 128 Hazelton and 128 Retail and should not be disclosed to the Receiver over those projects. If you disagree, please explain your client's position as to why loan agreements concerning a different development project constitute Records within the meaning of the Appointment Order in the absence of 128 Hazelton being a party to the agreements.

We look forward to clarification on the issue of what agreement your letter references. We also suggest you review our previous communications with your client's former lawyer setting out our client's position that there are no amounts owed to Mr. Berry further to the loan agreements referenced above, most notably the Amending Agreement.

Yours very truly,

Jerome R. Morse

Jerome R. Morse
DT/vs

Cc: Steven Weisz
Michael Osborne

This is **Exhibit "XX"** referred to in the Affidavit of **David Berry** sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow", written in a cursive style.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

September 13, 2024

DELIVERED VIA EMAIL

Jerome R. Morse
Morse Shannon LLP
133 Richmond Street West, Suite 501
Email: jmorse@morseshannon.com

Dear Counsel:

Re: David Berry / 128 Hazelton Ave., Unit 901 / Mizrahi Developments Inc. Loan

We write further to your letter of September 11, 2024. Capitalized terms in this letter carry the same meaning as set out in our letter of September 9, 2024.

We are surprised to hear that your client is not aware of the Supplementary Agreement dated June 28, 2016 between Mr. Berry and Mizrahi (128 Hazelton) Inc. and Sam Mizrahi. We enclose a copy of the Supplementary Agreement and its appended Confidentiality Agreement for your review, both of which are signed by Mr. Mizrahi. We are also concerned that the Receiver has not mentioned the Supplementary Agreement in its correspondence with our client thus far. It suggests that Mr. Mizrahi and Constantine have both failed to make the Receiver aware of an Agreement that is material to Mr. Berry's interest in Unit 901.

As previously advised, our client's position is that the Supplementary Agreement impacts his rights in respect of Unit 901 and he is required by law to provide a copy of the Supplementary Agreement to the Receiver. He is also entitled to do so in his effort to enforce his rights under the Supplementary Agreement, which is a permitted disclosure pursuant to the Confidentiality Agreement.

If your client objects to Mr. Berry's disclosure of the Supplementary Agreement to the Receiver please advise forthwith as we otherwise intend to provide the Receiver with a copy of the Supplementary Agreement, the Confidentiality Agreement, the June 29, 2016 Loan Agreement ("**Loan Agreement**"), the October 12, 2021 Amending Agreement ("**Amending Agreement**"), the April 16, 2020 Letter regarding Additional Parking for Unit 901 at 128 Hazelton, and the APS for the units 1102 and 1103 at 1451 Wellington.

We have reviewed your prior correspondence with Mr. Leslie. We disagree that the Wellington Loan Agreement and the ancillary agreements and documents should not be disclosed to the Receiver. Mr. Berry's entitlement to close on Unit 901 at Hazelton—and the finances of such

closing—is related, in part, to his rights under the Supplementary Agreement, which is a side agreement to the Loan Agreement and the Amending Agreement.

We also disagree with your suggestion that there are no amounts owing to Mr. Berry under the Loan. The Amending Agreement provides that interest will begin to run on the loan facilities if the Wellington APS do not close within 18 months. The units did not close in the prescribed time period and interest continued to accrue on the loans in April 2023. Interest continues to accrue to this date. The Loan Agreement also provides that all legal and other costs associated with the loans are to be paid by the Borrower. Our client is currently calculating the applicable costs and we will advise of this figure in due course.

In any event, by our client's calculation, as of September 12, 2024 the outstanding balance of the Loans including interest (and excluding other costs to be calculated) is ~\$9,356,289.14. Until the 1451 Wellington units to which our client is entitled close, the Loan remains outstanding and our client is entitled under the Supplementary Agreement to close on Unit 901 at Hazelton without making any further payment.

We intend to detail Mr. Berry's interest in Unit 901 to the Receiver, with specific reference to and disclosure of the Supplementary Agreement. If your client disagrees with Mr. Berry's obligation and entitlement to provide the Supplementary Agreement and Confidentiality Agreement to the Receiver at this time, please advise without delay, as we will then advise the Receiver that Mr. Mizrahi is preventing Mr. Berry from disclosing the Supplementary Agreement and seek permission from the court to make such disclosure. If our client is required to seek the assistance of the court on this issue he will seek his full costs against Mr. Mizrahi for having to do so.

We look forward to hearing from you.

Yours very truly,



Michael O'Brien

cc: Colin Keith, *Keith Law*
Jason Wadden, Nick Morrow, *Tyr LLP*

This is **Exhibit “YY”** referred to in the Affidavit of **David Berry**
sworn this 29th day of January 2025

A handwritten signature in black ink, appearing to read "Nick Morrow", written in a cursive style.

Nick Morrow

Commissioner for Taking Affidavits
(or as may be)

600

SUMMARY

COMPANY	TOTAL
Access Storage	\$ 61,120.13
Museum Pros	\$ 60,603.51
Stellar Art	\$ 32,552.48
Rockbrune/Cal Nichols	\$ 17,164.70
Barrie Moving	\$ 8,100.00
Hudson Movers	\$ 99,293.64
	\$ 278,834.46

Access Storage

Access Storage	\$	21.46
Access Storage	\$	21.59
Access Storage	\$	21.59
Access Storage	\$	28.25
Access Storage	\$	28.25
Access Storage	\$	21.49
Access Storage	\$	21.49
Access Storage	\$	673.60
Access Storage	\$	480.54
Access Storage	\$	673.60
Access Storage	\$	461.15
Access Storage	\$	461.15
Access Storage	\$	673.60
Access Storage	\$	673.60
Access Storage	\$	461.15
Access Storage	\$	673.60
Access Storage	\$	461.15
Access Storage	\$	461.15
Access Storage	\$	673.60
Access Storage	\$	1,218.45
Access Storage	\$	28.25
Access Storage	\$	28.25
Access Storage	\$	641.94
Access Storage	\$	528.94
Access Storage	\$	1,168.65
Access Storage	\$	64.38
Access Storage	\$	49.71
Access Storage	\$	21.59
Access Storage	\$	1,168.65
Access Storage	\$	1,170.90
Access Storage	\$	1,168.65
Access Storage	\$	1,170.90
Access Storage	\$	1,168.65
Access Storage	\$	1,170.90
Access Storage	\$	1,168.65
Access Storage	\$	1,170.90
Access Storage	\$	1,168.65
Access Storage	\$	28.25
Access Storage	\$	575.29
Access Storage	\$	1,170.90
Access Storage	\$	673.60

Access Storage	\$	495.05
Access Storage	\$	1,170.90
Access Storage	\$	575.30
Access Storage	\$	673.60
Access Storage	\$	495.05
Access Storage	\$	1,170.90
Access Storage	\$	575.30
Access Storage	\$	673.60
Access Storage	\$	1,170.90
Access Storage	\$	27.45
Access Storage	\$	22.45
Access Storage	\$	575.30
Access Storage	\$	673.60
Access Storage	\$	990.12
Access Storage	\$	41.90
Access Storage	\$	20.95
Access Storage	\$	1,170.90
Access Storage	\$	575.30
Access Storage	\$	673.60
Access Storage	\$	495.05
Access Storage	\$	1,170.90
Access Storage	\$	575.30
Access Storage	\$	673.60
Access Storage	\$	495.05
Access Storage	\$	1,170.90
Access Storage	\$	575.30
Access Storage	\$	673.60
Access Storage	\$	516.00
Access Storage	\$	1,170.90
Access Storage	\$	575.30
Access Storage	\$	673.60
Access Storage	\$	495.05
Access Storage	\$	1,170.90
Access Storage	\$	27.45
Access Storage	\$	22.45
Access Storage	\$	575.30
Access Storage	\$	673.60
Access Storage	\$	495.05
Access Storage	\$	1,170.90
Access Storage	\$	575.30
Access Storage	\$	673.60

Access Storage	\$	495.05
Access Storage	\$	1,170.90
Access Storage	\$	575.30
Access Storage	\$	673.60
Access Storage	\$	495.05
Access Storage	\$	1,170.90
Access Storage	\$	575.30
Access Storage	\$	673.60
Access Storage	\$	495.05
Access Storage	\$	1,170.90
Access Storage	\$	575.30
Access Storage	\$	673.60
Access Storage	\$	495.05
Access Storage	\$	1,170.90
Access Storage	\$	575.30
TOTAL:	\$	61,120.13

Museum Pros

DATE	COMPANY	AMOUNT	NOTES
Nov 6 2024	MUSEUM PROS	\$ 1,350.35	Moving/Delivery Cost
Oct 1 2024	MUSEUM PROS	\$ 793.33	Storage
Sep 1 20224	MUSEUM PROS	\$ 793.33	Storage
Aug 1 2024	MUSEUM PROS	\$ 793.33	Storage
July 1 2024	MUSEUM PROS	\$ 793.33	Storage
June 1 2024	MUSEUM PROS	\$ 793.33	Storage
May 1 2024	MUSEUM PROS	\$ 793.33	Storage
April 1 2024	MUSEUM PROS	\$ 793.33	Storage
March 1 2024	MUSEUM PROS	\$ 793.33	Storage
February 1 2024	MUSEUM PROS	\$ 793.33	Storage
January 1 2024	MUSEUM PROS	\$ 793.33	Storage
Dec 1 2023	MUSEUM PROS	\$ 793.33	Storage
Nov 1 2023	MUSEUM PROS	\$ 793.33	Storage
Oct 1 2023	MUSEUM PROS	\$ 793.33	Storage
Sept 5 2023	MUSEUM PROS	\$ 604.55	Delivery Cost
Sept 1 2023	MUSEUM PROS	\$ 689.90	Storage
Aug 1 2023	MUSEUM PROS	\$ 689.90	Storage
July 6 2023	MUSEUM PROS	\$ 14,403.04	Moving Cost
	TOTAL:	\$ 28,051.03	
TOTAL:	STELLAR ART	\$32,552.48	

TOTAL ART STORAGE & MOVING FEES \$ 60,603.51

605

Stellar Art

\$32,552.48

ROCKBRUNE CALL NICHOLS FEES

DATE	AMOUNT	PAY TYPE	NOTES/DESC
May-23	\$5,734.75	MC	Moving Fee
Jun-23	\$672.35	MC	Storage
Jul-23	\$672.35	MC	Storage
Aug-23	\$672.35	MC	Storage
Sep-23	\$672.35	MC	Storage
Oct-23	\$672.35	MC	Storage
Nov-23	\$672.35	MC	Storage
Dec-23	\$672.35	MC	Storage
Jan-24	\$672.35	MC	Storage
Feb-24	\$672.35	MC	Storage
Mar-24	\$672.35	MC	Storage
Apr-24	\$672.35	MC	Storage
May-24	\$672.35	MC	Storage
Jun-24	\$672.35	MC	Storage
Jul-24	\$672.35	MC	Storage
Aug-24	\$672.35	MC	Storage
Sep-24	\$672.35	MC	Storage
Oct-24	\$672.35	MC	Storage
TOTAL:	\$17,164.70		

DATE	COMPANY	AMOUNT
June 7 2023	Barrie Moving	\$ 1,750.00
June 20 2023	Barrie Moving	\$ 3,000.00
June 20 2023	Barrie Moving	\$ 1,500.00
Oct 1 2024	Barrie Moving	\$ 1,850.00
	TOTAL	\$ 8,100.00

HUDSON MOVERS - FEES & CHARGES

DATE	INV NO.	AMT.	NOTES/DESC
Dec 23 2021	#0023836	\$1,728.90	Storage
Jan 13 2022	#0023852	\$2,356.05	Moving Fees Park Rd to storage
Jan 15 2022	#SB032229	\$186.45	Storage
Jan 25 2022	#0023853	\$47,572.44	Move from Park Rd to storage
Feb 15 2022	#SB032373	\$186.45	Storage
Feb 15 2022	#SB032374	\$519.80	Storage
Mar 1 2022	#SB032454	\$2,858.90	Storage
Mar 15 2022	#SB032534	\$186.45	Storage
Mar 15 2022	#SB32535	\$519.80	Storage
Apr 1 2022	#SB032601	\$2,858.90	Storage
Apr 15 2022	#SB032675	\$186.45	Storage
Apr 15 2022	#SB032676	\$519.80	Storage
May 1 2022	#SB032746	\$2,858.90	Storage
May 1 2022	#SB032747	\$1,524.94	Storage
May 15 2022	#SB032819	\$186.45	Storage
May 15 2022	#SB032820	\$519.80	Storage
June 1 2022	#SB032893	\$2,858.90	Storage
June 1 2022	#SB032894	\$1,524.94	Storage
June 7 2022	#0024112	\$6,554.51	Moving fees Coach house to storage
June 15 2022	#SB032967	\$519.80	Storage
July 1 2022	#SB033036	\$2,858.90	Storage
July 1 2022	#SB033037	\$1,524.94	Storage
July 1 2022	#SB033038	\$885.47	Storage
July 15 2022	#SB033106	\$186.45	Storage
July 15 2022	#SB033107	\$519.80	Storage
Aug 1 2022	#SB033174	\$2,858.90	Storage
Aug 1 2022	#SB033175	\$1,524.94	Storage
Aug 1 2022	#SB033176	\$885.47	Storage
Aug 15 2022	#SB033245	\$186.45	Storage
Aug 15 2022	#SB033246	\$519.80	Storage
Sept 13 2022	#0024294	\$13,831.20	Sort through contents at storage facility
Sept 15 2022	#SB033386	\$186.45	Storage
Sept 15 2022	#SB033387	\$519.80	Storage
Sept 23 2022	#0024314	\$4,227.61	Move charge storage to 3rd Line
Sept 29 2022	#0024320	\$10,225.09	Move charge from storage to Royal Oak and to Caplan
Oct 27 2022	#00243643	\$2,823.59	Move charge from storage to Royal Oak
Sept 28 2022	#0024317	\$6,744.69	Move from storage to Woodbine
Cct 28 2022	#0024367	\$1,271.25	Move from storage to Woodbine
Nov 14 2022	#0024386	\$2,793.93	Move charge from Park Rd couch/wicker furniture to 3rd line
	TOTAL:	\$99,293.64	

CONSTANTINE ENTERPRISES INC.

-and-

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

Applicant

Respondents

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF DAVID BERRY
(AFFIRMED JANUARY 29, 2025)**

Tyr LLP

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Toronto, ON M5V 1E3
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Email: nmorrow@tyrllp.com
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Lawyers for David Berry

TAB 2

**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

**(Disclaimer of Agreement
Of Purchase and Sale)**

**AFFIDAVIT OF JUSTIN KERSTEN
(AFFIRMED JANUARY 27, 2025)**

I, **Justin Kersten**, of the City of Toronto, in the Province of Ontario, AFFIRM:

1. I am a Project Manager and Associate with Den Bosch + Finchley ("**DBF**").
2. DBF was retained by David Berry ("**Mr. Berry**") in connection with the construction and build-out of the **Berry Residence** (as defined below) in the capacity of a "Consultant", and I am part of the team at DBF that was working on this mandate. As part of my role, I assisted with the analysis of the costs related to the construction and build-out of the Berry Residence. Accordingly, I have personal knowledge of the matters discussed in this

affidavit. Where my evidence is based on information and belief, I have identified the source of my information and verily believe it to be true.

3. There were two particular areas that I was involved with as part of DBF's mandate: (a) addressing and analyzing the financial impact arising from the changes to the construction and build-out work resulting from the April 2020 Price Adjustment (as defined below); and (b) addressing the status of the construction and the build-out from time to time. I discuss both in greater detail below.

4. As a preliminary matter, for the sake of better explaining my evidence below, I make a distinction in this affidavit between "construction" work and "build-out" work that Mizrahi Developments Inc. ("**Mizrahi Developments**") and Mizrahi (128 Hazelton) Inc. ("**Hazelton Inc.**"), the developers of the project, were to undertake. Construction work is the work that is required to construct the Unit to a minimum standard, whereas by build-out work, I mean work such as finishings that can be done by either by the builder or an independent contractor retained by the owner.

A. Background Information Regarding the Project and my Evidence Below

5. My evidence set out this section is based on my review of various documents during the course of my work in carrying out my responsibilities in the two areas noted above.

6. Mr. Berry entered into an agreement of purchase and sale for a unit intended to be his residence (the "**Berry Residence**") in the condominium project being developed by

Hazelton Inc. known as “One Twenty-Eight Hazelton Avenue” (the “**Project**” or “**128 Hazelton**”), located in the Yorkville neighbourhood of Toronto, Ontario.

7. The Berry Residence was originally conceived to be comprised of both Unit 901 and Unit 802 of the Project (as I was advised by Mr. Berry). Unit 901 took up the entirety of the 9th floor as well as terrace space on the roof of 128 Hazelton.

8. The Berry Residence was not typical of the vast majority of condominium units on the market, even for units that are considered to be luxury units. While all developers have to provide a certain level of finishings to complete the unit and may offer a standard set of upgrades to the basic finishings, the Berry Residence was a different type of project. The Berry Residence was a highly bespoke and customized condominium unit, with Berry designing, specifying and sourcing many of the finishing features himself (through his team of design and construction professionals). Accordingly, the work that Mizrahi Developments undertook with respect to the Berry Residence was really of two, distinct types of work: (a) one was as a builder of Unit 901; and (b) the other was as a contractor undertaking customized finishing and renovation work.

9. This distinction between construction work and build-out work is discussed further below to explain the reconciliation of the costs that were associated with the different work streams that were included in the various budgets that were prepared from time to time.

B. Cost Adjustments Arising from the April 2020 Price Adjustment

10. In or about April 2020, Mr. Berry changed the scope of the Berry Residence

significantly (the “**April 2020 Adjustment**”). Mr. Berry advised DBF that he had sold Unit 802 to another individual, thereby amending his plans.

11. These changes impacted both the construction work and the custom build-out work that was required. In addition, there were other changes to the build-out work that specified from time to time.

12. As part of DBF’s mandate, we prepared an analysis to determine the cost adjustments that were caused by the April 2020 Changes, and from time to time I undertook similar work with other changes to the scope of the build-out work.

13. In connection with the April 2020 Changes, both Mizrahi Developments and DBF undertook a review of the anticipated budget impacts. In order to compare the analysis prepared by Mizrahi Developments and DBF, DBF prepared a “Construction Budget Reconciliation” table, a copy of which is attached as **Exhibit A** (the “**Reconciliation**”).

14. The Reconciliation sets out a summary of the costs summary prepared by DBF and Mizrahi Developments. The approach used in the two summaries was not the same – whereas DBF calculated the difference in the cost of the work to be done, Mizrahi Developments simply calculated the proforma total cost of the work (without consideration to what amounts were actually owing). The approach taken by DBF accounts for the additional build-out work that was to be done to the 9th Floor following the April 2020 Changes (reflecting a net reduction in the construction budget of \$514,043.41).

15. As noted in the Reconciliation, the summary prepared by Mizrahi Developments failed to provide a credit or reduction for the customer finishes (that is, build-out work)

that had been included with respect to the 8th floor, and which were no longer required. As set out in the Reconciliation under the DBF summary, there were \$973,988.63 in build-out costs that had been included in the prior budgets that ought to have been credited to the job following the April 2020 Changes.

16. Attached as **Exhibits B to E** are additional tables that include details of the amounts under both the original budget and the estimated budgets as a result of the April 2020 Changes, which figures are used to calculate the amounts in the Reconciliation (which is at **Exhibit "A"**). Each of these documents make a distinction between the basic construction work and the customer build-out work, by noting whether the costs were associated with "custom" work, or if it was included as part of the "Base Building".

C. Cost Adjustments Arising from the April 2020 Price Adjustmnet

17. As part of my responsibilities for the Berry Residence mandate, I communicated with Mizrahi Developments from time to time regarding the status of the construction or specific issues that arose with the project.

18. On April 20, 2023, I sent an email to Jay Keith ("**Mr. Keith**"), the Director of Site Operations for 128 Hazelton, a copy of which is included in the email chain attached as **Exhibit F**. In that email, I advised of a number of problems with 128 Hazelton's progress of the work, noting that despite what they had represented, they had not made various orders and had not progressed work as they had previously reported, and that instead it was used Unit 901 to store materials and as a break-room for workers. Mr. Keith responded on April 25, 2023, which response is included in the email chain attached as **Exhibit F**. Various other individuals involved with the Project, including individuals at

Mizrahi Developments, Mr. Berry, his counsel Colin Keith, and Robert Barber, my colleague at DBF were also copied on this email chain.

19. On December 5, 2023, I received an email from Keith, a copy of which is attached as **Exhibit G**. In that email, Keith provides a construction schedule for Unit 901. These dates represent a delay in the construction even as of that date, given that Unit 901 was supposed to have been completed in 2023.

20. I affirm this affidavit for the purpose of this motion and for no other or improper purpose.

AFFIRMED BEFORE ME by video conference by Justin Kersten at the City of Toronto, in the Province of Ontario, before me on January 27, 2025 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



NICK MORROW
Commissioner for Taking Affidavits
(or as may be)

JUSTIN KERSTEN

This is **Exhibit "A"** referred to in the Affidavit of **Justin Kersten**
sworn this 27th day of January, 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N" and "M".

NICK MORROW
Commissioner for Taking Affidavits
(or as may be)

7-Jun-22	128 HAZELTON AVENUE, TORONTO		
	CONSTRUCTION BUDGET RECONCILIATION - REVISED 9TH FLOOR FIT-OUT, DELETE 8TH FLOOR BASKETBALL COURT		
	This is the property of Den Bosch + Finchley. The information herein is to be treated as confidential.		
	It is not to be used, copied, or disclosed to outside parties without our written consent.		
	I:\Volumes\DATA\CURRENT\DESIGN.BLD\128 Hazelton Ave\[128 Hazelton Ave - Construction Cost Reconciliation.xlsx]128 Hazelton Ave - Budget		
ACC CODE	ITEM DESCRIPTION		
	CONSTRUCTION COSTS SUMMARY, PER DEN BOSCH + FINCHLEY REVIEW		
COST	Infill 747 SQ.FT. @ Proposed Basketball Court Incl. Concrete Floor, HVAC, Electrical, & Base Building Finishes (As Per Mizrahi)		334,335.96
CREDIT	Allowable Base Building Finishes @ 747 SQ.FT. Additional Infill Floor Area @ 9th Floor (As Per Mizrahi)		(201,690.00)
CREDIT	Custom Finishes @ 8TH Floor, As Per Original Design By Wise Nadel (As Per Den Bosch + Finchley)		(973,988.63)
COST	Revised Design Entire 9th Floor, As Per Hudson Cruze (As Per Mizrahi)		2,053,460.60
CREDIT	Original Design Partial 9th Floor, As Per Wise Nazel (As Per Den Bosch)		(1,667,023.60)
		Construction Costs	(454,905.67)
		Management Fee	Not Included
		Sub Total	(454,905.67)
		HST	(59,137.74)
		Total	(514,043.41)
	CONSTRUCTION COSTS SUMMARY, PER MIZRAHI		
COST	Infill 747 SQ.FT. @ Proposed Basketball Court Incl. Concrete Floor, HVAC, Electrical, & Base Building Finishes (As Per Mizrahi)		334,335.96
CREDIT	Allowable Base Building Finishes @ 747 SQ.FT. Additional Infill Floor Area @ 9th Floor (As Per Mizrahi)		(201,690.00)
CREDIT	Custom Finishes @ 8TH Floor, As Per Original Design By Wise Nadel (As Per Den Bosch + Finchley)		Not Included
CREDIT	Fit Out Of Original Design Partial 9th Flood, Per Wide Nadel (Per Mizrahi)		(310,511.07)
COST	Revised Design Entire 9th Floor, As Per Hudson Cruze (As Per Mizrahi)		2,053,460.60
		Construction Costs	1,875,595.49
		Management Fee	Not Included
		Sub Total	1,875,595.49
		HST	243,827.41
		Total	2,119,422.90
Note:	Figures quoted herein may have to be revised for any increase in material costs beyond our control which arise after the time of quotation and acceptance of quotation, and that all increased in such material costs are the sole responsibility of the owner. Budget figures herein do not include subsurface or otherwise concealed physical conditions of a nature that differ from those ordinarily found to exist.		

This is **Exhibit "B"** referred to in the Affidavit of **Justin Kersten**
sworn this 27th day of January, 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

NICK MORROW
Commissioner for Taking Affidavits
(or as may be)

7-Jun-22	128 HAZELTON AVE, TORONTO		
CONSTRUCTION COSTS PER ORIGINAL DESIGN, PER WISE NADEL (AS PER DEN BOSCH)			
This is the property of Den Bosch + Finchley. The information herein is to be treated as confidential.			
It is not to be used, copied, or disclosed to outside parties without our written consent.			
\\Volumes\DATA\CURRENT\DESIGN.BLD\128 Hazelton Ave\Takeoff & Budget - Jack (06.02.2022)\128 Hazelton Ave - April 2016 Original Budget - Jun.07.22.xlsx\21 Eastbourne			
ACC CODE	ITEM DESCRIPTION		BUDGET ESTIMATE
PROFESSIONAL & CITY CHARGES			
5001	Architectural Design		By Owner
5007	Interior Design		By Owner
5012	Permits		By Others
5014	Insurance		By Others
5022	Interior Decorating & Furniture		By Owner
PROFESSIONAL & CITY CHARGES			-
FIT OUT COSTS FOR 8TH FLOOR, PER ORIGINAL DESIGN PER WISE NADEL (PER DEN BOSCH)			
5023	Debris Removal		Base Building
5043	Windows & Exterior Doors Incl. Installation		Base Building
5043	Automated Blinds		Base Building
5053	Exterior Caulking		Base Building
5054	Exterior Wood Trim - Labour		Base Building
5055	Exterior Wood Trim - Materials		Base Building
5057	HVAC @ Basketball Court & Gymnasium	ALLOWANCE	45,000.00
5057	HVAC @ Bedrooms & Media Room w Independent Thermostatic Control	ALLOWANCE	35,000.00
5059	Plumbing Rough-In		17,160.00
5061	Electric Radiant Floor Heating @ Tiled/Stone Floors		5,940.00
5061	Electrical Rough-In Incl. Pot Lights & LED Stadium Lighting		53,500.00
5061	Low Voltage Lighting @ Laundry Room & Built-In Millwork	ALLOWANCE	2,400.00
5062	Lutron Homeworks Lighting Control System	ALLOWANCE	16,500.00
5062	Sonos Sound System @ Basketball Court Incl. 6 x Hi-Fi Speakers	ALLOWANCE	9,090.00
5062	TV Rough-Ins (4 Locations)		2,600.00
5067	Drywall, Sheathing Vapour Barrier & Insulation		65,000.00
5067	Steel Stud Framing - Labour & Materials		55,000.00
5067	Basic Sound Control @ Plumbing, Bathrooms, & Mechanical Rooms		6,500.00
5067	Acoustic Wall Panelling @ Media Room & Basketball Court		11,995.00
5068	Main Staircase - Supply & Install (Stain Finish By Others)		19,000.00
5068	Decorative Railing @ Main Stair		8,945.00
5068	Gym Staircase		16,500.00
5068	Decorative Railing @ Gym Staircase		6,550.00
5075	Sprung Hardwood Flooring System Incl. Court Markings - Supply & Install		54,932.50
5076	Engineered Hardwood Flooring - Supply & Install		19,360.00
5077	Porcelain Tile @ Laundry Room - Labour		3,124.00
5078	Porcelain Tile @ Laundry Room - Material		898.15
5079	Stone Tile @ Ensuite Bathrooms - Labour		13,442.00
5080	Stone Tile @ Ensuite Bathrooms - Material		15,106.98
5081	Stone Slab Work Incl. Countertops, Jams & Floors - Supply & Install		21,185.00
5085	Laundry Cabinets Incl. Built-In Desk		15,350.00
5085	Vanities		6,750.00
5086	Exterior Door & Hardware		Base Building
5088	Interior Doors - Paint Grade Slab or Shaker Style Doors		10,400.00
5088	Interior Doors - Blind Doors @ Basketball Court		4,800.00
5089	Interior Door Hardware		26,450.00
5090	Interior Trim - Labour		37,117.00
5091	Interior Trim - Material		20,915.00
5093	Built-In Millwork		94,420.00
5093	Puck Board @ Basketball Court		27,000.00
5093	Panel Mouldings @ Main Stair		8,050.00
5093	Decorative Millwork Hardware	ALLOWANCE	1,980.00
5097	Adjustable Basketball Nets @ Court (2)		76,000.00
5099	Interior Prime & Paint Incl. Ceilings, Walls, Trim, & Interior Paint Grade Doors		37,830.00
5099	Painted Epoxy Finish @ Concrete Floors (Mechanical & Storage)		Base Building
5099	Stain Finish @ Wood Staircases		11,900.00
5104	Storage Closets & Bench Storage @ Basketball Court		13,600.00
5104	Basic Closet Interiors		2,700.00
5107	Smart Glass @ Basketball Court TV Locations		8,600.00
5107	Mirrors @ Clearstory of Basketball Court		11,250.00

5107	Slab Mirror @ Vanities		1,350.00
5108	Glass Shower Enclosures		5,630.00
5110	Bathroom Accessories		1,350.00
5111	Decorative Lighting Fixtures		By Others
5112	Plumbing Fixtures		12,892.00
5113	Washers/Dryers		4,210.00
5117	Supply & Install 85" Televisions @ Basketball Court		17,080.00
5117	Supply & Install 85" Television & Sonos Home Theatre System @ Media Room		11,636.00
5118	Exterior Prime & Paint		Base Building
5138	Site Clean Up / Debris Removal		Base Building
5139	Miscellaneous Materials		Base Building
5140	Tool Rental Incl. Access Scaffold		Base Building
5142	General Labour		Base Building
5145	Final Clean-up (Incl. Window Cleaning & HVAC)		Base Building
5147	Miscellaneous Administration		Base Building
5152	Phone/Internet Service		Base Building
		Construction Costs - Floor 8 Only	973,988.63
		Management Fee	194,797.73
		Sub Total	1,168,786.36
		HST	151,942.23
		Total	1,320,728.58
	FIT-OUT COSTS FOR PARTIAL 9TH FLOOR, PER ORIGINAL DESIGN PER WISE NADEL (PER DESN BOSCH)		
5023	Debris Removal		Base Building
5043	Windows & Exterior Doors Incl. Installation		Base Building
5043	Automated Blinds		Base Building
5053	Exterior Caulking		Base Building
5054	Exterior Wood Trim - Labour		Base Building
5055	Exterior Wood Trim - Materials		Base Building
5057	HVAC @ Master Bedroom, Master Ensuite, & Office		35,000.00
5057	HVAC @ Games Room, Great Room, Kitchen & Dining		35,000.00
5059	Plumbing Rough-In.		18,590.00
5059	Water Purification System - RO Drinking Water @ Kitchen		2,372.10
5061	Electrical Rough-In		95,900.00
5061	Radiant Floor Heating		18,800.00
5061	Low Voltage Lighting		7,656.00
5062	Lutron Homeworks Lighting Control System	ALLOWANCE	36,000.00
5062	Sonos Sound System	ALLOWANCE	19,600.00
5062	Television Roughins (6 Locations)		3,900.00
5067	Drywall, Vapour Barrier & Insulation		145,000.00
5067	Steel Framing - Labour & Materials		65,000.00
5067	Basic Sound Control @ Plumbing, Bathrooms, & Mechanical Rooms		15,000.00
5069	Gas Fireplace Inserts Incl. Venting @ Games Room & Living Room		26,980.00
5076	Gym Rubber Flooring @ Gym Mezzanine		7,840.00
5076	Hardwood Flooring - Supply & Install		47,437.50
5079	Stone Tile - Labour		34,675.00
5080	Stone Tile - Material		70,225.00
5081	Stone Countertops, Niches & Benches - Supply & Install		144,875.00
5084	Kitchen Cabinets		74,800.00
5085	Vanities		13,600.00
5086	Exterior Door & Hardware		Base Building
5088	Interior Doors - Paint Grade		16,000.00
5088	Interior Doors - Glass Sliding Doors @ Dining		4,800.00
5088	Interior Doors - Integrated Sliding Doors @ Master Closet		1,600.00
5089	Interior Door Hardware		33,280.00
5090	Interior Trim - Labour		54,415.00
5091	Interior Trim - Material		30,530.00
5093	Built-In Millwork		56,750.00
5093	Panelled Coffered Ceilings		135,900.00
5093	Built-In Games Table with Revolving Ottoman on Rails	ALLOWANCE	75,000.00
5093	Wall Panelling @ Stair Hall & Foyer		27,300.00
5093	Decorative Millwork Hardware		5,280.00
5095	Master Ensuite Sauna Fitout		20,700.00
5099	Interior Prime & Paint Incl. Ceilings, Walls, Trim, & Interior Paint Grade Doors		55,675.00
5099	Painted Epoxy Finish @ Concrete Floors (Mechanical & Storage)		Base Building
5104	Coat Closets		8,900.00
5104	Master Closet (His/Hers)		31,720.00
5107	Slab Mirror @ Vanities		1,200.00

This is **Exhibit "C"** referred to in the Affidavit of **Justin Kersten**
sworn this 27th day of January, 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

NICK MORROW
Commissioner for Taking Affidavits
(or as may be)

7-Jun-22	128 HAZELTON AVENUE, TORONTO		
CONSTRUCTION COSTS 9TH FLOOR, AS PER HUDZON CRUZE (AS PER MIZRAHI)			
This is the property of Den Bosch + Finchley. The information herein is to be treated as confidential.			
It is not to be used, copied, or disclosed to outside parties without our written consent.			
/Volumes/DATA/CURRENT/DESIGN.BLD/128 Hazelton Ave/Takeoff & Budget - Jack (06.02.2022)/[128 Hazelton Ave - April 2021 Revised Budget - Jun.7.22 - FINAL.xlsx]128 Hazelton Ave - Budge			
ACC CODE	ITEM DESCRIPTION		BUDGET ESTIMATE
COST RELATED TO INFILL OF 9TH FLOOR, 747 SQ.FT. INCL. STRUCTURAL FLOOR & RELATED INFRASTRUCTURE (AS PER MIZRAHI)			
5004	Structural Design Related To Concrete Floor Infill (\$20/SQ.FT.)		15,000.00
5037	Concrete & Drains Incl. Infill of Reinforced Concrete Slab Above Basketball Court (\$127.50/SQ.FT.)		95,235.96
5057	HVAC - Upgrade/Extend Mechanical System To Service Additional Square Footage (\$20/SQ.FT.)		14,940.00
5057	Electric Rough-In - Basic Electrical Rough-Ins To Service Additional Square Footage (\$10/SQ.FT.)		7,470.00
5011	Standard Interior Finishes (ALLOWANCE - \$270/SQ.FT.)		201,690.00
ADDITIONAL BASE BUILDING COSTS RELATED TO INFILL OF 9TH FLOOR:			334,335.96
FIT-OUT COST FOR ENTIRE 9TH FLOOR, 4,746 SQ.FT. AS PER REVISED DESIGN BY HUDSON CRUZE (AS PER MIZRAHI)			
5023	Debris Removal		Base Building
5043	Windows & Exterior Doors Incl. Installation		Base Building
5043	Automated Blinds		Base Building
5053	Exterior Caulking		Base Building
5054	Exterior Wood Trim - Labour		Base Building
5055	Exterior Wood Trim - Materials		Base Building
5057	HVAC - Including Floor Warming at Lower Level Concrete Slab & Tiled Surfaces Only		135,695.87
5057	Electric Floor Heat @ Tiled Floors		Base Building
5059	Plumbing Rough-In.		Base Building
5059	Water Purification System Incl. RO Drinking Water		Not Included
5061	Electrical Rough-In		130,029.00
5061	Low Voltage LED Lighting @ Millwork		16,200.00
5062	Automation Control System		Not Included
5062	Nexus Drop Down TV Lift		9,668.10
5062	Basic Sound System		Base Building
5063	Emergency Back-Up Generator Incl. Transfer Switch		Not Included
5063	Security System (Chubb Standards / Avante)		Base Building
5063	Eddy's Emergency Water Shut-Off System Incl. 1 Year Monitoring		Not Included
5064	Automated Blinds		Base Building
5067	Drywall, Vapour Barrier & Insulation Incl. Metal Stud Framing		230,100.00
5067	Basic Sound Control @ Plumbing, Bathrooms, & Mechanical Rooms		Base Building
5068	Main Staircase - Supply & Install		Not Required
5068	Finishing Of Main Staircase		Not Required
5068	Interior Stair Railing		Not Required
5069	Gas Fireplace Inserts Incl. Venting (Great Room & Kitchen)		20,395.00
5076	Rubber Gym Flooring - Supply & Install		2,755.00
5076	Hardwood Flooring - Supply		43,559.02
5076	Hardwood Flooring - Labour		22,248.16
5077	Tile - Labour		234,482.92
5078	Tile - Material		181,154.56
5081	Stone Countertops, Jambs, Curbs, Niches, Benches, Fireplace Mantles & Hearths - Supply & Install		49,533.00
5083	Floating Porcelain Deck @ Master Bedroom Terrace & Third Floor Terrace		Base Building
5084	Kitchen		68,800.00
5085	Laundry Cabinets		7,575.00
5085	Vanities		12,245.00
5086	Main Entry Doors & Hardware Incl. Mortise Entry Set		Base Building
5088	Interior Doors - Paint Grade (Incl. Base Building Fire Doors)		Base Building
5088	Interior Doors - Custom Brass Mesh Inlays @ Dining Room Pocket Doors & Office Built-Ins		68,347.73
5089	Interior Door Hardware		8,900.00
5089	Soss Concealed Door Hinges		2,280.00
5090	Interior Trim - Labour		180,000.00
5091	Interior Trim - Material		Base Building
5092	Interior Wall Panelling - Labour & Materials		85,000.00
5092	Decorative & Coffered Ceiling Details		135,900.00
5093	Built-In Storage Millwork @ Corridor		48,400.00
5093	Decorative Millwork Hardware		By Trade
5099	Interior Prime & Paint Incl. Ceilings, Walls, Trim, & Interior Paint Grade Doors		32,000.00
5100	Specialty Wall Finishes Incl. Supply & Installation of Wallpaper		Pending
5104	Master Closet Interiors (His)		18,000.00
5104	Master Closet Interiors (Hers)		23,450.00
5104	Clothing Carousels @ Her Closet x 3		16,891.92
5104	Closet Built-Ins w Integrated Desks @ Bedrooms 2 & 3		35,100.00
5107	Slab Mirror @ Vanities Not Incl. Metal Frames or LED Backlighting		1,695.00

This is **Exhibit "D"** referred to in the Affidavit of **Justin Kersten**
sworn this 27th day of January, 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

NICK MORROW
Commissioner for Taking Affidavits
(or as may be)

JUN.7.22		128 HAZELTON AVE, TORONTO APRIL 2016 PLAN - TAKE-OFF				
This is the property of Den Bosch + Finchley. The information herein is to be treated as confidential. It is not to be used, copied, or disclosed to outside parties without our written consent.						
ACC				MAT'L	LBR	
CODE	ITEM DESCRIPTION	QTY	UNIT	COST	COST	COST
8TH FLOOR						
BASKETBALL COURT - 1570 SQ.FT.						
5062	Rough-In For Televisions	3	\$\$	650.00		1,950.00
5068	Gym Staircase	1	\$\$	16,500.00		16,500.00
5068	Decorative Railing	1	\$\$	6,550.00		6,550.00
5076	Hardwood Floors - Supply & Install	65	SF	22.00	5.50	1,787.50
5088	Paint Grade Interior Doors	1	EA	800.00		800.00
5088	Interior Doors (Blind Doors)	6	EA	800.00		4,800.00
5089	Interior Door Hardware Incl. Soss Hinges	7	EA	1,295.00		9,065.00
5090	Baseboards - Labour	180	LF		24.96	4,492.80
5090	Jambs & Casings - Labour	260	LF		28.88	7,508.80
5091	Baseboards - Material	180	LF	11.96		2,152.80
5091	Jambs & Casings - Material	260	LF	9.36		2,433.60
5093	Puck Board Wall Panelling	1800	SF	15.00		27,000.00
5093	Acoustical Wall Panels - Supply & Install @ Court Ceiling	1	\$\$	39,250.00		39,250.00
5097	Supply & Install 2 x Adjustable Basketball Nets (2)	1	\$\$	76,000.00		76,000.00
5104	Storage Closets & Bench Storage	1	\$\$	13,600.00		13,600.00
5107	Smart Glass @ TVs	2	\$\$	4,300.00		8,600.00
5107	Mirrors @ Second Level	1	\$\$	11,250.00		11,250.00
5117	85" OLED LG Televisions (To Be Mounted Behind Mirrors)	2	\$\$	7,990.00		15,980.00
5117	LG Motorized 2-Sided Drop Down Screen (Product Not Available)	1	\$\$	-		Not Included
5161	Sprung Hardwood Flooring System Incl. Court Markings - Supply & Install	1505	SF	30.00	6.50	54,932.50
					Total	304,653.00
MEDIA ROOM - 161 SQ.FT.						
5062	Rough-In For Televisions	1	\$\$	650.00		650.00
5076	Hardwood Floors - Supply & Install	161	SF	22.00	5.50	4,427.50
5088	Paint Grade Interior Doors	2	EA	800.00		1,600.00
5089	Interior Door Hardware Incl. Hinges	1	EA	520.00		520.00
5089	Interior Pocket Door Hardware Incl. Track	1	EA	1,300.00		1,300.00
5090	Baseboards - Labour	62	LF		24.96	1,547.52
5090	Jambs & Casings - Labour	120	LF		28.88	3,465.60
5091	Baseboards - Material	62	LF	11.96		741.52
5091	Jambs & Casings - Material	120	LF	9.36		1,123.20
5093	Built-In Desk w Storage Below	1	\$\$	7,500.00		7,500.00
5093	Built-In Day Bed Incl. Upholstry Labour (Material COM)	1	\$\$	12,500.00		12,500.00
5093	Millwork - Closet	1	\$\$	5,750.00		5,750.00
5093	Acoustical Wall Panels - Supply & Install	1	\$\$	8,800.00		8,800.00
5117	85" OLED LG Televisions & Sonos Sound System	1	\$\$	11,636.00		11,636.00
					Total	61,561.34
MEDIA ROOM ENSUITE - 45 SQ.FT.						
5079	Stone Tile @ Floor - Labour	28	SF		22.00	616.00
5079	Stone Tile @ Shower Floor, Walls & Ceiling - Labour	118	SF		22.00	2,596.00
5079	Stone Tile Baseboards - Labour	27	LF		22.00	594.00
5080	Stone Tile @ Floor - Material	28	SF	24.73		692.30
5080	Stone Tile @ Shower Floor, Walls & Ceiling - Material	118	SF	24.73		2,917.55
5080	Stone Tile Baseboards - Material	27	LF	24.73		667.58
5081	Stone Slab Jambs & Curb	1	\$\$	2,350.00		2,350.00
5081	Stone Countertop & Backsplash	1	\$\$	3,480.00		3,480.00
5085	Media Ensuite Vanity - Millwork	1	\$\$	2,250.00		2,250.00
5088	Paint Grade Interior Doors	1	EA	800.00		800.00
5089	Interior Door Hardware	1	EA	520.00		520.00
5090	Jambs & Casings - Labour	60	LF		28.88	1,732.80
5091	Jambs & Casings - Material	60	LF	9.36		561.60
5093	Chrome Shower Niche	1	\$\$	290.00		290.00
5107	Slab Mirror	1	\$\$	450.00		450.00
5108	3-Sided Frameless Glass Enclosure @ Shower	1	\$\$	3,430.00		3,430.00
5110	Bathroom Accessories	3	EA	150.00		450.00
5112	Sink	1	EA	285.00		285.00
5112	Faucet	1	EA	675.00		675.00
5112	Toilet	1	EA	845.00		845.00
5112	Shower Kit	1	\$\$	2,010.00		2,010.00
					Total	28,212.83
BEDROOM 1 - 176 SQ.FT.						
5076	Hardwood Floors - Supply & Install	176	SF	22.00	5.50	4,840.00
5088	Paint Grade Interior Doors	1	EA	800.00		800.00
5089	Interior Door Hardware	1	EA	520.00		520.00

ACC CODE	ITEM DESCRIPTION	QTY	UNIT	MAT'L COST	LBR COST	COST
5090	Baseboards - Labour	58	LF		24.96	1,447.68
5090	Jambs & Casings - Labour	60	LF		28.88	1,732.80
5091	Baseboards - Material	58	LF	11.96		693.68
5091	Jambs & Casings - Material	60	LF	9.36		561.60
5093	Built-In Desk & Closet	1	\$\$	10,750.00		10,750.00
					Total	21,345.76
ENSUITE 1 - 39 SQ.FT.						
5079	Stone Tile @ Walls - Labour	83	SF		22.00	1,826.00
5079	Stone Tile @ Shower Floor, Walls & Ceiling - Labour	136	SF		22.00	2,992.00
5079	Stone Tile Baseboards - Labour	26	LF		22.00	572.00
5080	Stone Tile @ Walls - Material	83	SF	24.73		2,052.18
5080	Stone Tile @ Shower Floor, Walls & Ceiling - Material	136	SF	24.73		3,362.60
5080	Stone Tile Baseboards - Material	26	LF	24.73		642.85
5081	Stone Slab @ Floor - Labour & Material	25	SF	55.00	75.00	3,250.00
5081	Stone Slab Jambs & Curb	1	\$\$	2,350.00		2,350.00
5081	Stone Countertop & Backsplash	1	\$\$	3,480.00		3,480.00
5085	Ensuite 1 Vanity - Millwork	1	\$\$	2,250.00		2,250.00
5088	Paint Grade Interior Doors	1	EA	800.00		800.00
5089	Interior Door Hardware	1	EA	520.00		520.00
5090	Jambs & Casings - Labour	60	LF		28.88	1,732.80
5091	Jambs & Casings - Material	60	LF	9.36		561.60
5093	Chrome Shower Niche	1	\$\$	290.00		290.00
5107	Slab Mirror	1	\$\$	450.00		450.00
5108	Frameless Glass Enclosure @ Shower	1	\$\$	1,100.00		1,100.00
5110	Bathroom Accessories	3	EA	150.00		450.00
5112	Sink	1	EA	285.00		285.00
5112	Faucet	1	EA	675.00		675.00
5112	Toilet	1	EA	845.00		845.00
5112	Shower Kit	1	\$\$	2,010.00		2,010.00
					Total	32,497.03
BEDROOM 2 - 180 SQ.FT.						
5076	Hardwood Floors - Supply & Install	180	SF	22.00	5.50	4,950.00
5088	Paint Grade Interior Doors	3	EA	800.00		2,400.00
5089	Interior Door Hardware	3	EA	520.00		1,560.00
5090	Baseboards - Labour	54	LF		24.96	1,347.84
5090	Jambs & Casings - Labour	60	LF		28.88	1,732.80
5091	Baseboards - Material	54	LF	11.96		645.84
5091	Jambs & Casings - Material	60	LF	9.36		561.60
5093	Millwork - Desk & Open Shelving	1	\$\$	5,100.00		5,100.00
5093	Millwork - Window Seat (Not Incl. Upholstry)	1	\$\$	3,900.00		3,900.00
5104	Closet Interiors	1	\$\$	2,700.00		2,700.00
					Total	24,898.08
ENSUITE 2 - 42 SQ.FT.						
5079	Stone Tile @ Floor - Labour	27	SF		22.00	594.00
5079	Stone Tile @ Shower Floor, Walls & Ceiling - Labour	140	SF		22.00	3,080.00
5079	Stone Tile Baseboards - Labour	26	LF		22.00	572.00
5080	Stone Tile @ Floor - Material	27	SF	24.73		667.58
5080	Stone Tile @ Shower Floor, Walls & Ceiling - Material	140	SF	24.73		3,461.50
5080	Stone Tile Baseboards - Material	26	LF	24.73		642.85
5081	Stone Slab Jambs & Curb	1	\$\$	2,350.00		2,350.00
5081	Stone Countertop & Backsplash	1	\$\$	3,480.00		3,480.00
5085	Ensuite 2 Vanity - Millwork	1	\$\$	2,250.00		2,250.00
5088	Paint Grade Interior Doors	1	EA	800.00		800.00
5089	Interior Door Hardware	1	EA	520.00		520.00
5090	Jambs & Casings - Labour	60	LF		28.88	1,732.80
5091	Jambs & Casings - Material	60	LF	9.36		561.60
5093	Chrome Niche	1	\$\$	290.00		290.00
5107	Slab Mirror	1	\$\$	450.00		450.00
5108	Frameless Glass Enclosure @ Shower	1	\$\$	1,100.00		1,100.00
5110	Bathroom Accessories	3	EA	150.00		450.00
5112	Sink	1	EA	285.00		285.00
5112	Faucet	1	EA	675.00		675.00
5112	Toilet	1	EA	845.00		845.00
5112	Shower Kit	1	\$\$	2,010.00		2,010.00
					Total	26,817.33
LAUNDRY ROOM - 142 SQ.FT.						
5077	Porcelain Tile @ Floor - Labour	142	SF		22.00	3,124.00
5078	Porcelain Tile @ Floor - Material	142	SF	6.05		859.10
5081	Caesarstone Countertop & Backsplash	1	\$\$	5,790.00		5,790.00
5085	Laundry Cabinets w Built-In Desk	1	LF	15,350.00		15,350.00
5088	Paint Grade Interior Doors	1	EA	800.00		800.00

ACC CODE	ITEM DESCRIPTION	QTY	UNIT	MAT'L COST	LBR COST	COST
5089	Interior Door Hardware	1	EA	520.00		520.00
5090	Baseboards - Labour	48	LF		24.96	1,198.08
5090	Jams & Casings - Labour	60	LF		28.88	1,732.80
5091	Baseboards - Material	48	LF	11.96		574.08
5091	Jams & Casings - Material	60	LF	9.36		561.60
5112	Sink	1	EA	595.00		595.00
5112	Faucet	1	EA	852.00		852.00
5113	Front Load Stackable Washer/Dryer	2	EA	2,105.00		4,210.00
					Total	36,166.66
HALLWAYS FLOOR 8 INCL. MAIN STAIR - 122 SQ.FT.						
5068	Main Staircase	1	\$\$	19,000.00		19,000.00
5068	Decorative Handrail	1	\$\$	8,945.00		8,945.00
5076	Hardwood Floors - Supply & Install	122	SF	22.00	5.50	3,355.00
5088	Paint Grade Interior Doors	2	EA	800.00		1,600.00
5089	Interior Door Hardware	2	EA	520.00		1,040.00
5090	Baseboards - Labour	90	LF		24.96	2,246.40
5090	Jams & Casings - Labour	120	LF		28.88	3,465.60
5091	Baseboards - Material	90	LF	11.96		1,076.40
5091	Jams & Casings - Material	120	LF	9.36		1,123.20
5093	Rift Cut White Oak Panel Mouldings @ Main Stair	1	\$\$	8,050.00		8,050.00
					Total	49,901.60
9TH FLOOR						
HALLWAYS FLOOR 9 - 322 SQ.FT.						
5079	Stone Tile @ Floor - Labour	322	SF		45.00	14,490.00
5080	Stone Tile @ Floor - Material	322	SF	55.00		17,710.00
5088	Paint Grade Interior Doors	6	EA	800.00		4,800.00
5089	Interior Door Hardware	6	EA	520.00		3,120.00
5090	Baseboards - Labour	135	LF		24.96	3,369.60
5090	Jams & Casings - Labour	280	LF		28.88	8,086.40
5091	Baseboards - Material	135	LF	11.96		1,614.60
5091	Jams & Casings - Material	280	LF	9.36		2,620.80
5093	Millwork - Bench Incl. Metal Lockers	1	\$\$	5,900.00		5,900.00
5093	Panelled Ceiling Detail	360	SF	50.00		18,000.00
5093	Rift Cut White Oak Panel Mouldings @ Main Stair & Foyer	780	SF	35.00		27,300.00
5104	Closet Interiors	1	\$\$	4,500.00		4,500.00
5108	Glass Partition @ Stair	1	\$\$	6,060.00		6,060.00
					Total	117,571.40
GYM MEZZANINE - 285 SQ.FT.						
5088	Paint Grade Interior Doors	4	EA	800.00		3,200.00
5089	Interior Door Hardware	4	EA	520.00		2,080.00
5090	Baseboards - Labour	90	LF		24.96	2,246.40
5090	Jams & Casings - Labour	220	LF		28.88	6,353.60
5091	Baseboards - Material	90	LF	11.96		1,076.40
5091	Jams & Casings - Material	220	LF	9.36		2,059.20
5108	Full Height Glass Partition Wall	1	\$\$	16,800.00		16,800.00
5161	Rubber Gym Flooring	285	SF	25.00		7,125.00
					Total	40,940.60
GYM BATHROOM / POWDER ROOM - 59 SQ.FT.						
5093	Stone Tile @ Bathroom Floor - Labour	44	SF		22.00	968.00
5079	Stone Tile Baseboards - Labour	36	SF		22.00	792.00
5080	Stone Tile @ Bathroom Floor - Material	44	SF	24.73		1,087.90
5080	Stone Tile Baseboards - Material	36	SF	24.73		890.10
5081	Stone Slab @ Shower Floor, Walls, Ceiling & Jams - Labour & Material	170	SF	55.00	75.00	22,100.00
5081	Stone Shower Niche	1	\$\$	650.00		650.00
5081	Stone Countertop & Backsplash	1	\$\$	3,480.00		3,480.00
5085	Powder Room Vanity - Millwork	1	\$\$	3,600.00		3,600.00
5088	Paint Grade Interior Doors	2	EA	800.00		1,600.00
5089	Interior Door Hardware	1	EA	520.00		520.00
5089	Interior Pocket Door Hardware Incl. Track	1	EA	1,300.00		1,300.00
5090	Jams & Casings - Labour	120	LF		28.88	3,465.60
5091	Jams & Casings - Material	120	LF	9.36		1,123.20
5107	Slab Mirror	1	\$\$	450.00		450.00
5110	Bathroom Accessories	3	EA	150.00		450.00
5112	Sink	1	EA	340.00		340.00
5112	Faucet	1	EA	950.00		950.00
5112	Toilet	1	EA	850.00		850.00
5112	Shower Kit	1	\$\$	5,200.00		5,200.00

ACC CODE	ITEM DESCRIPTION	QTY	UNIT	MAT'L COST	LBR COST	COST
					Total	49,816.80
INDOOR/OUTDOOR GAMES ROOM - 460 SQ.FT.						
5069	Remote Gas Fireplace Insert	1	\$\$	14,000.00		14,000.00
5079	Stone Tile @ Floor - Labour	46	SF		45.00	2,070.00
5080	Stone Tile @ Floor - Material	460	SF	55.00		25,300.00
5081	Stone Fireplace Surround/Mantel	1	\$\$	9,500.00		9,500.00
5088	Paint Grade Interior Doors	1	EA	800.00		-
5089	Interior Pocket Door Hardware Incl. Track	1	EA	1,300.00		1,300.00
5090	Baseboards - Labour	114	LF		24.96	2,845.44
5090	Jambs & Casings - Labour	60	LF		28.88	1,732.80
5091	Baseboards - Material	114	LF	11.96		1,363.44
5091	Jambs & Casings - Material	60	LF	9.36		561.60
5093	Panelled Ceiling Detail	460	SF	50.00		23,000.00
5093	Millwork - Bar & Media Unit	1	\$\$	29,000.00		29,000.00
5093	Ottoman/Games Table Incl. Adjustable Seating (Fabric COM)	1	\$\$	75,000.00		75,000.00
					Total	185,673.28
COAT ROOM - 80 SQ.FT.						
5076	Hardwood Floors - Supply & Install	80	SF	22.00	5.50	2,200.00
5088	Paint Grade Interior Doors	2	EA	800.00		1,600.00
5089	Interior Door Hardware	2	EA	520.00		1,040.00
5090	Baseboards - Labour	36	LF		24.96	898.56
5090	Jambs & Casings - Labour	120	LF		28.88	3,465.60
5091	Baseboards - Material	36	LF	11.96		430.56
5091	Jambs & Casings - Material	120	LF	9.36		1,123.20
5104	Millwork - Coat Closet - Open Storage/Laminate	1	\$\$	4,400.00		4,400.00
					Total	15,157.92
LIVING ROOM - 473 SQ.FT.						
5076	Hardwood Floors - Supply & Install	473	SF	22.00	5.50	13,007.50
5062	TV Rough-In	1	\$\$	650.00		650.00
5069	Remote Gas Fireplace Insert	1	\$\$	12,980.00		12,980.00
5088	Paint Grade Interior Doors	1	EA	800.00		800.00
5089	Interior Pocket Door Hardware Incl. Track	1	EA	1,300.00		1,300.00
5090	Baseboards - Labour	88	LF		24.96	2,196.48
5090	Jambs & Casings - Labour	60	LF		28.88	1,732.80
5091	Baseboards - Material	88	LF	11.96		1,052.48
5091	Jambs & Casings - Material	60	LF	9.36		561.60
5093	Millwork - Fireplace Mantel/Media Unit	1	\$\$	8,900.00		8,900.00
5093	Panelled Ceiling Detail	470	SF	50.00		23,500.00
5117	85" OLED LG Televisions	1	\$\$	7,990.00		7,990.00
					Total	74,670.86
KITCHEN & INDOOR/OUTDOOR DINING - 628 SQ.FT.						
5062	TV Rough-In	1	\$\$	650.00		650.00
5076	Hardwood Floors - Supply & Install	628	SF	22.00	5.50	17,270.00
5081	Stone Waterfall Countertop @ Island	1	\$\$	13,800.00		13,800.00
5081	Perimeter Stone Countertops & Backsplash	1	\$\$	15,200.00		15,200.00
5084	Kitchen Cabinetry - Uppers/Lowers & Island	1	\$\$	74,800.00		74,800.00
5088	Glass Sliding Doors	3	EA	1,600.00		4,800.00
5089	Interior Pocket Door Hardware Incl. Track	3	EA	1,300.00		3,900.00
5090	Baseboards - Labour	111	LF		24.96	2,770.56
5090	Jambs & Casings - Labour	140	LF		28.88	4,043.20
5091	Baseboards - Material	111	LF	11.96		1,327.56
5091	Jambs & Casings - Material	140	LF	9.36		1,310.40
5093	Panelled Ceiling Detail	628	SF	50.00		31,400.00
5093	Banquette Seating Incl. Upholstry (Fabric COM)	1	\$\$	11,250.00		11,250.00
5112	Kitchen Sink	1	EA	2,353.00		2,353.00
5112	Kitchen Faucet	1	EA	3,572.00		3,572.00
5113	Miele 48" Gas Range	1	EA	24,199.00		24,199.00
5113	Miele 48" Ceiling Mounted Exhaust Hood	1	EA	7,249.00		7,249.00
5113	Miele 18" All Freezer	1	EA	9,799.00		9,799.00
5113	Miele 36" All Fridge	1	EA	12,499.00		12,499.00
5113	24" Panel-Ready Dishwasher	1	EA	6,670.00		6,670.00
5113	Dual Sided Wine Display Unit C/W Refrigeration	1	EA	45,000.00		45,000.00
5117	Television	1	\$\$	1,500.00		1,500.00
					Total	295,362.72
OFFICE - 174 SQ.FT.						
5076	Hardwood Floors - Supply & Install	174	SF	22.00	5.50	4,785.00
5088	Paint Grade Interior Doors	1	EA	800.00		800.00
5089	Interior Pocket Door Hardware Incl. Track	2	EA	1,300.00		2,600.00
5090	Baseboards - Labour	53	LF		24.96	1,322.88

ACC CODE	ITEM DESCRIPTION	QTY	UNIT	MAT'L COST	LBR COST	COST
5090	Jambs & Casings - Labour	60	LF		28.88	1,732.80
5091	Baseboards - Material	53	LF	11.96		633.88
5091	Jambs & Casings - Material	60	LF	9.36		561.60
5093	Panelled Ceiling Detail	174	SF	50.00		8,700.00
5093	Built-In Office Millwork Not Incl. Desk	1	\$\$	15,950.00		15,950.00
					Total	37,086.16
MASTER ENSUITE - 256 SQ.FT.						
5079	Stone Tile @ Floor - Labour	146	SF		45.00	6,570.00
5079	Stone Tile @ Water Closet Floor - Labour	30	SF		45.00	1,350.00
5079	Stone Tile @ Steam Shower Floor, Wall & Ceiling - Labour	121	SF		45.00	5,445.00
5080	Stone Tile @ Floor - Material	146	SF	55.00		8,030.00
5080	Stone Tile @ Water Closet Floor - Material	30	SF	55.00		1,650.00
5080	Stone Tile @ Steam Shower Floor, Wall & Ceiling - Material	121	SF	55.00		6,655.00
5081	Stone Shower Jambs & Curb	1	\$\$	3,200.00		3,200.00
5081	Stone Shower Niche	1	\$\$	950.00		950.00
5081	Stone Shower Bench	1	\$\$	1,656.00		1,656.00
5081	Stone Countertop & Backsplash	1	\$\$	4,500.00		4,500.00
5085	Master Vanity - Millwork (His & Hers)	1	\$\$	10,000.00		10,000.00
5088	Paint Grade Interior Doors	2	EA	800.00		1,600.00
5090	Jambs & Casings - Labour	80	LF		28.88	2,310.40
5091	Jambs & Casings - Material	80	LF	9.36		748.80
5093	Panelled Ceiling Detail	256	SF	50.00		12,800.00
5095	Cedar Sauna Fitout Incl. Heater - Labour & Materials	1	\$\$	20,700.00		20,700.00
5107	Slab Mirror	1	\$\$	750.00		750.00
5108	Frameless Glass Enclosures @ Shower & W/C	1	\$\$	5,425.00		5,425.00
5110	Bathroom Accessories	5	EA	150.00		750.00
5112	Sink	2	EA	340.00		680.00
5112	Faucet	2	EA	1,450.00		2,900.00
5112	Bathtub	1	EA	6,050.00		6,050.00
5112	Freestanding Tub Filler	1	EA	3,250.00		3,250.00
5112	Toilet	1	EA	2,899.00		2,899.00
5112	Shower Kit	1	\$\$	5,200.00		5,200.00
5112	Steam Shower	1	\$\$	4,588.00		4,588.00
					Total	120,657.20
MASTER BEDROOM - 370 SQ.FT.						
5062	TV Rough-In	1	\$\$	650.00		650.00
5076	Hardwood Floors - Supply & Install	370	SF	22.00	5.50	10,175.00
5088	Paint Grade Interior Doors	1	EA	400.00		400.00
5088	Integrated Sliding Closet Doors	2	EA	800.00		1,600.00
5089	Interior Door Hardware	1	EA	520.00		520.00
5089	Interior Sliding Door Hardware Incl. Track	2	EA	1,300.00		2,600.00
5090	Baseboards - Labour	72	LF		24.96	1,797.12
5090	Jambs & Casings - Labour	140	LF		28.88	4,043.20
5091	Baseboards - Material	72	LF	11.96		861.12
5091	Jambs & Casings - Material	140	LF	9.36		1,310.40
5093	Panelled Ceiling Detail	370	SF	50.00		18,500.00
5093	Millwork Drawers & Media Unit	1	\$\$	5,750.00		5,750.00
5093	Custom Furniture COM	1	\$\$	-		Not Incl.
5104	His Walk-In Closet	1	\$\$	13,000.00		13,000.00
5104	Hers Walk-In Closet	1	\$\$	18,720.00		18,720.00
5117	Television	1	\$\$	1,500.00		1,500.00
					Total	81,426.84
EXTERIOR TERRACES						
TERRACES - 2434 SQ.FT.						
7044	Skylight	1	\$\$	4,750.00		Pending
7076	Wood Pool Deck - Supply & Install	332	SF	19.00	9.50	9,462.00
7077	Terrace Pavers - Labour	2434	SF		-	Base Building
7078	Terrace Pavers - Material	2434	SF	-		Base Building
7081	Stone Countertops @ Outdoor Kitchen	1	\$\$	6,900.00		6,900.00
7081	Shower Privacy Screens @ Outdoor Showers	1	\$\$	22,800.00		22,800.00
7084	Stainless Steel Outdoor Kitchen Cabinets	1	\$\$	11,540.00		11,540.00
7093	Patio Furniture COM	1	\$\$	-		Not Incl.
7093	Millwork Benches @ North Corners	2	\$\$	3,500.00		7,000.00
7093	Millwork Banquette Not Incl. Table @ Rooftop Terrace (Cushion Fabric COM)	1	\$\$	8,500.00		8,500.00
7093	Built-In Decorative Planters	1	\$\$	Not Incl.		Not Incl.
7112	Outdoor Shower System	2	\$\$	8,585.00		17,170.00
7113	36" Lynx BBQ w/ Infrared Burners, Rotisserie & Cover	1	\$\$	12,000.00		12,000.00
7124	Motorized Awning	3	\$\$	19,500.00		58,500.00
7164	Lap Pool	1	\$\$	145,000.00		145,000.00
7164	Hot Tub	1	\$\$	15,525.00		15,525.00

632

ACC				MAT'L	LBR	
CODE	ITEM DESCRIPTION	QTY	UNIT	COST	COST	COST
					Total	314,397.00

This is **Exhibit "E"** referred to in the Affidavit of **Justin Kersten**
sworn this 27th day of January, 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is fluid and cursive, with the first name "Nick" and last name "Morrow" clearly distinguishable.

NICK MORROW
Commissioner for Taking Affidavits
(or as may be)

JUN.7.22	128 HAZELTON AVE, TORONTO APRIL 2016 PLAN - TAKE-OFF					
This is the property of Den Bosch + Finchley. The information herein is to be treated as confidential. It is not to be used, copied, or disclosed to outside parties without our written consent.						
ACC CODE	ITEM DESCRIPTION	QTY	UNIT	MATL COST	LBR COST	COST
BEDROOM 2 - 153 SQ.FT.						
5076	Hardwood Floors - Supply	153	SF	15.90		2,432.70
5076	Hardwood Floors - Install	153	SF		6.75	1,032.75
5088	Paint Grade Interior Doors	1	EA	400.00		400.00
5089	Interior Door Hardware	1	EA	260.00		260.00
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5104	Bedroom 2 - Built-In Closet	1	\$\$	17,550.00		17,550.00
5062	Automated Blinds	1	\$\$	-		Base Building
					Total	22,903.30
ENSUITE 2 - 39 SQ.FT.						
5079	Stone Tile - Labour	76	SF		22.00	1,672.00
5080	Stone Tile - Material	76	SF	18.05		1,371.80
5081	Stone Jams	1	\$\$	1,660.00		Not Included
5081	Stone Niche Shelves	1	\$\$	650.00		650.00
5081	Stone Shower Bench	1	\$\$	1,656.00		1,656.00
5081	Stone Countertop & Backsplash	1	\$\$	3,480.00		3,480.00
5085	Vanity - Millwork	1	\$\$	-		Standard Spec
5088	Paint Grade Interior Doors	1	EA	400.00		400.00
5089	Interior Door Hardware	1	EA	260.00		260.00
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5107	Slab Mirror	1	\$\$	750.00		750.00
5108	Frameless Glass Enclosure @ Shower & W/C	2	\$\$	1,450.00		2,900.00
5110	Bathroom Accessories	1	\$\$	518.13		518.13
5112	Sink	1	EA	117.42		117.42
5112	Faucet	1	EA	699.96		699.96
5112	Toilet Incl. Matte Black Trip Lever	1	EA	674.88		674.88
5112	Shower Kit w Tub Filler	1	\$\$	887.49		887.49
5112	Tub	1	\$\$	695.00		695.00
5062	Automated Blinds	1	\$\$	-		Base Building
5062	Electric Floor Heat	1	\$\$	-		Base Building
					Total	17,535.72
BEDROOM 3 - 188 SQ.FT.						
5076	Hardwood Floors - Supply	188	SF	15.90		2,989.20
5076	Hardwood Floors - Install	188	SF		6.75	1,269.00
5088	Paint Grade Interior Doors	1	EA	400.00		400.00
5089	Interior Door Hardware	1	EA	260.00		260.00
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5104	Bedroom 3 - Built-In Closet	1	\$\$	17,550.00		17,550.00
5062	Automated Blinds	1	\$\$	-		Base Building
					Total	23,696.05
ENSUITE 3 - 38 SQ.FT.						
5079	Stone Tile - Labour	140	SF		22.00	3,080.00
5080	Stone Tile - Material	140	SF	18.05		2,527.00
5081	Stone Jams	1	\$\$	1,660.00		Not Included
5081	Stone Niche Shelves	1	\$\$	650.00		650.00
5081	Stone Shower Bench	1	\$\$	1,656.00		1,656.00
5081	Stone Countertop & Backsplash	1	\$\$	3,480.00		3,480.00
5085	Vanity - Millwork	1	\$\$	-		Standard Spec
5088	Paint Grade Interior Doors	1	EA	400.00		400.00
5089	Interior Door Hardware	1	EA	260.00		260.00
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5107	Slab Mirror	1	\$\$	750.00		750.00
5108	Frameless Glass Enclosure @ Shower & W/C	2	\$\$	1,450.00		2,900.00
5110	Bathroom Accessories	1	\$\$	518.13		518.13
5112	Sink	1	EA	117.42		117.42
5112	Faucet	1	EA	699.96		699.96
5112	Toilet Incl. Matte Black Trip Lever	1	EA	674.88		674.88
5112	Shower Kit	1	\$\$	887.49		887.49
5062	Automated Blinds	1	\$\$	-		Base Building

ACC CODE	ITEM DESCRIPTION	QTY	UNIT	MAT'L COST	LBR COST	COST
5062	Electric Floor Heat	1	\$\$	-		Base Building
					Total	19,403.92
POWDER ROOM - 46 SQ.FT.						
5077	Tile @ Floor - Labour	43	SF		22.00	946.00
5078	Tile @ Floor - Material	43	SF	18.05		776.15
5081	Stone Jams	1	\$\$	1,660.00		Not Included
5081	Stone Niche Shelves	1	\$\$	650.00		650.00
5081	Stone Shower Bench	1	\$\$	1,656.00		1,656.00
5081	Stone Countertop & Backsplash	1	\$\$	2,610.00		2,610.00
5085	Vanity - Millwork	1	\$\$	4,745.00		4,745.00
5088	Paint Grade Interior Doors	2	EA	400.00		800.00
5089	Interior Door Hardware	2	EA	260.00		520.00
5089	Pocket Door Track	1	EA	950.00		950.00
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5107	Slab Mirror	1	\$\$	750.00		750.00
5110	Bathroom Accessories	1	\$\$	518.13		518.13
5112	Sink	1	EA	117.42		117.42
5112	Faucet	1	EA	635.55		635.55
5112	Toilet	1	EA	613.89		613.89
5062	Electric Floor Heat	1	\$\$	-		Base Building
					Total	17,091.18
LAUNDRY ROOM - 42 SQ.FT.						
5061	Low Voltage LED Lighting @ Millwork	1	\$\$	450.00		450.00
5062	Electric Floor Heat	1	\$\$	-		Base Building
5077	Tile @ Floor - Labour	42	SF		20.00	840.00
5078	Tile @ Floor - Material	42	SF	15.48		650.16
5081	Stone Countertop & Backsplash	1	\$\$	1,740.00		1,740.00
5084	Laundry Cabinets	1	\$\$	7,575.00		7,575.00
5088	Paint Grade Interior Doors	1	EA	400.00		400.00
5089	Interior Door Hardware	1	EA	260.00		260.00
5090	Baseboards - Labour	10	LF		12.48	124.80
5091	Baseboards - Material	10	LF	5.99		59.90
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5112	Sink	1	EA	1,318.98		1,318.98
5112	Faucet	1	EA	355.11		355.11
5112	Drain	1	EA	76.95		76.95
5113	Washer/Dryer	1	EA	2,105.00		2,105.00
					Total	16,758.94
ELEVATOR LOBBY / CORRIDOR - 272 SQ.FT.						
5077	Tile @ Floor Border - Labour	272	SF		55.00	14,960.00
5078	Tile @ Floor Border - Material	272	SF	64.55		17,557.60
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5093	Wall Panelling					
					Total	33,745.45
CORRIDOR - 187 SQ.FT.						
5076	Hardwood Floors - Supply	187	SF	15.90		2,973.30
5076	Hardwood Floors - Install	187	SF		6.75	1,262.25
5088	Paint Grade Interior Doors	2	EA	400.00		800.00
5089	Interior Door Hardware	2	EA	260.00		520.00
5089	Soss Concealed Door Hinges	6	EA	190.00		1,140.00
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5093	Panel Mouldings @ Main Stair	1	\$\$	-		Not Required
5093	Corridor Millwork	1	\$\$	48,400.00		48,400.00
					Total	56,323.40
GYM - 190 SQ.FT.						
5076	Rubber Gym Flooring	190	SF		14.50	2,755.00
5088	Paint Grade Interior Doors	1	EA	400.00		400.00
5089	Interior Door Hardware	1	EA	260.00		260.00

ACC CODE	ITEM DESCRIPTION	QTY	UNIT	MAT'L COST	LBR COST	COST
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5093	Wall Panelling	1	\$\$	-	-	Not Required
5102	Full Height Glass Partition Wall	1	\$\$	-	-	Not Required
					Total	4,642.85
GAMES ROOM - 521 SQ.FT.						
5076	Hardwood Floors - Supply (Border Only)	99	SF	15.90		1,574.10
5076	Hardwood Floors - Install (Border Only)	99	SF		6.75	668.25
5077	Tile @ Floor Border - Labour	521	SF		55.00	28,655.00
5078	Tile @ Floor Border - Material	521	SF	64.55		33,630.55
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5062	Automated Blinds	1	\$\$	-	-	Base Building
5062	Automated Doors/Windows	1	\$\$	-	-	Base Building
5062	Electric Floor Heat	1	\$\$	-	-	Base Building
					Total	65,755.75
GREAT ROOM - 473 SQ.FT.						
5061	Low Voltage LED Lighting @ Millwork	1	\$\$	2,450.00		2,450.00
5062	Automated Blinds	1	\$\$	-	-	Base Building
5069	Remote Gas Fireplace Insert	1	\$\$	8,700.00		8,700.00
5076	Hardwood Floors - Supply (Border Only)	94	SF	15.90		1,494.60
5076	Hardwood Floors - Install (Border Only)	94	SF		6.75	634.50
5077	Tile @ Floor - Labour	473	SF		55.00	26,015.00
5078	Tile @ Floor - Material	473	SF	64.55		30,532.15
5081	Stone Back Panels @ Built-Ins	1	\$\$	29,400.00		29,400.00
5081	Stone Jams @ Archway	2	\$\$	7,790.00		15,580.00
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5093	Built-In Millwork @ Great Room (Rift Cut White Oak)	1	\$\$	27,550.00		27,550.00
					Total	143,584.10
DINING ROOM - 189 SQ.FT.						
5061	Low Voltage LED Lighting @ Millwork	1	\$\$	2,450.00		2,450.00
5076	Hardwood Floors - Supply (Border Only)	56	SF	15.90		890.40
5076	Hardwood Floors - Install (Border Only)	56	SF		6.75	378.00
5077	Tile @ Floor - Labour	189	SF		55.00	10,395.00
5078	Tile @ Floor - Material	189	SF	64.55		12,199.95
5081	Dining Room Wall Panel	1	\$\$	3,133.00		3,133.00
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5093	Panelled Ceiling Detail	1	\$\$	5.99		5.99
5062	Automated Windows & Doors	1	\$\$	-	-	Base Building
5062	Automated Blinds	1	\$\$	-	-	Base Building
5113	Built-In Wine Units	1	\$\$	98,256.08		98,256.08
					Total	128,936.27
KITCHEN - 578 SQ.FT.						
5061	Low Voltage LED Lighting @ Millwork	1	\$\$	2,450.00		2,450.00
5076	Hardwood Floors - Supply	578	SF	15.90		9,190.20
5076	Hardwood Floors - Install	578	SF		6.75	3,901.50
5077	Kitchen Backsplash Tile - Labour	137	SF		55.00	7,535.00
5078	Kitchen Backsplash Tile - Material	137	SF	28.20		3,863.40
5081	Stone Countertop @ Island	1	\$\$	6,500.00		6,500.00
5081	Perimeter Stone Countertops & Backsplash	1	\$\$	7,200.00		7,200.00
5084	Kitchen Cabinetry - Uppers/Lowers & Island	1	\$\$	68,800.00		68,800.00
5088	Paint Grade Interior Doors	2	EA	400.00		800.00
5089	Interior Door Hardware	2	EA	260.00		520.00
5089	Soss Concealed Door Hinges	6	EA	190.00		1,140.00
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5093	Panelled Ceiling Detail	1	\$\$	5.99		5.99

ACC CODE	ITEM DESCRIPTION	QTY	UNIT	MAT'L COST	LBR COST	COST
5112	Kitchen Sink	1	EA	690.27		690.27
5112	Kitchen Faucet	1	EA	2,053.10		2,053.10
5112	Drain	1	EA	76.95		76.95
5113	Miele 48" Gas Range	1	EA	19,686.82		19,686.82
5113	Miele 48" Ceiling Mounted Exhaust Hood	1	EA	3,335.71		3,335.71
5113	Miele 18" All Freezer	1	EA	7,561.39		7,561.39
5113	Miele 36" All Fridge	1	EA	8,969.63		8,969.63
5113	24" Panel-Ready Dishwasher	1	EA	1,935.53		1,935.53
5113	24" Miele Coffee System	1	EA	4,022.46		4,022.46
5069	Remote Gas Fireplace Insert	1	\$\$	11,695.00		11,695.00
5062	Automated Blinds	1	\$\$	-	-	Base Building
5062	Automated Windows & Doors	1	\$\$	-	-	Base Building
5062	Automated Blinds	1	\$\$	-	-	Base Building
					Total	173,160.80
OFFICE - 281 SQ.FT.						
5061	Low Voltage LED Lighting @ Millwork	1	\$\$	1,150.00		1,150.00
5076	Hardwood Floors - Supply	281	SF	15.90		4,467.90
5076	Hardwood Floors - Install	281	SF		6.75	1,896.75
5088	Paint Grade Interior Doors	3	EA	400.00		1,200.00
5089	Interior Door Hardware	3	EA	260.00		780.00
5089	Pocket Door Track	1	EA	950.00		950.00
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5093	Custom Laminated Brass Mesh Panel Inlays @ Bar Millwork & Pocket Doors - Supply Only	1	\$\$	90.00		29,250.00
5093	Built-In Millwork	1	\$\$	15,000.00		15,000.00
5112	Bar Sink	1	EA	750.12		750.12
5112	Bar Faucet	1	EA	489.63		489.63
5112	Bar Drain	1	EA	76.95		76.95
5113	Under Counter Fridge	1	EA	1,860.59		1,860.59
5062	Automated Blinds	1	\$\$	-	-	Base Building
					Total	59,099.79
HER ENSUITE						
5061	Low Voltage LED Lighting @ Millwork	1	\$\$	950.00		950.00
5079	Marble Tile @ Floor - Labour	772	SF		22.00	16,984.00
5080	Marble Tile @ Floor - Material	772	SF	37.90		29,258.80
5079	Marble Tile @ Walls Incl. Jams - Labour	330	SF		20.00	6,600.00
5080	Marble Tile @ Walls Incl. Jams - Material	362	SF	15.48		5,603.76
5079	Marble Tile Baseboards - Labour	16	SF		20.00	320.00
5080	Marble Tile Baseboards - Material	16	SF	15.48		247.68
5081	Stone Jams	1	\$\$	1,660.00		Not Included
5081	Stone Niche Shelves	1	\$\$	650.00		650.00
5081	Stone Shower Bench	1	\$\$	1,656.00		1,656.00
5081	Stone Countertop & Backsplash	1	\$\$	3,480.00		3,480.00
5085	Her Vanity	1	\$\$	2,700.00		2,700.00
5088	Paint Grade Interior Doors	1	EA	400.00		400.00
5089	Interior Door Hardware	1	EA	295.00		295.00
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5107	Slab Mirror	1	\$\$	750.00		750.00
5108	Frameless Glass Enclosures @ Shower & W/C	2	\$\$	1,450.00		2,900.00
5110	Bathroom Accessories	1	\$\$	367.08		367.08
5112	Sink	1	EA	117.42		117.42
5112	Faucet	1	EA	578.55		578.55
5112	Elipse Freestanding Tubs	1	EA	11,985.00		11,985.00
5112	Freestanding Tub Filler	1	EA	1,361.16		1,361.16
5112	Wall Hung Toilet (NOT INCL. OPTION)	1	EA	1,371.42		1,371.42
5112	Shower Kit	1	\$\$	1,582.89		1,582.89
5062	Heated Floors	1	\$\$	-	-	Base Building
5062	Automated Blinds	1	\$\$	-	-	Base Building
					Total	91,386.61
HIS ENSUITE / STEAM / SAUNA						
5061	Low Voltage LED Lighting @ Millwork	1	\$\$	950.00		950.00
5079	Marble Tile @ Steam/Sauna - Labour	476	SF		22.00	10,472.00
5080	Marble Tile @ Steam/Sauna - Material	476	SF	37.90		18,040.40
5081	Stone Jams	1	\$\$	1,660.00		Not Included
5081	Stone Niche Shelves	1	\$\$	650.00		650.00
5081	Stone Shower Bench	1	\$\$	1,656.00		1,656.00
5081	Stone Countertop & Backsplash	1	\$\$	3,480.00		3,480.00
5085	His Vanity	1	\$\$	4,800.00		4,800.00

ACC CODE	ITEM DESCRIPTION	QTY	UNIT	MAT'L COST	LBR COST	COST
5088	Paint Grade Interior Doors	1	EA	400.00		400.00
5089	Interior Door Hardware	1	EA	295.00		295.00
5089	Pocket Door Track	2	EA	1,125.00		2,250.00
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5107	Slab Mirror	1	\$\$	750.00		750.00
5108	Frameless Glass Enclosures @ Shower & W/C	2	\$\$	1,450.00		2,900.00
5110	Bathroom Accessories	1	\$\$	367.08		367.08
5112	Sink	1	EA	117.42		117.42
5112	Faucet	1	EA	578.55		578.55
5112	Toilet	1	EA	1,371.42		1,371.42
5112	Shower Kit	1	\$\$	1,582.89		1,582.89
5112	Steam Unit	1	\$\$	3,905.64		3,905.64
5112	Infrared Sauna	1	\$\$	8,190.00		8,190.00
5062	Heated Floors	1	\$\$	-	-	Base Building
5062	Automated Blinds	1	\$\$	-	-	Base Building
					Total	63,984.25
MASTER BEDROOM - 370 SQ.FT.						
5061	Low Voltage LED Lighting @ His & Hers Closets	1	\$\$	1,150.00		1,150.00
5076	Hardwood Floors - Supply	370	SF	15.90		5,883.00
5076	Hardwood Floors - Install	370	SF		6.75	2,497.50
5088	Paint Grade Interior Doors	3	EA	400.00		1,200.00
5089	Interior Door Hardware	3	EA	295.00		885.00
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5062	Nexus Drop Down TV Lift	1	\$\$	9,668.10		9,668.10
5062	TV Rough-In	1	\$\$	-	-	Base Building
5062	Automated Blinds	1	\$\$	-	-	Base Building
					Total	22,511.45
HER CLOSET - 370 SQ.FT.						
5061	Low Voltage LED Lighting @ His & Hers Closets	1	\$\$	2,250.00		2,250.00
5062	TV Rough-In	1	\$\$	-	-	Base Building
5062	Automated Blinds	1	\$\$	-	-	Base Building
5076	Hardwood Floors - Supply	370	SF	15.90		5,883.00
5076	Hardwood Floors - Install	370	SF		6.75	2,497.50
5088	Paint Grade Interior Doors	3	EA	400.00		1,200.00
5089	Interior Door Hardware	3	EA	295.00		885.00
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5104	Hers Walk-In Closet	1	\$\$	48,720.00		48,720.00
5104	Carousel Closet Inserts	2	\$\$	5,630.64		11,261.28
5110	Double Safe @ Her Closet	1	\$\$	-		Pending
					Total	73,924.63
HIS CLOSET - 370 SQ.FT.						
5061	Low Voltage LED Lighting @ His & Hers Closets	1	\$\$	1,950.00		1,950.00
5076	Hardwood Floors - Supply	370	SF	15.90		5,883.00
5076	Hardwood Floors - Install	370	SF		6.75	2,497.50
5088	Paint Grade Interior Doors	3	EA	400.00		1,200.00
5089	Interior Door Hardware	3	EA	295.00		885.00
5089	Pocket Door Track	2	EA	1,125.00		2,250.00
5090	Baseboards - Labour	23	LF		12.48	287.04
5091	Baseboards - Material	23	LF	5.99		137.77
5090	Jams & Casings - Labour	42	LF		14.44	606.48
5091	Jams & Casings - Material	42	LF	4.68		196.56
5104	His Walk-In Closet	1	\$\$	18,000.00		18,000.00
5104	Carousel Closet Insert	1	\$\$	5,630.64		5,630.64
5062	TV Rough-In	1	\$\$	-	-	Base Building
5062	Automated Blinds	1	\$\$	-	-	Base Building
					Total	39,523.99
9TH FLOOR TERRACE - 200 SQ.FT.						
7044	Electric Snowmelt	1	\$\$	-	-	Base Building
7077	Tile @ Floor - Labour	48	SF	-	-	Base Building
7078	Tile @ Floor - Material	48	SF	-	-	Base Building
7077	Tile @ Floor - Labour	1632	SF	-	-	Base Building

ACC				MAT'L	LBR	
CODE	ITEM DESCRIPTION	QTY	UNIT	COST	COST	COST
7078	Tile @ Floor - Material	1632	SF	-	-	Base Building
7093	Stainless Steel Outdoor Kitchen Cabinets	1	\$\$	-	-	Pending
7081	Stone Countertops @ Outdoor Kitchen	1	\$\$	-	-	Pending
7081	Natural Stone Partition @ Outdoor Showers	1	\$\$	-	-	Base Building
7093	Millwork Lounge Areas @ Rooftop Terrace	1	\$\$	-	-	Pending
7093	Millwork Banquette @ Rooftop Terrace	1	\$\$	-	-	Pending
7112	Outdoor Shower System	1	\$\$	-	-	Pending
7113	36" BBQ	1	\$\$	-	-	Pending
7113	Hot Tub	1	\$\$	-	-	Base Building
7113	Lap Pool	1	\$\$	-	-	Base Building
7114	Pool Deck	200	SF	-	-	Pending
7115	Motorized Awning	1	\$\$	-	-	Pending
7118	Built-In Decorative Planter	1	\$\$	-	-	Pending
7119	Skylight - Pending	1	\$\$	-	-	Base Building
					Total	-

This is **Exhibit "F"** referred to in the Affidavit of **Justin Kersten**
sworn this 27th day of January, 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N" and "M".

NICK MORROW
Commissioner for Taking Affidavits
(or as may be)

From: [Jay Keith](#)
To: [Justin Kersten](#)
Cc: [Sam Mizrahi](#); [Esteban Yanquelevech](#); [Diego Del Castillo](#); [David & Fiona Berry](#); [Colin Keith](#); [Robert Barber](#)
Subject: Re: Unit 901 - 128 Hazelton Avenue - Notice
Date: April 25, 2023 9:17:56 AM
Attachments: [image001.png](#)
[9th sauna kit-1.pdf](#)

Morning Justin,

Received your email last week and sat down with Esteban to review your concerns.

-I have asked Diego to have the breakroom and tool shack removed from the 9th floor. This should be done by the end of the week.

-All the electrical components were ordered a couple weeks ago and we had expected the electricians to begin the rough in 2 weeks ago however there was an issue with the contract and pricing that we have just recently ironed out. I am hoping to have them back on site later next week.

- the base fixtures were ordered a couple weeks ago and the revised list Trevor supplied will be ordered this week for delivery 2nd week in May.

-Miele PO was issued March 24th, I will not deliver these prior to the floor being laid down. Wine fridges were added to order 3 weeks ago.

- sauna kit information is attached

- Deficiency list is still in the works and part of our occupancy package with the city for the roof.

-The pool change room has been submitted to S&A in order to put site instruction out to trades for pricing

-Spa pools is aware of the work to be completed on the roof and will have all issues corrected prior to occupancy. The deck issue is a concern as it's a high quality wood that was used. An alternative product really wouldn't have held up better. I will speak to the company about correcting their work.

-Completion date of sept. 10 in my mind is still achievable. Materials we are using are readily available , cameo has confirmed the need 12 weeks to do the kitchen. Given the size of the unit I can also stack the different trades to be working at the same time

Regards

Jay r Keith
Director
Site Operations
125 Hazelton Avenue
Toronto, Ontario M5R 2E4
T-416-605-4668
F. [1.866.300.0219](tel:18663000219)



On Thu, Apr 20, 2023 at 11:31 AM Justin Kersten <justin@denbosch.ca> wrote:

Good morning,

As you are aware, we have been participating in weekly site reviews at unit 901-128 Hazelton Avenue since December 2022.

We are writing to notify you that construction progress on unit 901-128 Hazelton Avenue is completely unreasonable and unacceptable.

The site is currently being used as a storage facility and break room for other construction taking place in the building. While no progress has been made on unit 901-128 Hazelton Avenue, work appears to progress on other units throughout the building uninterrupted.

The unit has sat stagnant for more than six weeks. Metal stud framers were last seen on site the week of March 14th, 2023.

Jay advised us on April 4th that the electricians would be mobilizing on site the week of April 10th, but they have still not started work on site.

We were advised that no progress could be made on the unit because materials such as pot lights and electrical devices were back-ordered or delayed. We provided approval of the pot light spec on March 8th, 2023. Please provide us with a copy of the original order and confirmation of the delay from your supplier. We have experienced no shortage of this product and believe this claim is false.

We were told on site that plumbing rough-ins could not be completed since rough-in valves and trims are back-ordered or delayed. We have since been asked to sign-off on the final order. Evidently, the fixtures were never ordered and claims that they were delayed were false. Please send us a copy of the final order when secured.

We provided approval for all kitchen appliances, as well as bar beverage fridges, on February 28th, 2023. We provided approval of 4 x wine fridge towers including merging kits on March 28th, 2023. We were told that all appliances were ordered, and then we were told

that appliances have not been signed off on by Esteban. We will not be responsible for any delays related to the availability of the appliances. When we provided approvals in February and March, all appliances were available for delivery by end of May. Please send us a final copy of the order when secured.

In general, we are concerned that building materials required to complete the Owner's unit may not yet be secured. As agreed, we have been working with Diego, Jay, and Trevor to ensure your team has answers and approvals in a timely manner. We will not be held responsible for delays related to the availability of materials which were approved several weeks, or even months prior.

We are also concerned with the quality of work and materials. We have brought to Jay's attention that the porcelain tiles installed at the perimeter of the pool last fall are falling off. The porcelain decking pavers at rooftop are all cracked. The wood deck is already warping due to the extreme southern exposure and is the wrong material for this location. We advised Jay last fall that the sconces mounted at the rooftop terrace are mounted at two different heights and must be corrected. He advised that he has a list of deficiencies, and these would all be made good. We request a copy of the deficiency list to ensure everything is documented and addressed.

Lastly, we would like to bring your attention to the construction schedule. The original construction schedule provided January 12th, 2023, noted occupancy by August 4, 2023. The updated construction schedule dated March 28th, 2023, notes occupancy by September 10th. Looking at the current state of the unit, it is evident that occupancy will likely slide again possibly to October 12, 2023. Construction is approximately 8 weeks behind schedule.

Regards,



Justin Kersten

Associate Project Manager

Den Bosch + Finchley

146 Davenport Road | Toronto, ON | M5R 1J2

W: 416-922-4249 x 309 | C: 416-669-2257

justin@denbosch.ca

This is **Exhibit "G"** referred to in the Affidavit of **Justin Kersten**
sworn this 27th day of January, 2025

A handwritten signature in black ink, appearing to read "Nick Morrow". The signature is written in a cursive style with a large initial "N" and "M".

NICK MORROW
Commissioner for Taking Affidavits
(or as may be)

From: [Jay Keith](#)
To: [Justin Kersten](#)
Cc: [Esteban Yanquelevich](#); [Colin Keith](#)
Subject: 128 Hazelton 9th
Date: December 5, 2023 9:37:27 AM

Attached you will find an updated schedule for construction. Pretty high level right now but a good overview to base our conversation on tomorrow.

All the best

LOCATION AND DEFICIENCY	CHECK	TRADES	START	FINISH	REASON
901 - Electrical rough in		OZZ	2-Jan-24	26-Jan-24	
901 - Plumbing rough in	90%	CEC	1-Jun-23	5-Jan-24	
901 - Sprinkler installation		CEC	25-Jan-24	26-Jan-24	
901 - Drywall installation		Coswick	27-Jan-24	23-Feb-24	
901 - Taping		Coswick	17-Feb-24	8-Mar-24	
901 - Priming and ceiling paint		Luis	9-Mar-24	19-Mar-24	
901 - Tile installation		Elite Tile	20-Mar-24	29-Mar-24	
901 - Hardwood installation		TDB	30-Mar-24	19-Apr-24	need to review selections package
901 - Shower enclosure		Perfect glass	17-Apr-24	19-Apr-24	
901 - Trims and baseboard installation		TDB	20-Apr-24	17-May-24	PM has asked for samples of the selections chosen
901 - Door installation		TDB	20-Apr-24	17-May-24	
901 - Paint		Luis	18-May-24	14-Jun-24	
901 - Hardware installation		TDB	15-May-24	19-May-24	need to select and purchase the hardware
901 - Cabinets installation		TDB	20-Apr-24	10-May-24	
901 - Counter tops installation		Stone depot	25-May-24	29-May-24	
901 - Electrical pot lights installation		Ozz	24-Mar-24	29-Mar-24	
901 - Plumbing fixtures		CEC	30-May-24	31-May-24	
901 - Appliances installation		Miele	30-May-24	30-May-24	
901 - Mirrors installation		Perfect glass	31-May-24	6-Jun-24	
901 - Electrical fixtures		Ozz	7-Jun-24	7-Jun-24	
901 - Cleaning and inspection		Mizrahi	5-Jun-24	9-Jun-24	
901 - Finish the pool		SPA	29-Jan-24	1-Mar-24	
901 - Finish the jacuzzi		SPA	28-Jan-24	5-Feb-24	

Jay r Keith

Director
 Site Operations
 125 Hazelton Avenue
 Toronto, Ontario M5R 2E4
 T-416-605-4668
 F. 1.866.300.0219



CONSTANTINE ENTERPRISES INC.

-and-

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

Applicant

Respondents

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF JUSTIN KERSTEN
(AFFIRMED JANUARY 27, 2025)**

Tyr LLP

488 Wellington Street West, Suite 300-302
Toronto, ON M5V 1E3
Fax: 416.987.2370

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Email: nmorrow@tyrllp.com
Tel: 416.434.9114

Lawyers for the Respondent

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

RESPONDING MOTION RECORD OF DAVID BERRY

Tyr LLP

488 Wellington Street West, Suite 300-302
Toronto, ON M5V 1E3
Fax: 416.987.2370

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Lawyers for David Berry